

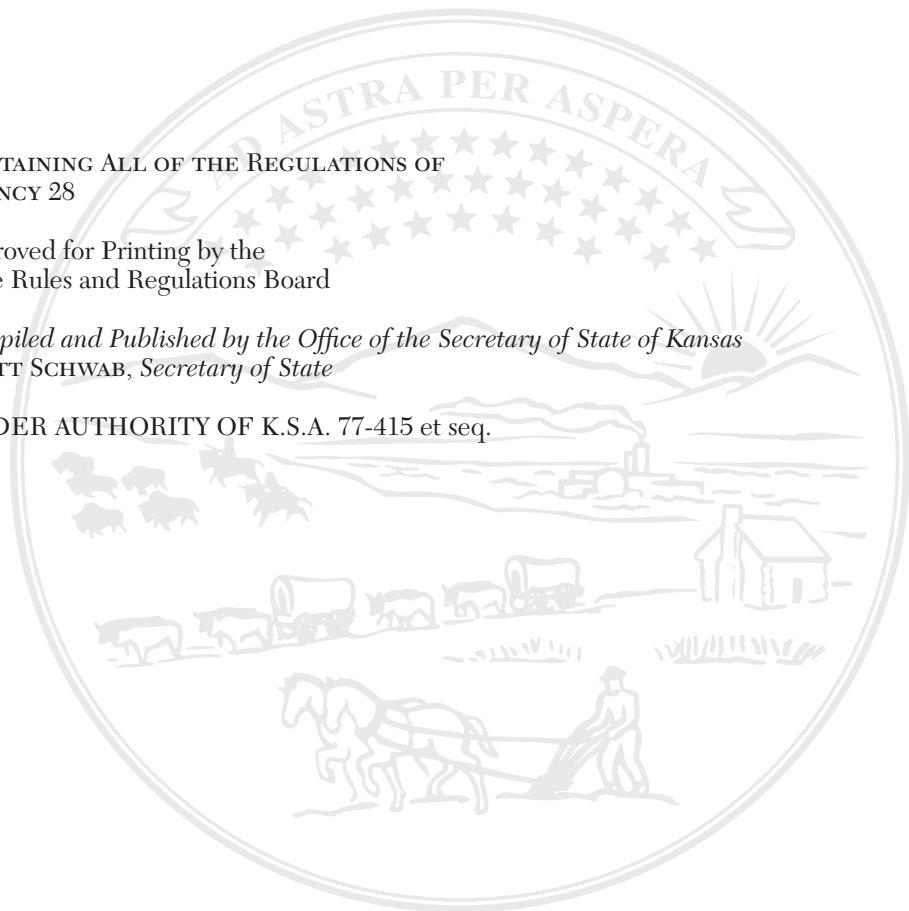
Kansas Administrative Regulations

CONTAINING ALL OF THE REGULATIONS OF
AGENCY 28

Approved for Printing by the
State Rules and Regulations Board

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

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



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AUTHENTICATION OF RULES AND REGULATIONS

THIS IS TO CERTIFY That we, Derek Schmidt, Attorney General of and for the State of Kansas, and Scott Schwab, Secretary of State of and for the State of Kansas, pursuant to K.S.A. 77-429 have examined and compared this 2022 Volume 2 of the Kansas Administrative Regulations; and do hereby certify that this publication of rules and regulations contains all rules and regulations for agency 28 approved for printing by the State Rules and Regulations Board and otherwise complies with K.S.A. 77-415 *et seq.* and acts amendatory thereof.

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


DEREK SCHMIDT,
Attorney General


SCOTT SCHWAB,
Secretary of State

[SEAL]

EXPLANATORY PREFACE

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

ARRANGEMENT OF RULES AND REGULATIONS

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

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

SALES

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SCOTT SCHWAB, *Secretary of State*

COMMENTARY

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

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

To find the most recent version of a regulation:

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

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

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

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

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

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

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

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

SCOTT SCHWAB, *Secretary of State*

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**Editor's note.*

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- SKILLED NURSING HOMES. (*Not in active use.*)
- INTERMEDIATE CARE HOMES. (*Not in active use.*)
- PERSONAL CARE HOMES. (*Not in active use.*)
- GENERAL. (*Not in active use.*)
- SKILLED NURSING FACILITIES AND INTERMEDIATE CARE FACILITIES. (*Not in active use.*)
- PERSONAL CARE FACILITIES. (*Not in active use.*)
- ONE-BED AND TWO-BED HOMES. (*Not in active use.*)
- BOARDING CARE HOMES.
- CERTIFICATION OF NURSE AIDES.
- CERTIFICATION OF MEDICATION AIDES.
- INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED.
- 28-40. EMERGENCY MEDICAL SERVICES. (*Not in active use.*)
- CERTIFICATION OF AMBULANCE ATTENDANTS. (*Not in active use.*)
- AMBULANCE LICENSURE. (*Not in active use.*)
- 28-41. OIL FIELD WASTE DISPOSAL. (*Not in active use.*)
- 28-42. CERTIFICATES OF NEED FOR HEALTH FACILITIES. (*Not in active use.*)
- 28-43. CONSTRUCTION, OPERATION, MONITORING AND ABANDONMENT OF SALT SOLUTION MINING WELLS. (*Not in active use.*)
- 28-44. PETROLEUM PRODUCTS STORAGE TANKS.
- 28-45. UNDERGROUND HYDROCARBON STORAGE WELLS AND ASSOCIATED BRINE PONDS.
- 28-45a. UNDERGROUND NATURAL GAS STORAGE WELLS IN BEDDED SALT.
- 28-45b. UNDERGROUND CRUDE OIL STORAGE WELLS AND ASSOCIATED BRINE PONDS.
- 28-46. UNDERGROUND INJECTION CONTROL REGULATIONS.
- 28-47. USE OF OIL AND GAS FIELD SALT WATER IN ROAD CONSTRUCTION AND MAINTENANCE PROJECTS.
- 28-48. SPILL REPORTING.
- 28-49. TRAUMATIC HEAD INJURY FACILITIES. (*Not in active use.*)
- 28-50. ASBESTOS CONTROL.
- 28-51. HOME HEALTH AGENCY LICENSURE.
- 28-52. MEDICAL CARE FACILITIES.
- 28-53. CHARITABLE HEALTH CARE PROVIDERS.
- 28-54. TRAUMA SYSTEM PROGRAM.
- 28-55. PCB FACILITY CONSTRUCTION PERMIT STANDARDS AND REGULATIONS. (*Not in active use.*)
- 28-56. REPORTING OF INDUCED TERMINATIONS OF PREGNANCY.
- 28-59. DIETITIAN.
- 28-60. CREDENTIALING PROGRAM.
- 28-61. LICENSURE OF SPEECH LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS.
- 28-65. EMERGENCY PLANNING AND RIGHT-TO-KNOW.
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- 28-68. KANSAS DRYCLEANER ENVIRONMENTAL RESPONSE ACT.
- 28-70. CANCER REGISTRY.

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- 28-71. VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM.
- 28-72. RESIDENTIAL CHILDHOOD LEAD POISONING PREVENTION PROGRAM.
- 28-73. ENVIRONMENTAL USE CONTROLS PROGRAM.
- 28-74. RISK MANAGEMENT PROGRAM.
- 28-75. HEALTH INFORMATION.

Article 1.—DISEASES

28-1-1. Definitions. As used in K.A.R. 28-1-1 through 28-1-23, each of the following terms shall have the meaning specified in this regulation: (a) “Case” means an instance of a diagnosed infectious or contagious disease or condition in a person or an animal.

(b) “Cluster, outbreak, or epidemic” means a situation in which cases are observed in excess of what is expected compared to the usual frequency of the incidence of the infectious or contagious disease or condition in a defined area, among a specified population, and during a specified period of time.

(c) “Condition” means any noninfectious adverse health event.

(d) “Correctional facility” means any city or county jail or any correctional institution, as defined in K.S.A. 75-5202 and amendments thereto.

(e) “Corrections officer” means an employee of the department of corrections, as defined in K.S.A. 75-5202 and amendments thereto, and any person employed by a city or county who is in charge of a jail or section of a jail, including jail guards and those individuals who conduct searches of persons taken into custody.

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

(g) “Emergency services employee” means an attendant, as specified in K.S.A. 65-6112 and amendments thereto; a supervised student, as described in K.S.A. 65-6129a and amendments thereto; an observer authorized by an employing agency or entity; or a paid or volunteer firefighter.

(h) “Infectious or contagious diseases” has the meaning specified for “infectious and contagious diseases” in K.S.A. 65-116a, and amendments thereto.

(i) “Local health officer” means each person appointed pursuant to K.S.A. 65-201, and amendments thereto.

(j) “Occupational exposure” has the meaning specified in K.S.A. 65-116a, and amendments thereto.

(k) “Other potentially infectious materials” has

the meaning specified in K.S.A. 65-116a, and amendments thereto.

(l) “Physician” means a person licensed by the state board of healing arts to practice medicine and surgery.

(m) “Secretary” means secretary of the department of health and environment.

(n) “Suspected case” means an instance in which signs and symptoms suggestive of an infectious or contagious disease or condition are present in a person or animal before confirmation of the diagnosis. (Authorized by and implementing K.S.A. 65-101 and K.S.A. 2017 Supp. 65-128; effective May 1, 1982; amended May 11, 2018.)

28-1-2. Reporting requirements for infectious or contagious diseases and conditions.

(a) Each person licensed to practice the healing arts or engaged in a postgraduate training program approved by the state board of healing arts, licensed dentist, licensed professional nurse, licensed practical nurse, administrator of a hospital, licensed adult care home administrator, licensed physician assistant, licensed social worker, and teacher or school administrator shall report each suspected case of the following infectious or contagious diseases or conditions to the secretary within four hours of knowledge of the suspected case:

- (1) Anthrax;
- (2) botulism;
- (3) cholera;
- (4) diphtheria;
- (5) measles (rubeola);
- (6) meningococcal disease;
- (7) mumps;
- (8) novel influenza A virus infection;
- (9) plague (*Yersinia pestis*);
- (10) poliovirus;
- (11) rabies, human;
- (12) rubella;
- (13) severe acute respiratory syndrome-associated coronavirus (SARS-CoV);
- (14) smallpox;
- (15) tetanus;
- (16) tuberculosis;

(17) vaccinia, postvaccination infection or secondary transmission;

(18) viral hemorrhagic fevers, including Ebola virus, Marburg virus, Crimean-Congo hemorrhagic fever virus, Lassa virus, Lujo virus, and any of the New World arenaviruses; and

(19) any exotic or newly recognized disease.

(b) Each person licensed to practice the healing arts or engaged in a postgraduate training program approved by the state board of healing arts, licensed dentist, licensed professional nurse, licensed practical nurse, administrator of a hospital, licensed adult care home administrator, licensed physician assistant, licensed social worker, and teacher or school administrator shall report each occurrence of any of the following to the secretary within four hours:

(1) Clusters, outbreaks, or epidemics;

(2) possible terrorist acts due to biological, chemical, or radiological agents;

(3) unexplained death suspected to be due to an unidentified infectious agent; or

(4) any unusual disease or manifestation of illness.

(c) Each person specified in subsection (a) shall report each case of the infectious or contagious diseases or conditions specified in this subsection to the secretary within 24 hours, except that if the reporting period ends on a weekend or state-approved holiday, the report shall be made to the secretary by 5:00 p.m. on the next business day after the 24-hour period. Each report for the following shall be required only upon receipt of laboratory evidence of the infectious or contagious disease or condition, unless otherwise specified or requested by the secretary:

(1) Acute flaccid myelitis (report all suspected cases, regardless of laboratory evidence);

(2) anaplasmosis;

(3) arboviral disease, neuroinvasive and non-neuroinvasive, including California serogroup virus disease, chikungunya virus, any dengue virus infection, eastern equine encephalitis virus disease (EEE), Powassan virus disease, St. Louis encephalitis virus disease (SLE), West Nile virus disease (WNV), western equine encephalitis virus disease (WEE), and Zika virus;

(4) babesiosis;

(5) blood lead level, any results;

(6) brucellosis, including laboratory exposures to *Brucella* species;

(7) campylobacteriosis;

(8) *Candida auris*;

(9) carbapenem-resistant bacterial infection or colonization;

(10) carbon monoxide poisoning (report all suspected cases, regardless of laboratory evidence);

(11) chancroid;

(12) chickenpox (varicella) (report all suspected cases, regardless of laboratory evidence);

(13) *Chlamydia trachomatis* infection;

(14) coccidioidomycosis;

(15) cryptosporidiosis;

(16) cyclosporiasis;

(17) ehrlichiosis;

(18) giardiasis;

(19) gonorrhea, including antibiotic susceptibility testing results, if performed;

(20) *Haemophilus influenzae*, invasive disease;

(21) Hansen's disease (leprosy) (report all suspected cases, regardless of laboratory evidence);

(22) hantavirus (report all suspected cases, regardless of laboratory evidence);

(23) hemolytic uremic syndrome, postdiarrheal (report all suspected cases, regardless of laboratory evidence);

(24) hepatitis A, acute hepatitis A (IgM antibody-positive laboratory results only);

(25) hepatitis B, acute, chronic, and perinatal infections;

(26) hepatitis B in pregnancy (report the pregnancy of each woman with hepatitis B virus infection);

(27) hepatitis B (report all positive, negative, and inconclusive results for children younger than five years of age);

(28) hepatitis C;

(29) hepatitis D;

(30) hepatitis E;

(31) histoplasmosis;

(32) human immunodeficiency virus infection;

(33) human immunodeficiency virus-positive cases (report either the CD4+ T-lymphocyte cell counts or the CD4+ T-lymphocyte percent of total lymphocytes);

(34) human immunodeficiency virus infection in pregnancy (report the pregnancy of each woman with human immunodeficiency virus infection);

(35) human immunodeficiency virus (report viral load of any value);

(36) influenza that results in the death of any child under 18 years of age (report both suspected cases and cases, regardless of laboratory evidence);

(37) legionellosis;

(38) leptospirosis;

- (39) listeriosis;
 - (40) Lyme disease;
 - (41) malaria;
 - (42) psittacosis;
 - (43) Q fever, acute and chronic;
 - (44) rabies, animal;
 - (45) salmonellosis;
 - (46) shiga toxin-producing *Escherichia coli* (STEC);
 - (47) shigellosis;
 - (48) spotted fever rickettsiosis;
 - (49) streptococcal toxic-shock syndrome;
 - (50) *Streptococcus pneumoniae*, invasive disease;
 - (51) syphilis, including congenital syphilis (report all suspected cases, regardless of laboratory evidence);
 - (52) toxic-shock syndrome, other than streptococcal;
 - (53) transmissible spongiform encephalopathy (TSE) or prion disease (indicate causative agent, if known);
 - (54) trichinellosis or trichinosis (report all suspected cases, regardless of laboratory evidence);
 - (55) tuberculosis infection (report all suspected cases based on positive tuberculin skin test or laboratory evidence);
 - (56) tularemia, including laboratory exposures;
 - (57) typhoid fever;
 - (58) vancomycin-intermediate *Staphylococcus aureus* (VISA);
 - (59) vancomycin-resistant *Staphylococcus aureus* (VRSA);
 - (60) vibriosis or non-cholera *Vibrio* species;
 - (61) yellow fever; and
 - (62) whooping cough (pertussis) (report all suspected cases, regardless of laboratory evidence).
- (d) Each person specified in subsection (a) shall report the following information in a manner specified by the secretary for any suspected case or case required to be reported by subsection (a), (b), or (c):
- (1) The following personal information for each patient:
 - (A) First and last names and middle initial;
 - (B) address, including city, state, and zip code;
 - (C) telephone number, including area code;
 - (D) date of birth;
 - (E) sex;
 - (F) race;
 - (G) ethnicity (specify if hispanic or non-hispanic ethnicity);
 - (H) pregnancy status;

- (I) date of onset of symptoms; and
- (J) diagnosis;
- (2) type of diagnostic tests;
- (3) type of specimen;
- (4) date of specimen collection;
- (5) site of specimen collection;
- (6) diagnostic test results, including reference range, titer if quantitative procedures are performed, and all available results concerning additional characterization of the organism;
- (7) treatment given;
- (8) name, address, and telephone number of the attending physician; and
- (9) any other necessary epidemiological information and additional specimen collection or laboratory test results requested by the secretary or local health officer. (Authorized by K.S.A. 65-101, K.S.A. 2017 Supp. 65-128, K.S.A. 65-1,202, and K.S.A. 65-6003; implementing K.S.A. 65-101, K.S.A. 2017 Supp. 65-118 and K.S.A. 65-6002; effective May 1, 1982; amended May 1, 1986; amended Dec. 24, 1990; amended April 19, 1993; amended Jan. 12, 1996; amended Dec. 1, 1997; amended Feb. 18, 2000; amended, T-28-11-20-03, Nov. 20, 2003; amended March 5, 2004; amended April 28, 2006; amended May 11, 2018.)

28-1-3. (Authorized by K.S.A. 65-102; effective Jan. 1, 1966; revoked Jan. 12, 1996.)

28-1-4. Hospital reporting requirements.

(a) The administrator of each hospital licensed in Kansas shall report the following information to the secretary when requested by the secretary and for the duration specified by the secretary, if this information is in the hospital's possession:

(1) The number of laboratory test orders for specified infectious or contagious diseases or conditions and the results for specified infectious or contagious diseases or conditions;

(2) the number of pharmacy prescriptions for medications used to treat specified infectious or contagious diseases or conditions;

(3) the number of emergency room visits for symptoms related to specified infectious or contagious diseases or conditions; and

(4) utilization rates of other services that can provide an early warning of an infectious or contagious disease, a condition, a cluster, outbreak, or epidemic, or any other public health threat specified by the secretary, if that information can be provided by the hospital with minimum additional burden.

(b) The administrator of each hospital licensed in Kansas may designate a person within the hospital to report infectious or contagious diseases or conditions on behalf of the individuals required by K.A.R. 28-1-2 to report suspected cases and cases observed at the hospital. Each report from the designated hospital person shall meet all reporting requirements for individuals required by K.A.R. 28-1-2 to report suspected cases and cases. (Authorized by K.S.A. 65-101; implementing K.S.A. 65-101 and K.S.A. 2017 Supp. 65-102; effective May 1, 1982; amended May 1, 1986; amended Jan. 12, 1996; amended Oct. 16, 1998; amended, T-28-11-20-03, Nov. 20, 2003; amended March 5, 2004; amended May 11, 2018.)

28-1-5. General provisions for isolation or quarantine of persons afflicted with infectious or contagious disease; examination of persons; collection of specimens.

(a) When the conditions of isolation and quarantine are not otherwise specified by regulation, the isolation and quarantine of persons afflicted with or exposed to infectious or contagious diseases shall be ordered and enforced by the local health officer or the secretary of health and environment to preserve the public health, safety, or welfare. The conditions of isolation or quarantine so ordered shall be based on current medical knowledge of the infectious agent of the disease for which isolation or quarantine is ordered and may include consideration of the following factors:

- (1) The incubation period;
- (2) the communicable period;
- (3) the mode of transmission; and
- (4) susceptibility.

(b) Isolation or quarantine, or both, shall be ordered in conjunction with investigation of infectious or contagious disease cases and outbreaks for examining persons reasonably suspected of having these diseases and for obtaining specimens from these persons for laboratory evidence suggestive of infectious or contagious disease. (Authorized by K.S.A. 65-101 and 65-128; implementing K.S.A. 65-101; effective May 1, 1982; amended July 20, 2007.)

28-1-6. Requirements for isolation and quarantine of specific infectious or contagious diseases. (a) The requirements for isolation and quarantine shall be those specified in the department's "requirements for isolation and

quarantine of infectious or contagious diseases," dated March 15, 2018, which is hereby adopted by reference.

(b) No isolation or quarantine shall be required for the following infectious or contagious diseases:

- (1) Anaplasmosis;
- (2) anthrax;
- (3) babesiosis;
- (4) botulism;
- (5) brucellosis;
- (6) chancroid;
- (7) *Chlamydia trachomatis* infection;
- (8) coccidiomycosis;
- (9) cyclosporiasis;
- (10) ehrlichiosis;
- (11) gonorrhea;
- (12) Hansen's disease (leprosy);
- (13) hantavirus pulmonary syndrome;
- (14) hepatitis B, acute, chronic, and perinatal infections;
- (15) hepatitis C, acute and either past or present infections;
- (16) hepatitis D;
- (17) hepatitis E;
- (18) histoplasmosis;
- (19) human immunodeficiency virus;
- (20) legionellosis;
- (21) leptospirosis;
- (22) listeriosis;
- (23) Lyme disease;
- (24) malaria;
- (25) psittacosis;
- (26) Q fever, acute and chronic;
- (27) spotted fever rickettsiosis;
- (28) syphilis;
- (29) tetanus;
- (30) transmissible spongiform encephalopathy (TSE) or prion disease;
- (31) trichinellosis (trichinosis);
- (32) tularemia; and
- (33) yellow fever. (Authorized by K.S.A. 65-101 and K.S.A. 2017 Supp. 65-128; implementing K.S.A. 65-101, K.S.A. 2017 Supp. 65-118, K.S.A. 65-122, and K.S.A. 2017 Supp. 65-128; effective May 1, 1982; amended May 1, 1986; amended Sept. 5, 1997; amended July 16, 1999; amended July 20, 2007; amended May 11, 2018.)

28-1-7. (Authorized by K.S.A. 1981 Supp. 65-101, K.S.A. 65-128; implementing K.S.A. 1981 Supp. 65-101; effective May 1, 1982; revoked May 11, 2018.)

28-1-8. (Authorized by K.S.A. 1981 Supp. 65-101, K.S.A. 65-128; implementing K.S.A. 1981 Supp. 65-101; effective May 1, 1982; revoked Sept. 5, 1997.)

28-1-9. (Authorized by K.S.A. 1981 Supp. 65-101, K.S.A. 65-128; implementing K.S.A. 1981 Supp. 65-101; effective May 1, 1982; revoked May 10, 1996.)

28-1-10. (Authorized by K.S.A. 65-128, K.S.A. 1981 Supp. 65-101; implementing K.S.A. 1981 Supp. 65-101; effective May 1, 1982; revoked May 10, 1996.)

28-1-11. (Authorized by K.S.A. 65-101, 65-104, 65-128; effective Jan. 1, 1966; revoked May 1, 1982.)

28-1-12. Release from isolation or quarantine. All laboratory tests and cultures for the release of an individual from isolation or quarantine shall be performed by the department's laboratory or by a laboratory approved by the secretary for this purpose. (Authorized by K.S.A. 65-101 and K.S.A. 2017 Supp. 65-128; implementing K.S.A. 65-101; effective May 1, 1982; amended May 11, 2018.)

28-1-13. Rabies control. The requirements for the control of rabies shall be those specified in the department's "rabies control requirements," dated October 19, 2017, which is hereby adopted by reference. (Authorized by K.S.A. 65-101 and K.S.A. 2017 Supp. 65-128; implementing K.S.A. 65-101, K.S.A. 2017 Supp. 65-128, and K.S.A. 75-5661; effective May 1, 1982; amended May 1, 1986; amended July 5, 1996; amended April 24, 1998; amended May 11, 2018.)

28-1-14. Rabies control in wildlife mammals. (a) The possession or sale of skunks, raccoons, foxes and coyotes for keeping of these mammals as pets shall be prohibited.

(b) Removal of musk glands of skunks for purposes of attempted domestication shall be prohibited.

(c) Except as permitted by the secretary, attempts to immunize skunks, coyotes, raccoons, foxes, and other wildlife mammals known to be involved in the transmission of rabies shall be prohibited.

(d) Subsections (a) and (b) of this regulation shall not apply to bonafide zoological parks or research institutions. (Authorized by and imple-

menting K.S.A. 65-101; effective May 1, 1982; amended May 1, 1983; amended July 5, 1996.)

28-1-15. Psittacosis control; records of purchase and sale. Breeders, wholesalers, distributors and retailers of psittacine birds shall maintain a record of the date of purchase, source, and the species of each psittacine bird. When birds are sold, the seller shall record the name, address and telephone number of the customer, date of purchase, species purchased, and the band number, if applicable, for each psittacine bird sold. These records shall be kept for one year. (Authorized by and implementing K.S.A. 65-101; effective May 1, 1982; amended July 5, 1996.)

28-1-16. (Authorized by K.S.A. 65-128; effective Jan. 1, 1966; revoked May 1, 1982.)

28-1-17. (Authorized by K.S.A. 65-101; effective Jan. 1, 1966; revoked May 1, 1982.)

28-1-18. Reporting and submission requirements for laboratories. (a) Each person who is in charge of a laboratory as specified in K.S.A. 65-118, and amendments thereto, shall provide the reports required by K.A.R. 28-1-2 to the department using an automated, secure electronic laboratory-reporting system or other means acceptable to the secretary. A person's use of electronic or automated reporting shall not exempt that person from reporting a suspected case within four hours as required by K.A.R. 28-1-2.

(b) Each person who is in charge of a laboratory as specified in K.S.A. 65-118, and amendments thereto, shall submit the following to the department's office of laboratory services in the following order of preference, if the test results indicate the presence of any microorganism specified in subsection (c):

- (1) Isolates of positive cultures;
- (2) original clinical specimen from a patient;
- (3) nucleic acid; or
- (4) any other materials determined by the secretary.

(c) Each person who is in charge of a laboratory as specified in K.S.A. 65-118, and amendments thereto, shall submit the specimens specified in subsection (b) if the test results indicate the presence of any of the following microorganisms:

- (1) Any carbapenem-resistant organism;
- (2) *Candida auris*;
- (3) *Haemophilus influenzae*, if identified in a patient with invasive disease;

- (4) *Listeria* species;
- (5) *Mycobacterium tuberculosis*;
- (6) *Neisseria meningitidis*;
- (7) *Salmonella* species;
- (8) shiga toxin-producing *Escherichia coli* (STEC);
- (9) *Shigella* species;
- (10) *Streptococcus pneumoniae*, invasive; and
- (11) *Vibrio* species. (Authorized by and implementing K.S.A. 65-101, K.S.A. 2017 Supp. 65-118, and K.S.A. 2017 Supp. 65-128; effective, E-68-22, Aug. 9, 1968; effective Jan. 1, 1969; amended May 1, 1986; amended Aug. 23, 1993; amended Jan. 12, 1996; amended Dec. 1, 1997; amended Feb. 18, 2000; amended, T-28-8-9-02, Aug. 9, 2002; amended Dec. 2, 2002; amended May 11, 2018.)

28-1-19. (Authorized by K.S.A. 65-116j, 65-128; effective, E-76-49, Oct. 1, 1975; effective Feb. 15, 1977; amended Jan. 30, 1995; revoked May 10, 1996.)

28-1-20. Immunizations; schools, child care facilities, and preschool or child care programs operated by a school. (a) Definition. For the purposes of this regulation, “susceptible child” shall mean either of the following if, for that individual, there is no history of the disease that has been documented by a physician, no laboratory documentation of immunity, or no documentation acceptable to the secretary that demonstrates current vaccination against the disease:

- (1) Any individual who attends school as defined in K.S.A. 72-6261, and amendments thereto; or
- (2) any individual who is enrolled, is placed, or resides in a child care facility as defined in K.S.A. 65-503, and amendments thereto, or a preschool or child care program operated by a school.

(b) Required vaccinations. Except as provided in K.S.A. 72-6262 and amendments thereto, each susceptible child shall be required to receive the following vaccinations before enrolling in any school:

- (1) Diphtheria;
- (2) hepatitis A;
- (3) hepatitis B;
- (4) measles (rubeola);
- (5) meningitis;
- (6) mumps;
- (7) pertussis (whooping cough);
- (8) poliomyelitis;
- (9) rubella (German measles);
- (10) tetanus; and
- (11) varicella (chickenpox).

(c) Immunization record for school entry. The immunization record of each individual who attends school shall document that the individual has received the vaccinations specified in subsection (b) from a physician or local health department or is not a susceptible child, on forms provided by the department of health and environment.

(d) Immunizations required for a child in a child care facility or preschool or child care program operated by a school. Each susceptible child, including a child under 16 years of age of a child care provider who is enrolled, is placed, or resides in a child care facility or a preschool or child care program operated by a school, shall be required to receive the following immunizations as medically appropriate:

- (1) Diphtheria;
- (2) *Haemophilus influenzae* type B;
- (3) hepatitis A;
- (4) hepatitis B;
- (5) measles (rubeola);
- (6) mumps;
- (7) pertussis (whooping cough);
- (8) pneumococcal disease;
- (9) poliomyelitis;
- (10) rubella;
- (11) tetanus; and
- (12) varicella (chickenpox).

(e) Immunization records for a child care facility. Each child’s immunization record shall be maintained on the forms provided by the department of health and environment. (Authorized by K.S.A. 65-508 and 72-6264; implementing K.S.A. 65-508 and 72-6262; effective, E-79-18, July 20, 1978; effective May 1, 1979; amended April 9, 2004; amended July 11, 2008; amended Aug. 2, 2019.)

28-1-21. (Authorized by K.S.A. 1982 Supp. 73-1707; implementing K.S.A. 1982 Supp. 73-1702; effective May 1, 1983; revoked May 10, 1996.)

28-1-22. (Authorized by K.S.A. 1989 Supp. 65-101, 65-128 and K.S.A. 1989 Supp. 65-6003, as amended by L. 1990, Ch. 234, sec. 3; implementing K.S.A. 1989 Supp. 65-6001 and 65-6002, as amended by L. 1990, Ch. 234, sec. 1-2; effective Dec. 24, 1990; revoked May 10, 1996.)

28-1-23. Management of occupational exposures. (a) For the purpose of this regulation, each of the following terms shall have the meaning specified in this subsection:

(1) "Occupational exposure" means any occupational exposure, as defined in K.S.A. 65-116a and amendments thereto, that occurs to any of the following under the conditions specified:

(A) Any individual providing medical or nursing services, clinical or forensic laboratory services, emergency medical services, or firefighting, law enforcement, or correctional services, whether for compensation or as a volunteer;

(B) any individual in training for certification, licensure, a position, or a job providing any services listed in paragraph (a)(1)(A); or

(C) any individual receiving services from an individual specified in paragraph (a)(1)(A) or (B).

(2) "Exposed person" means any individual who had an occupational exposure.

(3) "Source person" means any individual from whom an occupational exposure originated.

(4) "Infection control officer" means the individual on duty and designated to monitor and respond to occupational exposures by an entity providing medical or nursing services, clinical or forensic laboratory services, emergency medical services, or firefighting, law enforcement, or correctional services.

(b) Each exposed person specified in paragraph (a)(1)(A) or (B) shall inform the entity's infection control officer about the occupational exposure as soon as possible, but within four hours of the occupational exposure.

(c) The infection control officer shall determine whether the occupational exposure was sufficient to potentially transmit a pathogen or an infectious and contagious disease, considering current guidelines from the Kansas department of health and environment, the centers for disease control and prevention, and the United States public health service.

(d) If the infection control officer determines that the occupational exposure was sufficient to potentially transmit a pathogen or an infectious and contagious disease, the infection control officer shall direct that an appropriate specimen be obtained from the source person for testing.

(1) If the source person refuses to provide a specimen for testing, the infection control officer may submit an application to a court of competent jurisdiction for an order requiring the source person to submit an appropriate specimen for testing. The application shall include the following:

(A) An allegation that the source person has refused to provide an appropriate specimen for testing following an occupational exposure;

(B) the specific test or tests needed to be performed; and

(C) specification of whether and how frequently any additional tests may be required.

(2) If the source person has died and the infection control officer requests a specimen, the custodian of the source person's remains shall obtain and preserve an appropriate specimen from the source person for testing.

(e) If a person who has been transported to a health care facility is subsequently determined to be a source person of a pathogen or an infectious and contagious disease that can be transmitted from person to person through the air or by exposure to respiratory droplets, the following notifications shall be required:

(1) Within four hours of the diagnosis, the treating health care provider shall notify the infection control officer of the health care facility of the presence of a source person.

(2) Within four hours of receiving notification from the treating health care provider, the infection control officer of the health care facility shall provide to the entity that transported the source person at least the following information:

(A) The name of the source person;

(B) the diagnosis; and

(C) the date and time the source person was transported to the health care facility.

(3) Within four hours of receiving notification from the health care facility, the infection control officer of the entity that transported the source person shall notify all other entities whose personnel could have cared for or interacted with the source person in a manner that could transmit the pathogen or the infectious and contagious disease and shall provide at least the following information:

(A) The name of the source person;

(B) the diagnosis; and

(C) the date and time the source person was transported to the health care facility.

(f) The results of the infectious and contagious disease test or tests shall be disclosed to the exposed person, the infection control officer responsible for the exposed person, and the source person as soon as possible. To the extent feasible, the disclosure to the exposed person shall not include the name or identity of the source person.

(g) If an infection control officer has determined that a person who is or has been in the care or custody of an individual providing medical or nursing services, emergency medical services, or firefighting, law enforcement, or correctional

services has been exposed to an infectious and contagious disease, blood, or other potentially infectious materials by the individual providing those services, the infection control officer shall advise the exposed person and recommend appropriate testing as soon as feasible. (Authorized by and implementing K.S.A. 2013 Supp. 65-128; effective April 11, 2014.)

28-1-25. (Authorized by K.S.A. 1972 Supp. 65-128; effective, E-72-9, Feb. 28, 1972; effective Jan. 1, 1973; revoked Feb. 12, 1999.)

28-1-26. Protection of confidentiality of information regarding individuals with HIV infection. (a) Definitions. Each of the following terms shall have the meaning specified in this subsection:

(1) "AIDS" means the acquired immune deficiency syndrome.

(2) "Authorized personnel" means individuals who have signed a confidentiality statement.

(3) "Confidentiality statement" means a written statement, dated and signed by an applicable individual, that certifies the individual's agreement to abide by the security policy of a public health agency and this regulation.

(4) "Counseling and testing site" means a site where counseling and testing for HIV infection are available.

(5) "HIV" means the human immunodeficiency virus.

(6) "HIV confidential information" means all combinations of individual data elements or information collected for surveillance purposes pursuant to K.S.A. 65-6002 and amendments thereto, in electronic or hard copy, that could identify anyone with HIV or AIDS, including the name, date of birth, address, and other identifying information.

(7) "HIV confidentiality officer" means the official in a public health agency responsible for implementing and enforcing all the measures to protect HIV confidential information as defined under this regulation.

(8) "HIV infection" means the presence of HIV in the body.

(9) "HIV prevention counseling" and "HPC" mean a client-centered counseling activity designed to assist clients in assessing their risks of acquiring or transmitting HIV and in negotiating a realistic and incremental plan for reducing risk.

(10) "HIV report" means a report of HIV infection or AIDS transmitted to a public health agen-

cy pursuant to K.S.A. 65-6002 and amendments thereto.

(11) "Partner counseling and referral services" and "PCRS" mean a prevention and control activity conducted by trained individuals who contact and counsel each individual with HIV infection or AIDS who is reported to the secretary utilizing HPC.

(12) "Public health agency" means any organization operated by any state or local government that acquires, uses, discloses, or stores HIV confidential information for public health purposes.

(13) "Secretary" means the secretary of health and environment.

(14) "Secured area" means the physical confinement limiting the location where HIV confidential information is available.

(15) "Written security policy" means written specifications of the measures adopted to protect HIV confidential information and a description of how to implement these measures.

(b) Each public health agency shall appoint an HIV confidentiality officer, who shall have the authority to make decisions about the agency operations that could affect the protection of HIV confidential information.

(c) HIV confidential information shall be maintained in a secured area that is not easily accessible through a window and that is protected by a locked door. Access to the secured area shall be limited to authorized personnel only, and "Restricted area—No unauthorized access" signs shall be prominently posted. Access to the secured area by cleaning crews and other building maintenance personnel shall be granted only during hours when authorized personnel are available for escort or under conditions in which the data is protected by security measures specified in the written security policy.

(d) Hard copy records containing HIV confidential information shall be kept in a locked cabinet located in a secured area, except when in use by authorized personnel. Records shall not be removed from any secured area without authorization from the HIV confidentiality officer.

(e) All electronic records containing HIV confidential information shall be kept on computers protected by coded, individual passwords and located in a secured area. Each transfer of records onto removable electronic media shall occur only if absolutely necessary for HIV surveillance program operations and shall be required to be authorized by the HIV confidentiality officer. The records shall

always be encrypted before the transfer to the removable media. Exchange of HIV confidential information using electronic mail shall be done only if encryption procedures are utilized.

(f) HIV confidential information shall be permanently removed from HIV records as soon as the information is no longer necessary for the purposes of the prevention and control of HIV infection.

(g) Mail containing HIV confidential information shall not include on the envelope or address any reference to the HIV infection, to the HIV virus, or to AIDS.

(h) All telephone conversations in which HIV confidential information is exchanged shall be conducted in a manner that prevents the conversations from being overheard by unauthorized persons.

(i) Each local health officer responsible for a public health agency shall adopt and implement a written security policy related to HIV confidential information consistent with the provisions of this regulation. A copy of the security policy shall be distributed to all authorized personnel.

(j) Access to HIV confidential information shall be restricted to a minimum number of authorized personnel trained in confidentiality procedures and aware of penalties for the unauthorized disclosure of HIV confidential information. The HIV confidentiality officer shall authorize the persons who may have access to HIV confidential information and shall keep a list of these authorized personnel.

(k) Each person authorized to access HIV confidential information shall sign a confidentiality agreement. The HIV confidentiality officer shall maintain a copy of the confidentiality agreement for all authorized personnel.

(l) HIV confidential information shall not be cross-matched with records in other databases if the resulting cross-matched databases do not have equivalent security and confidentiality protections, and penalties for unauthorized disclosure as those for the HIV confidential information.

(m) The use of records containing HIV confidential information for research purposes shall be required to be approved in advance by institutional review boards, and all researchers shall sign confidentiality statements. Information made available for epidemiologic analyses shall not include names or other HIV confidential information and shall not result in the direct or indirect identification of persons reported with HIV and AIDS.

(n) Authorized personnel designated by the secretary shall provide confidential, voluntary PCRS in accordance with this regulation. Any personnel providing PCRS who have reason to believe that a spouse, sex partner, or needle-sharing partner of a person who either is infected with HIV or has AIDS may be exposed to HIV or AIDS and is unaware of this risk of exposure may inform the spouse or partner of the risk of exposure if they do not reveal any identifying information about the original patient, including the name, physical description, time frame, method of transmission, and frequency of exposure.

(o) All communication between public health agencies, both interstate and intrastate, for the purpose of supporting surveillance and PCRS activities, shall disclose information only to the extent necessary to protect the public health pursuant to K.S.A. 65-6002 and amendments thereto.

(p) Each security breach of HIV confidential information shall be investigated by the HIV confidentiality officer, and personnel sanctions and criminal penalties shall be imposed as appropriate. The HIV confidentiality officer shall make an immediate telephone notification to the secretary that a breach of HIV confidential information occurred and shall transmit to the secretary a written report within seven days from the time the breach is discovered.

(q) This regulation shall apply to the following:

(1) All public health agencies engaged in the provision of services to prevent and control HIV or AIDS as specified in K.S.A. 65-6003 and amendments thereto;

(2) all individuals required to send HIV reports to the secretary under K.S.A. 65-6002, and amendments thereto; and

(3) all counseling and testing sites that receive funds from public health agencies. (Authorized by K.S.A. 65-101 and 65-6003; implementing K.S.A. 65-6002 and 65-6003; effective Feb. 18, 2000; amended July 7, 2006.)

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

hereby adopted by reference, except as specified in subsection (b).

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

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

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

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

(a) “College designee” and “university designee” mean a person determined by the administration at a postsecondary educational institution to be responsible for the oversight and implementation of that institution’s TB prevention and control plan.

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

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

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

- (1) Has signs and symptoms of active TB;
- (2) has been in contact with a person who has been diagnosed with active TB; or
- (3) has traveled, resided in for more than three months, or was born in any country where TB is endemic as determined by the secretary and consistent with guidance provided by the centers for disease control and prevention.

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

(f) “Secretary” means secretary of health and environment or the secretary’s designee.

(g) “Student” means an individual who has been admitted to a postsecondary educational institution where the course of studies will require phys-

ical attendance in a classroom setting with one or more persons.

(h) “TB” means tuberculosis.

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

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

28-1-31. TB prevention and control plan.

(a) Each college designee and university designee shall implement a TB prevention and control plan.

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

- (A) Tuberculin skin testing;
- (B) interferon gamma release assay;
- (C) chest radiograph;
- (D) sputum evaluation;
- (E) physical exam; and
- (F) review of signs of symptoms.

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

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

28-1-32. Health services at colleges and universities; submission of a TB prevention and control plan; monitoring of compliance.

(a) Each college designee and university designee shall submit to the department a TB prevention and control plan and any revisions that have been developed in consultation with the department, to ensure that the TB prevention and control plan includes evaluation criteria that are in compliance with the best practice standards as recommended by the division of tuberculosis elimination of the centers for disease control and prevention.

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

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

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

28-1-40. Definitions. (a) In addition to the terms defined in L. 2021, ch. 116, sec. 38 and amendments thereto, each of the following terms, as used in K.A.R. 28-1-40 through 28-1-43, shall have the meaning specified in this subsection:

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

(2) “Personal information” means contact data collected as specified in K.A.R. 28-1-42 and “personal information” collected pursuant to K.S.A. 50-7a01, and amendments thereto.

(3) “Protected health information” has the meaning specified in K.S.A. 65-6822, and amendments thereto.

(b) As used in L. 2021, ch. 116, sec. 38 and amendments thereto, “third party” shall mean any of the following, other than any of the entities specified in K.S.A. 65-118 and amendments thereto:

- (1) An individual, other than a contact tracer;
- (2) an organization; or
- (3) a business. (Authorized by and implement-

ing L. 2021, ch. 116, sec. 38; effective, T-28-7-30-20, July 30, 2020; effective Nov. 20, 2020; amended Jan. 14, 2022.)

28-1-41. Contact tracers. (a) Each individual acting as a contact tracer under the authority of the secretary or a local health officer shall meet the following qualifications and training requirements:

- (1) Be at least 18 years of age;
- (2) possess a high school diploma or GED certificate; and
- (3) complete a contact tracing training program approved by the secretary.

(b) Each individual acting as a contact tracer under the authority of the secretary or a local health officer shall execute the following oath or affirmation:

“I, ___[name]___, acknowledge that I have completed the training to become a contact tracer. I am familiar with the provisions contained in and duties required by L. 2021, ch. 116, sec. 38, attached hereto and incorporated by reference, including the duty of confidentiality stated therein. I do solemnly swear (or affirm) that I will comply with those Kansas COVID-19 contact tracing provisions while acting as a contact tracer. So help me God.

Signature: _____ Date: _____”

(c) Any individual having conscientious scruples against taking an oath ending with a reference to a deity may affirm with like effect without the need to make a reference to the deity.

(d) The oath or affirmation specified in subsection (b) may be executed before the secretary, the secretary’s designee, a local health officer, or the local health officer’s designee. (Authorized by and implementing L. 2021, ch. 116, sec. 38; effective, T-28-7-30-20, July 30, 2020; effective Nov. 20, 2020; amended Jan. 14, 2022.)

28-1-42. Contact data; communication with contacts. (a) Each individual acting as a contact tracer under the authority of the secretary or a local health officer shall be limited to collecting the following personal information for any contact:

- (1) Data that identifies the contact, including name, date of birth, and sex;
- (2) address;
- (3) telephone number;
- (4) electronic-mail address;

(5) geographical or similar location information at certain points in time; and

(6) the name of each individual who could be an additional contact.

(b) Each individual acting as a contact tracer under the authority of the secretary or a local health officer shall be limited to collecting the following health data for any contact:

- (1) Age;
- (2) vaccination and testing status;
- (3) temperature; and
- (4) symptoms.

(c) Whenever a contact tracer communicates with a contact, the contact tracer shall advise the contact that the contact shall not be compelled to participate in or be prohibited from participating in the contact tracing.

(1) The contact tracer shall use the following text when advising the contact:

“Participation in COVID-19 contact tracing is voluntary. You shall not be compelled to participate in or be prohibited from participation in contact tracing for COVID-19. If in good faith you do provide information requested by a contact tracer, you shall be immune from civil, criminal, and administrative liability for disclosing the information. If you do not provide information, you are not subject to civil, criminal, or administrative penalties. Do you understand what I have said? May I ask you questions concerning a COVID-19 contact tracing?”

(2) The contact tracer shall document in the contact data whether the text was provided and what were the contact’s responses to the questions. (Authorized by and implementing L. 2021, ch. 116, sec. 38; effective, T-28-7-30-20, July 30, 2020; effective Nov. 20, 2020; amended Jan. 14, 2022.)

28-1-43. Surrender or destruction of contact data. (a) Each individual acting as a contact tracer for the secretary or a local health officer who possesses contact data pursuant to L. 2021, ch. 116, sec. 38, and amendments thereto, shall surrender all contact data to the secretary or the local health officer when the contact has been released from quarantine.

(b) Each individual who possesses contact data permitted to be collected as specified in K.A.R. 28-1-42 shall safely and securely destroy, in a manner approved by the secretary, any contact data that contains protected health information, individual movement or mobility data, or personal

information whenever the secretary determines that the contact data that contains protected health information, individual movement or mobility data, or personal information is no longer necessary for the purpose of contact tracing, as defined in L. 2021, ch. 116, sec. 38 and amendments thereto. (Authorized by and implementing L. 2021, ch. 116, sec. 38; effective, T-28-7-30-20, July 30, 2020; effective Nov. 20, 2020; amended Jan. 14, 2022.)

28-1-44. Sunset provision. K.A.R. 28-1-40 through 28-1-43 shall have no force and effect after June 30, 2022. (Authorized by and implementing L. 2021, ch. 116, sec. 38; effective, T-28-7-30-20, July 30, 2020; effective Nov. 20, 2020; amended Jan. 14, 2022.)

Article 3.—HEARINGS

28-3-1. (Authorized by K.S.A. 74-901e; effective Jan. 1, 1966; revoked May 1, 1986.)

28-3-2. (Authorized by K.S.A. 74-901e; effective Jan. 1, 1966; revoked May 1, 1986.)

28-3-3. (Authorized by K.S.A. 74-901e; effective Jan. 1, 1966; revoked May 1, 1986.)

28-3-4. (Authorized by K.S.A. 74-901e; effective Jan. 1, 1966; revoked May 1, 1986.)

28-3-5. (Authorized by K.S.A. 74-901e; effective Jan. 1, 1966; revoked May 10, 1996.)

28-3-6. (Authorized by K.S.A. 75-5625 and L. 1984, ch. 313, section 13; implementing L. 1984, ch. 313, section 26; effective May 1, 1986; revoked May 10, 1996.)

28-3-7. Conduct of hearings not under Kansas administrative procedure act. (a) In all hearings not conducted under the provisions of the Kansas administrative procedure act, the hearing officer shall be guided by rules of evidence as employed by the courts of the state of Kansas, but may relax the rules to the extent the hearing officer deems appropriate, keeping always in mind that the judicially developed rules of evidence have been developed as procedures most likely to obtain the truth.

(b) In hearings appealing an order or action by the secretary or the secretary’s designee, the requesting party shall open and close. In all other hearings, there shall be no requirements as to order of procedure. The hearing officer shall consid-

er evidence in the order which appears most likely to reveal the facts.

(c) A record of proceedings may be kept by the hearing officer by electronic recording, notes made by the hearing officer or both. A transcript of the record need not be made unless specifically ordered by the hearing officer or in cases in which the party requesting a transcription pays its cost. Each party to a hearing may cause the proceedings to be recorded by a certified court reporter, providing the requesting party bears the expense of same.

(d) The provisions of this regulation shall apply to all hearings conducted under authority of statutes other than the Kansas administrative procedure act and shall be supplemental to any statutory requirements. At the conclusion of each hearing, the presiding or hearing officer shall prepare a written report stating findings of fact, any appropriate conclusions of law, and any further comments which the presiding or hearing officer deems appropriate. A copy of the report shall be mailed to the parties and filed with the secretary. (Authorized by and implementing K.S.A. 75-5625; effective May 1, 1986.)

Article 4.—MATERNAL AND CHILD HEALTH

GENERAL REGULATIONS

28-4-1 to 28-4-4. (Authorized by K.S.A. 1975 Supp. 65-508; effective Jan. 1, 1966; revoked, E-76-36, July 14, 1975; revoked May 1, 1976.)

28-4-5. (Authorized by K.S.A. 1975 Supp. 65-508; effective Jan. 1, 1966; amended Jan. 1, 1970; revoked, E-76-36, July 14, 1975; revoked May 1, 1976.)

28-4-6 and 28-4-7. (Authorized by K.S.A. 1975 Supp. 65-508; effective Jan. 1, 1966; revoked, E-76-36, July 14, 1975; revoked May 1, 1976.)

28-4-8 to 28-4-19. (Authorized by K.S.A. 65-508; effective Jan. 1, 1966; revoked Jan. 1, 1973.)

28-4-20 to 28-4-25. (Authorized by K.S.A. 1975 Supp. 65-508; effective Jan. 1, 1966; revoked, E-76-36, July 14, 1975; revoked May 1, 1976.)

28-4-26 to 28-4-36. (Authorized by K.S.A. 65-508; effective Jan. 1, 1966; revoked, E-81-22, Aug. 27, 1980; revoked May 1, 1981.)

28-4-37. (Authorized by K.S.A. 65-504, 65-508; effective Jan. 1, 1966; revoked, E-81-22, Aug. 27, 1980; revoked May 1, 1981.)

28-4-38 to 28-4-49. (Authorized by K.S.A. 1975 Supp. 65-508; effective Jan. 1, 1966; revoked, E-76-36, July 14, 1975; revoked May 1, 1976.)

28-4-50. Acceptable types of water supplies for licensed child care homes. (a) Public water supply systems approved by the state department of health shall be used wherever such supplies are available or can be made available at reasonable cost.

(b) Properly located, constructed and equipped private ground water supplies approved by the department may be used if a public supply is not available. Environmental health services bulletin 4-1, a manual of recommended standards for locating, constructing, and equipping water wells for rural homes, shall be used as a guide for approving private ground water supplies.

(c) Stored water obtained from a supply approved by the department, and transported, and stored in facilities approved by the department may be used at homes where a public water supply or a satisfactory ground water supply is not available.

(d) Other methods of providing water for a home will be considered on an individual basis. All approval for such use shall be obtained from the chief engineer, state department of health.

(e) No water supply containing more than 45 mg/l of nitrates expressed as NO_3 shall be used at a home providing care for children under one year of age. (Authorized by K.S.A. 65-508; effective Jan. 1, 1966; amended Jan. 1, 1971.)

28-4-51 to 28-4-54. (Authorized by K.S.A. 65-508; effective Jan. 1, 1966; revoked Jan. 1, 1971.)

28-4-55. Acceptable sewage disposal systems for child care homes. (A) The home shall be connected to a public sewer system whenever such a system abuts the property or can be made to abut the property at a reasonable cost.

(B) Properly located, constructed, and operated septic tank-soil absorption systems, approved by the department, may be used for homes located in areas where a public sewer system is not available. Environmental health services bulletin 4-2, a manual of recommended standards for locating, constructing and operating septic tank systems for rural homes, shall be used as a guide in approving these systems.

(C) The home may be connected to any properly located, constructed and maintained waste stabilization ponds approved by the department where a public sewer system is not available and where soil is not suitable for use of a septic tank-soil absorption system. Environmental health services bulletin 4-2, a manual of recommended standards for locating, constructing and operating septic tank systems for rural homes, shall be used as a guide in approving these systems.

(D) The home may use any existing system that is functioning properly and is not discharging onto the surface of the ground, into a ditch or watercourse or into an underground fresh water aquifer and is not in violation of any public health or water pollution regulation adopted by the state board of health.

(E) The home may be permitted to use other types of sewage disposal systems provided prior approval for use of such a system is obtained from the chief engineer of the state department of health. (Authorized by K.S.A. 65-508; effective Jan. 1, 1966; amended Jan. 1, 1971.)

28-4-56. (Authorized by K.S.A. 65-502, K.S.A. 1975 Supp. 65-508; effective Jan. 1, 1966; revoked, E-76-36, July 14, 1975; revoked May 1, 1976.)

28-4-57 to 28-4-71. (Authorized by K.S.A. 1975 Supp. 65-508; effective Jan. 1, 1966; revoked, E-76-36, July 14, 1975; revoked May 1, 1976.)

28-4-72. (Authorized by K.S.A. 65-507; effective Jan. 1, 1966; revoked May 10, 1996.)

28-4-73. Treatment of eyes of newborn.

(a) The prophylactic approved for instillation into the eyes of newly born infants shall be one of the following:

(1) One percent (1%) aqueous solution of silver nitrate,

(2) An ophthalmic ointment containing one percent (1%) tetracycline, or

(3) An ophthalmic ointment containing five-tenths percent (.5%) erythromycin.

(b) These prophylactic agents shall be distributed in single use containers which bear clearly the name and percentage strength and an expiration date beyond which the product shall not be used. (Authorized by K.S.A. 65-153b, 65-153d; effective Jan. 1, 1966; amended, E-81-39, Dec. 10, 1980; amended May 1, 1981.)

28-4-74. (Authorized by K.S.A. 65-202; effective Jan. 1, 1966; revoked, E-81-22, Aug. 27, 1980; revoked May 1, 1981.)

28-4-75. (Authorized by K.S.A. 1978 Supp. 65-508; effective, E-76-36, July 14, 1975; effective May 1, 1986; amended, May 1, 1979, T-86-46, Dec. 18, 1985; revoked May 1, 1986.)

28-4-76. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, 65-503, 65-508, K.S.A. 1982 Supp. 65-504, 65-505; effective, E-76-36, July 14, 1985; effective May 1, 1976; amended May 1, 1979; amended, T-83-24, Aug. 25, 1982; amended May 1, 1983; revoked May 1, 1986.)

28-4-77. (Authorized by K.S.A. 1985 Supp. 65-508; effective, E-76-36, July 14, 1975; effective May 1, 1976; revoked May 1, 1986.)

28-4-78. (Authorized by K.S.A. 1978 Supp. 65-508; effective, E-76-36, July 14, 1975; effective May 1, 1976; amended May 1, 1979; revoked May 1, 1986.)

28-4-79. (Authorized by K.S.A. 1975 Supp. 65-508; effective, E-76-36, July 14, 1975; effective May 1, 1976; revoked May 1, 1986.)

28-4-80 and 28-4-81. (Authorized by K.S.A. 1978 Supp. 65-508; effective, E-76-36, July 14, 1975; effective May 1, 1976; amended May 1, 1979; revoked May 1, 1986.)

28-4-82. (Authorized by K.S.A. 1975 Supp. 65-508; effective, E-76-36, July 14, 1975; effective May 1, 1976; revoked May 1, 1986.)

28-4-83. (Authorized by K.S.A. 1978 Supp. 65-508; effective, E-76-36, July 14, 1975; effective May 1, 1976; amended May 1, 1979; revoked May 1, 1986.)

28-4-84 and 28-4-85. (Authorized by K.S.A. 1975 Supp. 65-508; effective, E-76-36, July 14, 1975; effective May 1, 1976; revoked May 1, 1986.)

28-4-86. (Authorized by K.S.A. 1978 Supp. 65-508; effective, E-76-36, July 14, 1975; effective May 1, 1976; amended May 1, 1979; revoked May 1, 1986.)

28-4-87. (Authorized by K.S.A. 1975 Supp. 65-508; effective, E-76-36, July 14, 1975; effective May 1, 1976; revoked May 1, 1986.)

28-4-88. (Authorized by K.S.A. 1978 Supp. 65-508; effective, E-76-36, July 14, 1975; effective May 1, 1976; amended May 1, 1979; revoked May 1, 1986.)

28-4-89 and 28-4-90. (Authorized by K.S.A. 1975 Supp. 65-508; effective, E-76-36, July 14, 1975; effective May 1, 1976; revoked May 1, 1986.)

28-4-91. Revocation of present regulations. The following present regulations as published in the Kansas administrative regulations are being replaced, so are hereby revoked:

General regulations 28-4-1 through 28-4-7.

Health standards for children's institutions 28-4-20 through 28-4-25.

Regulations for maternity homes and clinics 28-4-56 through 28-4-71.

(Authorized by K.S.A. 1975 Supp. 65-508; effective, E-76-36, July 14, 1975; effective May 1, 1976.)

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) secure residential treatment facility, as de-

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

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

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

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

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

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

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

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

28-4-94. Background check requests for residential centers, group boarding homes, and child placement agencies. (a) Initial and renewal background check requests. Each applicant submitting an initial application and each licensee submitting a renewal application shall submit a background check request on a form provided by the department. The request form shall be submitted with the application and shall include the name and all other required information for each individual who is at least 10 years old and is residing, working, or regularly volunteering in the residential center, group boarding home, or child placement agency.

(b) Additional background check requests. Each applicant with a temporary permit and each licensee shall submit a background check request on a form provided by the department before any individual who is at least 10 years old begins residing, working, or regularly volunteering in the residential center, group boarding home, or child placement agency.

(c) Background check not required. No background check request form shall be submitted for any individual admitted for care.

(d) Documentation. A copy of each background check request form shall be kept on file at the residential center, group boarding home, or child placement agency. (Authorized by K.S.A. 2014 Supp. 65-508; implementing K.S.A. 2014 Supp. 65-516; effective May 15, 2015.)

28-4-95. Fee for fingerprint-based background checks. Each applicant, applicant with a temporary permit, and licensee shall submit a nonrefundable fee of \$48 to the department for the cost of each required fingerprint-based background check, as follows:

(a) For each day care home, group day care home, child care center, and preschool, each individual specified in K.A.R. 28-4-125;

(b) for each school-age program, each individual specified in K.A.R. 28-4-584; and

(c) for each drop-in program, each individual specified in K.A.R. 28-4-705. (Authorized by and implementing K.S.A. 65-516; effective Nov. 26, 2018.)

LICENSED DAY CARE HOMES AND GROUP DAY CARE HOMES FOR CHILDREN

28-4-100. (Authorized by K.S.A. 65-503, 65-508; effective Jan. 1, 1970; revoked May 1, 1981.)

28-4-101. (Authorized by K.S.A. 65-501, 65-504, 65-505, 65-508, 65-512; effective Jan. 1, 1970; revoked, E-80-18, Oct. 17, 1979; revoked May 1, 1980.)

28-4-102. (Authorized by K.S.A. 65-504, 65-508; effective Jan. 1, 1970; revoked, E-80-18, Oct. 17, 1979; revoked May 1, 1980.)

28-4-103. (Authorized by K.S.A. 65-508, 65-510; effective Jan. 1, 1970; revoked, E-80-18, Oct. 17, 1979; revoked May 1, 1980.)

28-4-104 to 107. (Authorized by K.S.A. 65-508; effective Jan. 1, 1970; revoked, E-80-18, Oct. 17, 1979; revoked May 1, 1980.)

28-4-108. (Authorized by K.S.A. 65-507, 65-508; effective Jan. 1, 1970; revoked, E-80-18, Oct. 17, 1979; revoked May 1, 1980.)

28-4-109. (Authorized by K.S.A. 65-508; effective Jan. 1, 1970; revoked, E-80-18, Oct. 17, 1979; revoked May 1, 1980.)

28-4-110. (Authorized by K.S.A. 65-501, 65-504, 65-508, 65-514; effective Jan. 1, 1970; revoked, E-80-18, Oct. 17, 1979; revoked May 1, 1980.)

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

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

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

(1) A primary care provider;

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

(3) a substitute.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) “Weapons” means any of the following:

- (1) Firearms;
- (2) ammunition;

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

(4) hunting and fishing knives;

(5) archery equipment; or

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

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

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

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

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

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

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

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

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

(E) all regulations governing facilities.

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

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

(1) Be at least 18 years of age;

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

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

(c) Multiple child care facilities.

(1) Each applicant with a temporary permit and each licensee who operates more than one

child care facility, as defined in K.S.A. 65-503 and amendments thereto, shall maintain each child care facility as a separate entity.

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

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

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

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

TABLE I—LICENSE CAPACITY, ONE PROVIDER

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

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

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

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

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

TABLE II—LICENSE CAPACITY, ONE PROVIDER

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

TABLE III—LICENSE CAPACITY, TWO PROVIDERS*

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

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

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

TABLE IV—LICENSE CAPACITY, TWO PROVIDERS*

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

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

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

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

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

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

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

(j) Additional children on the premises. In addition to the number of children permitted under the terms of the temporary permit or the license

and specified in subsections (e) and (f), other children may be permitted on the premises.

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

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

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

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

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

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

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

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

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

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

(m) Closure. Any applicant may withdraw the application for a license. Any applicant with a temporary permit and any licensee may submit, at any time, a request to close the facility. If an application is withdrawn or a facility is closed, any temporary

permit or license granted to the applicant or licensee for that facility shall become void. (Authorized by K.S.A. 2010 Supp. 65-508; implementing K.S.A. 2010 Supp. 65-504, K.S.A. 2010 Supp. 65-505, and K.S.A. 2010 Supp. 65-508; effective, E-80-18, Oct. 17, 1979; effective May 1, 1980; amended May 1, 1981; amended May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended Feb. 26, 1990; amended Feb. 3, 2012.)

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

(a) Orientation.

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

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

(A) Licensing regulations;

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

(C) the schedule of daily activities;

(D) care and supervision of children in care, including any special needs and known allergies;

(E) health and safety practices; and

(F) confidentiality.

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

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

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

(3) Each licensee whose license was issued before July 1, 2017 and who has completed the training in the subject areas specified in paragraphs (b)(4)(A), (B), and (C) shall be exempt from training in the subject areas specified in paragraphs (b)(4)(D) through (I). Each provider who was employed at the facility before July 1, 2017 and who has completed the training in the subject areas specified in paragraphs (b)(4)(A), (B), and (C) shall be exempt from training in the subject areas specified in paragraphs (b)(4)(D) through (I).

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

(A) Recognizing the signs of child abuse or neglect, including prevention of shaken baby syndrome and abusive head trauma, and the reporting of suspected child abuse or neglect;

(B) basic child development, including supervision of children;

(C) safe sleep practices and sudden infant death syndrome;

(D) prevention and control of infectious diseases, including immunizations;

(E) prevention of and response to emergencies due to food and allergic reactions;

(F) building and premises safety, including identification of and protection from hazards that could cause bodily injury, including electrical hazards, bodies of water, and vehicular traffic;

(G) emergency preparedness and response planning for emergencies resulting from a natural disaster or a human-caused event, including violence at a facility;

(H) handling and storage of hazardous materials and the appropriate disposal of bio-contaminants, including blood and other bodily fluids or waste; and

(I) precautions when transporting children, if transportation is provided.

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

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

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

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

(d) Medication administration training.

(1) Each of the following individuals shall complete the medication administration training as specified in this subsection:

(A) Applicant;

(B) applicant with a temporary permit;

(C) licensee; and

(D) provider designated to administer medications.

(2) The training shall be approved by the secretary.

(3) Each applicant and each applicant with a temporary permit shall complete the training not later than 30 calendar days after submitting an application for a license and before administering medication to any child.

(4) Each licensee whose license was issued before July 1, 2017 shall complete the training not later than December 31, 2017. The licensee shall not administer medications after December 31, 2017 unless the licensee has completed the training.

(5) Each provider designated to administer medications who is employed at the facility before July 1, 2017 shall complete the training not later than December 31, 2017. The designated provider shall not administer medications after December 31, 2017 unless the designated provider has completed the training.

(6) Each provider designated to administer medications who is employed at the facility on or after July 1, 2017 shall complete the training before administering medication to any child.

(e) Annual professional development training requirements.

(1) For purposes of this subsection, "licensure year" shall mean the period beginning on the effective date and ending on the expiration date of a license.

(2) In each licensure year, each primary care provider shall complete professional development training as follows:

(A) For each licensure year ending during the 2017 calendar year, five clock-hours;

(B) for each licensure year ending during the 2018 calendar year, five clock-hours;

(C) for each licensure year ending during the 2019 calendar year, 12 clock-hours; and

(D) for each licensure year ending during the 2020 calendar year, and for each subsequent licensure year, 16 clock-hours.

(f) Documentation. Documentation of all orientation, training, and certifications for each in-

dividual shall be kept in that individual's file in the facility. (Authorized by and implementing K.S.A. 2016 Supp. 65-508; effective Feb. 3, 2012; amended May 12, 2017.)

28-4-115. Facility. (a) Water supply and sewerage systems. Each applicant, each applicant with a temporary permit, and each licensee shall ensure that public water and sewerage systems, where available, are used. If a nonpublic source for the water supply is used, the water shall be safe for drinking and shall be tested annually by a department-certified laboratory. If a well is used, the well shall be approved by the local authority for private well permitting, the department, or a licensed water well contractor. A copy of the test results and the approval shall be kept on file at the facility. Each private sewerage system shall be maintained in compliance with all applicable state and local laws.

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

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

- (1) Has walls that are in good condition;
- (2) is skirted and anchored if a mobile home;
- (3) has a 2A 10B:C fire extinguisher;
- (4) has a working smoke detector on each level of the facility;
- (5) is uncluttered, visibly clean, and free from any evidence of vermin infestation and any objects or materials that constitute a danger to children in care;
- (6) has kitchen and outdoor trash and garbage in covered containers or in tied plastic bags;
- (7) meets all of the following requirements for each heating appliance:
 - (A) Has a protective barrier for each freestanding heating appliance to protect from burns; and
 - (B) has each heating appliance using combustible fuel vented to the outside;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) All household cleaning supplies and all bodily care products bearing warning labels to keep out of reach of children or containing alcohol shall be in locked storage or stored out of reach of children under six years of age. Soap used for hand

washing may be kept unlocked and placed on the back of the counter by a bathroom or kitchen sink.

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

(3) Sharp instruments shall be stored in drawers or cabinets equipped with childproof devices to prevent access by children or stored out of reach of children.

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

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

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

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

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

(B) railroad tracks; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Each provider shall follow the supervision plan.

(b) General supervision requirements. Each applicant with a temporary permit and each licensee

shall ensure that supervision is provided as necessary to protect the health, safety, and well-being of each child in care.

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

(2) Each provider shall be aware at all times of the location of each child in that provider's care and the activities in which the child is engaged. Each provider shall perform the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) The door to each room remains open.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) When overnight care is provided in a group day care home, a second provider shall remain awake at all times if the number of children who are awake exceeds the requirements of K.A.R. 28-4-114 (e), table I. (Authorized by and implementing K.S.A. 2010 Supp. 65-508; effective Feb. 3, 2012.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) returning from being outdoors;

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

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

(E) before and after administering any medication; and

(F) after feeding or handling any pet.

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

(A) First arriving at the facility;

(B) returning from being outdoors;

(C) after toileting;

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

(E) after feeding or handling any pet.

(d) Smoking prohibited. No provider shall smoke while providing direct physical care to children. Smoking in any room, enclosed area, or other enclosed space on the premises shall be prohibited when children are in care pursuant to K.S.A. 65-530, and amendments thereto.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Breakfast shall include the following:

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

(ii) bread or grain product; and

(iii) milk.

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

(i) Meat or a meat alternative;

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

(iii) bread or a grain product; and

(iv) milk.

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

(i) Milk;

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

(iii) meat or a meat alternative; or

(iv) bread or grain product.

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

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

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

(6) Only pasteurized milk products shall be served.

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

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

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

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

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

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

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

(f) Recordkeeping. Each applicant with a temporary permit and each licensee shall ensure that a file is maintained for each child, including each child enrolled for emergency care. Each file shall include the following information:

(1) The full name, home and business addresses, and telephone numbers of the child's parent or

parents or legal guardian and the name, address, and telephone number of the individual to notify in case of emergency;

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

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

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

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

(b) Safe sleep practices for children in care.

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

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

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

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

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

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

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

(C) The child shall not nap or sleep in the same

crib or playpen as that occupied by another child at the same time.

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

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

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

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

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

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

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

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

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

(5) If a crib or playpen is slatted, the slats shall be spaced not more than $2\frac{3}{8}$ inches apart.

(6) On and after December 28, 2012, each applicant, each applicant with a temporary permit, and each licensee shall ensure that no crib purchased before June 28, 2011 is in use in the facility.

(7) Each pad used for napping or sleeping shall be at least $\frac{1}{2}$ inch thick, washable or enclosed in a washable cover, and long enough so that the child's head and feet rest on the pad. Clean, in-

dividual bedding, including a bottom and a top cover, shall be provided for each child.

(8) Cribs, cots, playpens, and pads, when in use for napping or sleeping, shall be separated by at least 24 inches in all directions except when bordering on the wall.

(9) When not in use, cribs, cots, playpens, pads, and bedding shall be stored in a clean and sanitary manner.

(d) Consumer warning or recall. Each applicant with a temporary permit and each licensee shall make any necessary changes to follow the recommendations of any consumer warning or recall of a crib or a playpen as soon as the warning or recall is known.

(e) Transition from crib or playpen. The determination of when a child who is 12 months of age or older is ready to transition from a crib or a playpen to another napping or sleeping surface shall be made by the parent or guardian of the child and by either the applicant with a temporary permit or the licensee. The requirements of paragraphs (c) (3) and (4) for a child using a crib or playpen shall apply. (Authorized by and implementing K.S.A. 2010 Supp. 65-508; effective Feb. 3, 2012.)

28-4-117. Health care requirements for children under 16 years of age. (a)(1) A completed medical record on the form provided by the department shall be on file for each child under 11 years of age enrolled for care and for each child under 16 years of age living in the child care facility.

(2) Each medical record shall include the results of a health assessment conducted by a nurse trained to perform health assessments or a licensed physician, within six months before the child's initial enrollment in a child care facility.

(3) Each medical record shall include a medical history obtained from the parent.

(b) A child under 16 years of age shall not be required to have routine tuberculin tests.

(c) Immunizations for each child, including each child of the provider under 16 years of age, shall be current as medically appropriate and shall be maintained current for protection from the diseases specified in K.A.R. 28-1-20(d). A record of each child's immunizations shall be maintained on the child's medical record.

(d) Exceptions to the requirements for immunizations shall be permitted as specified in K.S.A. 65-508, and amendments thereto. Documentation of each exception shall be maintained on file at the child care facility.

(e) If an infant who has not been immunized against measles, mumps, rubella, and varicella because of the age of that child is enrolled and there are children in care who have not had measles, mumps, rubella, and varicella immunizations due to exemption, including the children of the provider, the parents of the infant at risk shall sign a statement that the parents have been informed of the risk to their child. This statement shall be in the infant's file at the day care or group day care home.

(f) If a child is moved to a different child care provider, a new health assessment shall not be required if the previous medical record is available.

(g) Each licensee shall provide information to parents of children in the licensee's program about the benefits of annual well-child health assessments for children under the age of six years and biennial health assessments for children six years of age and older. Each licensee shall also provide information about the importance of seeking medical advice when children exhibit health problems. This information may be given on a form provided by the department to the parent when the child is enrolled or be posted in a conspicuous place, with copies of the form available to parents on request. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-507 and 65-508; effective, E-80-18, Oct. 17, 1979; effective May 1, 1980; amended May 1, 1981; amended, T-83-27, Sept. 22, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended Feb. 26, 1990; amended July 11, 2008.)

28-4-118. Medication administration and reporting suspected child abuse or neglect.

(a) Medication administration.

(1) Each applicant with a temporary permit and each licensee shall designate at least one provider to administer medications to children.

(2) If nonprescription medication is to be administered to a child, each designated provider shall meet the following requirements:

(A) Obtain written permission from each child's parent or legal guardian before administering medication to that child;

(B) require that each medication supplied by a parent or legal guardian for the child be in the original container;

(C) ensure that the container is labeled with the first and last name of the child for whom the medication is intended; and

(D) administer each medication according to the instructions on the label.

(3) If prescription medication is administered to a child, each designated provider shall meet the following requirements:

(A) Obtain written permission from each child's parent or legal guardian before administering medication to that child;

(B) keep each medication in the original container labeled by a pharmacist, with the following information:

(i) The child's first and last name;

(ii) the name of the licensed physician, physician assistant (PA), or advanced practice registered nurse (APRN) who ordered the medication;

(iii) the date the prescription was filled;

(iv) the expiration date of the medication; and

(v) specific, legible instructions for administration and storage of the medication;

(C) consider the instructions on each label to be the order from the licensed physician, PA, or APRN;

(D) administer the medication only to the child designated on the prescription label; and

(E) administer the medication in accordance with the instructions on the label.

(4) Documentation of each medication administered shall be kept on a form provided by the department and maintained in each child's file.

(5) A copy of the documentation of each medication administered shall be made available to the parent or legal guardian of the child.

(b) Reporting suspected child abuse or neglect. Each provider shall report to the Kansas department for children and families or to law enforcement any suspected child abuse or neglect within 24 hours. (Authorized by and implementing K.S.A. 2016 Supp. 65-508; effective, E-80-18, Oct. 17, 1979; effective May 1, 1980; amended May 1, 1981; amended May 1, 1983; amended May 1, 1986; amended Feb. 26, 1990; amended May 12, 2017.)

28-4-119. (Implementing K.S.A. 1979 Supp. 65-503 and 65-508; authorized by K.S.A. 65-503 and 65-508; effective, E-80-18, Oct. 17, 1979; effective May 1, 1980; amended May 1, 1981; amended May 1, 1983; revoked May 1, 1984.)

28-4-119a. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1984; amended May 1, 1985; revoked May 1, 1986.)

28-4-119b. Compliance with regulations.

(a) An exception to a regulation may be allowed by the department if:

(1) The applicant requests an exception from the department on a form supplied by the department; and

(2) The secretary determines the exception to be in the best interests of the day care child or children and their families.

(b) Written notice from the Kansas department of health and environment stating the nature of the exception and its duration shall be posted with the license. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1984; amended Feb. 26, 1990.)

**REGISTERED FAMILY DAY
CARE HOMES FOR CHILDREN**

28-4-120. (Authorized by K.S.A. 65-522; implementing K.S.A. 65-519 and 65-521; effective May 1, 1981; amended May 1, 1986; amended Feb. 26, 1990; amended July 11, 2008; revoked Feb. 3, 2012.)

28-4-121. (Authorized by K.S.A. 65-522; implementing K.S.A. 65-519; effective July 11, 2008; revoked Feb. 3, 2012.)

**GENERAL REGULATIONS FOR
CATEGORIES OF CHILD CARE**

28-4-122. General regulations for family day care homes and child care facilities. K.A.R. 28-4-123 through 28-4-132 shall apply to the following:

(a) Family day care home as defined in K.S.A. 65-517, and amendments thereto;

(b) day care home and group day care home as defined in K.A.R. 28-4-113;

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

(d) residential center and group boarding home as defined in K.A.R. 28-4-268. (Authorized by and implementing K.S.A. 65-508 and 65-522; effective, T-86-46, Dec. 18, 1985; effective May 1, 1986; amended March 28, 2008.)

28-4-123. Parental access to child care facilities. Each parent or guardian of a child enrolled in a day care facility or preschool as defined in K.S.A. 65-517, K.A.R. 28-4-113 or K.A.R. 28-4-420 shall have access to the premises during all hours of operation. Each residential facility as defined in K.A.R. 28-4-311 and K.A.R. 28-4-268 shall develop a plan for parental visitation in coop-

eration with the legal custodian if different from the parent. (Authorized by and implementing K.S.A. 65-508 and K.S.A. 65-522; effective, T-86-46, Dec. 18, 1985; effective May 1, 1986.)

28-4-124. Parental permission for children to go off-premises. Each day care facility as defined in K.A.R. 28-4-113, K.A.R. 28-4-420 and K.S.A. 65-517, and any amendments to it shall obtain a signed parental permission for each location to which children go off of the premises on a form supplied by the department of health and environment. The destination, the time children leave the child care facility, the adults responsible for the children while off premises, and the estimated time of return shall be posted in a place accessible to parents. (Authorized by and implementing K.S.A. 65-508 and 65-522; effective, T-86-46, Dec. 18, 1985; effective May 1, 1986; amended Feb. 26, 1990.)

28-4-125. Background checks. Each applicant, applicant with a temporary permit, and licensee shall meet the following requirements:

(a) Submit to the department the identifying information necessary to complete background checks for each individual who works or regularly volunteers in the facility, each individual at least 10 years of age who resides in the facility, and any other individual in the facility whose activities involve either supervised or unsupervised access to children. The identifying information shall be submitted as follows:

- (1) When submitting an application for a license;
- (2) when submitting an application to renew a license; and
- (3) before allowing any individual to work, regularly volunteer, or reside in the facility and before allowing any individual whose activities involve either supervised or unsupervised access to children to be in the facility;

(b) ensure that fingerprint-based background checks are completed for each of the following:

- (1) The applicant;
- (2) the applicant with a temporary permit;
- (3) the licensee;
- (4) each provider in a day care home or group day care home;
- (5) each individual at least 18 years of age who resides in a day care home or group day care home;
- (6) each employee in a preschool or child care center;

(7) each volunteer counted in the staff-child ratio; and

(8) any other individual regularly in the facility if the individual's activities involve unsupervised access to children;

(c) ensure that the information submitted for each individual specified in subsection (b) includes the required information for background checks from each state of residence throughout the five-year period before allowing the individual to work, regularly volunteer, or reside in the facility;

(d) ensure that name-based background checks by the Kansas bureau of investigation and the Kansas department for children and families are completed for each of the following:

(1) Each individual at least 10 years of age who resides in a day care home or group day care home;

(2) each volunteer who is not counted in the staff-child ratio and whose activities do not involve unsupervised access to children;

(3) each student of an accredited secondary or postsecondary school who is at least 16 years of age and who is participating in an educational experience arranged by the school, if the student is not counted in the staff-child ratio and does not have unsupervised access to children; and

(4) any other individual regularly in the facility whose activities do not involve unsupervised access to children; and

(e) ensure that no individual works, regularly volunteers, or resides in the facility until the results of the individual's background checks verify that the individual is not prohibited from working, regularly volunteering, or residing in a facility pursuant to K.S.A. 65-516, and amendments thereto. (Authorized by K.S.A. 2017 Supp. 65-508; implementing K.S.A. 2017 Supp. 65-508 and 65-516; effective, T-86-46, Dec. 18, 1985; effective May 1, 1986; amended Feb. 26, 1990; amended June 7, 2018.)

28-4-126. Health of persons 16 years or older in child care facilities. (a)(1) Each person caring for children shall be free from physical, mental or emotional handicaps as necessary to protect the health, safety and welfare of the children, and shall be qualified by temperament, emotional maturity, sound judgment, and an understanding of children.

(2) Persons in contact with children shall not be in a state of impaired ability due to the use of alcohol or drugs.

(b)(1) Each person regularly caring for children shall have a health assessment conducted by a licensed physician or by a nurse trained to perform health assessments. The health assessment shall be conducted no earlier than one year before the date of employment or initial application for a license or certificate of registration, or not later than 30 days after the date of employment or initial application.

(2) Each substitute in a day care facility as defined in K.A.R. 28-4-113 or K.S.A. 65-517 shall be exempt from K.A.R. 28-4-126(b)(1).

(c) Tuberculin testing.

(1) Each person living, working or regularly volunteering in the facility shall have a record of a negative tuberculin test or x-ray obtained not more than two years before the employment or initial application for a license or certificate of registration or not later than 30 days after the date of employment or initial application.

(2) Additional tuberculin testing shall be required if significant exposure to an active case of tuberculosis occurs, or symptoms compatible with tuberculosis develop. Proper treatment or prophylaxis shall be instituted, and results of the follow-up shall be recorded on the person's health record. The Kansas department of health and environment shall be informed of each case described within this paragraph.

(d) Results of the health assessment and tuberculin test shall be recorded on forms supplied by the Kansas department of health and environment and kept on file at the facility. Health assessment records may be transferred to a new place of employment if the transfer occurs within one year of previous employment.

(e) Each resident 16 years or older in a residential facility as defined in K.A.R. 28-4-268 shall meet the requirements in K.A.R. 28-4-126(b), (c) and (d). (Authorized by and implementing K.S.A. 65-508 and K.S.A. 65-522; effective May 1, 1986; amended Feb. 26, 1990.)

28-4-127. Emergencies. (a) A working telephone shall be on the premises. Emergency telephone numbers shall be posted next to the telephone for the police, fire department, ambulance, hospital or hospitals, and poison control center.

(b) Emergency medical treatment.

(1) Each facility shall have on file at the facility for each child:

(A) written permission of the parent, guardian, or legal custodian for emergency medical treat-

ment on a form that meets the requirements of the hospital or clinic where emergency medical care will be given; and

(B) the name, address and telephone number of a physician to be called in case of emergency.

(2) Residential facilities providing emergency care shall be exempt from K.A.R. 28-4-127 (b)(1)(A).

(3) Provisions shall be made at a hospital or clinic for emergency treatment for children.

(c) Health assessment forms and emergency release forms shall be taken to the emergency room with the child.

(d) When a staff member accompanies a child to the source of emergency care, that person shall remain with the child unless or until a parent or parent's designee assumes responsibility for the child. Such an arrangement shall not compromise the supervision of the other children in the facility.

(e) Reporting illnesses and injuries:

(1)(A) Residential facilities shall have on file at the facility written policies on reporting of illnesses and injuries of adults and children.

(B) The policies shall be approved by the licensing agency.

(2) Day care facilities shall report immediately to the parent or guardian each illness or injury of a child which requires medical attention.

(3) Communicable diseases shall be reported to the county health department by the next working day.

(f) Any injury or illness which results in the death of a child in care shall be reported by the next working day to the county health department or the Kansas department of health and environment. (Authorized by and implementing K.S.A. 65-508 and 65-522; effective May 1, 1986; amended May 1, 1987; amended Feb. 26, 1990.)

28-4-128. Safety procedures. (a) Each facility shall develop an emergency plan to provide for the safety of children and staff in emergencies such as fire, tornadoes, storms, floods, and serious injury.

(b) Each emergency plan shall be posted in a conspicuous place in the facility. Staff in day care facilities shall review the plan with parents of children enrolled.

(c) Each person responsible for the children, including each substitute, shall be informed of and shall follow the emergency plans.

(d) A fire drill shall be conducted monthly and scheduled to allow participation by each child. Each date and time shall be recorded.

(e) A tornado drill shall be conducted monthly, April through September, and scheduled to allow participation by each child. Each date and time shall be recorded.

(f) Each person regularly caring for children shall have first-aid training. Documentation of the training shall be on file at the facility. (Authorized by and implementing K.S.A. 65-508 and K.S.A. 65-522; effective May 1, 1986; amended Feb. 26, 1990.)

28-4-129. Swimming and wading activities. (a) Swimming and wading pools on the premises.

(1) If swimming pools with water over 24 inches deep, wading pools, or hot tubs are on the premises, they shall be constructed, maintained, and used in such a manner as to safeguard the lives and health of the children.

(2) The number and ages of children using either swimming or wading pools shall be limited to allow appropriate supervision by adult staff members.

(3) Required staff/child ratios shall be maintained at all times that children are involved in swimming or wading activities.

(4) Legible safety rules for the use of swimming pools shall be posted in a conspicuous location, and shall be read and reviewed weekly by each staff member responsible for the supervision of children.

(b) Swimming pools on the premises.

(1) Below-ground swimming pools shall be enclosed by a fence not less than five feet high to prevent chance access by children.

(2) Above-ground swimming pools shall be four feet high, or shall be enclosed with a fence not less than five feet high. Steps shall be removed from the pool when the pool is not in use.

(3) Sensors shall not be used in lieu of a fence.

(4) Water in the swimming pool shall be maintained between pH 7.2 and pH 8.2. Available free chlorine content shall be between 0.4 and 3.0 parts per million. The pool shall be cleaned daily, and the chlorine level and pH level shall be tested daily. The results of these tests shall be recorded and available.

(5) A person with a life saving certificate or a person with training in CPR who can swim shall be in attendance when children are using a swimming pool.

(6) Each swimming pool more than six feet in width, length, or diameter shall be provided with a ring buoy and rope or shepherd's hook. Such

equipment shall be of sufficient length to reach the center of the pool from its edge.

(c) Wading pools on the premises.

(1) Children shall never be permitted to play without supervision in areas where there is a wading pool containing water.

(2) Water in wading pools shall be emptied daily.

(d) Hot tubs or spas on the premises.

(1) Each hot tub or spa shall be covered with an insulated cover secured by straps or locks.

(2) Children in day care facilities shall not be permitted to use hot tubs. Children in residential facilities shall be permitted to use hot tubs when medically indicated.

(e) Ponds and lakes may be used only for children over six years of age, and shall be approved for swimming by the county health department or Kansas department of health and environment or like departments in other states. Required staff/child ratios shall be maintained at all times, and a certified life guard shall be on duty. (Authorized by and implementing K.S.A. 65-508 and 65-522; effective May 1, 1986; amended Feb. 26, 1990.)

28-4-130. Transportation. (a) Facility-owned or leased vehicles.

(1) When a vehicle used for transportation of children is owned or leased by the facility, the driver shall be 18 years of age or older, and shall hold an operator's license of a type appropriate for the vehicle being used. Trailers pulled by another vehicle, camper shells or truck beds shall not be used for transportation of children.

(2)(A) Each transporting vehicle shall be maintained in safe operating condition.

(B) The transporting vehicle shall have a yearly mechanical safety check of tires, lights, windshield, wipers, horn, signal lights, steering, suspension, glass, brakes, tail lights, exhaust system, and outside mirror. A record of the date of the annual safety check and corrections made shall be kept on file at the facility.

(3) The vehicle shall be covered by accident and liability insurance in amount of not less than \$100,000 for personal injury or death in any one accident, \$300,000 for injury or death to two or more persons in any one accident; and \$50,000 for loss to property of others.

(4)(A) Emergency release forms and health assessment records shall be in the vehicle when children are transported. Residential facilities shall be exempt from K.A.R. 28-4-130(a)(4)(A) unless children are being transported more than

60 miles from the facility, or if children are in emergency care.

(B) A first-aid kit shall be in the transporting vehicle and shall include band-aids of all sizes; adhesive tape; a roll of gauze; scissors; one package of 4X4 inch gauze squares; a cleansing agent; and one elastic bandage.

(5) Each vehicle shall be equipped with an individual restraint for each child as follows:

(A) An infant unable to sit up without support shall be provided with an infant car carrier which faces the rear.

(B) A child able to sit up without support shall be provided with one of the following restraints:

- (i) A shield-type device;
- (ii) a car seat facing the front that is designed to hold a child weighing up to 40 pounds; or
- (iii) a safety harness.

(C) A child four years of age or older, or weighing 40 pounds or more, shall have a lap belt. Shoulder straps shall be used if they do not cross the child's neck or face.

(D) Not more than one child shall be restrained in each lap belt.

(E) Buses of the type used by schools shall not be required to be equipped with individual restraints if the buses are used to transport only school-age children.

(6) The safety of the children riding in the vehicle shall be protected as follows:

(A) All doors except the front door on the driver's side shall be locked while the vehicle is in motion.

(B) Discipline shall be maintained at all times.

(C) All parts of the child's body shall remain inside the vehicle at all times.

(D) Children shall neither enter nor exit the vehicle into a lane of traffic.

(E) Children under 10 years of age shall not be left in a vehicle unattended by an adult. When the vehicle is vacated, the driver shall make certain no child is left in the vehicle.

(F) Smoking in the vehicle shall be prohibited while children are being transported.

(G)(i) Day care facilities defined by K.S.A. 65-517, K.A.R. 28-4-113 and K.A.R. 28-4-420 shall maintain applicable staff/child ratios.

(ii) Residential facilities as defined by K.A.R. 28-4-268 and K.A.R. 28-4-311 shall maintain applicable staff/child ratios when children under six are being transported.

(H) The driver shall transport the child to the intended location, person, agency or institution as

designated by the child's parent or legal guardian, or by the agency person in charge.

(b) Vehicles owned by staff or volunteers.

(1) When a vehicle used for transportation of children is owned by staff or volunteers the vehicle shall be covered by accident and liability insurance required by K.S.A. 40-3104 and 40-3118 and any amendments to it.

(2) Each such vehicle shall meet the requirements of K.A.R. 28-4-130(a)(1); (a)(2)(A); (a)(4)(A); (a)(5); and (a)(6)(A) through (H).

(c)(1) Each driver shall be informed of the provisions of K.A.R. 28-4-130.

(2) Paragraphs (A) through (H) of subsection (a) (6) of K.A.R. 28-4-130 shall be posted in the vehicle or given to the driver. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1986; amended May 1, 1987; amended Feb. 26, 1990.)

28-4-131. Animals, birds, or fish. (a) When animals, birds, or fish are kept on the premises, the pet area shall be maintained in a sanitary manner. No animal or bird shall be in the kitchen while food is being prepared. Parents shall be informed whenever children have access to pets in the child care facility.

(b) Dogs and cats shall have current immunizations as recommended by a veterinarian. A record of immunizations shall be kept on file in the facility.

(c) When animals that represent a hazard to children are on the premises, children shall be protected from them. Pit bulldogs shall be prohibited. If animals are displayed as part of an animal exhibit, they shall be supervised by appropriate animal care personnel. (Authorized by and implementing K.S.A. 65-508 and 65-522; effective May 1, 1986; amended Feb. 26, 1990.)

28-4-132. Child care practices. (a) Supervision. Each child in day care shall be under the supervision of a person 16 years of age or older who is responsible for the child's health, safety and well-being.

(b) Discipline.

(1) There shall be a written discipline policy indicating methods of guidance appropriate to the age of the children enrolled. Parents shall be informed of the policy.

(2) Prohibited punishment. Punishment which is humiliating, frightening or physically harmful to the child shall be prohibited. Prohibited methods of punishment include:

(A) corporal punishment such as spanking with the hand or any implement, slapping, swatting, pulling hair, yanking the arm, or any similar activity;

(B) verbal abuse, threats, or derogatory remarks about the child or the child's family;

(C) binding or tying to restrict movement, or enclosing in a confined space such as a closet, locked room, box, or similar cubicle;

(D) withholding or forcing foods; and

(E) placing substances which sting or burn on the child's mouth or tongue or other parts of the body.

(3) If isolation is used in residential facilities as defined in K.A.R. 28-4-268, the isolation policies shall be approved by the department of social and rehabilitation services before implementation.

(4) Each staff member and care provider's discipline practices shall comply with K.A.R. 28-4-132.

(c) Diapering and toileting.

(1) Each child's clothing or bedding shall be changed whenever wet or soiled.

(2) Each child under three years of age shall have at least one complete change of clothing at the facility.

(3)(A) Handwashing facilities shall be in or readily accessible to the diaper-changing area.

(B) Each person caring for children shall wash hands with soap and water after changing diapers or soiled clothing.

(4) Children shall be diapered in their own cribs or playpens, on a clean pad on the floor, or on a changing table. Each unit in a child care center as defined by K.A.R. 28-4-420 shall have a changing table.

(5) Changing tables and pads shall have a waterproof, undamaged surface. Tables shall be sturdy, and shall be equipped with railing or safety straps. Children shall not be left unattended on the changing table.

(6) Changing tables and pads shall be sanitized after each use by washing with a disinfectant solution of ¼ cup of chlorine bleach to one gallon of water, or an appropriate commercial disinfectant.

(7) The following procedures shall be followed when washable diapers or training pants are used:

(A) Day care facilities. Washable diapers or training pants shall not be rinsed out. They shall be stored in a labeled covered container or plastic bag and returned home with the parents.

(B) Residential facilities. Sanitary laundering procedures which promote infection control shall be followed.

(8) Disposable diapers shall be placed in a covered container or plastic bag which shall be emptied daily, or more frequently as necessary for odor control.

(9)(A) Potty chairs when used shall be left in the toilet room. The wastes shall be disposed of immediately in a flush toilet. The container shall be sanitized after each use and shall be washed with soap and water daily.

(B) There shall be one potty chair or child-sized toilet for every five toddlers in a child care center as defined by K.A.R. 28-4-420. Potty chairs shall not be counted as toilets.

(10) Diapering procedures recommended by the U.S. Department of Health and Human Services, Public Health Service, December, 1984, shall be followed in all child care facilities caring for infants and toddlers. Diapering and toileting procedures shall be posted in child care centers, group boarding homes, residential centers and group day care homes serving children under 2½ years of age. (Authorized by and implementing K.S.A. 65-508 and K.S.A. 65-522; effective Feb. 26, 1990.)

28-4-133. Reporting critical incidents.

This regulation shall apply to all day care homes, group day care homes, preschools, and child care centers.

(a) Reports to parents and legal guardians. In addition to meeting the reporting requirements in K.A.R. 28-4-127, each primary care provider and each program director shall ensure that each of the following critical incidents is immediately reported to the parent or legal guardian of any child affected by the critical incident:

(1) Fire damage or other damage to the facility, or any damage to the property that affects the structure of the facility or the safety of the children in care;

(2) a vehicle collision involving any child in care;

(3) a missing child;

(4) an injury to a child that requires treatment by a health care professional;

(5) the death of any of the following:

(A) A child;

(B) a provider in a day care home or group day care home;

(C) an employee in a preschool or child care center; or

(D) a volunteer in a day care home, group day care home, preschool, or child care center; and

(6) any other occurrence that jeopardizes the safety of any child in care.

(b) Written reports to the department. Each primary care provider and each program director shall ensure that a written report of any critical incident specified in subsection (a) is submitted by the next working day to the department. The report shall be submitted on a form provided by the department. A copy of each critical incident report shall be kept on file at the facility for at least one year from the date of the critical incident. (Authorized by and implementing K.S.A. 65-508; effective Dec. 27, 2019.)

GROUP BOARDING HOMES

28-4-135. (Authorized by K.S.A. 65-503, K.S.A. 1975 Supp. 65-504, 65-508; effective Jan. 1, 1972; revoked, E-76-36, July 14, 1975; revoked May 1, 1976.)

28-4-136. (Authorized by K.S.A. 65-510, K.S.A. 1975 Supp. 65-504, 65-506, 65-508; effective Jan. 1, 1972; revoked, E-76-36, July 14, 1975; revoked May 1, 1976.)

28-4-137. (Authorized by K.S.A. 1975 Supp. 65-508; effective Jan. 1, 1972; revoked, E-76-36, July 14, 1975; revoked May 1, 1976.)

28-4-138. (Authorized by K.S.A. 17-1706, K.S.A. 1975 Supp. 65-508; effective Jan. 1, 1972; revoked, E-76-36, July 14, 1975; revoked May 1, 1976.)

28-4-139. (Authorized by K.S.A. 1975 Supp. 65-508; effective Jan. 1, 1972; revoked, E-76-36, July 14, 1975; revoked May 1, 1976.)

28-4-140. (Authorized by K.S.A. 65-503; effective Jan. 1, 1972; revoked, E-76-36, July 14, 1975; revoked May 1, 1976.)

28-4-141. (Authorized by K.S.A. 1975 Supp. 65-508; effective Jan. 1, 1972; revoked, E-76-36, July 14, 1975; revoked May 1, 1976.)

28-4-142. (Authorized by K.S.A. 65-510, K.S.A. 1975 Supp. 65-508; effective Jan. 1, 1972; revoked, E-76-36, July 14, 1975; revoked May 1, 1976.)

28-4-143. (Authorized by K.S.A. 1975 Supp. 65-508; effective Jan. 1, 1972; revoked, E-76-36, July 14, 1975; revoked May 1, 1976.)

28-4-144. (Authorized by K.S.A. 1975 Supp. 65-506, 65-507, 65-508; effective Jan. 1, 1972; revoked, E-76-36, July 14, 1975; revoked May 1, 1976.)

28-4-145. (Authorized by K.S.A. 65-510, K.S.A. 1975 Supp. 65-507, 65-508; effective Jan. 1, 1972; revoked, E-76-36, July 14, 1975; revoked May 1, 1976.)

28-4-146. (Authorized by K.S.A. 1975 Supp. 65-507, 65-508; effective Jan. 1, 1972; revoked, E-76-36, July 14, 1975; revoked May 1, 1976.)

28-4-147. (Authorized by K.S.A. 65-510, K.S.A. 1975 Supp. 65-501, 65-504, 65-506, 65-508, 65-512, 65-513, 65-514, 65-515; effective Jan. 1, 1972; revoked, E-76-36, July 14, 1975; revoked May 1, 1976.)

28-4-148. (Authorized by K.S.A. 1975 Supp. 65-508; effective Jan. 1, 1972; revoked, E-76-36, July 14, 1975; revoked May 1, 1976.)

CHILD PLACEMENT AGENCIES

28-4-160 to 28-4-169. (Authorized by K.S.A. 65-503, 65-508; effective Jan. 1, 1972; revoked May 1, 1982.)

28-4-170. Definitions. (a) “Child placing agency” or “agency” means an association, organization, or corporation receiving, caring for, or finding homes for orphans or deprived children who are under 16 years of age.

(b) “Division” means the division of health of the department of health and environment.

(c) “License” means a document issued by the secretary granting authority to an association, organization, or corporation to operate and maintain a child placing agency.

(d) “Secretary” means the secretary of the health and environment. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-503, 65-508; effective May 1, 1982.)

28-4-171. Licensing procedures. (a) Any association, organization, or corporation desiring to conduct a child placing agency shall apply for a license on forms provided by the Kansas department of health and environment.

(b) A full license shall be issued if the secretary finds that the applicant is in compliance with the requirements of K.S.A. 65-501 *et seq.* and amendments thereof and the rules and regulations promulgated pursuant thereto and has made full payment of the license fee required by the provisions of K.S.A. 65-505 and amendments thereof. The license and any written exceptions granted by the secretary under K.A.R. 28-4-171(c) shall be posted as required by K.S.A. 65-504.

(c) Exceptions. (1) An exception to a regulation may be allowed by the Kansas department of health and environment if:

(A) The applicant requests an exception from the Kansas department of health and environment; and

(B) The secretary determines the exception to be in the best interests of families and children served by the agency.

(2) Written notice from the Kansas department of health and environment stating the nature of the exception and its duration shall be posted with the license.

(d) A copy of the "regulations for licensing child placing agencies" shall be kept on the premises at all times.

(e) The applicant or licensee shall notify the Kansas department of health and environment when service is discontinued. Resumption of agency services shall require a new application for license.

(f) An applicant or licensee receiving notice of denial or revocation of license shall be notified of the right to an administrative hearing by the Kansas department of health and environment and subsequently to the right to appeal the denial or revocation to the district court. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-503, 65-508; effective May 1, 1982.)

28-4-172. Administration and personnel.

(a) The agency shall develop a written statement of philosophy, purpose, program orientation, and policy of operation including the agency's position on disciplinary methods to be used by staff. Corporal punishment shall be prohibited. The statement shall contain long and short term goals and shall be available to the secretary or a designee of the secretary, and to the public. The agency, at the time of making initial application for a license, shall furnish the division the following:

(1) Evidence of a need for services to a particular group of children;

(2) A definition of the services to be provided in sufficient detail as to indicate the agency has an understanding of each particular service;

(3) A description of the geographical area it serves or intends to serve; and

(4) Evidence that its services will be used by referral sources.

(b) A child placing agency shall have a governing body which shall exercise authority over and have responsibility for the operation, policy, and prac-

tices of the child placing agency. The governing body shall select and employ a qualified executive director, who shall be responsible for the administration and operation of the child placing agency. The governing body shall have among its officers a secretary responsible for documenting its activities and for keeping attendance records and minutes of its meetings. These records and minutes shall be available for inspection by the division.

(c) The child placing agency shall prepare an annual report of the agency's activities. The report shall include fiscal and statistical sections indicating the levels of income and expenditures, the size and types of staff and the number of clients serviced by each service program.

(d) The child placing agency shall demonstrate financial solvency to carry out its program for the licensing period. Agencies which have not operated shall have capital necessary for at least a 6 month period of operation. The agency shall prepare an annual budget. Books shall be audited annually by a certified public accountant. A copy of the accountant's statement of income and disbursements shall accompany the licensing application.

(e) The applicant or licensee shall maintain a current organizational table showing the administrative structure of the agency, including the lines of authority, responsibility, communications, and staff assignments. The table shall be provided to all staff members as a part of the orientation procedure and, on request, to the division, clients, or referral sources.

(f) Child placing agencies shall have written personnel policies and procedures and shall make them available to all staff members, persons seeking employment, and the division. Personnel policies and practices shall be developed by the agency, with input from the staff. These policies and procedures shall be reviewed annually, and revised when necessary. The child placing agency shall make the policies and procedures available to staff in a personnel policy manual.

(g) Each child placing agency shall provide the qualified staff necessary to ensure proper services to children in the agency's care, to biological and adoptive parents, and to foster parents. The child placing agency shall verify the personal qualifications of all employees through character references. Signed statements shall be made a condition of employment for prospective employees. These statements shall list any past or current police records, mental or physical actions, conditions, or addictions of the applicant that would adversely

affect their capacity to work with children. The agency shall hire qualified professional staff, as follows:

(1) The executive director of a child placing agency, who shall have:

(A) A degree from an accredited college or university;

(B) Education and experience in administering a child placement or related program commensurate with the size and complexity of the agency;

(C) A thorough understanding of the philosophy, purpose, and policy of the agency; and

(D) The capacity to provide direction and leadership for the agency.

(2) Social service supervisory staff members responsible for the direct supervision of the social workers involved in child placement service, who shall have:

(A) A master's degree from an accredited college or university and be licensed as a social worker by the state of Kansas or shall have a graduate degree in a related area of human services;

(B) Two years of experience in child placement services;

(C) Ability to assume professional responsibility for reviewing the placement of children in out-of-home care when these placements are made by a person with lesser qualifications. There shall be written documentation of specific services provided by this person and the frequency of these services.

(3) Social workers performing intake services, direct services to foster children, homefinding, and assessment related to foster home and adoptive services, who shall have:

(A) A master's degree from an accredited college or university and be licensed as a social worker by the state of Kansas; or

(B) A bachelor's degree from an accredited college or university and be licensed as a social worker by the state of Kansas; or

(C) A bachelor's degree in behavioral sciences from an accredited college or university and 2 years of experience in child placement under direct supervision of a person meeting the supervisory requirements in subsection (g)(2).

(h) The child placing agency shall provide enough qualified personnel to assure that:

(1) Supervisors shall not supervise more than six social workers;

(2) In-service training related to child placement is made available to supplement supervision; and

(3) Casework staff carries caseloads which are sufficiently controlled to allow for all the necessary contacts with the family, children, foster families, adoptive families, and collateral parties.

(i) The agency shall, if it makes use of volunteers, develop a written plan for their orientation, training and use. The agency shall assign professional staff to supervise volunteers.

(j) The child placing agency shall have a personnel file for each employee which shall contain:

(1) The application for employment, resume, or both;

(2) Reference letters from former employer(s);

(3) Any required medical information;

(4) Applicable professional credentials or certifications;

(5) Periodical performance evaluations;

(6) Personnel actions, other appropriate materials, reports, and notes relating to the individual's employment with the agency; and

(7) Employee's starting and termination dates. The staff member shall have reasonable access to his or her file and shall be allowed to add any written statement he or she wishes to make to the file at any time. A child placing agency shall maintain the personnel file of an employee who leaves the agency for a period of 3 years. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-503, 65-508; effective May 1, 1982.)

28-4-173. Facility. (a) Convenience of location. The agency shall be easily accessible to the clientele, staff, and community and shall have adequate parking available.

(b) Space requirements. The child placing agency shall provide suitable space for the following purposes:

(1) Office, reception areas, and visitation areas which insure comfort, privacy, and convenience of clients and staff and which are appropriately equipped for their intended use;

(2) Storage area for records which provides for systematic controlled access and retrieval, and which insures confidentiality.

(c) Equipment. Suitable equipment shall be maintained in good working condition. Telephones shall be conveniently located and sufficient in number. Equipment and furnishings shall be clean and designed for efficiency, safety, and varied use. When transportation is provided by the agency, it shall be in well-maintained vehicles. Car seats and car restraints shall be provided when the agency transports children. (Authorized

by K.S.A. 65-508; implementing K.S.A. 65-503, 65-508; effective May 1, 1982.)

28-4-174. Social services related to child placing. (a) Intake requirements. A child placing agency shall have a written description of services offered and the criteria for service eligibility which shall include who is eligible for the services and what fees, if any, are charged. The statement of services and criteria shall be available in individual copies for distribution to clients and to the public. A child placing agency shall document that social services to preserve the family unit have been provided to the family and child and alternatives to placement have been explored with them. The agency shall keep a record of all applications for services and the reasons for denial of services. The agency shall provide referral assistance to persons seeking services not provided by the agency.

(b) Intake procedures and practices. Upon referral or application, the agency shall assess the child's social and family history, the child's legal status, the strengths, resources, and needs of the child and his or her family, the role the child's parent or parents and other persons are to have during placement, and the identification of the specific needs of the child and family that warrant placement.

(c) Initial case plan. Upon completion of the intake assessment and before placement, except in cases of emergency, the agency shall develop a written service plan. The plan shall include:

(1) Selection and description of the type of placement appropriate to meet the child's needs;

(2) Projected duration of the placement;

(3) Preplacement activities with child and family;

(4) Specific treatment goals for child and family;

(5) Specific steps to accommodate each goal;

(6) Specific time frames for goals;

(7) Designation of responsibility for carrying out steps with child, parents, foster parent, adoptive parent(s), and court (when involved) including frequency of contacts;

(8) Date for first review of progress on steps and goals; and

(9) Description of the conditions under which the child shall be returned home or when proceedings for termination of parental rights should be initiated.

(d) Case plan development. The parents or other significant persons to the child as well as the child, appropriate to his or her age and understanding, shall participate in developing the placement plan and participate in service con-

tracts or agreements. Before accepting a child for placement from a parent or custodian, the agency shall secure written authority to provide care and written authority for medical care. In emergency situations necessitating immediate placement, the agency shall initiate assessment and initial case plan within one week of placement, which shall be completed within six weeks of placement.

(e) Supervision and review of the case plan. The agency shall specify in writing the worker or workers who have the ongoing responsibility for the child, the biological, foster and adoptive families, and the casework plan. When a child is placed with another agency or division or whenever more than one worker or division are involved with the same family, the roles shall be clearly delineated for the workers and the family members and the specific responsibilities necessary to carry out the plan shall be in writing in the case records. The case plan shall specify the frequency of social worker visits with the child, the child's family and the foster family, but these visits shall not be made less than once each month. The agency shall complete a quarterly review and assessment of the case plan and progress toward goal achievement. The agency shall have a periodic individual case review, either administrative or with outside agency personnel to ascertain whether children are being served in a prompt manner and whether return to home, continual placement, or adoption efforts are appropriate on the child's behalf.

(f) Placement services to parents. The agency's services shall be accessible and available to the parents of children in care and to an expectant parent or parents requesting services. The choice to use an agency's services shall be the parent's decision except when the choice has been taken from the parents by court order. The agency shall have as a goal helping the parents achieve positive self image and to carry out their parental roles and responsibilities while the child is in care. The agency shall have personal contacts with the parents when possible. It shall promote constructive contact by the parent or parents with the child after placement. The agency shall help the family have access to the services necessary to accomplish the case plan goals. While the child is in care, the agency shall counsel the parents relative to the problems and needs that brought about the circumstances of placement. Expectant parents considering placement shall receive assistance in the decision making process before the child is born and immediately thereafter.

(g) Selection of placement. The agency shall select the most appropriate form of placement for the child consistent with the needs of the child's family, including foster family care, residential group care or adoption. In choosing the appropriate placement for the child, the agency shall provide for any specialized services the child may need in the least restrictive setting and in the closest available program to the child's home, and shall take into consideration and preserve the child's racial, cultural, ethnic, and religious heritage to the extent possible without jeopardizing the child's right to care. The agency shall consider the child's treatment plan steps and goals and select a placement that has the capacity to assist in their achievement. The agency shall, in accordance with the case plan, provide the child with a continuity of relationships for the anticipated duration of care when selecting the placement.

(h) Preplacement preparation. The caseworker for the child shall become acquainted with the child before placement. The child's worker shall help the child understand the reasons for the placement plan, preparing him or her for a new environment. The worker shall plan and participate in at least one preplacement visit. The agency shall arrange a general medical examination by a physician for each child within a week of admission into care unless the child has received an examination within 30 days before admission. The results of this examination shall be recorded on forms supplied by the Kansas department of health and environment. The agency shall ensure that each child has had a dental examination by a dentist within 60 days of admission unless the child has been examined within 6 months before admission. Results of the examination shall be recorded on forms supplied by the Kansas department of health and environment.

(i) Services during care. The agency shall supervise the child in care and shall coordinate the planning and services to child and family as outlined in the case plan. The supervising worker shall see the child a minimum of biweekly in the first three months of placement and monthly thereafter. Parents and children shall be provided the opportunity to meet on a regular basis with the agency worker regarding their progress on resolving problems that may be precipitated by placement, their progress in coping with problems through the use of substitute care, the parent and child's relationship difficulties arising from separation, and case goals. The placing agency shall have a

written agreement with the parents regarding visits to the child and shall facilitate and promote visitation while the child is in care. If the parents require services that the agency does not offer, referral shall be made to appropriate services. Communication between the two agencies shall be on a regular planned basis. The agency shall provide for the child's specialized services as outlined in the case plan. The agency shall have documentation of maintaining clear working agreements with other community resources, confidential referrals and providing access to services necessary to meet goals in the case plan.

(j) Aftercare services. The agency shall provide for continuing services for children and families following an adoption or a child's return to the family from the placement. In the case of the disruption of an adoptive placement, the agency shall make plans, either through purchase of service or provision of foster care services, for continued care of the child until a permanent home has been secured. The agency shall offer supportive help to a family receiving a child into placement or giving up a child for placement for a minimum period of 6 months after the placement or relinquishment of the child. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-503, 65-508; effective May 1, 1982; amended May 1, 1983.)

28-4-175. Services in family foster home care. (a) Foster home finding. The agency shall have a recruitment process with designated staff and funding to reach out and inform the community about children needing foster homes. The agency shall provide information to prospective foster parents about foster care, the agency, the requirements for foster parents, the children needing foster care, licensing regulations, the licensing process and the reimbursement rates. The agency shall recruit foster parents who can respond to the agency's need to place specific children and be able to adjust their recruitment techniques as the kinds of children needing placement change.

(b) Application and study process. At the time of inquiry, the potential applicant(s) shall be provided the opportunity to state their own plan for child care. Before formal application, the agency's foster care program and the value and necessity of having a license shall be discussed. It shall be explained that a licensed agency or the Kansas department of social and rehabilitation services shall complete a study and make recom-

recommendations concerning the home's eligibility for licensure to the Kansas department of health and environment. If after discussion of the potential applicant(s) plan and the general requirements for licensing, the potential applicant(s) wishes to proceed, the application forms shall be completed. The agency shall provide to prospective foster parents a copy of "regulations for licensing family foster homes" and an application form, both furnished by the Kansas department of health and environment. The application shall be completed, checked for accuracy, and counter-signed by an agency representative.

(c) Social study. The agency shall, as a further part of the application process, conduct a social study of the foster family in their home. In conducting the study, the agency shall include at least one face-to-face interview with each member of the foster family. The agency shall assess the following areas and record the information in the foster parent(s) record:

- (1) Motivation for foster care;
- (2) Family's attitude toward foster children;
- (3) Family's attitude toward natural parent(s);
- (4) Adjustment of own children including school reports;
- (5) Child caring skills;
- (6) Strengths and weaknesses of each member of the household;
- (7) Type of children desired;
- (8) Type of children for whom placement with the family would not be appropriate; and
- (9) Recommendation for number, age, sex, characteristics, and special needs children best served by the family. Copies of the social study are to be made available to the applicant and to licensing representative(s) of the Kansas department of social and rehabilitation services. The placement of children shall be consistent with the assessment and recommendations of the social study, including assessment of subsequent placements.

(d) Services to foster parent(s).

(1) Orientation. The agency shall provide orientation to foster parents to acquaint them with the agency's policies and practices.

(2) Training. There shall be a training plan for all foster parents to receive not less than 6 hours of training yearly. Such training shall provide opportunities for the foster families to increase their skills and parenting ability particularly with respect to the differences they may encounter in raising children not their own. Training opportunities should be chosen from the following topics:

(A) Developmental needs of the child to be placed;

(B) Roles and relationships in foster care between the agency, foster parent, natural parent, and child;

(C) Child management and discipline techniques;

(D) Separation and the importance of the child's family;

(E) Importance of the child's continued communication and contact with his or her family;

(F) Supportive services available to the children and foster families from the community;

(G) Communication skills;

(H) Constructive problem solving;

(I) First aid and home safety; and

(J) Human sexuality.

(e) Agreement. The agency shall have a written agreement with each foster family which clearly delineates the responsibility of the foster family and the child placing agency.

(f) Annual evaluations. The agency shall schedule an annual on-site evaluation of the foster home to make an assessment of the care and progress of each foster child in the home. The results of the evaluation shall be on file in written form at the agency and a copy submitted to the foster parents.

(g) Foster care payments. The agency shall have a system by which reimbursement is made to foster parents for expenditures or fees for service that is timely and equitable. If either services or care is to be provided by a foster family as a donation to the agency, a written agreement between the agency and the family shall specify services which shall be provided free and services or costs to be assumed by the agency. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-503, 65-508; effective May 1, 1982.)

28-4-176. Adoptive services. (a) Recruitment. The agency shall have a written recruitment plan which includes the methods of recruitment, sources to be used, time-related goals for applicant recruitment, and the designated staff and budget to carry it out. Recruitment shall be a continual process in the agency to meet the particular needs of the children available for adoption. The agency shall provide orientation to prospective adoptive parents to acquaint them with the agency's policies and practices and the approximate time the assessment will take, eligibility standards, types of children available and the availability of subsidy. The orientation shall also include a realistic assessment of the agency's need for adoptive homes.

(b) Application. The agency shall require prospective adoptive parents to submit an application before proceeding with adoption. The application form shall be designed to obtain information declaring their intent to become adoptive parents and basic data about their family, their home, their financial status, and references to initiate a home study. The agency shall, as a further part of the application, conduct a social study with the family in their home.

(c) Adoptive home study. The study process shall include a face-to-face interview with each member of the household. The agency shall have on file a written assessment of the adoptive home. The narrative shall assess the following areas of concern:

- (1) Motivation for adoption;
- (2) Family's attitude toward accepting an adoptive child, and plan for discussing adoption with the child;
- (3) Emotional stability, physical health, and compatibility of adoptive parents;
- (4) Ability to cope with problems, stress, frustrations, crises, and loss;
- (5) Information on medical or health conditions which would effect the applicant's ability to parent a child;
- (6) Record of convictions other than minor traffic violations;
- (7) Ability to provide for child's physical and emotional needs;
- (8) Adjustment of own children, if any, including school reports;
- (9) Positive feelings about parenting an adoptive child;
- (10) Capacity to give and receive affection;
- (11) Types of children desired and kinds of handicaps accepted;
- (12) Types of children who would not be appropriate for the placement with this family;
- (13) References; and
- (14) Recommendations for number, age, sex, characteristics, and special needs children best served by this family.

(d) Services to adoptive parents. The agency shall provide services to adoptive applicants individually or in groups to enable them to make an informed decision as to whether they can meet the specific needs of children awaiting adoption through participation in the adoptive study and evaluation of their potential for meeting the needs of the children available for adoption. The agency shall discuss potential children with the adopting

family and shall prepare the adoptive family for the placement of a particular child by anticipating the adjustments and problems that may arise during and after placement. The agency worker shall establish a time schedule for visits to the adoptive family after the placement of a child in order to be able to make clear recommendations for the finalization of the adoption. The agency services shall be available to the adoptive family after finalization of the adoption. The agency shall inform applicants when it has been decided that a child cannot be placed in their home. Services shall be offered to the applicants to assist them to adjust to this decision.

(e) Services to adoptees. Adoptive records shall be maintained by the agency after finalization. Records shall contain sufficient information to maintain the agency's capability to provide to adult adoptees information concerning the circumstances of their origins and their adoption. Copies of court documents shall be maintained indefinitely. In providing information to adult adoptees served by the agency, confidentiality of information obtained from biological families shall be respected. This information may be released only in compliance with state law and orders of a court of competent jurisdiction. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-503, 65-508; effective May 1, 1982.)

28-4-177. Services in residential group care. (a) Selection of the appropriate group care facility. The agency shall place a child, or refer a child for placement, only in a licensed group care facility. The selection of the most appropriate facility for a child shall be based upon the following considerations:

- (1) The child's particular level of development, and the child's social and emotional problems that can be benefited through group living experiences;
- (2) The child's relationship to parents and the family situation in relation to location and willingness to participate; and
- (3) The particular treatment plan and team approach that the licensed group care facility can make available. A statement of why a particular selection was made, which discusses these factors, shall be in the case record.

(b) Placement agreement. There shall be a clearly written agreement between the placing agency and the residential group care facility, if separate agencies, which clarifies the following:

(1) The amount and frequency of contact the agency shall have with the child and the residential facility for supervision purposes;

(2) The extent to which the agency is to participate in ongoing evaluation of the child's needs and progress;

(3) How the agency is to work with the child's parents;

(4) When the agency will have access to information on the child's care and development;

(5) Visiting plans for child's parents and family members;

(6) Parental participation in case planning;

(7) Reporting mechanisms to be used between the agency and the residential facility while the child is in care;

(8) The financial plan in regard to cost of care;

(9) The conditions under which the child will be discharged from the program; and

(10) Designation of responsibility for aftercare services. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-503, 65-508; effective May 1, 1982.)

28-4-178. Services to young parents.

(a) Admission. The agency shall describe the services it makes available to parent(s) who are under 18 years of age and who are interested in placing their child. The statement of services and criteria for service eligibility shall be made available to the public.

(b) Services to parents. The agency shall offer counseling to the parents of young parents applying to the agency for services.

(c) Medical services. The agency shall assist in procuring the medical services needed by the pregnant young woman. Medical services and care shall be coordinated by the agency; shall be based on the inter-relationship of physical, social, environmental, and spiritual factors; and shall insure confidentiality for the parent(s) if requested or required. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-503, 65-508; effective May 1, 1982.)

28-4-179. Case records. (a) The agency shall maintain case records in a manner that is uniform, detailed, well written, and organized. Records shall be current and be made available for inspection by the division. The agency shall show in their case records the following:

(1) Continuity of service plan;

(2) Documentation of the work of the agency; and

(3) Summaries and assessments of changes affecting the client and changes in the service delivery process.

(b) Foster home records. The agency shall keep separate records for each foster home. The record shall be started at the time of application. The foster home record shall contain:

(1) The application;

(2) Home study;

(3) Medical reports;

(4) Summary narrative containing the dates as well as the content material from the worker's contacts;

(5) References;

(6) Yearly evaluation of strengths and weaknesses of the foster family and assessment of the best way to maximize the foster care experience for the foster family and the children placed with them. This evaluation shall be reviewed with the foster family;

(7) Yearly relicensing recommendation study and forms connected with it; and

(8) Placement history of the foster home, children placed, dates admitted and discharged, and pertinent narrative information about the interaction and relationships within the foster family.

(c) Adoptive home records. The agency shall keep separate records for each prospective and actual adoptive family. The adoptive home record shall contain:

(1) The application;

(2) The adoptive home study;

(3) Medical reports;

(4) References;

(5) A copy of the information given to the parents concerning the child;

(6) All legal documents pertaining to the adoption;

(7) Summary narrative on the pre-placement and post-placement contacts with the family and the adopted child;

(8) A narrative which clearly indicates the reason(s) a family was not accepted or did not have a child placed; and

(9) After placement, a statement of plans for follow-up services to the child in placement and to the adoptive family.

(d) Child's records upon placement. The agency shall maintain individual records for each child placed in a foster or adoptive home which shall include:

(1) The name, sex, race, birth date, and birth place of the child;

(2) Name, address, telephone number, and marital status of parent or guardian of the child;

(3) All legal documents and court status;

(4) Medical history, cumulative health record, and psychological and psychiatric reports;

(5) Social history of the family and parent background clearly and fully stated to provide an informational tool for all subsequent workers;

(6) Summary narrative which reflects the dates of contact, initial assessments and case plan, and contact material of worker's visits;

(7) The circumstances precipitating the decision to place a child, the agency's involvement with the parents, including services offered, delivered or rejected. If placement is court ordered, the case record shall contain the court papers, summaries, and required court reports during placement;

(8) Educational records and reports;

(9) Summary of case review conference which reflects the contacts with and status of all family members in relation to the placement plan as well as the achievements or changes in the goals;

(10) Summary of the administrative or outside case review on the progress of each child toward determined goals;

(11) Summary and narrative regarding the child's contacts with the family. The material should reflect the quality of the relationships as well as the way the child is coping with them; and

(12) Copy of interstate compact forms, if applicable.

(e) Child's records upon discharge. Upon discharge, the following shall be placed in the child's case record:

(1) Date of discharge, reason for discharge, and the name, telephone number, address, and relationship of the person or agency to whom the child was discharged;

(2) A discharge summary containing services provided during care, growth and accomplishments and assessed needs which remain to be met with the service possibilities which might meet those needs; and

(3) Aftercare plans.

(f) Reports to the division. The agency shall provide written notification to the division of change of address of legal office. The agency shall provide statistical data to the division when requested for public information, research, or planning purposes. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-503, 65-508; effective May 1, 1982.)

CHILD CARE RESOURCE AND REFERRAL AGENCIES

28-4-185. Definitions. (a) "Day care referral agency" means an association, organization, individual, or corporation receiving, caring for, and finding homes for children needing day care who are under 16 years of age.

(b) "Division" means the division of health of the department of health and environment.

(c) "License" means a document issued by the secretary granting authority to an association, organization, individual, or corporation to operate and maintain a day care referral agency.

(d) "Secretary" means the secretary of the health and environment. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-503, 65-508; effective May 1, 1982.)

28-4-186. Licensing procedures. (a) Any association, organization, individual, or corporation desiring to conduct a day care referral service shall apply for a day care referral agency license on forms provided by the Kansas department of health and environment.

(b) A full license shall be issued if the secretary finds that the applicant is in compliance with the requirements of K.S.A. 65-501 *et seq.* and amendments thereof and the rules and regulations promulgated pursuant thereto and has made full payment of the license fee required by the provisions of K.S.A. 65-505 and amendments thereof. The license and any written exceptions granted by the secretary under K.A.R. 28-4-171(c) shall be posted as required by K.S.A. 65-504.

(c) Exceptions. (1) An exception to a regulation may be allowed by the Kansas department of health and environment if:

(A) The applicant requests an exception from the Kansas department of health and environment; and

(B) The secretary determines the exception to be in the best interests of families and children served by the agency.

(2) Written notice from the Kansas department of health and environment stating the nature of the exception and its duration shall be posted with the license.

(d) A copy of the "regulations for licensing day care referral services" shall be kept on the premises at all times.

(e) The applicant or licensee shall notify the division when service is discontinued. Resumption of referral services shall require a new application for license.

(f) An applicant or licensee receiving notice of denial or revocation of license shall be notified of the right to an administrative hearing by the Kansas department of health and environment and subsequently to the right to appeal the denial or revocation to the district court. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-503, 65-508; effective May 1, 1982.)

28-4-187. Administration. (a) Organization. Each day care referral agency shall have a clearly designated individual or governing body which shall exercise authority over and have responsibility for the operation, policies, and practices of the day care referral agency.

(b) Insurance. Each day care referral agency shall carry liability insurance and accident insurance of not less than \$100,000 per occurrence.

(c) Services.

(1) Each day care referral agency shall have a written description of the day care referral services to be offered to children and their families. The statement of services shall be available in individual copies for distribution to clients and to the public.

(2) Any advertisements shall conform to the written statement of services.

(3) Each day care referral agency shall notify the division of any changes in the designated authority or services offered:

(4) Referrals shall be made only to child care facilities which have a temporary permit, a license, or a certificate of registration issued by the secretary of the department of health and environment.

(5) The following referral records shall be maintained for a period of one year and shall be available for review by licensing staff:

(A) Date of inquiry;

(B) name of person requesting referral; and

(C) disposition of request.

(d) Personnel.

(1) Staffing patterns.

(A) Each day care referral agency that operates child care facilities shall maintain a separate direct child care staff.

(B) Day care referral staff shall not be counted in determining child/staff ratios in any other licensed or registered child care facility.

(2) Records. A personnel record shall be maintained for each day care referral service staff member. The record shall include: job descriptions, medical records, and a record of training and experience. Each staff member shall have reasonable

access to that staff member's file and shall be allowed to add any written statement that staff member wishes to make to the file at any time.

(3) Staff qualifications. Day care referral agencies shall have at least one staff member who meets the following requirements:

(A) Knowledge of the needs of young children;

(B) Human relations skills to relate to the providers, parents and community; and

(C) Training or experience in administrative skills such as budgeting, bookkeeping, and record-keeping.

(4) Volunteers. The agency shall, if it makes use of volunteers, develop a written plan for their orientation, training, and use. The agency shall assign a staff person to supervise volunteers.

(5) Substitute care.

(A) Day care referral agencies shall not move children from one child care provider to another or knowingly assist in the relocation of children without establishing, with the provider, a means of informing each child's parent or parents.

(B) If the need for substitute care is known in advance, parents shall be given notification of names, addresses, and telephone numbers of substitute providers and shall make their own substitute care arrangements.

(C) Emergency permission forms and health assessment forms shall accompany the child to the substitute care.

(D) The agency shall report to the department the name, address and birthdate of each new staff person hired, each new person living in the facility, and each new volunteer recruited during the license year. This report shall be filed within two weeks of the time the person begins to reside, work or volunteer in the facility. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1982; amended May 1, 1984; amended May 1, 1985; amended May 1, 1987.)

28-4-188. Health policies for staff. (a) Before employment, all staff who have contact with the children shall submit, on a form supplied by the division, a certificate of health signed by a licensed physician or nurse approved to perform health assessments. The certificate shall include certification that the person is free from tuberculosis as established by a chest x-ray or negative tuberculin skin test administered within 2 years of the date of employment.

(b) Substitutes and volunteers, before participating in any program operated by the day care

referral agency, shall present a written statement of freedom from active tuberculosis signed by a licensed physician or nurse approved to perform health assessments. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-503, 65-508; effective May 1, 1982.)

28-4-189. Transportation. Any day care referral agency that provides transportation as a part of the day care referral service shall meet the following requirements:

(a) When children are transported, the driver shall be 18 years of age or older, and shall hold an operator's license of a type appropriate for the vehicle being used.

(b) Each transporting vehicle shall be in safe operating condition. The transporting vehicle shall have a yearly mechanical safety check of tires, lights, windshield wipers, horn, signal lights, steering, suspension, glass, brakes, and tail-lights. A record of the date of the annual safety checks and corrections made shall be kept on file at the facility or in the vehicle.

(c) Children shall not be transported in campers, vehicle-drawn recreation vehicles or in the back of a truck.

(d) Each vehicle shall be covered by accident and liability insurance as required by K.S.A. 40-3104 and 40-3118 and any amendments thereof.

(e) Emergency release forms and health assessment records, as specified in K.A.R. 28-4-118(a) and 28-4-119(c), shall be carried in the vehicle when children are transported. A first aid kit shall be available.

(f) The safety of the children riding in the vehicle shall be protected as follows:

(1) Each vehicle shall be equipped with an individual restraint for each child as follows:

(A) An infant unable to sit up without support shall be provided with an infant car carrier which faces the rear.

(B) A child able to sit up without support shall be provided with one of the following restraints:

(i) a shield-type device;

(ii) a car seat facing the front that is designed to hold a child weighing up to 40 pounds; or

(iii) a safety harness.

(C) A child four years of age or older, or weighing 40 pounds or more, shall have a lap belt. Shoulder straps shall be used if they do not cross the child's neck or face.

(D) Not more than one child shall be restrained in each lap belt.

(E) School-type buses transporting school-age children shall not be required to be equipped with individual restraints.

(2) All doors shall be locked while the vehicle is in motion.

(3) Discipline shall be maintained at all times.

(4) All parts of the child's body shall remain inside the vehicle at all times.

(5) Children shall not enter or exit from the vehicle into a lane of traffic.

(6) Children shall not be left in a vehicle unattended by an adult. When the vehicle is vacated, the provider shall make certain no child is left in the vehicle.

(7) Smoking in the vehicle shall be prohibited while children are being transported. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-503, 65-508; effective May 1, 1982; amended May 1, 1984; amended May 1, 1985.)

CHILD CARE CENTERS FOR CHILDREN

28-4-200. (Authorized by and implementing K.S.A. 65-508; effective Jan. 1, 1973; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1979; amended, T-83-24, Aug. 25, 1982; revoked May 1, 1983.)

28-4-201 and 28-4-202. (Authorized by K.S.A. 65-508; effective Jan. 1, 1973; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1979; revoked May 1, 1983.)

28-4-203. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, 65-503, 65-504, 65-505, 65-508; effective Jan. 1, 1973; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1979; amended, T-83-24, Aug. 25, 1982; revoked May 1, 1983.)

28-4-204. (Authorized by K.S.A. 65-501, 65-504; effective Jan. 1, 1973; amended May 1, 1975; revoked May 1, 1983.)

28-4-205 to 28-4-208. (Authorized by K.S.A. 65-508; effective Jan. 1, 1973; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1979; revoked May 1, 1983.)

28-4-209. (Authorized by K.S.A. 65-508; effective Jan. 1, 1973; amended May 1, 1975; amended Feb. 15, 1977; revoked May 1, 1983.)

28-4-210. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, 65-503, 65-504, 65-505, 65-508; effective Jan. 1, 1973; amended May

1, 1975; amended Feb. 15, 1977; amended May 1, 1979; amended, T-83-24, Aug. 25, 1982; revoked May 1, 1983.)

28-4-211. (Authorized by K.S.A. 65-508; effective Jan. 1, 1973; amended May 1, 1975; revoked May 1, 1983.)

28-4-212. (Authorized by K.S.A. 65-508; effective Jan. 1, 1973; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1979; modified, HCR No. 5019, May 1, 1981; revoked May 1, 1983.)

28-4-213. (Authorized by K.S.A. 65-508; effective Jan. 1, 1973; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1979; amended, T-83-27, Sept. 22, 1982; revoked May 1, 1983.)

28-4-214 to 28-4-216. (Authorized by K.S.A. 65-508; effective Jan. 1, 1973; amended May 1, 1975; revoked May 1, 1983.)

28-4-217. (Authorized by K.S.A. 65-508; effective Jan. 1, 1973; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1979; revoked May 1, 1983.)

28-4-218. (Authorized by K.S.A. 65-508; effective Jan. 1, 1973; amended May 1, 1975; revoked May 1, 1983.)

28-4-219 and 28-4-220. (Authorized by K.S.A. 65-508; effective Jan. 1, 1973; amended May 1, 1975; amended Feb. 15, 1977; revoked May 1, 1983.)

28-4-221. (Authorized by K.S.A. 1978 Supp. 65-508; effective Jan. 1, 1973; amended May 1, 1975; amended Feb. 15, 1977; revoked May 1, 1979.)

GROUP BOARDING HOMES FOR CHILDREN AND YOUTH

28-4-250. (Authorized by K.S.A. 1975 Supp. 65-508; effective, E-76-36, July 14, 1975; effective May 1, 1976; T-86-46, Dec. 18, 1985; revoked May 1, 1986.)

28-4-251. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, 65-503, 65-508, K.S.A. 1982 Supp. 65-504, 65-505; effective, E-76-36, July 14, 1975; effective May 1, 1976; amended, T-83-24, Aug. 25, 1982; amended May 1, 1983; revoked May 1, 1986.)

28-4-252. (Authorized by K.S.A. 1975 Supp. 65-508; effective, E-76-36, July 14, 1975; effective May 1, 1976; revoked May 1, 1986.)

28-4-253. (Authorized by K.S.A. 1978 Supp. 65-508; effective, E-76-36, July 14, 1975; effective May 1, 1976; amended May 1, 1979; revoked May 1, 1986.)

28-4-254 and 28-4-255. (Authorized by K.S.A. 1975 Supp. 65-508; effective, E-76-36, July 14, 1975; effective May 1, 1976; revoked May 1, 1986.)

28-4-256 and 28-4-257. (Authorized by K.S.A. 1978 Supp. 65-508; effective, E-76-36, July 14, 1975; effective May 1, 1976; amended May 1, 1979; revoked May 1, 1986.)

28-4-258 to 28-4-261. (Authorized by K.S.A. 1978 Supp. 65-508; effective, E-76-36, July 14, 1975; effective May 1, 1976; revoked May 1, 1986.)

28-4-262. (Authorized by K.S.A. 1978 Supp. 65-508; effective, E-76-36, July 14, 1975; effective May 1, 1976; amended May 1, 1979; revoked May 1, 1986.)

28-4-263. (Authorized by K.S.A. 1975 Supp. 65-508; effective, E-76-36, July 14, 1975; effective May 1, 1976; revoked May 1, 1986.)

28-4-264. (Authorized by K.S.A. 1978 Supp. 65-508; effective, E-76-36, July 14, 1975; effective May 1, 1976; amended May 1, 1979; revoked May 1, 1986.)

28-4-265 and 28-4-266. (Authorized by K.S.A. 1975 Supp. 65-508; effective, E-76-36, July 14, 1975; effective May 1, 1976; revoked May 1, 1986.)

28-4-267. Revocation of present regulations. The following present regulations as published in the Kansas administrative regulations are being replaced, so are hereby revoked:

General regulations 28-4-1 through 28-4-7.

Regulations for group boarding homes for children 28-4-135 through 28-4-148.

Regulations for maternity homes and clinics 28-4-56 through 28-4-71.

(Authorized by K.S.A. 1975 Supp. 65-508; effective, E-76-36, July 14, 1975; effective May 1, 1976.)

GROUP BOARDING HOMES AND RESIDENTIAL CENTERS FOR CHILDREN AND YOUTH

28-4-268. Definitions. (a) “Basement” means each area with a floor level more than 30 inches below ground level on all four sides.

(b) “Child” means each individual under 16 years of age.

(c) “Corporal punishment” means each activity directed toward modifying a child’s behavior by means of adverse physical contact such as spanking with the hand or an implement, slapping, swatting, pulling hair, or any similar activity.

(d) “Developmental disability” means any physical, emotional, or mental disability which constitutes a substantial handicap to the individual as defined in public law 91-517.

(e) “Discipline” means the on-going process of helping children develop inner control so that they can manage their own behavior in a socially-approved manner.

(f) “Emergency care” means residential care not to exceed 30 days.

(g) “Emergency shelter” means residential care and protection not to exceed 30 days.

(h) “Facility” means a group boarding home or residential center that provides residential care.

(i) “Group boarding home” means a non-secure facility providing residential care for not less than five nor more than ten persons unrelated to the caregivers, and includes emergency shelters and maternity homes.

(j) “Isolation” means removal of a resident from other residents to a separate locked room or quarters.

(k) “License” means a document issued by the Kansas department of health and environment which authorizes a licensee to operate and maintain a group boarding home or residential center.

(l) “Living unit” means a group of residents living together as an established unit within a residential center.

(m) “Maternity care” means residential care which includes services to women during pregnancy.

(n) “Maternity home” means a facility whose primary function is to provide services to women during pregnancy.

(o) “Non-secure facility” means a facility which provides the resident access to the surrounding community.

(p) “Placing agent” means the person, social agency or court possessing the legal right to place a child.

(q) “Program” means the comprehensive and coordinated sets of activities and services providing for the care, protection and development of the residents.

(r) “Resident” means any child, youth or pregnant woman accepted for care in the residential facility.

(s) “Residential care” means 24-hour care.

(t) “Residential center” means a non-secure facility which provides residential care for more than 10 residents unrelated to the caregivers, and includes emergency shelters and maternity homes.

(u) “Temporary care” means residential care not to exceed 90 days. (Authorized by and implementing K.S.A. 65-508; effective, T-86-46, Dec. 18, 1985; effective May 1, 1986.)

28-4-269. Licensing procedures. (a) A person shall not conduct a group boarding home or residential center for children under 16 years of age unless a license is issued by the secretary.

(b) Each person desiring to conduct a group boarding home or residential center shall submit the following:

(1) An application for a license, which shall be submitted on forms supplied by the department; and

(2) the license fee as specified in K.S.A. 65-505, and amendments thereto.

(c) A license shall not be issued until all of the following information is submitted:

(1) A written proposal that details the following:

(A) The purpose of the facility;

(B) the administration plan for the program, including an organizational chart;

(C) the financing plan for the program;

(D) staffing for the program, including job descriptions;

(E) the services to be offered, including the number, age range, and sex of residents to be served; and

(F) admission criteria and a description of the level of care to be provided to the residents through either of the following:

(i) Direct services; or

(ii) agreements with specified community resources;

(2) a copy of the written notification provided to the school district where the facility is located, including the following:

(A) The anticipated opening date;

(B) the number, age range, and anticipated special education needs of the residents to be served; and

(C) a request for educational services or a request for approval of proposed alternative formal schooling to be provided by the facility as required by K.A.R. 28-4-274(d);

(3) documentation that the notification required by paragraph (c)(2) was received by the school district at least 90 days before the planned opening date;

(4) floor plans for each building to be used as a group boarding home or residential center; and

(5) documentation of the state fire marshal's approval.

(d) The proposal required by paragraph (c)(1) shall be approved by the secretary before a license is issued.

(e) A license shall be issued by the secretary if the applicant is in compliance with the requirements of K.S.A. 65-501 through 65-516, and amendments thereto, and the regulations promulgated pursuant to those statutes, and has made full payment of the license fee.

(f) Each licensee shall notify the secretary and obtain written approval from the secretary before making any change in any of the following:

(1) The admission criteria;

(2) the use of the buildings; or

(3) the program, including the level of care provided through either of the following:

(A) Direct services; or

(B) agreements with specified community resources.

(g) The notification of a proposed change in the program, the admission criteria, or the level of care of the residents shall include the following:

(1) A copy of the written notification of the proposed change that was submitted to the school district where the facility is located; and

(2) documentation that the notification required in paragraph (g)(1) was received by the school district at least 90 days before the anticipated date of any proposed change.

(h) Renewals. Each licensee who wishes to renew the license shall apply for renewal of the license annually on forms supplied by the department and shall submit the fee as specified in K.S.A. 65-505, and amendments thereto.

(i) Request to withdraw an application or terminate a license.

(1) Each applicant shall inform the department if the applicant desires to withdraw the application. The withdrawal of the application shall be acknowledged by the department in writing. A new application and a new fee shall be required

before opening a facility. No applicant shall admit a child before the applicant receives a license.

(2) Each licensee shall inform the department if the licensee desires to terminate the license. The licensee shall return the license to the department with the request to terminate the license. The request and the license shall be accepted by the department. The licensee and other appropriate agencies shall be notified by the department that the license is terminated and that the facility is considered closed. The former licensee shall submit a new application and fee to the department if that person desires to obtain a new license. That person shall not reopen the facility or admit any child before receiving a new license.

(j) A new application and fee shall be submitted for each change of ownership, sponsorship, or location.

(k) Grievance procedures.

(1) Each applicant or licensee receiving notice of denial or revocation of license shall be notified of the right to request an administrative hearing by the secretary and subsequently of the right of appeal to the district court.

(2) If an applicant or licensee disagrees with a notice documenting any finding of noncompliance with licensing statutes or regulations, the applicant or licensee may request an explanation of the finding from the secretary's designee. If the explanation is not satisfactory to the applicant or licensee, the applicant or licensee may submit a written request to the secretary for reconsideration of the finding. The written request shall identify the finding in question and explain why the applicant or licensee believes that the finding should be changed. This request shall be made to the secretary within 10 days after receiving the explanation.

(1) Exceptions.

(1) An applicant or a licensee may submit a written request for an exception to a regulation to the secretary. An exception may be granted if the secretary determines the exception to be in the best interest of a child or children and their families, and if statutory requirements are not violated.

(2) Each licensee shall post with the license the written notice from the secretary stating the nature and duration of the exception.

(m) Amended license.

(1) Each licensee shall submit a request for an amended license and a \$35.00 fee to the secretary if the licensee desires to make any change in any of the following:

(A) The license capacity;

- (B) the age of children to be served; or
- (C) the living units.

(2) Each request for a change in the license capacity or the age range of children to be served shall include the following:

(A) A copy of the written notification of the proposed change that was submitted to the school district where the facility is located; and

(B) documentation that the notification required by paragraph (m)(2)(A) was received by the school district at least 90 days before the anticipated date of any proposed change.

(3) The licensee shall make no change unless permission is granted, in writing, by the secretary. If granted, the licensee shall post the amended license, and the prior license shall no longer be in effect.

(n) Waiver of 90-day notification to the local school district. The 90-day notification to the local school district may be waived by the secretary upon receipt of a written agreement by the local school district.

This regulation shall be effective on and after July 30, 2002. (Authorized by K.S.A. 2001 Supp. 65-508; implementing K.S.A. 2001 Supp. 65-501, 65-504, 65-505, 65-506, and 65-508; effective May 1, 1986; amended, T-87-34, Nov. 19, 1986; amended May 1, 1987; amended, T-28-4-1-02, April 1, 2002; amended July 30, 2002.)

28-4-270. Terms of license. (a) The maximum number and age range of residents who may be cared for in each facility shall be specified on the license.

(b) Each facility license issued shall be valid only for the firm, corporation or association and the address appearing on the license.

(c) The license does not give permission for placement of children.

(d) Activities which would interfere with the care of the residents shall not be carried out in the facility by child care personnel.

(e) Advertisements shall conform to the statement of services as given on the application. Claims for specialized services shall not be made unless the facility is staffed and equipped to offer the services, or arrangements have been made for services as outlined in K.A.R. 28-4-271(e)(4). A general claim of "state approval" shall not be made unless the facility has obtained a license issued by the Kansas department of health and environment. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1986.)

28-4-271. Administration. (a) Organization. The facility shall have plans and policies of organization and administration clearly defining legal responsibility, administrative authority and responsibility for comprehensive services. Changes in policies shall be submitted to the appropriate agency for licensing approval.

(b) Finances.

(1) The facility shall have sound and sufficient finances to insure licensing compliance and effective services. A license for an additional facility operated by a licensee shall not be issued until all existing facilities operated by the licensee are in compliance with licensing regulations.

(2) The facility shall be covered by liability and casualty insurance.

(3) Residents' personal money shall be kept separate from the facility's funds and individual accounts shall be kept.

(4) Residents shall not be exploited in campaigns or publicity efforts to raise funds.

(5) Solicitation of funds by charitable organizations shall be made in Kansas only after compliance with K.S.A. 17-1740.

(c) Personnel policies.

(1) The facility shall have written personnel policies and operating practices which shall be made available to its staff members. The various services of the facility and the duties and responsibilities of each staff member shall be clearly defined and followed.

(2) A personnel record shall be maintained on each staff member and made available to the staff member on request.

(d) Child care personnel.

(1) The facility shall have an administrator whose responsibility is administration of the program.

(2) There shall be adequate staff 18 years of age and older to supervise the residents at all times, and to provide for their physical, social, emotional and educational needs. There shall be an additional adult available in case of emergency.

(3) Each facility shall have a minimum of one child care staff member on duty and available for every seven residents during waking hours and a minimum of one for every ten during sleeping hours. When residents are on the premises at least one staff member shall be physically present. Children of the staff shall be included in the ratio if living in the facility.

(4) Child care personnel shall be provided for the relief of regular staff.

(5) Substitute staff shall be available to work in case of illness or emergency of regular or relief staff.

(e) Staff qualifications.

(1) Administrator. The administrator shall have previous administrative experience and shall have a working knowledge of child development principles.

(A) Each administrator of a residential center shall have at least a bachelor's degree.

(B) Each administrator of a group boarding home shall have at least a high school diploma, or its equivalent.

(C) Each administrator shall be familiar with statutes and regulations governing group boarding homes or residential centers.

(2) Child care staff.

(A) Child care staff with direct responsibility for the residents shall have at least a high school diploma or its equivalent.

(B) Child care staff shall practice accepted methods of child care.

(C) Child care staff shall have a working knowledge of all agency policies and procedures and of the current status of residents.

(3) Relief staff.

(A) Relief staff shall practice accepted methods of child care.

(B) Relief staff with direct responsibility for the residents shall have at least a high school diploma or its equivalent.

(4) Substitute staff shall practice accepted methods of child care.

(5) Child care personnel including substitute staff, shall have a working knowledge of policies and procedures relative to discipline, child abuse reporting and health.

(6) Child care personnel, excluding substitute staff, shall attend a minimum of 18 hours of training annually, to improve their knowledge, understanding and practice of child development principles.

(7) Food service staff shall:

(A) Have a knowledge of nutritional needs of children and youth;

(B) understand quantity food preparation and service;

(C) practice sanitary methods of food handling and storage;

(D) be sensitive to individual, cultural and religious food preferences of the residents; and

(E) be willing to work with the administrator in planning learning experiences for the residents relative to nutrition.

(8) Consultant services. The facility shall arrange for consultation by social workers, physicians, psychologists, psychiatrists, teachers, nurses, speech therapists and other consultants as required to meet the needs of the residents served. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1986; amended May 1, 1987.)

28-4-272. Records. (a) Resident's records.

(1) A report of residents in care shall be submitted quarterly to the Kansas department of social and rehabilitation services on forms supplied by the Kansas department of health and environment.

(2) An individual record shall be kept on each resident. Each record shall include:

(A) Date of admission and discharge;

(B) a health assessment record, an immunization record and a dental record on forms supplied by the Kansas department of health and environment;

(C) consent for emergency medical treatment signed by a parent or legal guardian or other person authorized by statute to consent as custodian; and

(D) each accident report.

(3) Each facility providing treatment or social service programs shall have a social service record for each resident. The record shall include a treatment plan and progress report made every three months.

(4) There shall not be disclosure of confidential records or information regarding the resident.

(5) Each facility providing emergency care shall be exempt from K.A.R. 28-4-272(a)(2) and (3).

(b) Staff records. A file shall be kept at the administrative office for each employee. Duplicate health certificates shall be on file at the facility. The file shall include:

(1) Terms of employment;

(2) education and experience;

(3) health certificates;

(4) work references; and

(5) a statement signed by the employee that the employee has read the following documents and agrees to abide by them:

(A) Discipline policies;

(B) child abuse reporting policies; and

(C) health policies. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1986.)

28-4-273. Admission policies. (a) Written admission policies shall be prepared by the applicant in accordance with goals and purposes of the

facility. The policies shall include a nondiscrimination statement.

(b) Children under three years of age shall be given care in a residential facility only as follows:

(1) To provide emergency care for not more than 30 days; or

(2) To keep siblings together for a maximum of 90 days.

(c) Any facility not specifically designed to serve developmentally disabled persons shall admit residents with special problems only as follows:

(1) Any person with mild development disabilities shall be enrolled at the discretion of the licensee.

(2) Any person showing significant developmental disabilities, including severe mental retardation, emotional disturbance or physical handicap, shall be enrolled at the discretion of the licensee following a developmental evaluation of the person and approval from the Kansas department of health and environment and the Kansas state department of social and rehabilitation services.

(d) Any child or youth who requires long term nursing care shall not be kept in the facility.

(e) Placement agreements between placing agent and facility.

(1) The goal of residential placement shall be to return the resident to the resident's home when such a placement is in the resident's best interest.

(2) There shall be a written policy regarding the facility's responsibility to the resident's family while the resident is in placement.

(3) There shall be a written agreement at the time of placement between the placing agent and the facility setting forth the terms of placement and removal with the understanding that the person or agency having custody shall retain the right to withdraw the resident. Parental rights and responsibilities shall be clearly defined.

(4) Written visitation and communication policies shall be available to all residents, parents, legal guardians, and legal representatives.

(5) The placing agency or other person responsible under the law for the care and custody of each resident shall make arrangements at the time of placement for the financial responsibility for services of the facility and for necessary specialized services.

(6) Acceptance of out-of-state residents shall be made according to Kansas laws and interstate compact procedures.

(7) Any facility shall not accept legal guardianship of a child unless the facility is licensed as a

child placing agency. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1986.)

28-4-274. Services. (a) Services shall be provided in accordance with the stated purpose and goals of the facility.

(b) Social services. Treatment and social service facilities shall have a specific plan for the provision of social services for each resident in care. These services shall be provided by a private or public social agency or through a licensed social worker on the facility staff.

(c) Discipline.

(1) Each resident shall be treated as a member of the group during the period of care, sharing privileges and duties of the household according to age and capacity, and receiving care and training according to special abilities and limitations.

(2) There shall be a written discipline policy outlining methods of guidance appropriate to the ages of the residents. Residents shall not be permitted to discipline other residents.

(3) Prohibited punishment. Punishment or a threat of punishment which is humiliating, frightening or physically harmful to the resident shall be prohibited. Prohibited methods of punishment include:

(A) Corporal punishment;

(B) verbal abuse or derogatory remarks about the child or the child's family;

(C) binding or tying to restrict movement, or enclosing in a confined space such as a closet, locked room, box, or similar cubicle;

(D) withholding or forcing foods; or

(E) isolation.

(4) Facilities with isolation policies approved by the department of social and rehabilitation services shall be exempt from K.A.R. 28-4-274(c)(3)(E).

(d) Education. Each resident shall be helped to secure the maximum amount of education of which they are capable and be provided the optimum conditions under which they can receive the greatest benefit from the school experience. Alternative formal schooling provided by the facility shall have received approval by the local school district or the Kansas state department of education.

(e) Religion. Each resident shall be allowed to participate in religious worship.

(f) Work experiences.

(1) Whenever possible, residents shall have an opportunity to earn and manage money by working either at the facility or in the community. They shall not be used as substitutes for regular staff.

(2) Vacation, after school, and other jobs shall be permitted with the administrator's approval.

(3) Hazardous work experiences shall not be allowed. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1986.)

28-4-275. Health care. (a) General health policies.

(1) Smoking shall be confined to designated smoking areas in the facility.

(2) Alcohol or non-prescribed controlled substances, as defined in K.S.A. 65-4101 and any amendments to it, shall not be consumed by any resident, by any staff person while on duty, or by any staff person in the presence of residents.

(b)(1) The licensee, in consultation with a physician or community health nurse, shall develop written policies for implementing the health program in the following areas:

(A) Health examination for residents and staff;

(B) continuing health care;

(C) dental examination and follow-up dental care;

(D) corrections of medical problems;

(E) special examinations such as vision, hearing and neurological exams;

(F) care of minor illness including use of non-prescription drugs; and

(G) consultation for the individual child when indicated.

(2)(A) Use of sharp or dangerous instruments and tools by residents shall be supervised by staff.

(B) Firearms and ammunition, and household poisons and other hazardous substances shall be in locked storage.

(C) Internal and external medications shall be in separate locked storage in a supervised location.

(3) Each prescription medicine shall have the name of the individual recipient and the physician, and shall show the dosage and time. A record shall be kept in the resident's file as to who gave the medication and when it was given. Each unused or expired medication shall be safely discarded.

(4) Medications requiring refrigeration shall be labeled and kept in locked storage in the refrigerator.

(c) Physical health of residents and children of staff.

(1) Physical health.

(A) A health assessment for each resident and for each child of a staff member shall be obtained within six months prior to or not more than 30 days

after admission of the resident or employment of the parent. The assessment shall be conducted by a licensed physician or by a nurse approved by the Kansas department of health and environment to conduct the assessment.

(B) Health assessments shall be required annually for residents to age six and every three years for residents over the age of six. Results of the health assessment shall be recorded on forms supplied by the Kansas department of health and environment.

(C) Each person under 16 years of age who lives in the facility shall have current immunizations according to the schedule recommended by the center for disease control.

(2) Health care.

(A) A current health record shall be kept for each resident. The record shall include pertinent information about health status, developmental progress, and special needs, with appropriate plans to meet these needs.

(B) The staff shall update the health information as determined by the program's specific health policies and use the information as a basis for review and evaluation of the resident's health status.

(3) Residents in emergency care shall be exempt from K.A.R. 28-4-275(c)(1) and (2).

(4) Each child care staff member shall be trained in observation of symptoms of illness, in elementary principles of first aid, and accident prevention.

(5) The staff of the facility shall obtain immediate medical treatment for any resident who is seriously injured or ill, and shall notify the placing agent, the parent, as dictated by the care plan, and the local health department of the injury or illness as soon as possible.

(6) Staff members, as required by law, shall report any evidence of suspected child abuse or neglect of residents to the Kansas state department of social and rehabilitation services, or the appropriate law enforcement agency when Kansas state department of social and rehabilitation services offices are closed.

(d) Dental health of residents.

(1) A pre-admission dental examination obtained within a year prior to or within 60 days after admission shall be required for each resident except residents in emergency care.

(2) Follow-up dental correction shall be provided, and shall be noted in the resident's file.

(3) The facility staff shall develop plans for dental health education and supervise the residents in

the practice of good oral hygiene. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1986; amended May 1, 1987.)

28-4-276. Mental health policies. (a) The residential program shall supplement and support the family-child relationship.

(b) The views of the parents, the resident, and the placing agency, concerning factors important to them in the emotional development of the resident, shall be considered by the staff in the services provided.

(c) The cultural heritage of the resident shall be recognized and respected.

(d) Mental health concepts, as an integral aspect of total child development, shall be included in staff training and in parent-child conferences. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1986.)

28-4-277. Environmental standards. (a) General requirements.

(1) Community resources, such as schools, churches, recreational and health services, police protection and fire protection from an organized fire department, shall be available to the facility.

(2) The building shall meet the legal requirements of the community as to building codes, zoning, and fire protection. Where local fire regulations do not exist, fire safety approval shall be obtained from the state fire marshal.

(3) Plans for constructing a proposed building or for any major addition or alteration shall be the responsibility of a licensed architect.

(A) New buildings. Preliminary plans and outline specifications including plot plans shall be submitted to the Kansas department of health and environment for review prior to commencing construction.

(B) Additions or alterations. A written statement defining the proposed use of the construction shall accompany the plans and specifications. The statement shall be submitted to the Kansas department of health and environment for review prior to beginning construction.

(4) If construction is not commenced within the year, plans and proposals shall be resubmitted to the department before proposed construction begins.

(b) Premises.

(1) There shall be sufficient outside play space available as determined by the number and ages of residents.

(2) The outdoor play area shall be free of physical hazards including bodies of water, ravines, and drainage ditches.

(3) Playground equipment, such as climbing apparatus, slides and swings, shall be provided as appropriate for the age of residents, and shall be firmly anchored. A hard-surfaced area or gravel shall not be used under anchored play equipment.

(4) Each facility shall develop a written maintenance policy which shall be followed. The facility and outside area shall be maintained in good condition and shall be clean at all times, free from accumulated dirt, trash, vermin and rodent infestation. Garbage and outdoor trash containers shall be covered. Contents of outdoor containers shall be removed at least weekly.

(5) The structure of the facility shall be large enough to house the number of residents for which the facility was planned, the staff, substitute staff and children of the staff who are to live in it.

(6) Living rooms and indoor play space shall have proper heating, cooling, lighting and ventilation. There shall be adequate space for recreation and study.

(7) All quarters occupied by the residents shall have lighting of a minimum of 20 foot candles in all parts of the room. There shall be lighting of a minimum of 35 foot candles in areas used for reading, study or other close work.

(8) There shall be a telephone located in each facility and readily available.

(9) Windows and doors shall be screened as needed unless areas are air conditioned.

(10) Low windows and glass doors which present a hazard to children shall be effectively screened and guarded.

(11) All stairs shall be provided with sturdy handrails.

(12) The facility shall contain adequate central storage for household supplies, bedding, linen, out-of-season clothing, luggage and play equipment in addition to adequate closet and storage space in bedrooms for the residents and child care staff.

(13)(A) Asbestos shall not be used in new or remodeling construction.

(B) If friable asbestos is present, it shall be covered and sealed so as to provide a protective barrier between the asbestos and the occupants of the building.

(14) Floors shall be smooth, free from cracks, and easily cleanable. They shall not be slippery. Floor covering for living quarters shall be required over concrete slabs in contact with the ground.

(15) Walls shall be smooth, easily cleanable and in sound condition.

(16) Electrical outlets within the reach of children under six years shall be covered with safety devices.

(17) Appropriate physical facilities, equipment and furnishings shall be provided.

(18) Care for children with handicapping conditions. Care for non-ambulatory children shall be provided on the ground floor. All exits and steps shall have ramps properly equipped with cross-treads. Each ramp shall have an incline of no more than two inches to the foot.

(c) Sleeping facilities.

(1) Sleeping facilities shall be limited to first and second floors. The minimum square footage of floor space exclusive of built in furniture, storage space or closets shall be 80 square feet per person in single rooms and an average of not less than 60 square feet per person in rooms accommodating more than one person. Minimum ceiling height shall be 7' 8" over 90% of the room area.

(2) Each sleeping room shall be an outside room with operable windows, and shall be well-ventilated, adequately lighted, and appropriately heated or cooled.

(3) A separate bed with level flat mattress in good condition and adequate bedding shall be provided for each resident.

(4) Children of staff who reside in the center shall have separate sleeping areas if sex or age is different from that of residents.

(d) Water supply.

(1) The water supply shall be from a source approved and certified by the county health officer and shall be under pressure. Water coming into the premises shall come from a public or municipal source, or from a private water supply which has been investigated and approved by the responsible health authorities. The plumbing shall have been installed according to local or state plumbing codes.

(2) Sanitary drinking facilities shall be provided for the residents. The following methods are acceptable:

(A) Disposable cups and an appropriate water dispenser which is available to the residents;

(B) a fountain of approved design with water under pressure so that the stream is not less than three inches high; or

(C) a glass washed after each use.

(e) Toilet and lavatory facilities.

(1) All plumbing fixtures and building sewers

shall be connected to public sewers if the public sewer line is within 50 yards of the building.

(2) Where a public sewer is not available, a private sewage disposal system meeting requirements of the health authority and installed and connected to all plumbing fixtures and building sewers shall be used.

(3) Toilet and bathing facilities shall be convenient to sleeping quarters, living and recreation rooms.

(4) Cold water and hot water not exceeding 120°F., shall be supplied under pressure to lavatory and bathtub or shower.

(5) For each five or fewer residents of each sex there shall be at least one toilet, one lavatory and a bathtub or shower.

(6) Separate bathroom facilities shall be provided for live-in staff.

(7) Each bathroom shall be ventilated. An inside bathroom shall have a mechanical system to the outdoors with a minimum of four air changes per hour.

(8) Facilities serving non-ambulatory children shall have toilets and washbasins designed to accommodate them.

(f) Laundry facilities.

(1) If laundry is done at the facility, laundry fixtures shall be located in an area separate from food preparation areas and shall be installed and used in a manner that safeguards the health and safety of the residents.

(2) If needed, the type of diapers and diaper service shall be determined by the facility director with approval of the health nurse.

(3) Soiled linen shall be kept in areas separate from clean linen. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1986; amended, T-87-34, Nov. 19, 1986; amended May 1, 1987.)

28-4-278. Food service. (a) Food preparation and storage.

(1) The major food preparation area shall be adequately equipped for the sanitary preparation and storage of food and washing of dishes and utensils. Food shall be prepared and served in a sanitary manner. Kitchens which serve 25 or more persons shall provide separate handwashing facilities in the kitchen. Personnel shall wash their hands before handling food.

(2) Dishes shall have hard-glazed surfaces and shall be entirely free of cracks or chips.

(3) Dishes, kitchen utensils and feeding equip-

ment shall be maintained in a sanitary condition using one of the following methods:

(A) A three-compartment sink supplied with hot and cold running water to each compartment and a drain board for washing, sanitizing, and air-drying;

(B) a domestic-type dishwasher for groups of 24 or fewer persons;

(C) a commercial-type dishwasher with a 12-second rinse with 180°F. water, for groups of 25 persons or more; or

(D) disposable plates, cups, and plastic utensils of food-grade medium weight. Disposable table service shall be used only one time and then destroyed.

(4) Tables shall be washed before and after meals, and floors shall be swept after meals.

(5) Poisonous or toxic materials shall not be stored with, under, or over food.

(6) All perishables and potentially hazardous foods shall be continuously maintained at 45°F. or lower in the refrigerator, or 10°F. or lower in the freezer, with 0°F. recommended. Each cold storage facility shall be provided with a clearly visible, accurate thermometer.

(8) All foods stored in the refrigerator shall be covered.

(9) All foods not requiring refrigeration shall be stored at least six inches above the floor in clean, dry, well-ventilated storerooms or other approved areas with no overhead drain nor sewer lines.

(10) Dry bulk food which is not in an original, unopened container shall be stored in metal, glass or food-grade plastic containers with tight-fitting covers and shall be labeled.

(b) Food safety.

(1) All dairy products shall be pasteurized. Dry milk shall be used only for cooking.

(2) Beef, pork and poultry shall be obtained from government-inspected sources.

(3) Commercially canned food from dented, rusted, bulging or leaking cans, or food from cans without labels, shall not be used. Home-canned foods, other than jams and jellies, shall not be used.

(c) Nutrition.

(1) Meals and snacks shall meet the nutrient needs of the residents according to recommended dietary allowances for age and sex.

(2) Special diets shall be provided for residents as ordered by attending physicians. Efforts shall be made to accommodate religious practices.

(3) Copies of menus served for one month shall be kept on file and available for inspection. (Au-

thorized by and implementing K.S.A. 65-508; effective May 1, 1986.)

28-4-279. Maternity care. (a) Any facility may provide care for a pregnant resident if the requirements of this regulation are met, and the plan is approved by the department. If the facility does not meet the maternity care regulations or does not plan to maintain the resident through the pregnancy, the resident's child placing agent shall be notified within seven days of the determination of pregnancy and the resident shall be moved within 30 days thereafter.

(b) Any facility which provides maternity care shall meet the following additional requirements:

(1) Each resident shall receive the services of a licensed physician on a regular and continuing basis throughout pregnancy, delivery and post-delivery checkup.

(2) The facility shall consult with a board-certified obstetrician who is available in case of emergency or complication.

(3) There shall be a written plan for all deliveries to take place in a licensed hospital or maternity center. The plan shall state the name and location of the facility and of an alternate hospital for use if services are unavailable at the primary hospital or maternity center.

(4) The facility shall be within 30 minutes of the licensed hospital or maternity center providing maternity services.

(5) Complaints of alleged inadequate or improper care by a physician or hospital shall be reported in writing immediately to the Kansas department of health and environment.

(6) Ambulance service shall be readily available for emergencies.

(7) Special arrangements shall be available for bed and nursing care for each resident who develops complications during pregnancy but who does not require hospitalization.

(8) Each resident's medical record shall include the medical consent form, the name of her physician, a schedule of appointments, the expected date of delivery and any special needs or problems.

(9) The facility shall contract for the services of a registered nurse to provide at least weekly instruction to the pregnant residents regarding childbirth preparation, nutrition, general health and hygiene, post-partum care, post-natal care, contraception and venereal disease, and the psychology and physiology of pregnancy. The resi-

dents shall be given a tour of the hospital where delivery is planned. The nurse shall also serve as a consultant to the staff regarding the development of general health policies.

(10) Special nutrition policies for pregnant residents shall be developed in consultation with a physician, nutritionist or nurse. Residents shall be referred to the WIC program when appropriate and available.

(11) Specific policies shall be developed for support to the mother during labor and delivery and for the care of any new mother who returns to the facility following delivery.

(12) Upon dismissal from the facility, each resident shall be given written information regarding her post-partum care. A referral shall be made to the appropriate community resource for follow-up services.

(13) Casework services shall be provided by an approved social agency in the community or the facility's own professional staff.

(A) If the facility's professional staff provides casework services, the following requirements shall be met:

(i) There shall be at least one social worker for each fourteen residents.

(ii) Casework services shall be provided to each pregnant resident immediately upon admission to the facility.

(iii) Casework interviews shall be regularly scheduled with reasonable frequency based on the service plan.

(iv) Casework service shall include help in adjustment to pregnancy, to separation from the resident's natural environment and to group living. Casework services shall include psychological and psychiatric help as needed to facilitate diagnosis and treatment.

(v) The caseworker shall be responsible for providing help in formulating a long-term plan for the mother and baby.

(vi) Each resident shall have the right to make the decision as to whether to keep or relinquish her infant. This decision shall be made without undue pressure or influence.

(vii) The caseworker, at the request of the pregnant resident, shall arrange for referral to a licensed child placing agency for any baby needing adoptive placement or other foster care.

(B) If casework services are provided by a community social agency, K.A.R. 28-4-279(b) (13)(A)(iii)(iv)(v)(vi) and (vii) requirements shall be met.

(14) The maternity care staff, board, or any other person connected with the facility shall not directly or indirectly place or arrange for placement of children for adoption or foster care. Such an action shall result in immediate revocation or denial of license. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-502, 65-506, 65-507 and L. 1984, Chapter 224, Section 1; effective May 1, 1986.)

28-4-280. Residential services to mothers and infants. Each maternity home or residential facility which provides residential services to mothers and infants after delivery shall meet the following requirements:

(a) Physical plant.

(1) A maximum of five mothers and infants shall be served.

(2) The mother/infant unit shall be separate from units serving pregnant and nonpregnant residents.

(3) A nursery shall be provided.

(A) The nursery shall have adequate space and equipment for the number and age of infants in care.

(B) Age-appropriate toys and play equipment shall be available.

(4) Rooming-in may be allowed if it is determined to be in the best interest of the newborn as documented in the resident's social service plan.

(5) A quiet area shall be provided for infant feeding.

(6) Laundry facilities shall be readily available.

(7) There shall be facilities for the safe preparation and storage of formula.

(8) The environment shall be free of substances potentially hazardous to mother and infant.

(b) Parenting education.

(1) Techniques of care of the newborn shall be taught on an individual basis.

(2) Residents shall be provided instruction in child development and child care, infant development and stimulation, first aid, and infant nutrition by the agency or through community resources.

(c) Policies.

(1) There shall be written policies which specify:
(A) The length of time the mother may remain in the unit;

(B) prohibition against the assumption of child care responsibilities by any resident other than the mother of the newborn; and

(C) substitute child care arrangements when the mother is ill or otherwise away from her newborn.

(d) Services.

(1) The facility shall contract with a pediatrician to supervise the health care of the infants in the unit.

(2) There shall be casework services as outlined in KAR 28-4-279(a)(14).

(3) Staff shall be trained in the use of monitors and infant CPR.

(e) Records. The following records shall be maintained for each mother/infant:

(1) Medical consent;

(2) health care instructions; and

(3) infant medical record. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1986.)

ATTENDANT CARE FACILITIES FOR CHILDREN AND YOUTH

28-4-285. Definitions. (a) "Attendant" means a staff person or volunteer who provides direct supervision of a juvenile.

(b) "Attendant care" means one-on-one direct supervision of a juvenile who has been taken into custody. Attendant care shall not exceed 24 hours exclusive of weekends and court holidays.

(c) "Attendant care facility," herein after referred to as the facility, means a boarding home for children at which attendant care is provided.

(d) "Corporal punishment" means activity directed toward modifying a juvenile's behavior by means of physical contact such as hitting with the hand or any implement, slapping, swatting, pulling hair, yanking the arm, or any similar activity.

(e) "Juvenile" means a person between the ages of 10 and 18 years of age.

(f) "License" means a document issued by the Kansas department of health and environment which authorizes a licensee to operate and maintain an attendant care facility.

(g) "Non-secure facility" means a facility not characterized by the use of physically restricting construction, hardware and procedures.

(h) "Public agency" means any branch of city, county, or state government. (Authorized by K.S.A. 65-508; and implementing K.S.A. 65-501, 65-503, and 65-508; effective, T-28-7-29-88, July 29, 1988; effective Dec. 12, 1988.)

28-4-286. Licensing procedures. (a) Any person, corporation, firm, association or other organization who desires to conduct an attendant care facility shall apply for a license on forms provided by the Kansas department of health and environment. The application shall include a KBI/

SRS child abuse registry form supplied by the Kansas department of health and environment.

(b) A license shall be issued if the secretary finds that the applicant is in compliance with the requirements of K.S.A. 65-501 *et seq.* and amendments of them and the regulations adopted as required by those statutes, and has made full payment of the license fee required by the provisions of K.S.A. 65-505 and amendments of it.

(c) The Kansas department of health and environment shall revoke a license or deny any application in any case in which there is a failure to comply with the provisions of the regulations for attendant care.

(d) A copy of "regulations for licensing attendant care facilities," provided by the Kansas department of health and environment shall be kept on the premises at all times. (Authorized by K.S.A. 65-508; and implementing K.S.A. 65-501, 65-503, and 65-508; effective, T-28-7-29-88, July 29, 1988; effective Dec. 12, 1988.)

28-4-287. Terms of license. (a) The maximum number and age range of juveniles who may be cared for in each living unit shall be specified on the license.

(b) Each facility license shall be valid only for the licensee and the address appearing on the license. A new application shall be required for each change of ownership, sponsor, or address of the facility.

(c) Each license shall not give the attendant care facility permission to place children.

(d) Claims as to specialized services shall not be made unless the facility is staffed and equipped to offer such services.

(e) Each applicant or licensee shall inform the licensing authority when the application is to be withdrawn or the license is not to be renewed. The Kansas department of health and environment shall notify the applicant or licensee and other appropriate agencies that the facility is considered closed and the license terminated.

(f)(1) Any applicant or licensee may submit a written request for an exception to a regulation to the Kansas department of health and environment. An exception shall be granted if the secretary determines the exception to be in the best interest of a juvenile, and if statutory requirements are not violated.

(2) Written notice from the Kansas department of health and environment stating the nature of the exception and its duration shall be posted with

the license. (Authorized by and implementing K.S.A. 65-508; effective, T-28-7-29-88, July 29, 1988; effective Dec. 12, 1988.)

28-4-288. Administration, personnel and records. (a) Organization. If the facility is operated by a private corporation, the corporation shall be authorized to do business in the state of Kansas.

(b) Administrative policies.

(1) Each facility shall have an organizational chart, and written policies and procedures defining operations and legal responsibilities.

(2) Each policy and procedure shall be distributed to staff members as appropriate.

(3) A KBI/SRS child abuse registry form shall be completed and submitted to the Kansas department of health and environment within two weeks of the time each new person over 10 years of age resides, works or regularly volunteers in the facility, excluding juveniles placed in care.

(c) Finances.

(1) The facility shall have sufficient finances to ensure licensing compliance and effective services.

(2) Juveniles shall not be exploited in campaigns or publicity efforts to raise funds.

(3) Insurance. The facility shall be covered by liability and casualty insurance.

(d) Personnel policies.

(1) Each facility shall have written personnel policies including job descriptions that are approved and reviewed annually by licensing staff.

(2) A personnel record shall be maintained for each attendant and made available to the attendant on written request.

(3) No attendant shall be on duty for more than eight hours.

(e) Staffing.

(1) There shall be an attendant for each juvenile.

(2) Each attendant shall be the same sex as the juvenile.

(3) Exceptions to this regulation may be requested pursuant to K.A.R. 28-4-287.

(f) Staff qualifications.

(1) Attendants shall be qualified by temperament, emotional maturity, sound judgment and an understanding of children.

(2) Each attendant shall:

(A) Be 19 years of age or over;

(B) have a high school diploma or its equivalent; and

(C) have completed a state-approved training program.

(g) The following individual personnel records shall be kept on each attendant:

(1) Job application, including:

(A) Identifying information;

(B) qualifications; and

(C) character and employment references;

(2) record of negative TB test;

(3) a statement signed by attendant that discipline policies have been reviewed and will be followed; and

(4) documentation of state-approved training.

(h) Juvenile records.

(1) A register shall be kept of all juveniles with name, birthdate, reason for custody, dates of admission and release, and names and addresses of parents, legal guardian or legal custodian.

(2) An admission and release form shall be submitted to the Kansas bureau of investigation upon release of a juvenile, on forms supplied by the bureau.

(3) A record shall be kept on each juvenile which shall include:

(A) Identifying information;

(B) arrest record;

(C) record of money and personal property, signed by the juvenile and the attendant;

(D) statement signed by the juvenile that the rules and regulations of the facility have been reviewed; and

(E) health history checklist.

(4) A daily log of each juvenile's behavior shall be maintained with notations regarding special problems while in custody and response of staff to problems.

(5) Each improper disclosure of records or information regarding juveniles shall be grounds for revocation or suspension of the license. (Authorized by and implementing K.S.A. 65-508; effective, T-28-7-29-88, July 29, 1988; effective Dec. 12, 1988.)

28-4-289. Admission policies and procedures. (a) Written admission criteria shall be clearly defined.

(b) Intake policies.

(1) Identifying information shall be obtained to initiate each juvenile's record. This information shall include a description of behavior and obvious physical problems of each juvenile.

(2) An arrest record shall accompany each juvenile to the facility. A detention hearing shall be held as designated in the juvenile code.

(3) If it is known that the juvenile's parents, guardian or other custodians have not been no-

tified, the facility's staff shall notify such persons of custody.

(4) Prior to admission, each juvenile shall be searched and items removed that might be used to injure self or others.

(5) Upon admission, if a juvenile surrenders money and personal property, a record of each of these properties shall be signed by both the juvenile and the attendant and placed in the juvenile's record. Each refusal to sign shall be documented.

(6) A health history checklist shall be completed for each juvenile at the time of admission. Each checklist shall be completed by the person who admits the juvenile, using forms supplied by the Kansas department of health and environment.

(7) Each juvenile shall not be admitted if he or she shows evidence of being seriously ill or injured until examined by a physician.

(8) Upon admission, rules and regulations of the facility shall be discussed with each juvenile, and the juvenile shall sign a statement that the rules and regulations have been reviewed.

(c) Release policies.

(1) Each release shall be approved by the court of jurisdiction or other designated authority.

(2) The facility shall provide release forms to be signed by the person to whom the juvenile is released. (Authorized by and implementing K.S.A. 65-508; effective, T-28-7-29-88, July 29, 1988; effective Dec. 12, 1988.)

28-4-290. Program. (a) A written plan and daily routine shall be maintained for all juveniles that shall include supervision, meals, rest and sleep, personal hygiene, physical exercise, work, recreation, visitation and communication.

(b) Supervision.

(1) Each juvenile shall be supervised at all times.

(2) Activities that would interfere with the care of a juvenile shall not be carried out by an attendant while on duty.

(3) Alcohol or non-prescribed controlled substances as defined in K.S.A. 65-4101 and any amendments of it shall not be consumed by any juvenile or attendant while on duty.

(4) Smoking shall be confined to designated smoking areas in the facility.

(c) Food service.

(1) Each juvenile shall receive nutritious meals and snacks at customary times.

(2) Food prepared off premises:

(A) Shall be obtained from sources licensed by the Kansas department of health and environment;

(B) shall be transported in covered containers; and

(C) shall not be allowed to stand.

(3) Food prepared on the premises shall be prepared, served and stored in a sanitary manner.

(4) Only pasteurized milk and government-inspected meat and fowl shall be used. Powdered milk shall be used for cooking only.

(5) Home-canned foods shall not be served in the facility.

(d) Personal hygiene.

(1) Each juvenile shall be allowed to bathe and perform bodily functions as necessary.

(2) Each juvenile shall be provided soap, toothbrush, toothpaste, other personal care items, and clean, individual bath and face towels.

(4) Clothing, if provided, shall be clean and in good condition.

(e) Each juvenile shall have the opportunity for physical exercise. This activity shall be in an area free of hazards, and outdoors if possible.

(f) Work.

(1) Work assignments shall not be used as a substitute for recreation.

(2) Each juvenile shall be prohibited from performing duties including, but not limited to:

(A) Personal services for staff;

(B) cleaning or maintaining areas away from the attendant care facility;

(C) substituting for staff; or

(D) any work defined as hazardous by the Kansas department of human resources governing child labor.

(g) Art and craft supplies, books, current magazines, games and other indoor recreational materials and equipment shall be provided for leisure time activities.

(h) Visitation and communication.

(1) Each facility shall provide juveniles with the opportunity for telephone and visitation contact with parents, legal guardians, and legal representatives.

(2) Written visitation policies shall be available to each juvenile, parent, legal guardian and legal representative.

(3) Each juvenile shall not be denied the right to contact the juvenile's attorney or court counselor.

(i) Discipline.

(1) There shall be a written discipline policy.

(2) Punishment that is humiliating, frightening or physically harmful to the juvenile shall not be

used at any time. The juvenile shall be protected against all forms of neglect, exploitation or degrading forms of punishment.

(3) Prohibited forms of punishment shall include:

- (A) Corporal punishment;
 - (B) verbal abuse, threats, or derogatory remarks about the juvenile or the juvenile's family;
 - (C) binding or tying to restrict movement, or enclosing in a confined space such as a closet, locked room, box, or similar cubicle; or
 - (D) deprivation of meals.
- (4) Juveniles shall be permitted to be appropriately clothed at all times. (Authorized by and implementing K.S.A. 65-508; effective, T-28-7-29-88, July 29, 1988; effective Dec. 12, 1988.)

28-4-291. (a) Health care policies.

(1) Each facility, in consultation with a physician or community health nurse, and using the Kansas department of health and environment health care guidelines as a resource, shall develop written health care guidelines covering the following areas:

- (A) Care of minor illness, including the use of nonprescription drugs;
- (B) care of juveniles under the influence of alcohol and drugs; and
- (C) consultation regarding individual juveniles when indicated.

(2) Each attendant caring for juveniles shall have first aid training.

(b) Health care of juveniles.

(1) A health checklist provided by the Kansas department of health and environment shall serve as a guide to determine if a juvenile is in need of medical care.

(2) A physician shall be contacted for any juvenile taking a prescribed medication to prevent interruption of treatment.

(C) A physician shall be contacted for a juvenile who has acute symptoms of illness or who has a chronic illness. Reportable communicable diseases shall be reported immediately to the county health officer.

(c) Health of attendants.

(1) Each attendant shall be free of communicable disease and shall be in such a state of health and freedom from physical or emotional handicaps as is necessary to work with children.

(2) Each attendant shall present written proof of freedom from active tuberculosis before serving in the facility. (Authorized by and implement-

ing K.S.A. 65-508; effective, T-28-7-29-88, July 29, 1988; effective Dec. 12, 1988.)

28-4-292. Safety procedures. (a) Plans shall be developed for the care of juveniles in disasters such as fires, tornadoes, storms, floods, and civil disorders, as well as occurrences of serious illness or injury to staff or juveniles.

(b) Each disaster plan shall be posted and followed in an emergency.

(c) Each incident resulting in the death of or serious injury to any staff member of the facility or juvenile admitted to the facility shall be reported to the Kansas department of health and environment. Each incident involving any juvenile shall be reported to the parent or guardian. (Authorized by and implementing K.S.A. 65-508; effective, T-28-7-29-88, July 29, 1988; effective Dec. 12, 1988.)

28-4-293. Physical plant. (a) Each facility shall be clean and free from safety hazards.

(b) (1) Any facility may be located in a non-secure area at a sheriff's office, state police post, detoxification center, community mental health center, local hospital or similar facility which meets all applicable codes.

(2) Community resources including but not limited to health services, police protection, and fire protection shall be available to the attendant care facility.

(c) Inside area.

(1) Each wall and floor shall be in sound condition and easily cleanable. Floor covering shall be required over concrete slab in contact with the ground. The floors shall not be slippery.

(2) Each facility shall be limited to ground level and above except basements may be used with fire safety approval. Each room with a floor level more than 30 inches below ground level shall be considered a basement.

(3) The minimum square footage of free floor space shall be 120 square feet including activity and sleeping areas. Minimum ceiling height shall be 7 ft. 8 inches over 90% of the room.

(4) Each room occupied by a juvenile shall have a source of natural light.

(5) Each area used for reading shall have a minimum of 35 foot candles of light.

(6) Each facility shall have adequate storage space for supplies and equipment.

(7) A separate bed with a level, flat mattress in good condition and adequate, clean bedding shall be provided for each juvenile.

(8) Medicines, poisons and firearms shall be inaccessible to juveniles.

(9) A telephone and emergency telephone numbers shall be readily accessible to the attendant.

(10) The water supply, whether public or private, shall be from a source approved by the local health department or the Kansas department of health and environment.

(11) There shall be one toilet, one lavatory and one bathtub or shower available to the facility.

(12) Cold and hot water shall be supplied to each lavatory, bathtub and shower. (Authorized by and implementing K.S.A. 65-508; effective, T-28-7-29-88, July 29, 1988; effective Dec. 12, 1988.)

28-4-294. Transportation. Each facility that provides transportation for juveniles shall meet the following requirements:

(a) Each driver of the vehicle shall hold an operator's license of a type appropriate for the vehicle being used.

(b) Each transporting vehicle shall be maintained in safe operating condition.

(c) Each transporting vehicle shall be equipped with an individual seat belt for the driver, each juvenile passenger and each additional passenger. The driver, each juvenile passenger and each additional passenger shall use the seat belts. (Authorized by and implementing K.S.A. 65-508; effective, T-28-7-29-88, July 29, 1988; effective Dec. 12, 1988.)

FAMILY FOSTER HOMES FOR CHILDREN AND YOUTH

28-4-300. (Authorized by K.S.A. 65-508; effective, E-76-36, July 14, 1975; effective May 1, 1976; amended, E-78-7, Feb. 17, 1977; revoked, E-81-22, Aug. 27, 1980; revoked May 1, 1981.)

28-4-301 to 28-4-310. (Authorized by K.S.A. 65-508; effective, E-76-36, July 14, 1975; effective May 1, 1976; revoked, E-81-22, Aug. 27, 1980; revoked May 1, 1981.)

28-4-311. Definition. "Family foster home" means a child care facility that is a private residence, including any adjacent grounds, in which a licensee provides care for 24 hours a day for one or more children in foster care and for which a license is required by K.A.R. 28-4-801. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-503 and 65-508; effective, E-81-22, Aug. 27, 1980; effective May 1, 1981; amended March 28, 2008.)

28-4-312. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, 65-503, 65-508, K.S.A. 1982 Supp. 65-504, 65-505; effective, E-81-22, Aug. 27, 1980; effective May 1, 1981; amended, T-83-24, Aug. 25, 1982; amended May 1, 1983; revoked March 28, 2008.)

28-4-313. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-508; effective, E-81-22, Aug. 27, 1980; effective May 1, 1981; revoked March 28, 2008.)

28-4-314. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-507; effective, E-81-22, Aug. 27, 1980; effective May 1, 1981; revoked March 28, 2008.)

28-4-315. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-508; effective, E-81-22, Aug. 27, 1980; effective May 1, 1981; revoked March 28, 2008.)

28-4-316. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-507, 65-508, 65-510; effective, E-81-22, Aug. 27, 1980; effective May 1, 1981; amended, T-84-28, Oct. 19, 1983; amended May 1, 1984; amended May 1, 1986; revoked March 28, 2008.)

28-4-317. (Authorized by and implementing K.S.A. 65-508; effective, E-81-22, Aug. 27, 1980; effective May 1, 1981; amended May 1, 1986; revoked March 28, 2008.)

SECURE TREATMENT FACILITIES

28-4-330. Definitions. (a) "Administrator" means a person employed by a secure residential treatment facility who is responsible for the overall administration of the facility.

(b) "Basement" means each area with a floor level more than 30 inches below ground level on all four sides.

(c) "Clinical director" means a person who is employed by the secure residential treatment facility, who is responsible for the overall treatment program, and who is approved by the Kansas behavioral sciences regulatory board, Kansas board of nursing, or Kansas board of healing arts to diagnose and treat mental and behavioral disorders.

(d) "Corporal punishment" means an activity directed toward modifying a youth's behavior by means of adverse physical contact, including spanking with the hand or an implement, slapping, swatting, pulling hair, or any similar activity.

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

(f) “Discipline” means the ongoing process of helping youth develop inner control so that they can manage their own behavior in a socially approved manner.

(g) “Individual plan of care” means a written, goal-oriented treatment plan to enable a youth to function in a less restrictive environment, including the planned programs, therapies, and activities designed to move the individual to a level of functioning consistent with living in a community setting.

(h) “Involuntary seclusion” means the removal of a youth from other youths to a separate locked room or quarters.

(i) “License” means a document issued by the Kansas department of health and environment that authorizes a licensee to operate and maintain a secure residential treatment facility.

(j) “Program” means the comprehensive and coordinated activities and services providing for the care, protection, and treatment of youth.

(k) “Program director” means the staff person responsible for the oversight and implementation of the program.

(l) “Restraint” means the application of any devices, other than human force alone, to any part of the body of a youth in care for the purpose of preventing the youth from causing injury to oneself or others.

(m) “Secretary” means the secretary of the Kansas department of health and environment.

(n) “Secure facility” means a child care facility that is operated or structured to ensure that the entrances and exits from the facility are under the exclusive control of the staff.

(o) “Secure residential treatment facility” means a secure facility operated or structured to provide a therapeutic residential care alternative to psychiatric hospitalization for five or more youth with a diagnosis of a severe emotional, behavioral, or psychiatric condition.

(p) “Treatment” means comprehensive, individualized, goal-directed, therapeutic services provided to youth.

(q) “Treatment team” means the secure residential treatment facility’s interdisciplinary personnel responsible for the development, implementation, and evaluation of each youth’s individualized plan of care.

(r) “Youth” means a person or persons who are admitted to a secure residential treatment facility for treatment.

(s) “Youth care staff” means the persons employed by the secure residential treatment facility to supervise the youth.

(t) “Youth record” means any electronic or written document concerning a youth admitted to a secure residential treatment facility that is created or obtained by an employee of the secure residential treatment facility. (Authorized by and implementing K.S.A. 1998 Supp. 65-508; effective, T-28-7-8-99, July 8, 1999; effective Nov. 5, 1999.)

28-4-331. Licensing procedures. (a) A person shall not operate a secure residential treatment facility that provides treatment to youth under 16 years of age, unless issued a license by the department.

(b) Each person desiring to operate a secure residential treatment facility that provides treatment to youth under 16 years of age shall submit the following:

(1) An application for a license on forms provided by the department; and

(2) the license fee as specified in K.S.A. 65-505, and amendments thereto.

(c) In addition to the application for a license, each applicant shall submit the following:

(1) A written proposal that details the following:

(A) The purpose of the facility;

(B) the administration plan for the program, including an organizational chart;

(C) the financing plan for the program;

(D) staffing for the program, including job descriptions; and

(E) services and treatment to be offered, including the number, age range, and sex of youth to be served;

(2) a copy of the written notification that was submitted to the school district where the facility is located, including the following:

(A) The planned opening date;

(B) the number, age range, and anticipated special education needs of the residents to be served; and

(C) a request for on-site educational services or a request for approval of proposed alternative formal schooling to be provided by the licensee as specified in K.A.R. 28-4-336; and

(3) documentation that the notification required by paragraph (c)(2) was received by the school district at least 90 days before the planned opening date.

(d) Each applicant shall submit a report, on forms provided by the department, containing

the identifying information that is necessary to complete criminal history and child abuse registry background checks for all persons 10 years of age and older residing, working, or regularly volunteering in the secure residential treatment facility.

(1) The identifying information shall be submitted on a report as follows:

(A) At the time of application for an original license;

(B) at the time of application for renewal of a license; and

(C) before each new person resides, works, or regularly volunteers in the secure residential treatment facility.

(2) A copy of each report shall be kept on file at the facility.

Youth admitted into a secure residential treatment facility for care and treatment shall not be considered to be residing in the secure residential treatment facility for the purposes of criminal history or child abuse background checks.

(e) Each applicant shall submit to the department plans for each building that will be used as a secure residential treatment facility. Each plan shall state whether or not the secure residential treatment facility will rely on locked entrances and exits to secure the facility.

(f) Each applicant shall submit a code footprint for each building to be used as a secure residential treatment facility to the Kansas state fire marshal's office for approval. Each applicant shall provide to the department a copy of the approval of the Kansas state fire marshal's office before a license is issued.

(g) Each applicant shall be issued a license if the secretary finds that the applicant is in compliance with the requirements of K.S.A. 65-501 through 65-516, and amendments thereto, and the regulations promulgated pursuant to these statutes and if the license fee required by K.S.A. 65-505, and amendments thereto, is submitted. Each license shall be prominently displayed within the facility.

(h) Each licensee who wishes to renew the license shall apply for renewal of the license annually on forms supplied by the department and shall submit the fee as specified in K.S.A. 65-505, and amendments thereto.

(i) Request to withdraw an application or terminate a license.

(1) Each applicant shall inform the department if the applicant desires to withdraw the application. The withdrawal of the application shall be acknowledged by the department in writing. A

new application and a new fee shall be required before opening a facility. No applicant shall admit a child before the applicant receives a license.

(2) Each licensee shall inform the department if the licensee desires to terminate the license. The licensee shall return the license to the department with the request to terminate the license. The request and the license shall be accepted by the department. The licensee and other appropriate agencies shall be notified by the department that the license is terminated and that the facility is considered closed. The former licensee shall submit a new application and fee to the department if that person desires to obtain a new license. That person shall not reopen the facility or admit any child before receiving a new license.

(j) A new application and fee shall be submitted for each change of ownership, sponsorship, or location.

(k) Grievance procedures.

(1) Each applicant or licensee receiving notice of the denial or revocation of a license shall be notified of the right to request an administrative hearing by the secretary, and subsequently of the right of appeal to the district court.

(2) If an applicant or licensee disagrees with a notice documenting any finding of noncompliance with licensing statutes or regulations, the applicant or licensee may request an explanation of the finding from the secretary's designee. If the explanation is not satisfactory to the applicant or licensee, the applicant or licensee may submit a written request to the secretary for reconsideration of the finding. The written request shall identify the finding in question and explain why the applicant or licensee believes that the finding should be changed. The request shall be made to the secretary within 10 days after receiving the explanation.

(l) Exceptions.

(1) Any applicant or licensee may submit to the department a written request for an exception to a regulation. An exception may be granted if the secretary or the secretary's designee determines the exception to be in the best interest of a youth or the youth's family, and if the exception does not violate statutory requirements.

(2) Written notice of each request for an exception that is approved by the secretary shall be provided to the applicant or licensee by the secretary or the secretary's designee. Each written notice shall state the nature and duration of the exception. This notice shall be posted with the license.

(m) Each licensee shall notify the secretary and obtain written approval from the secretary before making any change in any of the following:

(1) The use of the buildings; or
 (2) the program, provided through either of the following:

(A) Direct services; or
 (B) agreements with specified community resources.

(n) The notification of a proposed change in the program shall include the following:

(1) A copy of the written notification of the proposed change that was submitted to the school district where the facility is located; and

(2) documentation that the notification required by paragraph (n)(1) was received by the school district at least 90 days before the anticipated date of any proposed change.

(o) Amended license.

(1) Each licensee shall submit a request for an amended license and a \$35.00 fee to the secretary if the licensee desires to make any change in any of the following:

(A) The license capacity;
 (B) the age of the children to be served; or
 (C) the living units.

(2) Each request for a change in license capacity or the age range of children to be served shall include the following:

(A) A copy of the written notification of the proposed change that was submitted to the school district where the facility is located; and

(B) documentation that the notification required in paragraph (o)(2)(A) was received by the school district at least 90 days before the anticipated date of any proposed change.

(3) The licensee shall make no change unless permission is granted, in writing, by the secretary. If granted, the licensee shall post the amended license, and the prior license shall no longer be in effect.

(p) Waiver of 90-day notification to the local school district. The 90-day notification to the local school district may be waived by the secretary upon receipt of a written agreement by the local school district.

This regulation shall be effective on and after July 30, 2002. (Authorized by K.S.A. 2001 Supp. 65-508; implementing K.S.A. 2001 Supp. 65-501, 65-504, 65-505, 65-506, 65-508, and 65-516; effective, T-28-7-8-99, July 8, 1999; effective Nov. 5, 1999; amended, T-28-4-1-02, April 1, 2002; amended July 30, 2002.)

28-4-332. Terms of license. (a) The maximum number of youth and the age range of youth who may be treated in each secure residential treatment facility shall be specified on the facility's license. No youth less than 10 years of age shall be admitted to a secure residential treatment facility. No youth more than 18 years of age shall be admitted to a secure residential treatment facility, but any person admitted for treatment may continue to receive treatment until that person is 21 years of age.

(b) Each license issued by the department shall be valid only for the firm, corporation, or association appearing on the license and for the address listed on the license.

(c) Advertising for each secure residential treatment facility shall conform to the statement of services as given on the application. A claim for specialized services shall not be made unless the secure residential treatment facility is staffed and equipped to offer those services. (Authorized by K.S.A. 1998 Supp. 65-508; implementing K.S.A. 1998 Supp. 65-501, 65-504, 65-508, and 65-510; effective, T-28-7-8-99, July 8, 1999; effective Nov. 5, 1999.)

28-4-333. Administration. (a) Organization.

(1) Each secure residential treatment facility shall be governed by one of the following entities:

(A) A public agency, who shall employ an administrator for the secure residential treatment facility; or

(B) a private entity with a governing board that is legally responsible for the operation, policies, finances, and general management of the secure residential treatment facility. The private entity shall employ an administrator for the secure residential treatment facility. The administrator shall not be a voting member of the governing board.

(2) If the licensee is a private corporation, it shall be a corporation qualified in the state of Kansas and shall operate in accordance with established by-laws. The licensee shall furnish a copy of the articles of incorporation and by-laws to the department before a license is issued. One of these documents shall include a nondiscrimination statement that complies with state and federal civil rights laws.

(b) Administrative policies.

(1) A copy of these regulations for secure residential treatment facilities for youth shall be kept on the premises at all times and shall be made available to all staff members.

(2) Each licensee shall develop and implement a quality assurance program to ensure consistent compliance with these regulations. The quality assurance program shall provide for review of the facility's policies, procedures and practices, including their consistency with licensure requirements.

(3) Each licensee shall establish written plans and policies of organization and administration clearly defining legal responsibility, administrative authority, and responsibility for comprehensive services, including an organizational chart approved by the licensee.

(4) Personnel and administrative policies shall be distributed to staff members.

(c) Finances.

(1) Funding.

(A) Each secure residential treatment facility shall have sound and sufficient finances to ensure effective services. The licensee shall be responsible for financing plans. The licensee shall provide the financial resources necessary to maintain compliance with the regulations.

(B) If the licensee is a charitable organization, all solicitation of funds conducted in Kansas shall be in compliance with K.S.A. 17-1759 et seq., and amendments thereto.

(C) Youth shall not be used in any fund-raising efforts.

(2) Financial records.

(A) Each secure residential treatment facility shall maintain financial records that are sufficient to verify resources and expenditures. Each secure residential treatment facility shall account for major expenditures on behalf of the youth for whom payment is received.

(B) Each youth's personal money shall be kept separate from the facility funds. Each secure residential treatment facility shall maintain financial records of each youth's personal money.

(C) A yearly audit by an independent accountant shall be conducted, and a copy of the audit shall be available at the secure residential treatment facility for review by the staff of the Kansas department of social and rehabilitation services, the juvenile justice authority, and the department.

(D) Each secure residential treatment facility shall have an annual financial statement verifying assets and liabilities. The licensee shall make the annual financial statement available to the Kansas department of social and rehabilitation services, the juvenile justice authority, and the department.

(3) Insurance.

(A) Each secure residential treatment facility shall maintain the following insurance:

(i) Professional and civil liability insurance for all employees; and

(ii) liability insurance for injury or personal property damage.

(B) Each licensee shall purchase one or more motor vehicle liability insurance policies covering each vehicle owned or operated by the facility. Each policy shall contain the following limits of liability, exclusive of interest and costs:

(i) Not less than \$100,000 for personal injury or death in any one accident;

(ii) not less than \$300,000 for personal injury to, or the death of, two or more persons in any one accident; and

(iii) not less than \$50,000 for harm to, or destruction of, property of others in any one accident.

(d) Personnel policies.

(1) Each secure residential treatment facility shall have written personnel policies, which shall be approved and reviewed annually by the governing body. The personnel policies shall be provided to each staff member upon employment. The personnel policies shall include the following:

(A) Hiring practices;

(B) job descriptions, including qualifications, duties, and responsibilities for each staff position;

(C) policies regarding hours of work;

(D) sick and vacation leave policies;

(E) grievance procedures; and

(F) a description of salaries, benefits, and staff development practices.

(2) A personnel record shall be maintained for each employee and shall be made available to the employee upon written request.

(e) Staffing.

(1) The governing body of each secure residential treatment facility shall designate an administrator whose responsibility is the overall administration of the facility.

(2) A written daily staff schedule shall be developed and followed. The staff schedule shall meet all of the following requirements:

(A) The schedule shall provide for adequate staff on the living unit to directly supervise and interact with the youth at all times, to implement each youth's individual plan for care, and to provide for each youth's physical, social, emotional, and educational needs.

(B) The schedule shall provide for a minimum ratio of one youth care staff member on active

duty to seven youth during waking hours and one youth care staff member on active duty to 10 youth during sleeping hours.

(C) At least one youth care staff member of the same sex as the youth shall be present, awake, and available to the youth at all times. If both male and female youth are present in the secure residential treatment facility, at least one male and one female youth care staff member shall be present, awake, and available.

(3) At no time shall there be fewer than two youth care staff members present on the living unit when one or more youth are in care.

(4) Youth shall not be left in a room unattended except that, during sleeping hours, the minimum ratio of youth care staff shall be immediately available in a connecting area to the sleeping rooms. Supervision of youth in involuntary seclusion shall comply with K.A.R. 28-4-338(c).

(5) Alternate qualified youth care staff members shall be provided for the relief of the regular staff members on a one-to-one basis and in compliance with the staffing pattern required in paragraph (e) (2) of this regulation.

(6) Electronic supervision shall not replace the youth care staffing requirements.

(7) Auxiliary staff members shall be available as needed. The auxiliary staff shall include food service, clerical, and maintenance personnel. Auxiliary staff members shall not be included in meeting the minimum ratio of youth care staff to youth.

(8) Professional consultant services shall be available, to the extent necessary, to meet the needs of the youth served. Professional consultants shall include physicians, dentists, nurses, clergy, social workers, psychologists, psychiatrists, teachers, and dieticians.

(9) A volunteer shall not be used as a substitute for a youth care staff member, but shall augment the services provided by the staff.

(10) A staff person designated to be in charge of the secure residential treatment facility shall be on-site at all times when a youth is in care. Procedures shall be in place to ensure that all staff members know who is in charge.

(f) Community and volunteer involvement.

(1) Each secure residential treatment facility shall establish written policies and procedures that provide for securing community and volunteer involvement in facility programs. The policies and procedures shall specify a screening and selection process for volunteers and shall encourage

recruitment from all cultural and socioeconomic segments of the community.

(2) Written policies and procedures for volunteers shall include the following:

(A) A description of the lines and scope of authority, responsibility, and accountability for volunteers;

(B) orientation and training requirements for each volunteer; and

(C) a requirement that each volunteer who provides professional services must meet the same requirements as would be expected of a paid professional staff member providing the same services.

(3) Each volunteer shall agree, in writing, to abide by all secure residential treatment facility policies, specifically including those relating to security, confidentiality of information, and mandatory reporting laws pertaining to suspected abuse, neglect, and exploitation of youth.

(4) Each volunteer in contact with youth shall have a health assessment, including a screen for tuberculosis. (Authorized by K.S.A. 1998 Supp. 65-508; implementing K.S.A. 1998 Supp. 65-508 and 65-516; effective, T-28-7-8-99, July 8, 1999; effective Nov. 5, 1999.)

28-4-334. Staff development. (a) Each person having contact with youth shall demonstrate emotional maturity, sound judgment, and a sound knowledge of the developmental needs of youth.

(b) Administrator qualifications.

(1) Each administrator shall demonstrate the following:

(A) Knowledge of the principles, practices, methods, and techniques of administration and management;

(B) ability to train, supervise, plan, direct, and evaluate the work of others, as documented by experience, training, or a combination of both;

(C) ability to establish and maintain effective working relationships with others;

(D) ability to establish and maintain effective working relationships with governmental agencies, schools, other treatment facilities, and community organizations;

(E) knowledge of the methods and techniques used in dealing with youth in a residential setting; and

(F) knowledge of principles and techniques of behavioral and mental health treatment and care of youth and of the growth, development, needs, and unique problems of youth.

(2) Each administrator shall have a master's degree in social work or a related field, or a bachelor's degree in social work, human development and family life, psychology, or education. Each administrator shall have a minimum of three years of supervisory experience within a child care facility providing treatment to youth.

(c) Each secure residential treatment facility shall have a program director who is responsible for oversight and implementation of the secure residential treatment facility's program. Each program director shall have a master's degree in social work, psychology, nursing, or a related field, and shall have a minimum of one year of supervisory experience in a treatment facility serving youth. In secure residential treatment facilities with more than 20 youth, the program director shall not be the administrator.

(d) All youth care staff and alternate youth care staff shall meet the following requirements:

- (1) Be 21 years of age or older;
- (2) have a high school diploma or its equivalent; and
- (3) have completed one or more of one of the following:

(A) Three semester hours of college-level study in adolescent development, psychology, or a related subject;

(B) 45 clock hours of training in child care or child development; or

(C) one year of experience as a child care worker or house parent in a facility serving youth.

(e) Professional staff and consultants shall meet all Kansas qualification and licensing requirements for their profession.

(f) Each food service employee shall meet all of the following requirements:

(1) Comply with the Kansas health standards established in K.A.R. 28-36-22;

(2) possess knowledge of the nutritional needs of children and youth;

(3) understand quantity food preparation and service concepts; and

(4) practice sanitary food handling and storage methods.

(g) Staff professional development. Each secure residential treatment facility shall provide and monitor professional development programs, which shall consist of activities designed to achieve specific learning objectives. Professional development may occur through workshops, seminars, or staff meetings, or through closely supervised, on-the-job training.

(1) Each secure residential treatment facility shall have written policies and procedures governing orientation and in-service training. Each employee shall receive orientation training before being assigned an independent job duty.

(2) Each youth care staff member shall receive a minimum of eight hours of orientation training before assuming any responsibility for supervising youth and an additional 32 clock hours of orientation training before assuming independent responsibility for supervision of youth. Orientation training shall include all of the following topics:

(A) Accident and injury prevention;

(B) child abuse, neglect, and exploitation reporting requirements;

(C) crisis management and intervention;

(D) emergency and safety procedures to follow in the event of an emergency, bomb threat, fire, tornado, riot, or flood;

(E) facility policies and procedures;

(F) first aid, including rescue breathing;

(G) health, sanitation, and safety measures;

(H) job duties and responsibilities;

(I) the rights of the youth;

(J) observation of symptoms of illness and communicable diseases;

(K) policies regarding behavior management, use of restraints, and involuntary seclusion;

(L) problem solving methods;

(M) report writing methods;

(N) security procedures; and

(O) suicide prevention.

(3) Each program director and each person having contact with youth shall complete a minimum of 40 clock hours of in-service training per year. In-service training shall include the following topics:

(A) Accident and injury prevention;

(B) child abuse symptoms and reporting requirements;

(C) child care practices;

(D) child psychosocial growth and development;

(E) first aid, including rescue breathing;

(F) the rights of the youth;

(G) licensing regulations;

(H) observations of symptoms of illness and communicable diseases;

(I) suicide prevention;

(J) use of restraints and seclusion; and

(K) crisis management.

(4) Each program director shall attend a minimum of one training event per year away from

the facility, in addition to the in-service training conducted at the facility.

(5) Each person's in-service training shall be documented in that person's personnel file. (Authorized by and implementing K.S.A. 1998 Supp. 65-508; effective, T-28-7-8-99, July 8, 1999; effective Nov. 5, 1999.)

28-4-335. Admission and release policies.

(a) Before admission, each youth shall be evaluated by a person approved by the Kansas behavioral sciences regulatory board, Kansas board of nursing, or Kansas board of healing arts to diagnose and treat mental and behavioral disorders, or by a qualified mental health professional as defined in K.S.A. 59-2946(j) and amendments thereto, to determine all of the following:

(1) Whether or not the youth is a danger to self or others;

(2) whether or not secure treatment is clinically indicated; and

(3) whether or not there are other less restrictive facilities that could meet the youth's needs.

(b) Any youth may be admitted to the secure residential treatment facility if the preadmission evaluation of the youth indicates all of the following:

(1) The youth is a danger to self or others.

(2) The youth requires treatment in a secure setting.

(3) Less restrictive care is not available to meet the youth's needs.

(c) All written admission policies and procedures of the facility shall conform with the goals and purposes of the facility.

(d) Admission procedures and practice shall include provisions for the following:

(1) Collecting identifying information;

(2) completing a health history checklist, which shall be completed on a form approved by the department and which shall include a description of bruises, abrasions, symptoms of illness, and current medications;

(3) assessing the youth's suicide risk potential, assault potential, and escape risk;

(4) conducting an intake interview;

(5) providing an orientation to the secure residential treatment facility in a manner that is understandable to the youth. Completion of the orientation and receipt of all written orientation materials shall be documented by a signed statement from the youth;

(6) completing an inventory that documents the youth's clothing and personal possessions and

their disposition. Each inventory shall include a written list of all money and personal property of the youth, shall be signed by the youth and the admitting staff member, and shall be kept with the youth's record. If the youth refuses to sign the inventory, the refusal shall be documented in the youth's record;

(7) distributing personal hygiene items;

(8) providing for a shower and hair care;

(9) issuing clean, laundered clothing, if necessary; and

(10) assigning the youth to a sleeping room.

(e) No youth shall be admitted who shows evidence of being seriously physically ill, injured, or under the influence of alcohol or drugs until the youth is examined and approved for admission by a physician licensed to practice in Kansas.

(f) A licensee or employee of a secure residential treatment facility shall not accept permanent legal guardianship of a youth.

(g) Release policies.

(1) All releases shall be authorized by the treatment team or the legal custodian.

(2) Temporary releases for court attendance, medical appointments, placement visits, or other necessary purposes shall be permitted when authorized by the parent or legal guardian or the court.

(3) The secure residential treatment facility shall provide release forms to be signed by the person to whom the youth is released and by the staff person releasing the youth.

(4) Procedures and practices for the discharge of youth shall include provisions for the following:

(A) Verification of identity of the youth and the person to whom the youth is released;

(B) completion of any pending action, including any grievance or claim for damages or lost possessions;

(C) transportation arrangements;

(D) instructions for forwarding mail; and

(E) return of money and personal property to the youth. A receipt for all money and personal property shall be signed by the youth.

(h) Length of treatment.

(1) Each youth shall be released or transferred within six months of the youth's admission date.

(2) A secure residential treatment facility may request that a youth remain in the facility longer than six months, if the treatment team determines that continued treatment in a secure residential treatment facility is necessary and the department approves an extension of treatment.

(3) Each written request for an extension shall be submitted to the department before the end of the six-month period. The request shall include the following information:

- (A) The name of the youth;
 - (B) the reason why the extension is needed; and
 - (C) the length of time of the requested extension.
- (4) If it is determined to be in the best interest of the youth and the youth's family, the request shall be approved by the department. (Authorized by and implementing K.S.A. 1998 Supp. 65-508; effective, T-28-7-8-99, July 8, 1999; effective Nov. 5, 1999.)

28-4-336. Program and services. (a) Each secure residential treatment facility shall keep documentation of each youth's preadmission evaluation in the youth's file.

(b) An interdisciplinary treatment team shall develop an individualized plan of care for each youth admitted to the secure residential treatment facility. The team shall review the treatment plan every 30 days and shall update the treatment plan as necessary. Each review shall be documented and signed by the clinical director or the clinical director's designee.

(c) The treatment team shall be headed by the clinical director or the clinical director's designee.

(d) Each facility shall maintain a written plan and daily routine for all youth, which shall include the following:

- (1) Meals;
- (2) rest and sleep;
- (3) personal hygiene;
- (4) physical exercise;
- (5) recreation;
- (6) mental health services;
- (7) education; and
- (8) social services.

(e) Classroom instruction shall be provided on-site by teachers holding appropriate certification from the Kansas board of education.

(1) The staff of the secure residential treatment facility shall coordinate education services with the local school district. During the local school year, each youth shall receive a minimum of six hours of instruction per day, excluding weekends and holidays.

(2) For each youth currently enrolled in a Kansas public school, the staff of the secure residential treatment facility shall maintain contact with the youth's home school district to ensure the continuity of each youth's education.

(3) The staff of the facility shall provide a regular schedule of instruction and related educational services appropriate to the needs of each youth.

(4) Youth care staff shall be stationed in proximity to the classroom, with frequent, direct, physical observation of the classroom activity at least every 15 minutes, to provide immediate support to the teacher.

(f) Library services.

(1) Each secure residential treatment facility shall have written policies and procedures that govern the facility's library program, including acquisition of materials, hours of availability, and staffing.

(2) Library services shall be available to all youth.

(A) Reading and other library materials may be provided for use during non-library hours.

(B) Library materials shall be appropriate for various levels of competency.

(C) Reading material shall reflect a variety of interests.

(g) Recreation.

(1) Each secure residential treatment facility shall provide indoor and outdoor recreational areas and equipment where security and visual supervision can be easily maintained. Unless restricted for health reasons, all youth shall be allowed to engage in supervised indoor and outdoor recreation on a daily basis.

(2) Art and craft supplies, books, current magazines, games, and other indoor recreational materials shall be provided for leisure time activities.

(h) Work.

(1) Work assignments shall not be used as a substitute for recreation.

(2) Youth shall be prohibited from performing the following duties:

(A) Personal services for the staff;

(B) cleaning or maintaining areas away from the facility;

(C) replacing employed staff; or

(D) any work experience defined as hazardous by the Kansas department of human resources regulations governing child labor.

(3) After receiving the required youth care staff orientation and training, auxiliary staff may supervise work activities. Youth care staff shall be within visual and auditory distance to provide immediate support, if necessary.

(i) Visitation and communication.

(1) Each secure residential treatment facility shall provide telephone and contact visitation

rights for parents, legal guardians, legal representatives, and other visitors approved by personnel designated by the administrator. Private telephone conversation and visitation shall be allowed, except when a need to protect the youth is clinically indicated, as documented in the youth's individual plan for care.

(2) The facility shall make written policies and procedures regarding telephone use and visitation available to all youth, parents, legal guardians, and legal representatives.

(3) A youth shall not be denied the right to contact an attorney or court counselor. No court counselor or attorney shall be refused visitation with a youth to whom the counselor or attorney is assigned.

(4) Staff of the secure residential treatment facility shall not censor mail or written communication, except to check for contraband, unless there is sufficient reason to believe that the security of the facility is at risk. Suspect mail shall be opened by staff in the presence of the addressee. If mail is to be read, the youth shall be informed in advance and shall be present when the mail is opened. The reason for each occasion of censorship shall be documented and kept in the youth's record.

(5) Writing materials and postage for the purposes of correspondence shall be available to youth. Materials and postage for at least two letters per week shall be provided for each youth.

(6) First-class letters and packages shall be forwarded after the transfer or release of each youth.

(j) Transportation. Each secure residential treatment facility shall establish and implement written policies and procedures for transporting youth.

(1) The transportation policies and procedures shall include all of the following information:

(A) A list of the persons authorized to transport youth for the secure residential treatment facility;

(B) a description of precautions to prevent escape during transfer;

(C) documentation of a current and appropriate license for each secure residential treatment facility driver for the type of vehicle in use;

(D) provisions for maintaining documentation of current insurance in the transporting vehicle if the licensee is a private entity; and

(E) procedures to be followed in case of accident, injury, or other critical incident, including notification procedures.

(2) Each transporting vehicle owned or leased by the secure residential treatment facility shall have a yearly safety check. A record of the year-

ly safety check and all repairs or improvements made shall be kept on file at the secure residential treatment facility. When youth are transported in a privately owned vehicle, the vehicle shall be in good working condition.

(3) Each vehicle used by the secure residential treatment facility to transport youth shall be equipped with an individual seat belt for the driver, each youth passenger, and each additional passenger. The driver, each youth passenger, and each additional passenger shall be required to use the seat belts at all times.

(4) Smoking in the transporting vehicle shall be prohibited while youth are being transported.

(5) Youth shall be delivered to the designated destination by the most direct route.

(6) Youth shall not be shackled or confined with mechanical restraints when being transported by staff. (Authorized by and implementing K.S.A. 1998 Supp. 65-508; effective, T-28-7-8-99, July 8, 1999; effective Nov. 5, 1999.)

28-4-337. Records. (a) Personnel records. Each secure residential treatment facility shall maintain individual personnel records for each staff member, which shall include the following information:

(1) The staff member's job application, including all of the following:

(A) Identifying information;

(B) the staff member's qualifications; and

(C) character and employment references;

(2) a description of the staff member's terms of employment and a copy of the staff member's job description;

(3) documentation of the staff member's employment dates and a copy of each of the staff member's annual performance reviews;

(4) the staff member's health certificates, including a record of the results of a health assessment and tuberculin test, documented on forms supplied or approved by the department;

(5) documentation of orientation, in-service training, and continuing education completed by the staff member;

(6) documentation of the report submitted to the department for the purpose of a background check for criminal and child abuse histories, to determine compliance with K.S.A. 65-516, and amendments thereto;

(7) documentation that the staff member has read, understands, and agrees to all of the following:

(A) The statutes and regulations regarding man-

datory reporting of suspected child abuse, neglect, and exploitation;

(B) the regulations for licensing secure residential treatment facilities for youth;

(C) the secure residential treatment facility's policies and procedures, including personnel, administrative, daily, and behavior management policies and procedures; and

(D) policies providing for a drug-free workplace; and

(8) a copy of each grievance and incident report regarding the specific staff member, including documentation regarding the means of resolution of each report.

(b) Volunteer records. Each secure residential treatment facility shall maintain individual volunteer records documenting the facility-related activities of each volunteer. The records shall include the following:

(1) The volunteer's identifying information;

(2) a copy of the volunteer's job description;

(3) documentation of the volunteer's dates of service and a copy of each of the volunteer's performance reviews;

(4) documentation of orientation provided to the volunteer regarding the secure residential treatment facility and specific assignments given to the volunteer;

(5) documentation that the volunteer has read, understands, and agrees to follow the policies and procedures of the secure residential treatment facility, including those related to security, confidentiality of information, and mandatory reporting of suspected child abuse and neglect;

(6) documentation of freedom from active tuberculosis;

(7) documentation of the report submitted to the department for the purpose of a background check for criminal and child abuse histories, to determine compliance with K.S.A. 65-516, and amendments thereto; and

(8) a copy of the health assessment as required in K.A.R. 28-4-333(f)(4).

(c) Youth records.

(1) Each secure residential treatment facility shall establish and implement written policies and procedures governing management of youth records. These policies and procedures shall include provisions for the following:

(A) Establishment, utilization, content, privacy, security, and preservation of records;

(B) a schedule for the retirement and destruction of inactive case records; and

(C) a review of the youth record policies and procedures at least annually and revision as needed.

(2) Each secure residential treatment facility shall keep a register of all youth in care. The register shall include the following information for each youth:

(A) Name;

(B) date of birth;

(C) the name and address of each parent or legal guardian;

(D) the name and address of the legal custodian, if not the parent or legal guardian;

(E) the name and address of the closest living relative, if other than a parent or guardian;

(F) the reason for admission; and

(G) the dates of admission and release.

(3) Each facility shall keep individual records for each youth, which shall include the following:

(A) The youth's identifying information;

(B) a description of the youth's legal status;

(C) the name of the youth's legal custodian;

(D) medical and dental permission forms, signed by a parent or legal guardian. The permission form used shall be one that is acceptable to the vendor who will provide the service; and

(E) a written inventory of all money and personal property of the youth signed by the youth and the admitting staff member as required by K.A.R. 28-4-335(d).

(4) Each facility shall keep a daily log of each youth's behavior in the youth's individual record file, with notations regarding any special problems and the response of the staff to any problems. Each entry shall be initialed by the staff member making the entry.

(5) A list of all youth receiving treatment shall be submitted on forms provided by the department upon request.

(6) Information from a youth's record shall not be released without written permission from the youth's parent or legal guardian. Improper disclosure of records or information regarding a youth shall be grounds for revocation or suspension of the secure residential treatment facility's license or denial of a facility's application for licensure.

(7) The written policies, procedures, and practices regarding youth records shall provide for the transfer of a youth's record upon release of a youth to a residential care facility. Each secure residential treatment facility shall ensure that each youth's record precedes or accompanies the youth. The case file information shall include the following:

(A) Identifying information;

- (B) medical records;
 - (C) immunization records;
 - (D) insurance information;
 - (E) the youth's medical card, when applicable;
 - (F) school placement information, including present courses of study; and
 - (G) the name and address of each parent or legal guardian.
- (8) Additional case file information to be transferred shall accompany the youth or be transferred within 72 hours. (Authorized by K.S.A. 1998 Supp. 65-508; implementing K.S.A. 1998 Supp. 65-508 and 65-516; effective, T-28-7-8-99, July 8, 1999; effective Nov. 5, 1999.)

28-4-338. Behavior management. (a) Policies.

(1) Each secure residential treatment facility shall establish and implement written policy providing for a behavior management system that assists youth to develop inner control and manage their own behavior in a socially acceptable manner. The policy shall provide the following:

(A) Expectations that are age appropriate and that allow for special abilities and limitations; and

(B) positive and negative consequences related to each expectation.

(2) Each facility shall establish written rules of youth conduct that define expected behaviors and related consequences.

(A) A rule book containing expected behaviors, ranges of consequences, and disciplinary procedures shall be given to each youth and youth care staff member.

(B) An acknowledgment of receipt of the rule book shall be signed by each youth and kept in each youth's record.

(C) If a literacy or language problem prevents a youth from understanding the rule book, a staff member or translator shall assist the youth in understanding the rules.

(3) Each staff member who has direct contact with youth shall be thoroughly familiar with the rules of youth conduct, the rationale for the rules, and the intervention options available.

(b) Discipline.

(1) Discipline that is humiliating, frightening, or physically harmful to the youth shall not be used at any time. Each youth shall be protected against all forms of neglect, exploitation, or degrading forms of discipline. No youth shall be isolated or confined in any dark space. Electronic monitoring or an audio communication system shall not re-

place the required presence of a youth care staff member.

(2) Corporal punishment shall not be used.

(3) Under no circumstances shall any youth be deprived of meals, clothing, sleep, medical services, exercise, correspondence, parental contact, or legal assistance for disciplinary purposes. If a youth is in involuntary seclusion during normal school hours, school work shall be provided to the youth.

(4) Under no circumstances shall any youth be allowed to supervise or to administer discipline to another youth.

(c) Involuntary seclusion.

(1) Involuntary seclusion shall be permitted within a secure residential treatment facility only when a youth is out of control, continually refuses to obey reasonable and lawful requests, or behaves in a way that presents a threat to self or others.

(2) Each secure residential treatment facility shall establish and implement written policies and procedures that govern the use of involuntary seclusion. The policies and procedures shall include provisions that meet the following conditions and requirements:

(A) Permit the use of involuntary seclusion if all other less restrictive methods to prevent immediate, substantial bodily injury to the youth or others have been attempted and have failed to prevent immediate and substantial bodily injury to the youth or others and if all alternative measures to prevent injury are not sufficient to accomplish this purpose;

(B) require a written order by the program director of the secure residential treatment facility, physician, psychologist, or other approved staff member each time a youth is placed in or released from involuntary seclusion;

(C) ensure that no more than one youth is placed in an involuntary seclusion room at any one time;

(D) provide for a search of each youth and removal of any items that may be used to injure oneself or others before admission to the involuntary seclusion room;

(E) ensure that each youth is provided appropriate clothing at all times;

(F) ensure that each youth in involuntary seclusion is provided with a mattress on a clean, level surface above floor level;

(G) ensure that each youth receives all meals and snacks normally served and is allowed time to exercise and perform necessary bodily functions;

(H) ensure that each youth has prompt access to drinking water and washroom facilities;

(I) ensure that the designated staff member on duty makes appropriate entries in the youth's records regarding the use of involuntary seclusion;

(J) ensure that at least one youth care staff member is in the proximity of each youth in involuntary seclusion at all times, with direct, physical observation at least every 15 minutes. At the time of each observation, all of the following activities shall occur:

(i) Interactive intervention shall be attempted, unless the youth is sleeping;

(ii) the result of the intervention shall be recorded; and

(iii) the condition of the youth shall be recorded;

(K) ensure constant supervision if a youth is considered suicidal; and

(L) provide for an assessment of the need for continued involuntary seclusion at each shift change and for documentation of the reasons that involuntary seclusion is continued.

(3) Electronic or auditory devices shall not be used to replace staff supervision of youth in involuntary seclusion.

(4) A youth shall not remain in involuntary seclusion for more than 24 hours without written approval of the program director or the program director's designee. No staff person who was involved in the incident leading to involuntary seclusion shall be permitted to approve an extension of the involuntary seclusion.

(5) The program director or designee who approved the extended involuntary seclusion shall visit with each isolated youth at least once within each eight-hour period after the first 24 hours.

(6) Written approval of the program director or program director's designee shall be required for each eight-hour period that involuntary seclusion is extended, beyond the first 24 hours.

(7) Involuntary seclusion shall not exceed 48 hours for any reason unless the youth continues to behave in a way that presents a threat to oneself or others.

(8) If a youth requires more than 48 consecutive hours of involuntary seclusion or more than 72 cumulative hours of involuntary seclusion within any seven-day period, or is placed on suicide watch, an emergency staff meeting shall be held to discuss the appropriateness of the youth's individual plan of care.

(A) Participants in the emergency staff meeting shall include the following:

(i) The youth, if behavior permits;

(ii) the program director or the program director's designee;

(iii) a physician, clinical psychologist, or clinical social worker who has assessed the youth; and

(iv) any other appropriate staff member.

(B) The youth's parents or legal guardian shall be notified of the emergency staff meeting and invited to participate. Documentation of notifications shall be kept in the youth's record.

(C) The results of the emergency staff meeting shall be recorded and maintained on file.

(9) All youth care staff and program personnel shall be informed at all times of the current status of each youth in involuntary seclusion.

(d) Restraint.

(1) Each facility shall establish and implement written policies and procedures that govern the use of restraint.

(2) These policies and procedures shall include the following:

(A) Limitations on the use of physical restraint to instances of justifiable self-defense, protection of the youth or others, or the protection of property;

(B) permission to use physical restraint only if all other less restrictive methods of controlling the youth's dangerous behavior were attempted and failed;

(C) a statement that chemical agents are not to be used by secure residential treatment facility personnel;

(D) a statement that psychotropic medications are not to be used for disciplinary reasons; and

(E) a statement that psychotropic medications are to be administered only when medically necessary upon order of the youth's physician.

(3) The restraints selected shall be the least restrictive measure necessary to prevent injury to the youth or others.

(4) Restraint or involuntary seclusion shall never be used for punishment or for the convenience of staff. Restraint or involuntary seclusion shall not be used for more than three consecutive hours without medical reevaluation of its necessity, except between the hours of 12:00 midnight and 8:00 a.m., unless necessary for the safety and well-being of the youth.

(5) Each secure residential treatment facility that uses restraint shall develop and insure implementation of a comprehensive policy on the use of each restraint. The policy shall identify the following:

(A) The forms of restraint in use at the secure residential treatment facility, clearly demonstrat-

ing that each specified form of restraint is required to appropriately serve youth;

(B) specific criteria for the use of each form of restraint;

(C) the staff members authorized to approve the use of each form of restraint;

(D) the staff members authorized and qualified to administer or apply each form of restraint;

(E) the approved procedures for application or administration of each form of restraint;

(F) the procedures for monitoring any youth placed in each form of restraint;

(G) any limitations on the use of each form of restraint, including time limitations;

(H) the procedures for immediate, continual review of restraint placements for each form of restraint, except passive physical restraint; and

(I) procedures for comprehensive record keeping concerning all incidents involving the use of restraint, including incidents of passive physical restraint if it is used in conjunction with or leads to the use of any other form of restraint. (Authorized by and implementing K.S.A. 1998 Supp. 65-508; effective, T-28-7-8-99, July 8, 1999; effective Nov. 5, 1999.)

28-4-339. Rights of youth. (a) The rights of youth while in the licensee's care or control shall not be diminished or denied for disciplinary reasons.

(b) Each secure residential treatment facility shall establish and implement written policies and procedures concerning the rights of the youth. These policies and procedures shall provide that youth are assured of their rights, except if it is necessary to maintain order and security in the secure residential treatment facility or if it is contrary to a youth's approved treatment plan. These policies and procedures shall ensure the following:

(1) Freedom from personal abuse, corporal or unusual punishment, excessive use of force, humiliation, harassment, mental abuse, or punitive interference with the daily functions of living, including eating or sleeping;

(2) freedom from discrimination based on race, color, ancestry, religion, national origin, sex, or disability;

(3) equal access to programs and services for both male and female youth in coed facilities;

(4) receipt and explanation of written rules and grievance procedures of the facility, in a language that the youth can understand;

(5) opportunity for physical exercise on a daily basis, including outdoor exercise if weather permits;

(6) participation in religious worship and religious counseling on a voluntary basis, subject only to the limitations necessary to maintain order and security;

(7) reasonable religious diets;

(8) the right to wear personal clothing consistent with secure residential treatment facility guidelines. If the facility provides clothing, it shall be of proper size and shall be approved by the department;

(9) access to the courts and confidential contact with attorneys, judges, parents, social workers, and other professionals, including telephone conversations, visits, and correspondence;

(10) medical treatment and emergency dental care, a medically proper diet, and the right to know what and why medications are being prescribed;

(11) the right to send and receive uncensored mail in accordance with K.A.R. 28-4-336(i)(4);

(12) the right to receive visitors and communication in accordance with the facility's visitation policies;

(13) the right to determine the length and style of hair, except when a physician determines that a haircut is medically necessary; and

(14) the right to keep facial hair, if desired, except when a licensed physician determines that removal is medically necessary for health and safety. (Authorized by and implementing K.S.A. 1998 Supp. 65-508; effective, T-28-7-8-99, July 8, 1999; effective Nov. 5, 1999.)

28-4-340. Emergency, safety, security, and control. (a) Each secure residential treatment facility shall develop a disaster plan to provide for the safety of youth in emergencies. The licensee shall review the plan at least annually and update as needed. The plan and any subsequent updates shall be approved by the state fire marshal or the fire marshal's designee.

(1) The disaster plan shall contain provisions for the care of youth in disasters, including fires, tornadoes, storms, floods, and civil disorders, as well as occurrences of serious illness or injury to staff members and youth.

(2) All of the staff in the secure residential treatment facility shall be informed of the disaster plans, and the plans shall be posted in a prominent location.

(3) Each secure residential treatment facility shall have first aid supplies, including the following:

(A) Assorted adhesive strip bandages;

- (B) adhesive tape;
- (C) a roll of gauze;
- (D) scissors;
- (E) a package of gauze squares;
- (F) pump soap;
- (G) an elastic bandage;
- (H) tweezers; and
- (I) rubbing alcohol.

(4) Each secure residential treatment facility that uses involuntary seclusion shall have a policy and procedure to evacuate each youth in seclusion in the event of a fire or other emergency.

(b) The secure residential treatment facility shall conduct a minimum of one fire drill and one tornado drill per shift per quarter.

(c) Security and control. Each secure residential treatment facility shall use a combination of supervision, inspection, accountability, and clearly defined policies and procedures on the use of security to promote safe and orderly operations.

(1) All written policies and procedures for security and control shall be available to all staff members. The licensee shall review the policies and procedures at least annually and update as needed, and shall include all of the following requirements:

(A) The licensee shall ensure that a daily report on youth population movement is completed and kept on file.

(B) Written operational shift assignments shall state the duties and responsibilities for each assigned position in the secure residential treatment facility.

(C) Supervisory staff shall maintain a permanent log and prepare shift reports that record routine and emergency situations.

(D) The licensee shall ensure that security devices are regularly inspected and maintained, with any corrective action completed as necessary and recorded.

(E) No weapons shall be permitted in the facility.

(F) The licensee shall ensure that guidelines for the control and use of keys, tools, and medical and culinary equipment are implemented.

(G) No youth or group of youth shall exercise control or authority over another youth, have access to the records of another youth, or have access to or use of keys that control security.

(H) The licensee shall ensure that procedures are developed and implemented for handling escapes, runaways, and unauthorized absences.

(I) The licensee shall ensure that safety and se-

curity precautions are developed and implemented pertaining to facility and staff vehicles.

(2) The licensee shall ensure that policies and procedures are developed for the prosecution of any illegal act committed while the youth is in care.

(3) The licensee shall ensure that policies and procedures are developed and implemented to prohibit the use of chemical agents, including mace, pepper mace, or tear gas, by facility staff.

(4) Poisons and all flammable materials shall be kept in locked storage.

(5) The licensee shall ensure that policies and procedures are developed that govern documentation of all special incidents, including the taking of hostages and the use of restraint. The policies and procedures shall require submission of a written report of all special incidents to the program director or the program director's designee. Each report shall be submitted no later than the conclusion of that shift. A copy of the report shall be kept in the youth's record. A copy of the report of any incident that involves the taking of hostages, the death or injury of a youth, or criminal charges against a youth or staff member shall be submitted to the department and the placing agent.

(6) The licensee shall ensure that each incident of disaster is reported to the department within 24 hours, excluding weekends and holidays. Each incident of fire shall also be reported to the state fire marshal within 24 hours, excluding weekends and holidays.

(7) A written plan shall provide for continuing operations in the event of a work stoppage. Copies of this plan shall be available to all staff. The licensee shall ensure that each incident of work stoppage is reported to the department within 24 hours, excluding weekends and holidays. (Authorized by and implementing K.S.A. 1998 Supp. 65-508; effective, T-28-7-8-99, July 8, 1999; effective Nov. 5, 1999.)

28-4-341. Health care policies. (a) Health services for youth.

(1) Each secure residential treatment facility, in consultation with a physician, shall develop written health care policies that cover the following:

(A) A health history checklist and review for each youth upon admission, as documented on forms approved by the department;

(B) follow-up health care, including a health examination and referrals, for concerns identified in the health history checklist and review;

(C) dental screening upon admission and follow-up emergency dental care as needed;

(D) preventive dental care for youth;

(E) chronic care, convalescent care, and preventive care, if medically indicated;

(F) care for minor illness, including the use and administration of prescription and nonprescription drugs;

(G) care for youth under the influence of alcohol or other drugs;

(H) consultation regarding individual youth, if indicated;

(I) infection control measures and universal precautions to prevent the spread of blood-borne infectious diseases;

(J) maternity care as defined in K.A.R. 28-4-279; and

(K) medically indicated seclusion.

(2) Each facility shall designate as a medical consultant a physician licensed to practice in Kansas.

(3) Each facility shall obtain written consent from each youth's parent or legal guardian for medical and dental care.

(4) The medicine cabinet shall be located in an accessible, supervised area. The cabinet shall be kept locked. Medications taken internally shall be kept separate from other medications. All unused medication shall be safely discarded.

(5) All medications shall be administered by a designated staff member qualified to administer medications. Prescription medication shall be given from a pharmacy container labeled with the following:

(A) The youth's name;

(B) the name of the medication;

(C) the dosage and the dosage intervals;

(D) the name of the prescribing physician; and

(E) the date the prescription was filled.

Any changes of prescription or directions for administering a prescription medication shall be authorized, in writing, by a physician with documentation placed in the youth's record.

(6) All medication, including nonprescription medication, shall be given only in accordance with label directions, unless ordered differently by a physician. A record shall be kept in the youth's record documenting the following:

(A) The name of the person who gave the medication;

(B) the name of the medication;

(C) the dosage; and

(D) the date and time it was given.

(7) Each licensee shall make the following arrangements for emergency care:

(A) The secure residential treatment facility shall have a written record of the name, address, and telephone number of a physician licensed in Kansas to be called in case of emergency.

(B) Policies and procedures shall ensure the continuous care of youth who require emergency medical treatment.

(C) If a staff member accompanies a youth to the source of emergency care, the staff member shall remain with the youth for the duration of the emergency.

(D) Supervision of the other youth in the secure residential treatment facility shall not be compromised.

(E) The health history checklist and health assessment shall be taken to the emergency room with the youth.

(8) The licensee shall report each instance of suspected abuse or neglect and each incident resulting in the death of or in a serious injury to any staff member or youth that requires treatment at a hospital. The report shall be made within 24 hours, excluding weekends and holidays, to the department and the county health department in which the secure residential treatment facility is located. The licensee shall submit each written incident report to the department within five working days. If an injured youth is taken to a hospital or seen by a physician, the licensee shall ensure that the parent or legal guardian or custodian is notified as soon as possible. If suspected abuse or neglect of a youth occurs, the licensee shall ensure that the Kansas department of social and rehabilitation services is notified.

(9) The licensee shall ensure that any injury to a youth or staff member that is a result of suspected criminal action is reported immediately to the local law enforcement officials.

(10) The licensee shall ensure that any death of staff or a youth within the secure residential treatment facility is reported to the local law enforcement officials.

(b) Physical health of youth.

(1) The licensee shall ensure that a health history checklist is completed for each youth at the time of admission. This checklist shall be completed by the person who admits the youth, using forms supplied or approved by the department.

(A) The health checklist shall serve as a guide to determine if a youth is in need of immediate medical care.

(B) The licensee shall ensure that the secure residential treatment facility's physician is contacted for any youth who is taking a prescribed medication at the time of admission so that treatment is not interrupted.

(C) The licensee shall ensure that a physician is contacted for any youth who has acute symptoms of illness or who has a chronic illness. Communicable diseases shall be reported to the local county health department within 24 hours, excluding weekends and holidays.

(2) Within 72 hours of admission, a physician or a nurse certified by the department to conduct screening and health assessments shall review the health history checklist. Based upon health indicators derived from the checklist or in the absence of documentation of a screening within the past 24 months, the physician or certified nurse shall determine whether or not a full screening and health assessment are necessary.

(A) If necessary, the screening and health assessment shall be conducted by a licensed physician or by a nurse certified by the department to conduct these examinations.

(i) The screening and health assessment shall be completed within 10 days of admission.

(ii) The screening shall be based upon health assessment and screening guidelines provided or approved by the department.

(B) Medical and dental records shall be kept on forms provided or approved by the department and shall be kept current.

(C) The licensee shall ensure that each youth receives a tuberculin skin test. A chest x-ray shall be taken of all positive tuberculin reactors and those with a history of positive reaction. The proper treatment or prophylaxis shall be instituted. The results of this follow-up shall be recorded in the youth's record, and the county health department shall be informed of the results.

(D) Each licensee shall maintain a current health record that includes the following for each youth:

- (i) The youth's current immunization record;
- (ii) a health history checklist;
- (iii) documentation of the review of the health history checklist;
- (iv) documentation of the decision regarding the need for screening and health assessment;
- (v) the tuberculin skin test result;
- (vi) a list of medical contacts; and
- (vii) entries regarding the youth's health care plan.

(E) The health record shall accompany the youth when transferred. A copy of the health record shall be kept in the youth's record at the secure residential treatment facility.

(3) The licensee's written policies and procedures shall prohibit the use of tobacco in any form by youth while in care.

(c) Dental health of youth.

(1) Each licensee shall make emergency dental care available for all youth. Each youth's record shall include a report of a dental examination obtained within one year before or 60 days after admission.

(2) The secure residential treatment facility staff shall develop plans for dental health education and shall supervise the youth in the practice of good dental hygiene.

(d) Personal health of staff members and volunteers.

(1) Each person caring for youth shall meet the following requirements:

(A) Be free from communicable disease;

(B) be free from physical, mental, or emotional handicaps to the extent necessary to fulfill the responsibilities listed in the job description, and protect the health, safety, and welfare of the youth; and

(C) be free from impaired ability due to the use of alcohol or other drugs.

(2) Each staff member who may have contact with any youth shall receive a health examination within one year before employment. This examination shall be conducted by a licensed physician or a nurse authorized to conduct these examinations.

(3) Results of the health examination shall be recorded on forms supplied or approved by the department and kept on file. Health assessment records may be transferred from a previous place of employment, if the transfer occurs within one year of the examination date.

(4) The initial health examination shall include a tuberculin skin test. If there is a positive reaction to the tuberculin skin test or a history of previous positive reaction, a chest x-ray shall be required. Proof of proper treatment or prophylaxis shall be required. Documentation of the test, x-ray, and treatment results shall be kept on file in the person's health record.

(5) A tuberculin skin test or a chest x-ray shall be required if significant exposure to an active case of tuberculosis occurs or if symptoms compatible with tuberculosis develop. If there is a positive reaction to the diagnostic procedure, proof of

proper treatment or prophylaxis shall be required. The results of this follow-up shall be recorded in the person's health record. The licensee shall inform the department of each case described in this paragraph.

(6) Each licensee shall require all volunteers to present written proof of freedom from active tuberculosis before serving in the facility.

(7) Smoking shall not be permitted in the facility.

(e) Personal hygiene.

(1) The licensee shall ensure that each youth bathes upon admission and that each youth is given the opportunity to bathe daily.

(2) The licensee shall give all youth the opportunity to brush their teeth after each meal.

(3) The licensee shall furnish each youth with toothpaste and a toothbrush. Pump soap shall be available at all community sinks and showers.

(4) Each licensee shall make facilities for shaves and haircuts available.

(5) Each youth's washable clothing shall be changed and laundered at least twice a week. The licensee shall ensure that clean underwear and socks are available to each youth on a daily basis.

(6) Each female youth shall be provided personal hygiene supplies with regard to her menstrual cycle.

(7) The licensee shall ensure that clean, individual bath and face towels are issued to each youth at least twice a week. Bed linen shall be changed at least once a week.

(8) The licensee shall allow each youth to have at least eight hours of sleep each day. Fourteen hours of activity shall be provided. (Authorized by and implementing K.S.A. 1998 Supp. 65-508; effective, T-28-7-8-99, July 8, 1999; effective Nov. 5, 1999.)

28-4-342. Mental health policies. (a) The treatment and activities provided by the secure residential treatment facility for youth shall supplement and support the family-child relationship.

(b) The views of the parents, the youth, and the placing agent concerning factors important to them in the emotional development of the youth shall be considered by the staff in the services provided.

(c) The licensee shall assess the need for mental health services for each youth. The youth's plan of care shall include the need for mental health services and shall be developed to address the need for mental health services through a goal-directed process.

(d) Mental health concepts, as an integral aspect of total child development, shall be included in staff training and in parent-youth conferences. (Authorized by and implementing K.S.A. 1998 Supp. 65-508; effective, T-28-7-8-99, July 8, 1999; effective Nov. 5, 1999.)

28-4-343. Environmental standards. (a) General building requirements.

(1) Each secure residential treatment facility shall use public water and sewage systems, or shall have private water and sewage systems approved pursuant to K.S.A. 65-163 and K.S.A. 65-165, and amendments thereto.

(2) A licensed architect shall be responsible for the plans for any newly constructed building or for any major addition or alteration to an existing building.

(A) In the case of a new building, preliminary plans and outline specifications, including plot plans, shall be submitted to the department for review before commencing the final working drawings and specifications. The licensee shall submit the final working drawings, construction specifications, and plot plans to the department for review and written approval before the letting of contracts.

(B) In the case of an addition or alteration to an existing building, the licensee shall submit a written statement defining the proposed use of the construction and detailing the plans and specifications to the department for review and written approval before commencing construction.

(3) If construction is not commenced within one year of submitting a proposal for a new building or an addition or alteration to an existing building, the licensee shall resubmit the plans and proposal to the department before proposed construction begins.

(b) Location and grounds requirements.

(1) Community resources, including health services, police protection, and fire protection from an organized fire department, shall be available.

(2) There shall be at least 100 square feet of outside activity space available per youth allowed to utilize each area at any one time.

(3) The outside activity area shall be free of physical hazards.

(4) Sufficient space for visitor and staff parking at each secure residential treatment facility shall be provided.

(c) The water supply to each secure residential treatment facility shall be from a source approved

and certified by the department. Any privately owned water supply shall be approved by the county health officer or the department.

(d) Structural requirements.

(1) Facility construction shall provide for the removal of architectural barriers to disabled persons. All parts of each secure residential treatment facility shall be accessible to and usable by disabled persons.

(2) Each secure residential treatment facility's structural design shall facilitate personal contact and interaction between staff members and youth.

(3) Floors shall be smooth and free from cracks, easily cleanable, and not slippery. Floor covering for living quarters shall be required. All floor covering shall be kept clean and be maintained in good repair.

(4) Walls shall be smooth, easily cleanable, and sound. Lead-free paint shall be used on all painted surfaces.

(5) No youth's room shall be in a basement. The minimum square footage of floor space shall be 80 square feet in single rooms, and an average of no fewer than 60 square feet of floor space per person in rooms accommodating more than one person. At least one dimension of the usable floor space unencumbered by furnishings or fixtures shall be no fewer than seven feet. The minimum ceiling height shall be seven feet, eight inches over 90% of the room area. An even temperature of between 68°Fahrenheit and 78°Fahrenheit shall be maintained, with an air exchange of at least four times per hour.

(6) Bedrooms occupied by youth shall have a window source of natural light. Access to a drinking water source and toilet facilities shall be available 24 hours a day.

(7) Separate beds with level, flat mattresses in good condition shall be provided for each youth. Beds shall be above the floor level.

(8) Adequate, clean bedding shall be provided for each youth.

(9) All quarters utilized by youth shall have minimum lighting of 20 foot-candles in all parts of the room. There shall be minimum lighting of 35 foot-candles in areas used for reading, study, or other close work.

(10) There shall be adequate space for study and recreation.

(11) Each living unit shall contain the following:

(A) Furnishings that provide sufficient seating for the maximum number of youth expected to use the area at any one time;

(B) writing surfaces that provide sufficient space for the maximum number of youth expected to use the area at any one time;

(C) furnishings that are consistent with the security needs of the assigned youth; and

(D) adequate central storage for household supplies, bedding, linen, and recreational equipment.

(12) If the secure residential treatment facility is on the same premises as another child care facility, the living unit of the secure residential treatment facility shall be maintained in a separate, self-contained unit. Youth of the secure residential treatment facility shall not use space shared with other child care facilities at the same time.

(13) If a secure residential treatment facility has day rooms, the day rooms shall provide space for varied youth activities. Day rooms shall be situated immediately adjacent to the youth sleeping rooms, but separated from them by a floor-to-ceiling wall. Each day room shall provide at least 35 square feet per person, exclusive of lavatories, showers, and toilets, for the maximum number of youth expected to use the day room area at any one time.

(14) There shall be a working telephone readily accessible to staff members in all areas of the building. Emergency numbers, including fire, police, hospital, physician, poison control facility, and ambulance, shall be posted by each phone.

(15) The inside program and activity areas, excluding the sleeping rooms, day room, and classrooms, shall provide floor space equivalent to a minimum of 100 square feet per youth.

(16) Sufficient space shall be provided for contact visiting. There shall be adequately designed space to permit the screening and search of both youth and visitors. Storage space shall be provided for the secure storage of visitors' coats, handbags, and other personal items not allowed into the visiting area.

(17) Each room used for involuntary seclusion shall meet the following requirements for an individual bedroom:

(A) The walls of each room used for involuntary seclusion shall be completely free of objects.

(B) The door of each room used for involuntary seclusion shall be equipped with a window mounted in a manner that allows inspection of the entire room. The glass in this window shall be impact-resistant and shatterproof.

(C) The locking system for a room used for involuntary seclusion shall be approved by the state fire marshal or the fire marshal's designee.

(18) A service sink and storage area for cleaning supplies shall be provided in a well-ventilated room separate from kitchen and living areas.

(e) Food services.

(1) Food storage, preparation, and service shall comply with the departmental regulations governing food and lodging services.

(2) All foods not requiring refrigeration shall be stored at least six inches above the floor in clean, dry, well-ventilated storerooms or other approved areas with no overhead drain or sewer lines.

(3) Dry bulk food that is not in an original, unopened container shall be stored in metal, glass, or food-grade plastic containers with tightly fitting covers and shall be labeled.

(4) Poisonous or toxic materials shall not be stored with or over food. If medication requiring refrigeration is stored with refrigerated food, the medication shall be stored in a locked medicine box under all food items in the refrigerator.

(5) All perishables and potentially hazardous foods shall be continuously maintained at 45°Fahrenheit or lower in the refrigerator, or 10°Fahrenheit or lower in the freezer.

(A) Each cold storage facility shall be provided with a clearly visible, accurate thermometer.

(B) All foods stored in the refrigerator shall be covered.

(C) Food not stored in the original container shall be labeled with the contents and date.

(D) Raw meat shall be stored under all other food items in the refrigerator before cooking.

(E) Adequate facilities to maintain food temperatures required in this regulation shall be available.

(6) All dense, hot foods shall be stored in containers four or fewer inches deep.

(7) Food preparation and service.

(A) Each food preparation area shall be adequately equipped for the sanitary preparation and storage of food and washing of dishes and utensils. Food shall be prepared and served in a sanitary manner.

(B) Cooking equipment shall be kept clean and in good condition.

(C) Dishes shall have hard-glazed surfaces and shall be free of cracks and chips.

(D) Dishes, kitchen utensils, and serving equipment shall be maintained in a sanitary condition using one of the following methods:

(i) A three-compartment sink supplied with hot and cold running water to each compartment and a drain board for washing, rinsing, sanitizing, and

air drying, with an appropriate chemical test kit for testing the sanitizing solution;

(ii) a domestic-type dishwasher for groups of 24 or fewer persons;

(iii) a commercial-type dishwasher providing a 12-second rinse with 180°Fahrenheit water, for groups of 25 persons or more;

(iv) other methods of sanitizing by manual or mechanical cleaning in accordance with K.A.R. 28-36-24(a) (3) and (4); or

(v) the use of disposable plates, cups, and plastic utensils of food-grade medium weight. Disposable table service shall be used only one time and then destroyed.

(E) Tables shall be in good condition and shall be washed before and after each meal. Floors shall be swept after meals.

(F) Meat shall be thawed using one of the following methods:

(i) Removing the meat from the freezer in advance and putting it in the refrigerator to thaw;

(ii) placing the meat under running, tepid water 72°Fahrenheit until thawed; or

(iii) thawing in the microwave as part of the cooking process.

(8) Sanitary conditions.

(A) Only authorized persons shall be in the kitchen.

(B) Each kitchen shall be equipped with separate hand-washing facilities. Personnel shall wash their hands before handling food and after working with raw meat.

(C) Hair shall be restrained.

(D) No staff member with any open wounds or infections shall be involved in food preparation or service.

(E) Clean and soiled linen shall be properly stored in the kitchen area.

(F) All trash cans in the restroom used by the kitchen staff shall be covered.

(9) Food safety.

(A) All dairy products shall be pasteurized. Dry milk shall be used for cooking only.

(B) Home-canned foods, other than jams and jellies, and home-frozen foods shall not be served.

(C) Commercially canned food from dented, rusted, bulging, or leaking cans, and food from cans without labels shall not be used.

(10) Nutrition.

(A) Meals and snacks shall meet the nutritional needs of the youth in accordance with recommended dietary allowances. A sufficient quantity of food shall be prepared for each meal to allow

each youth second portions of vegetables, fruit, bread, and milk.

(B) Special diets shall be provided for youth, if medically indicated, or to accommodate religious practice, as indicated by a religious consultant.

(C) Menus shall be planned one week in advance. Copies of the menus for the preceding month shall be kept on file and available for inspection.

(11) If meals are catered, the following requirements shall be met:

(A) The meals shall be obtained from sources licensed by the department.

(B) Food shall be transported in covered and temperature-controlled containers. Hot foods shall be maintained at not less than 140° Fahrenheit, and cold foods shall be maintained at 45° Fahrenheit or less.

(f) Toilets and lavatories.

(1) For each eight or fewer youth of each sex, there shall be at least one toilet, one lavatory, and either a bathtub or a shower. All toilets shall be above floor level.

(2) Each bathroom shall be ventilated. Each inside bathroom shall have a mechanical ventilating system to the outside, with a minimum of 10 air changes per hour.

(3) Toilet and bathing facilities and drinking water shall be convenient to sleeping quarters and living and recreation rooms.

(4) Cold and hot water, not exceeding 120° Fahrenheit, shall be supplied to lavatories, bathtubs, and showers.

(5) Toilet facilities and drinking water shall be convenient to the reception and admission areas.

(6) Locked sleeping rooms shall be equipped with a drinking fountain, lavatory, and toilet, unless a communication system or procedure is in effect to give the resident immediate access to a lavatory, toilet, and drinking water.

(g) Laundry.

(1) If laundry is done at the secure residential treatment facility, laundry fixtures shall be located in an area separate from food preparation areas and shall be installed and used in a manner that safeguards the health and safety of the youth.

(2) Soiled linen shall be stored separately from clean linen.

(3) Blankets shall be laundered or sanitized before reissue.

(4) Blankets, when used with sheets, shall be laundered at least once each month.

(5) Mattresses shall be water-repellent and washed down and sprayed with disinfectant be-

fore reissue. Mattress materials and treatments shall meet state fire marshal regulations.

(6) Adequate space shall be allocated for the storage of clean and dirty linen and clothing. If an in-house laundry service is provided, adequate space shall be allocated for the laundry room and the storage of laundry supplies, including locked storage for chemical agents used in the laundry area.

(h) Building maintenance standards.

(1) Each building shall be clean at all times and free from accumulated dirt, vermin, and rodent infestation.

(2) Floors and walking surfaces shall be kept free of hazardous substances at all times.

(3) A schedule for cleaning each building shall be established and maintained.

(4) Floors shall be swept and mopped daily.

(5) Washing aids, including brushes, dish mops, and other hand aids used in dishwashing activities, shall be clean and used for no other purpose.

(6) Mops and other cleaning tools shall be cleaned and dried after each use and stored in a well-ventilated place on adequate racks.

(7) Insecticides, rodent killers, and other poisons shall be used under careful supervision. These and other poisons shall be stored in a locked area.

(8) Toilets, lavatories, sinks, and other such facilities in the living quarters shall be cleaned thoroughly each day. (Authorized by and implementing K.S.A. 1998 Supp. 65-508; effective, T-28-7-8-99, July 8, 1999; effective Nov. 5, 1999.)

DETENTION CENTERS AND SECURE CARE CENTERS FOR CHILDREN AND YOUTH

28-4-350. Definitions. The following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(a) "Center" means a detention center or a secure care center. It may be owned and operated by public or private entities and includes the staff and services as well as the buildings and grounds.

(b) "Corporal punishment" means any method of physical discipline which inflicts pain.

(c) "Detention" means the temporary care of alleged or adjudicated children in need of care or alleged or adjudicated juvenile offenders who require secure custody pursuant to the Kansas code for the care of children, K.S.A. 38-1501 et seq. and amendments thereto, or the Kansas juvenile offender code, K.S.A. 38-1601 et seq. and amendments thereto.

(d) "Detention center" means a juvenile detention facility as defined in K.S.A. 38-1502(i) and K.S.A. 38-1602(f) and which requires a license pursuant to K.S.A. 65-501 et seq. Detention centers shall meet the requirements for licensure included in K.A.R. 28-4-351 through 360, unless specifically exempted.

(e) "Director" means the person responsible for the overall planning, organization, operation and fiscal management of the center. This person is directly responsible to the governing body.

(f) "Direct supervision" means physical presence of youth care staff in close proximity to allow for interaction and direct eye contact with juveniles.

(g) "Discipline" means the on-going process of helping children develop inner control so that they can manage their own behavior in a socially-approved manner.

(h) "Facility manager" means the person responsible for overseeing the daily operation of the center, including staff scheduling, food service, purchasing, housekeeping and maintenance.

(i) "Governing body" means the governing board of a private corporation or the designated policy-making committee of a public agency.

(j) "Intervention" means the use of certain skills or techniques for problem or conflict resolution or diffusion of anger.

(k) "Isolation" means removal of a juvenile from other juveniles to a separate locked room or quarters.

(l) "Juvenile" means a child or youth who is accepted for care in a detention or secure care center.

(m) "License" means a document issued by the Kansas department of health and environment which authorizes a public agency, person, corporation, firm, association or other organization to operate and maintain a detention center or a secure care center.

(n) "Non-secure facility" means a facility not characterized by the use of physically restricting construction, hardware and procedures and which provides the juveniles access to the surrounding community with minimal supervision.

(o) "Placing agent" means the person, social agency or court possessing the legal right to place a child.

(p) "Program" means the comprehensive and coordinated set of activities and social services providing for care, protection and development of juveniles while in the care of the center.

(q) "Program manager" means the person who is responsible for the overall development and implementation of the program and staff development.

(r) "Program personnel" means all persons directly involved with the development and implementation of the program.

(s) "Residential care" means 24 hour care.

(t) "Secure care center" means a secure youth residential facility, other than a juvenile detention center, used to provide care and treatment for alleged or adjudicated children in need of care pursuant to the Kansas code for the care of children. Secure care centers shall meet the requirements for licensure included in K.A.R. 28-4-351 through 360, unless specifically exempted.

(u) "Secure facility" means a facility which is operated or structured to ensure that all entrances and exits from such facility are under the exclusive control of the staff, whether or not the juveniles have freedom of movement within the perimeters of the facility, or which relies on locked rooms and buildings, fences or physical restraint in order to control the behavior of the residents. No secure facility, other than a juvenile detention center, shall be attached to or on the grounds of an adult jail or lockup.

(v) "Staffing" means a special client-centered meeting regarding specific issues.

(w) "Temporary care" means residential care not to exceed 90 days.

(x) "Volunteer" means a person or community group that has an interest in providing supportive services to juveniles and offers to provide specific services without remuneration.

(y) "Youth care staff" means the program personnel whose primary responsibility is to implement the program on a daily basis, including direct supervision, interaction and protection of the juveniles. (Authorized by K.S.A. 65-508, and implementing K.S.A. 65-503; effective May 1, 1979; amended Feb. 26, 1990; amended Aug. 23, 1993.)

28-4-351. Licensing procedures. (a) A person shall not conduct a center for children under 16 years of age, unless the person has been issued a license to do so by the department.

(b) Any person desiring to conduct a center shall apply for a license on forms provided by the department and submit the license fee as specified in K.S.A. 65-505, and amendments thereto.

(c) Centers operated by or receiving support

from county or municipal governments shall meet the same requirements for licensure as those for facilities operated by nongovernmental entities.

(d) Each application for a license shall be accompanied by the following:

- (1) A written proposal that details the following:
 - (A) The purpose of the center;
 - (B) the administration plan for the program, including an organizational chart;
 - (C) the financing plan for the program;
 - (D) staffing for the program, including job descriptions; and
 - (E) the program to be offered, including the number, age range, and sex of the juveniles to be served;

(2) a copy of the written notification that was submitted to the school district where the facility is located, including the following:

- (A) The planned opening date;
- (B) the number, age range, and anticipated special education needs of the residents to be served; and

(C) a request for on-site educational services or a request for approval of proposed alternative formal schooling to be provided by the licensee, as required by K.A.R. 28-4-355;

(3) documentation that the notification required by paragraph (d)(2) was received by the school district at least 90 days before the planned opening date;

(4) the floor plans for each building to be used as a center; and

(5) documentation of the state fire marshal's approval.

(e) Plans for all buildings to be used as a center shall be submitted to the department before submitting an application for a license.

(f) A license shall be issued if the secretary finds that the applicant is in compliance with the requirements of K.S.A. 65-501 through 65-516, and amendments thereto, and the regulations promulgated pursuant to those statutes and if the applicant has made payment of the license fee required by K.S.A. 65-505, and amendments thereto.

(g) Each applicant shall submit a report, on forms provided by the department, containing the identifying information that is necessary to complete the criminal history and child abuse registry background check for each person who resides, works, or regularly volunteers in the center, excluding children placed in care.

(1) Each center shall submit a current report as follows:

(A) Annually with a notice of intent to continue licensure; and

(B) within one week of the date any new person resides, works, or regularly volunteers in the center, excluding children placed in care.

(2) A copy of each report shall be kept on file at the facility.

(h) Each center shall notify the department of its intent to continue licensure on forms supplied by the department. Each licensee who wishes to continue licensure shall submit, within 30 days of the department's request, the notice of intent to continue licensure and the fee as specified in K.S.A. 65-505, and amendments thereto. Documentation of the fire safety inspection and approval provided by the state fire marshal or the state fire marshal's designee shall be required annually.

(i) Each licensee shall notify the secretary and obtain written approval from the secretary before making any change in any of the following:

- (1) The use of the buildings; or
- (2) the program, provided through either of the following:

- (A) Direct services; or
- (B) agreements with specified community resources.

(j) The notification of any proposed change in the program shall include the following:

(1) A copy of the written notification of the proposed change that was submitted to the school district where the facility is located; and

(2) documentation that the notification required by paragraph (j)(1) was received by the school district at least 90 days before the anticipated date of any proposed change.

(k) Waiver of 90-day notification to the local school district. The 90-day notification to the local school district may be waived by the secretary upon receipt of a written agreement by the local school district.

(l) Request to withdraw an application or terminate a license.

(1) Each applicant shall inform the department if the applicant desires to withdraw the application. The withdrawal of the application shall be acknowledged by the department in writing. A new application and fee shall be required before opening a center. No applicant shall admit a child before the applicant receives a license.

(2) Each licensee shall inform the department if the licensee desires to terminate the license. The licensee shall return the license to the department with the request to terminate the license. The

request and the license shall be accepted by the department. The licensee and other appropriate agencies shall be notified by the department that the license is terminated and that the center is considered closed. The former licensee shall submit a new application and fee to the department if that person desires to obtain a new license. That person shall not reopen the center or admit any child before receiving a new license.

This regulation shall be effective on and after July 30, 2002. (Authorized by K.S.A. 2001 Supp. 65-508; implementing K.S.A. 2001 Supp. 65-501, 65-504, 65-505, 65-506, 65-508, and 65-516; effective May 1, 1979; amended, T-83-24, Aug. 25, 1982; amended May 1, 1983; amended, T-87-34, Nov. 19, 1986; amended May 1, 1987; amended Aug. 23, 1993; amended, T-28-4-1-02, April 1, 2002; amended July 30, 2002.)

28-4-352. Terms of license. (a) The maximum number and age range of juveniles who may be cared for in each living unit shall be specified on each license.

(b) Any license issued shall not be transferable and shall be valid only for the original licensee at the address appearing on the license. A new application shall be submitted for each change of ownership, sponsor, or address of the center.

(c) The license shall not be construed to permit placement of children.

(d) No activities which would interfere with the care of the juveniles shall be carried out in the center.

(e) Advertisements shall conform to the statement of services provided on the application. Under no circumstances shall claims regarding specialized services be made unless the center is staffed and equipped to offer the services or has made arrangements for the services as outlined in K.A.R. 28-4-355. No general claim regarding "state approval" shall be made unless the center has obtained a full license issued by the Kansas department of health and environment.

A license for an additional facility operated by a licensee shall not be issued until all existing facilities operated by the licensee are in compliance with licensing regulations. (Authorized by K.S.A. 65-508 and implementing K.S.A. 65-504 and K.S.A. 65-508; effective May 1, 1979; amended Aug. 23, 1993.)

28-4-353. Administration. (a) Organization.

(1) The center shall be administered by:

(A) A public agency; or

(B) A private entity with a governing board which is legally responsible for the operation, policies, finances and general management of the center. The director shall not be a voting member of the governing board.

(2) If the sponsor is a private corporation, it shall be a corporation qualified in the state of Kansas, and shall operate in accordance with an established constitution and by-laws. A copy of the articles of incorporation and by-laws shall be furnished to the Kansas department of health and environment. It shall include a non-discrimination statement which complies with state and federal civil rights laws.

(b) Administrative policies.

(1) Each center shall have written plans and policies of organization and administration clearly defining legal responsibility, administrative authority and responsibility for comprehensive services, including an organizational chart as approved by the governing body. Changes in policies shall be submitted to the Kansas department of health and environment for licensing approval.

(2) Center personnel and administrative policies shall be distributed to staff members.

(c) Finances.

(1) Funding.

(A) Each center shall have sound and sufficient finances to ensure effective services. Financing plans shall be a responsibility of the governing body. It shall be the responsibility of the licensee to provide the financial resources necessary to maintain compliance with licensing regulations.

(B) Solicitation of funds by charitable organizations shall be made in Kansas in compliance with K.S.A. 17-1759 et seq.

(C) Juveniles shall not be exploited in any fund-raising efforts.

(2) Financial records.

(A) Each center shall maintain financial records sufficient to verify resources and expenditures. Each center shall account for major expenditures on behalf of the juveniles for whom payment is received.

(B) Each juvenile's personal money shall be kept separate from the center funds in an individual account, in accordance with accepted accounting procedures.

(C) A yearly audit by an independent accountant shall be conducted, and a copy of the audit shall be available at the center for review by the staff of the Kansas department of social and reha-

bilitation services and the Kansas department of health and environment.

(D) The licensee shall make available to the Kansas department of social and rehabilitation services and the Kansas department of health and environment an annual financial statement verifying assets and liabilities.

(3) Insurance.

(A) Each center shall maintain at a minimum the following insurance:

(i) Professional and civil liability for employees; and

(ii) Liability for injury or personal property damage.

(B) Public agencies and private entities shall purchase motor vehicle liability insurance policies containing limits of liability with respect to each vehicle, exclusive of interest and costs:

(i) not less than \$100,000 for personal injury or death in any one accident;

(ii) not less than \$300,000 for personal injury to, or death of, two or more persons in any one accident; and

(iii) not less than \$50,000 for harm to or destruction of property of others in any one accident.

(d) Personnel policies.

(1) Each center shall have written personnel policies, approved and reviewed annually by the governing body. Written personnel policies shall be provided to each staff member upon employment. The policies shall include:

(A) hiring practices;

(B) job descriptions, including qualifications, duties and responsibilities for each staff position;

(C) hours;

(D) sick and vacation leave;

(E) grievance procedures;

(F) salaries, benefits and staff development.

(2) A personnel record shall be maintained for each employee and made available to the employee upon written request.

(e) Staffing.

(1) The governing body of the center shall designate a director whose responsibility is the overall administration of the center.

(2) A written daily staff schedule shall be developed and followed. There shall be:

(A) Adequate male and female staff to directly supervise and interact with the juveniles at all times and provide for their physical, social, emotional and educational needs;

(B) one youth care staff member on active duty for each seven juveniles during waking hours and

one youth care staff member on active duty for each 11 juveniles during sleeping hours;

(C) at least one male and one female youth care staff member present, awake and available to the juveniles at all times.

(3) At no time shall there be less than two youth care staff members on active duty when a juvenile is in care.

(4) At no time shall any one youth care staff member directly supervise more than 11 juveniles. Juveniles shall not be left in a room unattended except that, during sleeping hours, there shall be a minimum of one youth care staff member immediately available to every 11 juveniles in a connecting area to the sleeping rooms. Supervision of juveniles in locked isolation shall comply with K.A.R. 28-4-355b (c)(4)(J) and (K).

(5) Alternate youth care staff members shall be provided for the relief of the regular staff members on a one-to-one basis in compliance with the staffing pattern required in K.A.R. 28-4-353(e)(4).

(6) Electronic supervision shall not replace the youth care staffing requirements.

(7) Auxiliary staff members shall be available as needed. The auxiliary staff shall include food service, clerical and maintenance personnel. Auxiliary staff members shall not be included in meeting youth care staff requirements.

(8) Professional consultant services shall be available as required to meet the needs of the juveniles served. Professional consultants shall include physicians, dentists, nurses, clergy, social workers, psychologists, psychiatrists and teachers.

(9) A volunteer shall not be used as a substitute for an essential program or operating staff member but shall augment the services provided by the staff.

(10) There shall be a designated staff person on site and in charge of the facility at all times when a juvenile is in care. Procedures shall be in place to ensure that all staff members know who is in charge.

(f) Community and volunteer involvement.

(1) Written policies and procedures shall provide for securing community and volunteer involvement in programs. The policies and procedures shall specify a screening and selection process and shall encourage recruitment from all cultural and socio-economic segments of the community.

(2) Written policies and procedures shall govern the volunteer program, specifying the lines and scope of authority, responsibility and accountability. The policies and procedures shall include:

- (A) Screening, selection and termination;
- (B) orientation and training requirements for each respective volunteer assignment;
- (C) a requirement that each volunteer who provides professional services shall meet the same requirements as would be expected of a paid professional staff member providing those services;
- (D) supervision;
- (E) identification of the volunteer while in the facility; and
- (F) provision for a background check as required by K.A.R. 28-4-351(g).

(3) Each volunteer shall agree in writing to abide by all center policies, particularly those relating to security, confidentiality of information and mandatory reporting laws pertaining to suspected abuse, neglect and exploitation of juveniles.

(4) Each volunteer who will have contact with juveniles shall have a health assessment, including a screen for tuberculosis.

(5) Written policies and procedures shall provide that the director may curtail, postpone or discontinue the services of a volunteer or volunteer organization when there are substantial reasons for so doing. (Authorized by K.S.A. 65-508 and implementing K.S.A. 65-508 and 65-516; effective May 1, 1979; amended Aug. 23, 1993.)

28-4-353a. Staff development. (a) Each person having contact with juveniles shall demonstrate emotional maturity, sound judgment, and a sound knowledge of the developmental needs of children.

(b) Center director qualifications.

(1) Each center director shall demonstrate the following skills and abilities:

(A) Thorough knowledge of the Kansas code for the care of children and the Kansas juvenile offender code;

(B) considerable knowledge of principles and techniques applicable to the care and rehabilitation of juveniles and to the growth, development, needs and unique problems of children;

(C) considerable knowledge of the principles, practices, methods and techniques of administration and management;

(D) ability to train, supervise, plan, direct and evaluate the work of others, as documented by experience, training or a combination of both;

(E) ability to establish and maintain effective working relationships with others; and

(F) ability to establish and maintain effective working relationships with the courts, law en-

forcement agencies, schools and community organizations.

(2) Each detention center director shall have at least a bachelor's degree in social work, human development and family life, psychology, education or criminal justice, with a minimum of 15 semester hours in courses related to child or adolescent development or juvenile delinquency, and shall have a minimum of three years of administrative or supervisory experience within a child care or juvenile justice agency.

(3) Each detention center director shall demonstrate thorough knowledge of the methods and techniques used in dealing with juvenile offenders in an institutional or detention setting.

(4) Each secure care center director shall have at least a master's degree in social work or a related field, or shall have a bachelor's degree in social work, human development and family life, psychology or education and a minimum of three years of supervisory experience within a child care agency.

(5) Each secure care center director shall demonstrate thorough knowledge of the methods and techniques used in dealing with juveniles in a residential setting;

(c) Each facility manager shall have at least a bachelor's degree and have three years of supervisory experience in a child care or juvenile justice agency serving youth of the same age and shall demonstrate thorough knowledge of the methods and techniques used in dealing with juvenile offenders in an institutional or detention setting. The facility manager may be the same person as the program manager if the qualifications for program manager required by K.A.R. 28-4-353a(d) are met.

(d) Each program manager shall have at least a bachelor's degree in social work or human development and family life, and shall have one year of supervisory experience in a child care or juvenile justice agency serving youth of the same age. The program manager may be the same person as the facility manager.

(e) Youth care staff and alternate youth care staff shall, before employment:

(1) Be twenty-one years of age or older;

(2) have a high school diploma or its equivalent; and

(3) have a minimum of:

(A) Three semester hours of college-level study in adolescent development, psychology or a related subject;

(B) forty-five clock hours in documented training in child care or child development; or

(C) one year of experience as a child care worker or house parent in a facility serving youth of the same age.

(f) Professional staff and consultants shall meet all Kansas qualification and licensing requirements for their profession.

(g) Food service staff shall:

(1) Comply with Kansas health standards as enumerated in K.A.R. 28-36-22;

(2) have knowledge of the nutritional needs of children and youth;

(3) understand quantity food preparation and service; and

(4) practice sanitary food handling and storage methods.

(h) Staff professional development. Professional development shall consist of organized, evaluated activity designed to achieve specific learning objectives. Professional development may occur through workshops, seminars, staff meetings or through closely supervised on-the-job training.

(1) Each center shall have written policies and procedures governing orientation and ongoing inservice training. Each employee shall receive orientation training before being independently assigned a particular job.

(2) Each youth care staff member shall receive at least eight hours of orientation training before assuming supervisory responsibility of juveniles and an additional 32 hours of orientation training before assuming independent responsibility for supervision of juveniles. There shall be written documentation of orientation training. Orientation training shall include, but not be limited to:

(A) Accident and injury prevention;

(B) child abuse, neglect and exploitation reporting;

(C) crisis management and intervention;

(D) emergency and safety procedures to follow in the event of an emergency, bomb threat, fire, tornado, riot or flood;

(E) facility policies and procedures;

(F) first aid including rescue breathing;

(G) health, sanitation and safety measures;

(H) job duties and responsibilities;

(I) juvenile rights;

(J) observation of symptoms of illness and communicable diseases;

(K) policies regarding behavior management, use of restraints and crises intervention.

(L) problem solving;

(M) report writing;

(N) security procedures; and

(O) suicide prevention.

(3) Each director, facility manager, program manager and each person having contact with juveniles shall complete a minimum of 40 clock hours of inservice training per year. Inservice training shall include, but not be limited to:

(A) Accident and injury prevention;

(B) child abuse symptoms and reporting;

(C) child care practices;

(D) child psychosocial growth and development;

(E) first aid including rescue breathing;

(F) juvenile court process;

(G) licensing regulations;

(H) observations of symptoms of illness and communicable diseases;

(I) suicide prevention; and

(J) use of restraints.

(4) Each program manager shall attend at least one training event per year away from the center in addition to the inservice training conducted at the center. (Authorized by and implementing K.S.A. 65-508; effective Aug. 23, 1993.)

28-4-353b. Records. (a) Personnel records. Individual records shall be kept for each staff member which shall include the staff member's:

(1) Job application, including all:

(A) Identifying information;

(B) qualifications including documentation and verification; and

(C) character and employment references.

(2) terms of employment and job description;

(3) employment dates and annual performance reviews;

(4) health certificates, including a record of the results of a health assessment and tuberculin test, documented on forms supplied or approved by the Kansas department of health and environment;

(5) documentation of orientation and inservice training and continuing education;

(6) documentation of the report submitted to the Kansas department of health and environment for purpose of a background check for criminal and child abuse histories in accordance with K.A.R. 28-4-351(g).

(7) documentation that the employee has read, understands and agrees to follow:

(A) the statutes and regulations regarding mandatory reporting of suspected child abuse, neglect and exploitation;

(B) the regulations for licensing detention centers and secure care centers for children and youth;

(C) the facility's policies and procedures, including personnel, administrative, daily and behavior management policies and procedures; and

(D) policies providing for a drug free workplace; and

(8) grievance and incident reports regarding the specific employee, including the means of resolution of each report.

(b) Volunteer records. Individual records shall be kept on the center-related activities of each volunteer. These records shall include the volunteer's:

(1) Identifying information;

(2) job description;

(3) dates of service and performance reviews;

(4) documentation of orientation to the facility and specific assignment;

(5) documentation that the volunteer has read, understands and agrees to follow center policies and procedures, particularly those related to security, confidentiality of information and mandatory reporting of suspected child abuse and neglect;

(6) documentation of freedom from active tuberculosis;

(7) documentation of the report submitted to the Kansas department of health and environment for purpose of a background check for criminal and child abuse histories in accordance with K.A.R. 28-4-351(g).

(8) a copy of the health assessment required in K.A.R. 28-4-353(f)(4).

(c) Juvenile records.

(1) Written policies and procedures shall govern record management and shall include, but not be limited to:

(A) The establishment, utilization, content, privacy, security and preservation of records.

(B) the schedule for the retirement and destruction of inactive case records; and

(C) a provision for review of policies and procedures at least annually and revision as needed.

(2) A register of all juveniles in care shall be kept by each center. The register shall include the following information for each juvenile:

(A) Name;

(B) date of birth;

(C) the name and address of each parent or legal guardian, person with whom juvenile resides at time of admission;

(D) the name and address of the legal custodian, if not the parent or legal guardian;

(E) the name and address of closest living relative if other than parent or guardian;

(F) the reason for admission; and

(G) the dates of admission and release.

(3) Upon the release of each juvenile from a detention center, a completed admission and release form, supplied by the Kansas bureau of investigation, shall be submitted to the bureau.

(4) Individual records shall be kept for each juvenile which shall include the juvenile's:

(A) Identifying information;

(B) legal status;

(C) legal custodian;

(D) arrest record;

(E) court order or journal entry for any juvenile in care longer than 48 hours;

(F) medical and dental permission forms, signed by a parent or legal guardian. The permission form used shall be one which is acceptable to the vendor who will provide the service; and

(G) a written inventory of all money and personal property of the juvenile signed by the juvenile and the admitting staff member.

(5) A daily log of each juvenile's behavior, with notations regarding any special problems during detention and the response of the staff to any problems shall be kept in each juvenile's individual record file. Each entry shall be initialed by the staff member making the entry.

(6) A list of all juveniles receiving care shall be submitted upon request to the Kansas department of health and environment on forms provided or approved by the department.

(7) Information from a juvenile's records shall not be released without written permission from the juvenile's parent or legal guardian. When the parent or legal guardian is not available to provide written permission, an order of the court having valid jurisdiction shall be acceptable. Improper disclosure of records or information regarding a juvenile shall be grounds for revocation or suspension of the center's license or permit in force, or the denial of a center's application for licensure.

(8) Written policy, procedure and practice shall provide for the transfer of specific juvenile case file information upon release of a juvenile to another center or other residential care. Specific case file information shall precede or accompany the juvenile and shall include:

(A) Identifying information;

(B) medical records;

(C) immunization records;

(D) insurance information;

- (E) medical card, when applicable;
 - (F) school placement information, including present courses of study; and
 - (G) the name and address of each parent or legal guardian.
- (9) Additional case file information to be transferred shall accompany the juvenile or be transferred within 72 hours. (Authorized by and implementing K.S.A. 65-508; effective Aug. 23, 1993.)

28-4-354. Admission and release policies.

(a) Written admission policies and procedures of the center shall be approved by the governing body in accordance with goals and purposes of the center and Kansas statutes.

(b) Admission procedures and practice shall include but not be limited to:

- (1) Collecting identifying information;
- (2) verifying the legal authority to detain;
- (3) completing a health history checklist. This checklist shall be completed by the admitting staff person, using a form approved by the Kansas department of health and environment. A description of bruises, abrasions, symptoms of illness and current medications shall be documented on this form;
- (4) assessing the juvenile's suicide risk potential;
- (5) documenting the notification of the juvenile's parents or legal guardian and legal custodian, if not the parent or legal guardian, in accordance with Kansas juvenile code.
- (6) assisting the juvenile in contacting the juvenile's family at the time of admission.
- (7) conducting an intake interview. Designated staff members shall conduct each intake interview;
- (8) providing an orientation to the center in a manner which is understandable to the juvenile. Completion of the orientation and receipt of all written orientation materials shall be documented by a signed statement from the juvenile;
- (9) notifying the appropriate intake officer;
- (10) searching the juvenile and the juvenile's possessions;
- (11) documenting the juvenile's clothing and personal possessions and disposition. A written inventory of all money and personal property of the juvenile shall be signed by the juvenile and the admitting staff member and kept with the juvenile's record. If the juvenile refuses to sign the inventory, the refusal shall be documented in the juvenile's record;
- (12) distributing personal hygiene items;

- (13) providing for a shower and hair care;
- (14) issuing clean, laundered clothing, if necessary; and

(15) assigning the juvenile to a sleeping room.

(c) No juvenile shall be admitted to:

(1) A detention center, except as authorized by K.S.A. 38-1528 subsections (a) or (b) or by K.S.A. 38-1640 and any amendments thereto; or

(2) a secure care center, except as authorized by K.S.A. 38-1502(a)(10) or by K.S.A. 38-1568 and any amendments thereto.

(d) No juvenile shall be admitted who shows evidence of being seriously ill, injured, intoxicated or physically or mentally impaired until the juvenile is examined and approved for admission by a physician licensed to practice in Kansas.

(e) A center shall not accept permanent legal guardianship of a juvenile.

(f) Release policies.

(1) All releases shall be approved by the court of jurisdiction or the designated authority.

(2) The center shall provide release forms to be signed by the person to whom the juvenile is released and by the staff person releasing the juvenile.

(3) Temporary releases for court attendance, medical appointments or placement visits, or other necessary purposes shall be permitted when authorized by the court or its designated official.

(4) Procedures and practice for release of juveniles shall include:

(A) Verification of identity.

(B) completion of any pending action, including any grievance or claim for damages or lost possessions;

(C) transportation arrangements;

(D) instructions for forwarding mail; and

(E) return of money and personal property to the juvenile. A receipt for all money and personal property shall be signed by the juvenile.

(5) Juvenile records shall be transferred in accordance with Kansas statutes and regulations and with center policies.

(g) The length of stay for each juvenile admitted for care in a detention center shall not exceed 90 days unless an exception is granted by the Kansas department of health and environment. Each request for an exception shall be received by the department prior to the ninetieth day of the juvenile's stay. Each exception request shall be in writing and provide:

(1) Identification of the juvenile for whom an exception is requested;

(2) the specific reason why an exception is requested;

(3) the projected release date; and

(4) the total number of service days requested. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1979; amended Aug. 23, 1993.)

28-4-355. Program and services. (a) A written plan and daily routine shall be maintained for all juveniles which shall include: meals, rest and sleep, personal hygiene, physical exercise, recreation, counseling, education and social services.

(b) Classroom instruction shall be provided on-site by teachers holding appropriate certification from the Kansas board of education.

(1) Education services shall be coordinated with the local school district. During the local school year, each juvenile shall receive a minimum of six hours of instruction per day, excluding weekends and holidays.

(2) For each juvenile currently enrolled in a Kansas public school, contact shall be maintained with the juvenile's home school district to ensure the continuity of each juvenile's education.

(3) A regular schedule of instruction and related educational services appropriate to the needs of each juvenile shall be provided.

(4) Youth care staff shall be stationed in proximity to the classroom, with frequent, direct, physical observation of the classroom activity at least every 15 minutes, to provide immediate support to the teacher.

(c) Library services.

(1) Each center shall have written policies and procedures which govern the center's library program, including acquisition of materials, hours of availability and staffing.

(2) Library services shall be available to all juveniles.

(A) Reading and other library materials may be provided for use during non-library hours.

(B) Library materials shall be appropriate for various levels of competency.

(C) Reading material shall reflect racial and ethnic interests.

(d) Recreation.

(1) All centers shall provide indoor and outdoor recreational areas and equipment where security and visual supervision can be easily maintained, and unless restricted for health reasons, all juveniles shall be allowed to engage in supervised indoor and outdoor recreation on a daily basis.

(2) Art and craft supplies, books, current magazines, games and other indoor recreational materials shall be provided for leisure time activities.

(e) Work.

(1) Work assignments shall not be used as a substitute for recreation.

(2) Juveniles shall be prohibited from performing such duties as:

(A) Personal services for the staff;

(B) cleaning or maintaining areas away from the center;

(C) replacing employed staff;

(D) any work experience defined as hazardous by the Kansas department of human resources regulations governing child labor.

(3) After receiving the required youth care staff orientation and training, auxiliary staff may supervise work activities. Youth care staff shall be within visual and auditory distance to provide immediate support, if necessary.

(f) Visitation and communication.

(1) All facilities shall provide telephone and contact visitation rights for parents, legal guardians, legal representatives and other visitors approved by personnel designated by the director or the governing body. Private telephone conversation and visitation shall be allowed, except when a documented need to protect the juvenile or the security of the facility dictates otherwise.

(2) Written telephone and contact visitation policies and procedures shall be made available to all juveniles, parents, legal guardians and legal representatives.

(3) A juvenile shall not be denied the right to contact his or her attorney or court counselor. No court counselor or attorney shall be refused visitation of a juvenile to whom the counselor or attorney has been assigned.

(4) There shall be no censorship of mail or written communication, except to check for contraband, unless there is sufficient reason to believe that the security of the center is at risk. Suspect mail shall be opened by center staff in the presence of the addressee. If mail is to be read, the juvenile is to be informed in advance and present when the mail is opened. The reason for each occasion of censorship shall be documented and kept in the juvenile's record.

(5) Writing materials and postage for the purposes of correspondence shall be available to juveniles. Materials and postage for at least two letters per week shall be provided for each juvenile.

(6) Juveniles shall be provided access to the telephone to make and receive personal calls.

(7) First class letters and packages shall be forwarded after transfer or release of each juvenile.

(g) Transportation. Written policies and procedures shall govern the transportation of juveniles outside the center and from one jurisdiction to another.

(1) Transportation procedures and practice shall include, but not be limited to:

(A) Precautions to prevent escape during transfer; and

(B) documentation of current, appropriate licensure for each center driver.

(2) When the center is transporting juveniles, each transporting vehicle shall be center owned or leased and shall have a yearly safety check. A record of the yearly safety check and all repairs or improvements made shall be kept on file at the center.

(3) Each transporting vehicle operated by the center shall be equipped with an individual seat belt for the driver, each juvenile passenger and each additional passenger. The driver, each juvenile passenger and each additional passenger shall use the seat belts at all times.

(4) Smoking in the transporting vehicle shall be prohibited while juveniles are being transported.

(5) Juveniles shall be delivered to the designated destination by the most direct route. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1979; amended Aug. 23, 1993.)

28-4-355a. Rights of juveniles. (a) The rights of juveniles while in detention or secure care shall not be diminished or denied for disciplinary reasons.

(b) Written policies and procedures shall provide that juveniles are assured their rights subject only to the limitations necessary to maintain order and security in the center. Procedures and practice shall ensure the following:

(1) Freedom from personal abuse, corporal or unusual punishment, excessive use of force, humiliation, harassment, mental abuse or punitive interference with the daily functions of living, such as eating or sleeping;

(2) freedom from discrimination based on race, culture, religion, national origin, sex or disability;

(3) equal access to programs and services for both male and female juveniles in co-ed facilities;

(4) receipt and explanation of written rules and grievance procedures of the center, in a language which the juvenile can understand;

(5) opportunity for a variety of physical exercise, including outdoor exercise when weather permits;

(6) participation in religious worship and religious counseling on a voluntary basis, subject only to the limitations necessary to maintain facility order and security;

(7) reasonable religious diets;

(8) the right to wear personal clothing consistent with center guidelines. If the center provides clothing, it shall be of proper size and contemporary style;

(9) access to the courts and confidential contact with attorneys, judges, parents, social workers and other professionals, including telephone conversations, visits and correspondence;

(10) medical treatment and emergency dental care, a medically proper diet and the right to know what and why medications have been prescribed;

(11) the right to send and receive uncensored mail in accordance with K.A.R. 28-4-355 (f)(4);

(12) the right to receive visitors and communication in accordance with the center's visitation policies;

(13) the right to determine the length and style of hair, except when a physician determines that a haircut is medically necessary; and

(14) the right to keep facial hair, if desired, except when a licensed physician determines that removal is medically necessary for health and safety. (Authorized by and implementing K.S.A. 65-508; effective Aug. 23, 1993.)

28-4-355b. Behavior management. (a) Rules.

(1) Written policies shall provide for a behavior management system that assists juveniles to develop inner control so that they can manage their own behavior in a socially acceptable manner. Procedures and practice shall provide:

(A) Expectations which are age appropriate and which allow for special abilities and limitations; and

(B) positive and negative consequences related to each expectation.

(2) Written rules of juvenile conduct shall define expected behaviors and related consequences.

(A) A rulebook containing expected behaviors, ranges of consequences and disciplinary procedures shall be given to each juvenile and youth care staff member.

(B) An acknowledgement of receipt of the rulebook shall be signed by each juvenile and kept in each juvenile's file.

(C) When a literacy or language problem prevents a juvenile from understanding the rulebook, a staff member or translator shall assist the juvenile in understanding the rules.

(D) The rulebook shall be translated into any language spoken by a significant number of persons in the jurisdiction.

(3) All staff members who have direct contact with juveniles shall be thoroughly familiar with the rules of juvenile conduct, the rationale for the rules and the intervention options available.

(b) Discipline.

(1) Discipline which is humiliating, frightening or physically harmful to the juvenile shall not be used at any time. The resident shall be protected against all forms of neglect, exploitation or degrading forms of discipline. No juvenile shall be isolated without a youth care staff member within visual and auditory distance or confined in any dark space. Electronic monitoring or an audio communication system shall not replace the required presence of a youth care staff member.

(2) Corporal punishment shall not be used.

(3) Under no circumstances shall any juvenile be deprived of meals, clothing, sleep, medical services, exercise, correspondence, parental contact or legal assistance for disciplinary purposes. If a juvenile is in locked isolation during normal school hours, school work shall be provided to the juvenile.

(4) Under no circumstances shall any juvenile be allowed to supervise or to administer discipline to other juveniles.

(c) Isolation.

(1) Routine nighttime lock-up during sleeping hours is permitted in detention centers for the purpose of security during sleeping hours. A detention center which uses nighttime lockup shall not be required to comply with the special requirements concerning locked isolation for routine lockup of juveniles during sleeping hours. Written policies and procedures shall govern the use of routine nighttime lockup. Procedure and practice shall provide for:

(A) Direct, irregularly scheduled, physical observation of juveniles at least every 15 minutes by a youth care staff member; and

(B) written reports of periodic observation of the juveniles. The reports shall be kept on file at the center.

(2) Electronic monitoring shall not replace periodic observation of juveniles by a youth care staff member during nighttime lock-up.

(3) Locked isolation shall be permitted within a detention center only when a juvenile is out of control, continually refuses to obey reasonable and lawful requests or behaves in a way that presents a threat to self or others. Within a secure care center, locked isolation shall be permitted only when a juvenile's behavior presents a threat to self or others.

(4) Each center shall have written policies and procedures which govern the use of locked isolation. Procedures and practice shall:

(A) Permit the use of locked isolation only when all other less restrictive methods of controlling the juvenile's dangerous behavior have been attempted and have failed;

(B) require a written order by a designated staff member each time a juvenile is placed in or released from isolation;

(C) ensure that no more than one juvenile is placed in an isolation room at any one time;

(D) provide for a search of each juvenile and removal of any items that may be used to injure self or others before admission to the isolation room;

(E) ensure that each juvenile is provided appropriate clothing at all times;

(F) ensure that each juvenile in isolation is provided a mattress with linens on a clean, level surface above floor level;

(G) ensure that each juvenile receives all meals and snacks normally served and is allowed time to exercise and perform necessary bodily functions;

(H) ensure that each juvenile has prompt access to drinking water and washroom facilities;

(I) ensure that the designated staff member on duty makes appropriate entries in the case records regarding the juvenile's use of the isolation room;

(J) ensure that at least one youth care staff member is in the proximity of each juvenile in isolation at all times, with direct, physical observation at least every 15 minutes. At the time of each observation, the following shall occur:

(i) Interactive intervention shall be attempted, unless the juvenile is sleeping;

(ii) the result of the intervention shall be recorded; and

(iii) the condition of the juvenile shall be recorded;

(K) ensure constant supervision when a juvenile is considered suicidal; and

(L) provide for an assessment of the need for continued isolation at each shift change and for documentation of the reasons isolation is continued.

(4) If a juvenile is in locked disciplinary isolation before routine nighttime lock-up occurs, the hours of nighttime lock-up shall be counted as time in locked disciplinary isolation for that juvenile.

(5) A juvenile shall not remain in isolation for more than 24 hours without written approval of the director or the director's designee who is not involved in the incident.

(A) The director or designated staff member who is not involved in the incident shall visit with each isolated juvenile at least once within each eight-hour period after the first 24 hours.

(B) Written approval of the director or director's designee shall be required for each eight hour period isolation is extended, beyond the first 24 hours.

(6) Isolation shall not exceed 48 hours for any offense unless the juvenile continues to behave in a way that presents a threat to self or others.

(7) If a juvenile requires more than 48 hours of consecutive isolation or more than 72 cumulative hours of isolation within any seven day period, or is placed on suicide watch, an emergency staffing shall be held to discuss the appropriateness of the juvenile's continued placement at the center and to develop an emergency plan for the juvenile.

(A) Participants in the emergency staffing shall include:

- (i) the juvenile if behavior permits;
- (ii) the director or the director's designee;
- (iii) a physician, clinical psychologist, or clinical social worker who has assessed the juvenile; and
- (iv) appropriate staff members.

(B) The placing agent or representative and the juvenile's parents or legal guardian shall be notified of the emergency staffing and invited to participate. Documentation of notifications shall be kept on file at the center.

(C) The results of the emergency staffing shall be recorded and maintained on file at the center.

(8) All youth care staff and program personnel shall be informed at all times of the current status of each resident in isolation.

(d) Restraint. Each center shall have written policies and procedures which govern the use of restraint.

(1) Procedure and practice shall:

(A) Limit the use of physical restraint to instances of justifiable self-defense, protection of the juvenile or others, protection of property or prevention of escape;

(B) permit the use of physical restraint only when all other less restrictive methods of controlling the

juvenile's dangerous behavior were either attempted and failed or diagnostically eliminated;

(C) prohibit the use of physical restraint as punishment.

(D) ensure that mechanical restraints are used within the secure parameters of the center only when required to move a juvenile to locked isolation. The use of mechanical restraints shall not exceed 30 minutes in duration;

(E) ensure that chemical agents are not used by center personnel; and

(F) provide that psychotropic medications are not used for disciplinary reasons. Psychotropic medications shall be administered only when medically necessary, upon order of the juvenile's physician.

(2) A center which uses any form of restraint shall develop and ensure the practice of a comprehensive written policy on the use of each restraint. The policy shall identify:

(A) The forms of restraint in use at the center, clearly demonstrating that each specified form of restraint is required to appropriately serve juveniles;

(B) specific criteria for the use of each form of restraint;

(C) the staff members authorized to approve the use of each form of restraint;

(D) the staff members authorized and qualified to administer or apply each form of restraint;

(E) the approved procedures for application or administration of each form of restraint;

(F) the procedures for monitoring any juvenile placed in each form of restraint;

(G) any limitations on the use of each form of restraint, including time limitations;

(H) the procedures for immediate, continual review of restraint placements for each form of restraint, except passive physical restraint; and

(I) procedures for comprehensive recordkeeping on all incidents of the use of restraint, including incidents of passive physical restraint where it is used in conjunction with or leads to the use of any other form of restraint.

(3) If a juvenile requires the use of mechanical restraints more than four times in any 30 day period, an emergency staffing shall be held to discuss the appropriateness of the juvenile's continued placement at the center and to develop an emergency plan for the juvenile.

(A) Participants in this emergency staffing shall include:

- (i) the juvenile if behavior permits;
- (ii) the director or the director's designee;

(iii) a physician, clinical psychologist or clinical social worker who has assessed the juvenile; and

(iv) appropriate staff members.

(B) The placing agent or representative and the juvenile's parents or legal guardian shall be notified of the emergency staffing and invited to participate. Documentation of notifications shall be kept on file at the center.

(C) The results of the emergency staffing shall be recorded and maintained on file at the center.

(4) Any juvenile or staff member injured in an incident involving the use of physical restraint shall receive immediate medical examination and treatment. (Authorized by and implementing K.S.A. 65-508; effective Aug. 23, 1993.)

28-4-356. Health care policies. (a) Health services for juveniles.

(1) Each center, in consultation with a physician or community health nurse, shall develop written health care policies which cover:

(A) Health history checklist and review for each juvenile upon admission, as documented on forms approved by Kansas department of health and environment;

(B) follow-up health care, including health examination and referrals, for concerns identified in the health history checklist and review.

(C) dental screening upon admission and follow-up emergency dental care as needed;

(D) preventive dental care for juveniles in secure care;

(E) chronic care, convalescent care and preventive care when medically indicated;

(F) care for minor illness, including the use and administration of prescription and nonprescription drugs;

(G) care for juveniles under the influence of alcohol or other drugs;

(H) consultation regarding individual juveniles when indicated;

(I) infection control measures and universal precautions to prevent the spread of bloodborne infectious diseases recommended in "Update: Universal Precautions for Prevention of Human Immunodeficiency Virus, Hepatitis B Virus, and Other Bloodborne Pathogens in Health-Care Settings" as published in the *Morbidity and Mortality Weekly Report*, June 24, 1988, Vol. 37 No. 24 which are hereby adopted by reference;

(J) maternity care as defined in K.A.R. 28-4-279; and

(K) medically indicated isolation.

(2) Each center shall have a physician licensed to practice in Kansas designated as the medical consultant to the health program.

(3) Each center shall obtain a written consent from each juvenile's parent or legal guardian for medical and dental care.

(4) The medicine cabinet shall be located in an accessible, supervised area. The cabinet shall be kept locked. Internal and external medicines shall be kept in separate sections of the cabinet. All unused medication shall be safely discarded.

(A) Prescription medication shall be administered by a designated staff member, from a pharmacy container labeled with the juvenile's name, the name of the medication, the dosage, the dosage intervals, the name of the physician and the date the prescription was filled. Any changes of prescription or directions for administering a prescription medication shall be authorized in writing by a physician, with documentation in the juvenile's file.

(B) All medication, including non-prescription medication, shall be given only in accordance with label directions, unless ordered differently by a licensed physician. A record shall be kept in the juvenile's file documenting the name of the person who gave the medication, the name of the medication, the dosage and the date and time it was given.

(5) Arrangements for emergency care shall be made as follows.

(A) The center shall have a written statement of the name, address and telephone number of a physician licensed in Kansas to be called in case of emergency.

(B) Policy and procedures shall ensure continuous care of juveniles who require emergency medical treatment.

(C) When a staff member accompanies a juvenile to the source of emergency care, the staff member shall remain with the juvenile for the duration of the emergency. Supervision of the other juveniles in the center shall not be compromised. The health history checklist and health assessment shall be taken to the emergency room with the juvenile.

(6) Any incident resulting in death or serious injury to any staff member or juvenile, or any instance of suspected abuse or neglect, shall be reported immediately to the Kansas department of health and environment bureau of adult and child care, and the county health department. A written incident report shall be submitted to the

bureau within five working days. Each parent or legal guardian shall be immediately notified when serious injury to, death or hospitalization of a juvenile occurs. When suspected abuse or neglect of a juvenile occurs, the Kansas department of social and rehabilitation services shall be notified in accordance with statutory requirements.

(7) Any injury to a juvenile or staff member that is a result of suspected criminal action, shall be reported immediately to the local law enforcement officials and district attorney's office for their disposition.

(8) Any death of staff within the center or of a juvenile shall be reported to the local law enforcement officials and district attorney's office for appropriate action.

(b) Physical health of juveniles.

(1) A health history checklist shall be completed for each juvenile at the time of admission. This checklist shall be completed by the person who admits the juvenile, using forms supplied or approved by the Kansas department of health and environment.

(A) The health checklist shall serve as a guide to determine if a juvenile is in need of immediate medical care.

(B) The center's physician shall be contacted for any juvenile who is taking a prescribed medication at the time of admission so that treatment is not interrupted.

(C) The center's physician shall be contacted for any juvenile who has acute symptoms of illness or who has a chronic illness. Communicable diseases shall be reported within 24 hours or by next working day to the local county health department.

(2) Within 72 hours of admission, juveniles shall have a review of the health history checklist by a physician or nurse. Based upon health indicators derived from the checklist or in the absence of documentation of a screening within the past 24 months, the physician or nurse shall determine whether a full screening and health assessment are necessary.

(A) When necessary, the screening and health assessment shall be conducted by a licensed physician or by a nurse certified by the Kansas department of health and environment to conduct such examinations.

(i) The screening and health assessment shall be completed within 10 days of admission.

(ii) The screening shall be based upon health assessment and screening guidelines provided or approved by the Kansas department of health and environment.

(B) Medical and dental records shall be kept on forms provided or approved by the Kansas department of health and environment and shall be kept current.

(C) Each juvenile shall receive a tuberculin skin test. A chest x-ray shall be taken of all positive tuberculin reactors and those with a history of previous positive reaction. The proper treatment or prophylaxis shall be instituted. The results of this follow-up shall be recorded in the juvenile's record and the county health department shall be kept informed of the results.

(D) A current health record shall be kept for each juvenile which includes the juvenile's current immunization record, health history checklist, documentation of the review of the health history checklist and the decision regarding the need for screening and health assessment, tuberculin skin test report, medical contacts and entries regarding the juvenile's health care plan.

(E) The health record shall accompany the juvenile when transferred to another facility. A copy of the health record shall be kept in the juvenile's file at the center.

(3) Written policy and procedures shall prohibit the use of tobacco in any form by juveniles while in care.

(c) Dental health of juveniles.

(1) Emergency dental care shall be available for all juveniles. Each secure care center juvenile record shall include a report of a dental examination obtained within one year before or 60 days after admission.

(2) The center staff shall develop plans for dental health education and shall supervise the juveniles in the practice of good dental hygiene.

(d) Personal health of staff members and volunteers.

(1) Each person caring for juveniles shall be:

(A) Free from communicable disease;

(B) Free from physical, mental or emotional handicaps as is necessary to fulfill the responsibilities listed in the job description and protect the health, safety and welfare of the juveniles; and

(C) Free from impaired ability due to the use of alcohol or other drugs.

(2) Each staff member who will have contact with the juveniles shall receive a health examination within one year before employment. This examination shall be conducted by a licensed physician or a nurse authorized to conduct such examinations.

(3) Results of the health examination shall be recorded on forms supplied or approved by the

Kansas department of health and environment and kept on file at the center. Health assessment records may be transferred from a previous place of employment if the transfer occurs within one year of the examination date.

(4) The initial health examination shall include a tuberculin skin test. If there is a positive reaction to the tuberculin skin test or a history of previous positive reaction, a chest x-ray shall be required. Proof of proper treatment or prophylaxis, according to current Kansas department of health and environment guidelines, shall be required. Documentation of test, x-ray and treatment results shall be kept on file in the person's health record.

(5) A tuberculin skin test or a chest x-ray shall be required if significant exposure to an active case of tuberculosis occurs or if symptoms compatible with tuberculosis develop. If there is a positive reaction to the diagnostic procedure, proof of proper treatment or prophylaxis, according to Kansas department of health and environment guidelines, shall be required. The results of this follow-up shall be recorded in the person's health record. The Kansas department of health and environment shall be informed of each case described within this paragraph.

(6) Volunteers shall present written proof of freedom from active tuberculosis before serving in the center.

(7) Smoking shall not be permitted in the facility.

(e) Personal hygiene.

(1) Each juvenile shall bathe upon admission and be given the opportunity to bathe daily.

(2) Each juvenile shall be given the opportunity to brush their teeth after each meal.

(3) Each juvenile shall be furnished with toothpaste and a toothbrush. Pump soap shall be available at all community sinks and showers.

(4) Facilities for shaves and haircuts shall be made available. No juveniles shall be required to have a hair cut unless a physician determines that a hair cut is medically necessary.

(5) Each juvenile's washable clothing shall be changed and laundered at least twice a week. Underwear and socks shall be changed and laundered daily. Clean and serviceable footwear of appropriate size shall be issued to each juvenile.

(6) Each female juvenile shall be provided personal hygiene supplies with regard to her menstrual cycle.

(7) Clean, individual bath and face towels shall be issued to each juvenile at least twice a week. Bed linen shall be changed at least once a week.

(8) Each juvenile shall be allowed to have at least eight hours of sleep each day. Fourteen hours of activity shall be provided. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1979; amended May 1, 1985; amended Aug. 23, 1993.)

28-4-357. Emergency, safety, security and control. (a) Each center shall develop a disaster plan to provide for the safety of juveniles in emergencies. The plan shall be reviewed at least annually and updated as needed. The plan and subsequent updates, if any, shall be approved by the state fire marshal or the marshal's designee.

(1) The plan shall include provisions for the care of juveniles in disasters such as fires, tornadoes, storms, floods, and civil disorders, as well as occurrences of serious illness or injury to staff members and juveniles.

(2) The personnel in the center shall be informed of the disaster plans and the plans shall be posted in a prominent location and practiced.

(3) Each center shall have first aid supplies: assorted adhesive strip bandages, adhesive tape, roll of gauze, scissors, package of gauze squares, pump soap, elastic bandage, tweezers and rubbing alcohol.

(4) Each center which uses locked isolation shall have an effective policy and procedure to evacuate an isolated juvenile in the event of a fire or other emergency.

(b) The center shall have one fire drill and one tornado drill per each shift per quarter.

(c) Security and control. Each center shall use a combination of supervision, inspection, accountability and clearly defined policies and procedures on the use of security to promote safe and orderly operations.

(1) Written policies and procedures for center security and control shall be available to all staff members. The policies and procedures shall be reviewed at least annually and updated as needed. The following rules and requirements shall be included:

(A) A daily report on juvenile population movement shall be completed and kept on file at the center.

(B) Written operational shift assignments shall state the duties and responsibilities for each assigned position in the center.

(C) Supervisory staff shall maintain a permanent log and prepare shift reports that record routine and emergency situations.

(D) Regular inspection and maintenance of security devices. Any corrective action shall be completed as necessary and recorded.

(E) No weapons shall be permitted in the center. Secure weapons lockers shall be provided for storage of any weapons carried by visiting law enforcement officers.

(F) Guidelines for the control and use of keys, tools and medical and culinary equipment shall be implemented.

(G) No juvenile or group of juveniles shall exercise control or authority over other juveniles, have access to the records of other juveniles or have access to or use of keys that control center security.

(H) Procedures for handling escapes, runaways and unauthorized absences shall be developed and adhered to.

(I) Safety and security precautions pertaining to facility and staff vehicles shall be developed and adhered to.

(2) Policies and procedures for the prosecution of any illegal act committed while the juvenile is in care shall be developed.

(3) Policies and procedures to ensure that chemical agents such as mace, pepper mace or tear gas are never used by center staff shall be developed and adhered to.

(4) Poisons and all flammable materials shall be kept in locked storage.

(5) Written policies and procedures governing control of contraband shall be developed and adhered to. The procedures shall:

(A) Provide for searches of facilities and juveniles;

(B) provide that strip searches are conducted only at admission or when there is reasonable belief that the juvenile is carrying contraband or other prohibited material. The inspection shall be conducted in private by a trained staff member of the same sex as the juvenile. A second staff person shall observe the staff member conducting the search to verify that the search was conducted in accordance with agency policies. If necessary, a body cavity inspection shall be conducted only by a physician or nurse who is trained to conduct body cavity inspections; and

(C) require documentation of the incident, including the reason for the search, the identities of staff persons involved and the result. The documentation shall be kept on file at the center.

(6) Policies and procedures shall govern documentation of all special incidents, including but not limited to the taking of hostages and the use of re-

straint other than for routine transport. Procedure and practice shall require submission of a written report of all special incidents to the director or the director's designee. The report is to be submitted no later than the conclusion of the shift. A copy of the report shall be kept in the file of the juvenile concerned. A copy of the report of any incident which involves the taking of hostages, the death or injury of a juvenile, or criminal charges against a juvenile or staff member shall be submitted to the Kansas department of health and environment, the placing agent and other persons as appropriate.

(7) Any incident of disaster as enumerated in K.A.R. 28-4-357 (a)(1) shall be reported to the Kansas department of health and environment within 24 hours excluding weekends and holidays. Any incident of fire shall also be reported to the state fire marshal within the same time frame.

(8) A written plan shall provide for continuing operations in the event of a work stoppage. Copies of this plan shall be available to all supervisory personnel who shall familiarize themselves with it. The Kansas department of health and environment shall be notified immediately of incidents of work stoppage. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1979; amended Aug. 23, 1993.)

28-4-358. Policies relating to animals at the center. (a) If animals or pets are kept at the center, written policies shall be developed for their care. These policies shall be approved by the Kansas department of health and environment.

(b) Animals shall have current immunizations as recommended by a veterinarian. A record of immunizations shall be kept on file at the center.

(c) Animals that represent a hazard to juveniles shall be excluded from the center. Hazardous animals shall include, but not be limited to snapping turtles, pit bulldogs, and poisonous snakes and insects.

(d) The pet area of each center shall be maintained in a clean and sanitary manner. No animal or bird shall be in the kitchen while food is being prepared. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1979; amended Aug. 23, 1993.)

28-4-359. Environmental standards. (a) General building requirements.

(1) Each building shall meet the legal requirements of the community as to building code,

zoning, fire protection, water supply and sewage disposal. Each center shall use public water and sewage systems, or shall have private water and sewage systems having approval and permits as required by K.S.A. 65-163 and K.S.A. 65-165 and amendments thereto. Where local fire regulations do not exist, construction shall be in compliance with the Kansas fire prevention code. When local and state regulations differ, the more stringent requirement shall prevail.

(2) A licensed architect shall be responsible for the plans for any newly constructed building or for any major addition or alteration to an existing building.

(A) In the case of a new building, preliminary plans and outline specifications, including plot plans, shall be submitted to the Kansas department of health and environment for review prior to commencing the final working drawings and specifications. The final working drawings, construction specifications and plot plans shall be submitted to the department for review and written approval prior to the letting of contracts.

(B) In the case of an addition or alteration to an existing building, a written statement defining the proposed use of the construction and the plans and specifications shall be submitted to the Kansas department of health and environment for review and written approval prior to commencing construction.

(3) If construction is not commenced within one year of the submittal of proposal for a new building or the addition or alteration to an existing building, the plans and proposal shall be resubmitted to the Kansas department of health and environment before proposed construction begins.

(b) Location and grounds requirements.

(1) Community resources such as health services, police protection, and fire protection from an organized fire department shall be available to the center.

(2) There shall be at least 100 square feet of outside activity space available per juvenile expected to utilize each area at any one time.

(3) The outside activity area shall be free of physical hazards.

(4) If the center is on the same grounds as any other type facility, the center shall be a separate, self-contained unit. No secure facility, other than a juvenile detention center, shall be attached to or on the grounds of an adult jail or lockup. When a juvenile detention facility is in the same building

or on the same grounds as an adult jail or lockup, there shall be:

(A) Total separation of the juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities;

(B) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping and general living activities; and

(C) separate juvenile and adult staffs, including management, security staff and direct care staff such as recreational, educational and counseling staff members.

(5) There shall be sufficient space for visitor and staff parking at each center.

(c) The water supply to each center shall be from a source approved and certified by the health authority.

(1) Plumbing shall be installed and maintained in compliance with local and state plumbing codes.

(2) Any privately owned water supply shall be approved by the county health officer or the Kansas department of health and environment.

(d) Structural requirements.

(1) Center construction shall provide for the removal of architectural barriers to disabled persons in accordance with state and federal statutes. All parts of each center shall be accessible to and usable by disabled persons.

(2) Each center's structural design shall facilitate personal contact and interaction between staff members and juveniles.

(3) Asbestos shall not be used in new or remodeling construction. Before any remodeling construction is started, any friable asbestos shall be covered and sealed in a manner that provides a protective barrier between the asbestos and the occupants of the building. The method of handling shall be in compliance with K.A.R. 28-50-1 through 28-50-14, the Kansas department of health and environment regulations governing asbestos control.

(4) Floors shall be smooth and free from cracks, easily cleanable and shall not be slippery. Floor covering for living quarters shall be required. All floor covering shall meet fire safety regulations, be kept clean and be maintained in good repair.

(5) Walls shall be smooth, easily cleanable and in sound condition. Paneling shall meet any applicable fire safety regulations. Lead-free paint shall be used on all painted surfaces.

(6) Juveniles' rooms shall be limited to the ground level and above. Any room with floor level more than 30 inches below ground level shall be considered a basement. The minimum square footage of floor space shall be 80 square feet in single rooms, and an average of not less than 60 square feet of floor space per person in rooms accommodating more than one person. At least one dimension of the usable floor space unencumbered by furnishings or fixtures shall be no less than seven feet. The minimum ceiling height shall be seven feet eight inches over 90% of the room area. An even temperature of between 68°Fahrenheit and 78°Fahrenheit shall be maintained with an air exchange of at least four times per hour.

(7) Bedrooms occupied by juveniles shall have a window source of natural light. Access to a drinking water source and toilet facilities shall be available 24 hours a day. Locking systems shall be approved by the state fire marshal or the marshal's designee.

(8) Separate beds with level, flat mattresses in good condition, shall be provided for each juvenile. Beds shall be above the floor level.

(9) Adequate, clean bedding shall be provided for each juvenile.

(10) All quarters utilized by juveniles shall have minimum lighting of 20 foot candles in all parts of the room. There shall be minimum lighting of 35 foot candles in areas used for reading, study or other close work.

(11) There shall be adequate space for study and recreation.

(12) Each living unit shall contain:

(A) Furnishings that provide sufficient seating for the maximum number of juveniles expected to use the area at any one time;

(B) writing surfaces that provide sufficient space for the maximum number of juveniles expected to use the area at any one time;

(C) furnishings that are consistent with the security needs of the assigned juveniles; and

(D) adequate central storage for household supplies, bedding, linen and recreational equipment.

(13) If a center has dayrooms, they shall provide space for varied juvenile activities. Dayrooms shall be situated immediately adjacent to the juvenile sleeping rooms but separated from them by a floor-to-ceiling wall. Each dayroom shall provide at least 35 square feet per person, exclusive of lavatories, showers and toilets, for the maximum number of juveniles expected to use the dayroom area at any one time.

(14) There shall be a working telephone readily accessible to staff members in all areas of the building. Emergency numbers such as fire, police, hospital, physician, poison control center and ambulance shall be posted by each phone.

(15) The inside program and activity areas, excluding the sleeping rooms, day room and class rooms, shall provide floor space equivalent to a minimum of 100 square feet per juvenile.

(16) Sufficient space shall be provided for contact visiting. There shall be adequately designed space to permit screening and search of both juveniles and visitors. Storage space shall be provided for the secure storage of visitors' coats, handbags and other personal items not allowed into the visiting area.

(17) Each room used for locked isolation shall meet the requirements for an individual bedroom.

(A) The walls of each room used for locked isolation shall be completely free of objects.

(B) The door of each room used for locked isolation shall be equipped with a window mounted in a manner which allows inspection of the entire room. Glass in this window shall be impact-resistant and shatterproof.

(C) The locking system shall be approved by the state fire marshal or the marshal's designee.

(18) A service sink and storage area for cleaning supplies shall be provided in a well ventilated room separate from kitchen and living areas.

(e) Food services.

(1) Food storage, preparation and service shall comply with K.A.R. 28-36-20 through 28-36-29, the Kansas department of health and environment regulations governing food and lodging services.

(2) All foods not requiring refrigeration shall be stored at least six inches above the floor in clean, dry, well-ventilated storerooms or other approved areas with no overhead drain or sewer lines.

(3) Dry bulk food which is not in an original, unopened container shall be stored in metal, glass or food-grade plastic containers with tight-fitting covers and shall be labeled.

(4) Poisonous or toxic materials shall not be stored with or over food. If medication requiring refrigeration is stored with refrigerated food, the medication shall be stored in a locked medicine box under all food items in the refrigerator.

(5) All perishables and potentially hazardous foods shall be continuously maintained at 45°Fahrenheit or lower in the refrigerator, or 10°Fahrenheit or lower in the freezer, with 0°Fahrenheit recommended.

(A) Each cold storage facility shall be provided with a clearly visible, accurate thermometer.

(B) All foods stored in the refrigerator shall be covered.

(C) Food not stored in the original container shall be labeled with the contents and date.

(D) Raw meat shall be stored under all other food items in the refrigerator before cooking.

(E) Adequate facilities to maintain product temperatures shall be available.

(6) All dense hot foods shall be stored in containers four inches or less deep.

(7) Food preparation and service.

(A) Each food preparation area shall be adequately equipped for the sanitary preparation and storage of food and washing of dishes and utensils. Food shall be prepared and served in a sanitary manner.

(B) Cooking equipment shall be kept clean and in good condition.

(C) Dishes shall have hard-glazed surfaces and shall be free of cracks and chips.

(D) Dishes, kitchen utensils and serving equipment shall be maintained in a sanitary condition using one of the following methods:

(i) A three-compartment sink supplied with hot and cold running water to each compartment and a drain board for washing, rinsing, sanitizing and air drying, with appropriate chemical test kit for testing the sanitizing solution;

(ii) a domestic-type dishwasher for groups of 24 or fewer persons;

(iii) a commercial-type dishwasher providing a 12 second rinse with 180° Fahrenheit water, for groups of 25 persons or more;

(iv) other methods of sanitizing by manual or mechanical cleaning in accordance with K.A.R. 28-36-24 (3) and (4); or

(v) the use of disposable plates, cups, and plastic utensils of food-grade medium weight. Disposable table service shall be used only one time and then destroyed.

(E) Tables shall be in good condition and shall be washed before and after each meal. Floors shall be swept after meals.

(F) Meat shall be thawed using one of the following methods:

(i) Removing the meat from the freezer in advance and putting it in the refrigerator to thaw;

(ii) placing the meat under running, tepid water 72° Fahrenheit; or

(iii) in the microwave as part of the cooking process.

(8) Sanitary conditions.

(A) Only authorized persons shall be in the kitchen.

(B) Each kitchen shall be equipped with separate hand washing facilities. Personnel shall wash their hands before handling food and after working with raw meat.

(C) Hair shall be restrained.

(D) No staff member with any open wounds or infections shall cook.

(E) Clean and soiled linen shall be properly stored in the kitchen area.

(F) A covered trash can shall be used in the restroom used by the kitchen staff.

(9) Food safety.

(A) All dairy products shall be pasteurized. Dry milk shall be used for cooking only.

(B) Meat products shall be obtained from government-approved sources.

(C) Home canned foods, other than jams and jellies, and home frozen foods shall not be served in the center.

(D) Commercially canned food from dented, rusted, bulging or leaking cans, and food from cans without labels shall not be used.

(10) Nutrition.

(A) Meals and snacks shall meet the nutrient needs of the juveniles in accordance with recommended dietary allowances. A sufficient quantity of food shall be prepared for each meal to allow each juvenile second portions of vegetables, fruit, bread and milk.

(B) Special diets shall be provided for juveniles, if medically indicated, or to accommodate religious practice, as indicated by a religious consultant.

(C) Menus shall be planned one week in advance. Copies of the menus for the preceding month shall be kept on file and available for inspection.

(11) If meals are catered:

(A) The meals shall be obtained from sources licensed by the Kansas department of health and environment.

(B) Food shall be transported in covered and temperature-controlled containers and shall not be allowed to stand. Hot foods shall be maintained at not less than 140° Fahrenheit, and cold foods shall be maintained at 45° Fahrenheit or less.

(f) Toilets and lavatories.

(1) For each eight or fewer juveniles of each sex, there shall be at least one toilet, one lavatory and a bathtub or shower. All toilets shall be above floor level.

(2) Each bathroom shall be ventilated. Each inside bathroom shall have a mechanical ventilating system to the outside with a minimum of ten air changes per hour.

(3) Toilet and bathing facilities and drinking water shall be convenient to sleeping quarters, living and recreation rooms.

(4) Cold and hot water, not exceeding 120° Fahrenheit, shall be supplied to lavatories, bathtubs and showers.

(5) Toilet facilities and drinking water shall be convenient to reception and admission areas.

(6) Locked sleeping rooms shall be equipped with a drinking fountain, lavatory and toilet, unless a communication system or procedure is in effect to give the resident immediate access to a lavatory, toilet and drinking water.

(g) Laundry.

(1) If laundry is done at the center, laundry fixtures shall be located in an area separate from food preparation areas and shall be installed and used in such manner as to safeguard the health and safety of the juveniles.

(2) Soiled linen shall be stored separately from clean linen. In centers constructed after January 1, 1974, separate hand washing facilities shall be provided in each laundry room which serves 25 or more persons.

(3) Blankets shall be laundered or sanitized before reissue.

(4) Blankets, when used with sheets, shall be laundered at least once each month.

(5) Mattresses shall be water repellent and washed down and sprayed with disinfectant before reissue. Mattress materials and treatments shall meet state fire marshal regulations.

(6) Adequate space shall be allocated for storage of clean and dirty linen and clothing. If in-house laundry service is provided, adequate space shall be allocated for the laundry room and storage of laundry supplies, including locked storage for chemical agents used in the laundry area.

(h) Building maintenance standards.

(1) Each building shall be clean at all times and free from accumulated dirt, vermin and rodent infestation.

(2) Floors and walking surfaces shall be kept free of hazardous substances at all times.

(3) A schedule for cleaning each building shall be established and maintained.

(4) Floors shall be swept and mopped daily.

(5) Washing aids, such as brushes, dishmops

and other hand aids used in dishwashing activities, shall be clean and used for no other purpose.

(6) Mops and other cleaning tools shall be cleaned and dried after each use and stored in a well-ventilated place on adequate racks.

(7) Insecticides, rodent killers and other poisons shall be used under careful supervision. These poisons shall be stored in a locked area.

(8) Toilets, lavatories, sinks and other such facilities in the living quarters shall be cleaned thoroughly each day. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1979; amended, T-87-34, Nov. 19, 1986; amended May 1, 1987; amended Aug. 23, 1993.)

28-4-360. Compliance with regulations.

(a) Center licenses shall be prominently displayed.

(b) A copy of these regulations shall be kept on the premises at all times. A copy of the regulations for licensing of detention centers and secure care centers for children and youth shall be available to all staff members.

(c) Centers licensed January 1, 1993 or later shall be required to meet structural requirements as stated in K.A.R. 28-4-359(d). Centers licensed before January 1, 1993 which are in compliance with the regulations for licensing detention centers and secure care centers for children and youth that became effective May 1, 1979 and were amended November 19, 1986, May 1, 1987 and February 26, 1990 shall continue to comply with those rules and regulations applicable to physical plant requirements regardless of the minimums established under current regulations. Each existing center which makes any structural addition or alteration, shall come into compliance with current structural requirements.

(d) Each applicant or licensee may submit a written request for an exception to a regulation to the Kansas department of health and environment. An exception may be granted if the secretary determines that the exception would not diminish the current level of juvenile care and if statutory requirements are not violated. The nature of the exception, the conditions, and the duration of the exception shall be in writing. Written notification shall be given to the licensee.

(e) Each center shall develop and implement a quality assurance program to ensure consistent compliance with these regulations. The quality assurance program shall provide for:

(1) Review of policies, procedures and practice; and

(2) reconciliation with licensure requirements.

(f) The county health department representative or the contracted surveyor who evaluates the center for licensing purposes shall be used as a consultant with regard to compliance with licensing regulations.

(g) The Kansas department of health and environment shall revoke a license or deny any application in any case in which there is a failure of compliance with the provisions of these regulations. (Authorized by K.S.A. 65-508 and implementing K.S.A. 65-504 and K.S.A. 65-508; effective May 1, 1979; amended Aug. 23, 1993.)

MATERNITY CENTERS

28-4-370. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, 65-502, 65-504, 65-508; effective May 1, 1981; revoked July 9, 2010.)

28-4-371. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, 65-503, 65-508, K.S.A. 1982 Supp. 65-504, 65-505; effective May 1, 1981; amended, T-83-24, Aug. 25, 1982; amended May 1, 1983; revoked July 9, 2010.)

28-4-372. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-502, 65-504, 65-509, 65-510, 65-511; effective May 1, 1981; revoked July 9, 2010.)

28-4-373. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, 65-502, 65-504, 65-507, 65-508; effective May 1, 1981; revoked July 9, 2010.)

28-4-374. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-507, 65-508; effective May 1, 1981; amended May 1, 1985; revoked July 9, 2010.)

28-4-375. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-507, 65-508; effective May 1, 1981; amended May 1, 1985; revoked July 9, 2010.)

28-4-376. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-507, 65-508, 65-510; effective May 1, 1981; amended May 1, 1985; revoked July 9, 2010.)

28-4-377. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1981; amended, T-87-34, Nov. 19, 1986; amended May 1, 1987; revoked July 9, 2010.)

28-4-378 and 28-4-379. (Authorized by

and implementing K.S.A. 65-508; effective May 1, 1981; revoked July 9, 2010.)

CHILDREN WITH SPECIAL HEALTH CARE NEEDS PROGRAM

28-4-400. Definitions. (a) “Cash assets” means money, savings accounts, saving certificates, checking accounts, and stocks and bonds.

(b) “Diagnostic service” means an evaluation to identify a handicapping disease or disease process.

(c) “Emergency” means an unanticipated, urgent event requiring immediate medical treatment.

(d) Family.

(1) “Family,” for an eligible person who resides with the person’s parents, stepparents or legal guardian or who is considered to be a dependent of that person’s parents, stepparents or legal guardian for income tax purposes, means the eligible person, person’s parents, stepparents or legal guardian and all other persons who reside in the same home as that of the person. Family shall not include persons who lease or rent a portion of the residence.

(2) “Family,” for an eligible person who has established a separate residence and is no longer considered a dependent of the person’s parents, stepparents or legal guardian for income tax purposes, means the eligible person, the person’s spouse and children, and all other relatives and persons who reside in the same home as that person. Family shall not include persons who lease or rent a portion of the residence.

(e) “Family income” means the total income received by all adult members of the family, based upon one or more of the following, with the addition of non-taxable benefits from whatever source:

(1) the total amount of adjusted gross income reported for federal income tax purposes on the most recent federal income tax return;

(2) three months of pay stubs; or

(3) a letter of anticipated earnings from the employer when the most recent federal income tax return does not reflect current income.

(f) “Family living allowance” means the amount established by the secretary as specified in K.A.R. 28-4-403(b).

(g) “Health care plan” means documents prepared by the secretary that state a plan of treatment, describe the authorized services, and identify the approved providers of service, the time frame for provision of services, and the party responsible for payment for services.

(h) “Prior authorization” means the approval of

a request to provide a specific service before the provision of the service, or in an emergency, within two working days after the emergency occurs.

(i) “Managed care” means coordination, direction, and provision of health services to an identified group of individuals by providers, agencies or organizations.

(j) “Medicaid” means the title xix of the social security act.

(k) “Medical treatment” means any medical or surgical service and any medical equipment, device or supply provided to a person who is eligible for assistance under the services for children with special health care needs program.

(l) “Resident” means a person who is living in the state with the intention of making a permanent home in the state.

(m) “Secretary” means the secretary of the department of health and environment or the secretary’s designee. (Authorized by and implementing K.S.A. 65-5a08; effective, E-82-10, April 27, 1981; effective May 1, 1982; amended May 1, 1983; amended, T-85-41, Dec. 19, 1984; amended May 1, 1985; amended Dec. 26, 1989; amended Sept. 12, 1997.)

28-4-401. Responsibilities of individuals who apply for or who receive services. (a) Each applicant shall fulfill the following requirements:

(1) Supply financial, insurance, and family information essential to the establishment of eligibility within 30 days of the request for service, on forms prescribed by the secretary;

(2) submit written permission, on forms prescribed by the secretary, for release of information needed to determine medical and financial eligibility; and

(3) report to the secretary changes in any of the following circumstances:

(A) the eligible person’s address;

(B) the number of persons living in the home;

(C) marital status of eligible person, parents, or legal guardians;

(D) custody of the eligible person;

(E) medical insurance coverage for the eligible person;

(F) medicaid eligibility or supplemental security income eligibility for the eligible person;

(G) family income or cash assets of more than \$500.00 per year; or

(H) other circumstances that affect the special health care needs of the eligible person.

(b) Each eligible person who is enrolled in the

department of social and rehabilitation services managed care arrangements shall report, within 10 working days of enrolling, the following information:

(1) The eligible person’s medicaid number;

(2) the name of the managed care provider; and

(3) the name of the eligible person’s primary care network physician at the time of application to the managed care provider or at the time of subsequent enrollment or change in enrollment in the managed care provider arrangement.

(c) Each eligible person enrolled in medicaid shall participate in the kan-be-healthy program.

(d) Each eligible person enrolled in a managed care arrangement under the medicaid program or an insurance policy shall obtain referrals for care as required by the managed care provider.

(e) Each eligible person shall perform the following actions:

(1) Obtain prior authorization for services;

(2) apply for insurance, medicaid coverage, supplemental security income, or benefits from other sources, when requested;

(3) assign the insurance benefits to hospitals and other providers of service for any medical treatment;

(4) apply the benefits of any non-assignable insurance by making payments to hospitals or other providers of service for items ordered by the attending physician;

(5) reimburse the secretary for any insurance proceeds sent directly to the recipient if the insurance payment is made for medical treatment provided by the services for children with special health care needs program; and

(6) submit any bills received for prior-authorized services to the secretary within six months of the date of service. (Authorized by and implementing K.S.A. 65-5a08; effective, E-82-10, April 27, 1981; effective May 1, 1982; amended May 1, 1983; amended, T-85-41, Dec. 19, 1984; amended May 1, 1985; amended, T-86-46, Dec. 18, 1985; amended May 1, 1986; amended, T-87-47, Dec. 19, 1986; amended May 1, 1987; amended Dec. 26, 1989; amended Sept. 12, 1997.)

28-4-402. (Authorized by and implementing K.S.A. 1984 Supp. 65-5a08; effective, E-82-10, April 27, 1981; effective May 1, 1982; amended May 1, 1983; amended, T-85-41, Dec. 19, 1984; amended May 1, 1985; amended, T-86-46, Dec. 18, 1985; amended May 1, 1986; revoked May 1, 1987.)

28-4-403. Financial eligibility. (a) (1) The uniform standard for determining eligibility shall be the annual margin as calculated in paragraph (a)(2). If the annual margin is zero or below, the person shall be eligible for financial assistance for medical treatment. If the annual margin is above zero, the person shall not be eligible for financial assistance, except as provided in subsections (d) and (e). The factors to be used in calculating the annual margin shall be the following items:

- (A) family income;
- (B) cash assets;
- (C) family living allowance;
- (D) anticipated specialized health care expenditures for the eligible person and other family members; and
- (E) the health benefits available under insurance coverage for the eligible person.

(2) The annual margin shall be calculated by the following method:

(A) Add the amount of the family income to the amount of cash assets above the maximum allowed under subsection (c); and

(B) subtract from the total of paragraph (a)(2) (A) the following:

- (i) the family living allowance as determined in subsection (b); and
- (ii) the amount of the anticipated health care expenditures for the person that will not be paid by the person's health insurance coverage.

(b) The family living allowance shall be 185 percent of the poverty guidelines updated annually in the federal register by the U.S. department of health and human services under the authority of section 673(2) of the omnibus budget reconciliation act of 1981 effective July 1, following the publication.

(c) The maximum cash assets allowed a family shall be 15 percent of the family living allowance.

(d) If within 12 months after application the family spends down the annual margin to zero or below per subsection (e) through the family's actual or obligated expenditures for medical care for any family member, the person shall be, at that time, financially eligible for assistance for the remainder of the 12-month period. These expenditures shall be in addition to any expenditure or reimbursement made by a health insurance carrier or other third party payor.

(e) In order to spend the annual margin down to zero, the family shall agree to pay the following expenses:

- (1) medical expenses and travel expenses re-

lated to medical treatment or health support services, supplies or equipment; or

(2) a portion of actual or anticipated medical expenses, and travel expense related to medical treatment or a portion of health support services, supplies or equipment as documented in the health care plan. (Authorized by K.S.A. 65-5a08; implementing K.S.A. 65-5a12; effective, E-82-10, April 27, 1981; effective May 1, 1982; amended, T-85-41, Dec. 19, 1984; amended May 1, 1985; amended, T-86-46, Dec. 18, 1985; amended May 1, 1986; amended Dec. 26, 1989; amended Sept. 12, 1997.)

28-4-404. Services. (a) Diagnostic services shall be made available to each eligible person who is a resident of this state and who is believed to have a severe handicap, disability, or chronic disease.

(b) Diagnostic services shall be authorized before the services are rendered and shall be provided in facilities and by providers approved by the secretary.

(c) Medical treatment services shall be provided to individuals meeting the medical and financial eligibility criteria found in K.A.R. 28-4-403 and K.A.R. 28-4-406, respectively.

(d) Medical treatment services related to the eligible medical diagnosis shall be provided as recommended by an approved provider. The medical treatment services shall be within the parameters of standard medical practice, shall not include experimental or investigational treatments, organ transplants or acupuncture, and shall be approved by the secretary.

(e) Medical treatment services shall be authorized before the services are rendered and shall be provided in facilities and by providers approved by the secretary. (Authorized by K.S.A. 65-5a08; implementing K.S.A. 65-5a10; effective May 1, 1982; amended, T-85-41, Dec. 19, 1984; amended May 1, 1985; amended, T-86-46, Dec. 18, 1985; amended May 1, 1986; amended Sept. 12, 1997.)

28-4-405. Providers of service. (a) Application. Each person or corporation desiring to supply services or sell prosthetic devices, equipment, appliances or supplies shall file an application with the secretary. Each application shall be approved or disapproved by the secretary, interested parties shall be notified of the action taken, and a list of approved providers of service shall be maintained.

(b) Designation of hospitals. Each hospital approved to provide medical and surgical services for the care and treatment of eligible persons, except for those out-of-state hospitals authorized by K.A.R. 28-4-408, shall meet the following requirements:

(1) For inpatient services, the hospital shall meet these standards:

(A) be licensed as a hospital in Kansas;

(B) be certified by the joint commission on accreditation of health care organizations;

(C) have staff physicians certified by specialty boards in the specialty appropriate for the needs of the eligible person;

(D) have available consultation in other specialty areas for the cases being treated;

(E) have appropriate operating facilities for the specialty for which the hospital is approved;

(F) have other facilities appropriate for the application of plaster or other cast material for eligible persons;

(G) have regularly scheduled inservice programs relating to children and pediatric conditions; and

(H) provide the following services for children:

(i) qualified professional nurses assigned to care of children;

(ii) at least one pediatrician on the hospital staff, with a designated chief of pediatrics; and

(iii) nonrestrictive visiting hours for parents and suitable recreational facilities for children.

(2) For outpatient services the hospital shall comply with the following standards:

(A) Be licensed as a hospital in Kansas;

(B) have an x-ray department with facilities and qualified personnel to treat children;

(C) have a physical therapy department with qualified personnel to treat children;

(D) have an occupational therapy department with qualified personnel to treat children;

(E) have a respiratory therapy department with qualified personnel to treat children;

(F) have regularly scheduled inservice programs for all health-care staff relating to children and pediatric conditions;

(G) have a laboratory department with facilities and qualified personnel for hematology, chemistry, microbiology, and serology testing; and

(H) have persons qualified to give anesthesia.

(c) Designation of laboratory facilities. Each laboratory facility approved to provide services for the care and treatment of eligible persons, except for those laboratory facilities authorized by K.A.R.

28-4-408, shall maintain a valid clinical laboratory improvement certificate appropriate for the type and complexity of the services performed.

(d) Designation of radiology and nuclear medicine facilities. Each x-ray facility approved to provide services for the care and treatment of eligible persons, except for those x-ray facilities authorized by K.A.R. 28-4-408, shall meet the following standards:

(1) Maintain compliance with K.A.R. 28-35-133 through 28-35-338, as authorized by K.S.A. 48-1607;

(2) have on staff a radiologist supervising the facility and all patient services;

(3) have on staff technical personnel who are qualified for the type of services being provided;

(4) have written medical policies and procedures that are developed and maintained under the direction of the radiologist responsible for patient services, including policies and procedures related to interpretation of all radiologic exams, preparation and provision of written reports, and emergency situations; and

(5) have regularly scheduled inservice programs for all staff relating to children and pediatric conditions.

(e) Designation of ambulatory surgical facilities. Each ambulatory surgical facility approved to provide services for the care and treatment of eligible persons, except for those ambulatory surgical facilities authorized by K.A.R. 28-4-408, shall fulfill these requirements:

(1) Be licensed as an ambulatory surgical facility by the secretary;

(2) have qualified pediatric nurses regularly assigned to care for the pediatric clients;

(3) have physicians performing the surgeries who are certified by specialty boards in the specialty appropriate for the needs of the child and for which the facility is approved;

(4) have dentists who are qualified to perform the procedures for which the facility is approved;

(5) have qualified personnel to give anesthesia to pediatric clients;

(6) have a separate area for children with provisions made for parents who wish to remain with their child during preparation for surgery and the post-operative period, including the recovery from anesthesia;

(7) have facilities to isolate clients with conditions requiring isolation or separation;

(8) have operating facilities appropriate for the type of procedures conducted at the facility;

(9) have a laboratory department with facilities and qualified personnel for hematology, chemistry, microbiology, and serology testing as appropriate for the type of procedures conducted at the facility;

(10) have a radiology department with facilities and qualified personnel to treat children for conditions related to the type of procedures conducted at the facility;

(11) have other facilities appropriate for the type of procedures conducted at the facility;

(12) have regularly scheduled inservice programs for all health-care staff relating to children and pediatric conditions;

(13) have written protocols which state the conditions under which a client would be transferred to a hospital to receive services not available within the ambulatory surgical facility;

(14) have written protocols which state the method of transfer of a client to the hospital, when necessary; and

(15) have a written agreement with a hospital to accept a patient transferring from the ambulatory surgical facility in an emergency situation.

(f) Designation of prosthetics and orthotics appliance facilities. Each prosthetics and orthotics appliance facility approved to provide services for the care and treatment of eligible persons shall have employees certified by the American board for certification in orthotics and prosthetics, in accordance with the "practitioner certification book of rules," effective October 1996, and "technician registration book of rules," revised June 1994.

(g) Designation of pharmacies. Each pharmacy approved to provide services for the care and treatment of eligible persons shall be registered as a pharmacy by the Kansas state board of pharmacy.

(h) Designation of home health agencies. Each home health agency approved to provide services for the care and treatment of eligible persons shall be licensed as a home health agency by the secretary.

(i) Designation of other providers. Other providers approved to provide medical, surgical, and other services for the care and treatment of eligible persons, except for out-of-state providers authorized by K.A.R. 28-4-408, shall meet the following standards.

(1) Each audiologist shall be licensed as an audiologist by the secretary.

(2) Each dentist shall be licensed by the Kansas dental board, and each dental specialist shall be

licensed to practice that specialty by the Kansas dental board.

(3) Each hearing aid dealer shall be licensed by the Kansas board of hearing aid examiners to fit and dispense hearing aids.

(4) Each nurse shall be licensed as a registered professional nurse by the Kansas state board of nursing.

(5) Each nutritionist shall be licensed as a dietitian by the secretary.

(6) Each ophthalmologist shall be certified by the national examining board of ophthalmologists, in accordance with the "certification, registration and recertification," effective 1995.

(7) Each occupational therapist shall be licensed as an occupational therapist by the Kansas state board of healing arts.

(8) Each optometrist shall be licensed by the Kansas board of examiners in optometry.

(9) Each oral surgeon shall be licensed as an oral surgeon by the Kansas dental board.

(10) Each orthodontist shall hold an orthodontist's license issued by the Kansas dental board.

(11) Each physical therapist shall be licensed as a physical therapist by the Kansas state board of healing arts.

(12) Each physician shall be licensed by the Kansas state board of healing arts. Physicians providing medical specialty services shall be certified by the appropriate specialty board within three years of being accepted as a provider for the services for children with special health care needs program.

(13) Each respiratory therapist shall be licensed by the state board of healing arts.

(14) Each social worker shall have a master's degree in social work and shall be licensed by the Kansas behavioral sciences regulatory board.

(15) Each speech therapist shall be licensed as a speech therapist by the secretary.

(j) Responsibilities. Each provider of service shall agree that race, color, religion, national origin or ancestry shall not be a basis for refusing to provide service. In addition, each provider shall agree to comply with the following requirements:

(1) Submit reports requested by the services for children with special health care needs program;

(2) accept responsibility for the care and treatment provided to persons under the services for children with special health care needs program;

(3) be a medicaid provider;

(4) accept and bill insurance and medicaid, when available;

(5) accept as payment in full, payment from medicaid for medicaid-eligible services, without receiving a supplement from the services for children with special health care needs program;

(6) accept as payment in full, payments from an insurance carrier for services covered under a policy, supplemented to equal the services for children with special health care needs allowable rate, when applicable;

(7) accept as payment in full the fees established by the secretary and shall not bill families for any service covered by the services for children with special health care needs program without permission of the secretary; and

(8) notify the secretary of withdrawal from the services for children with special health care needs program. (Authorized by and implementing K.S.A. 65-5a08; effective May 1, 1982; amended May 1, 1983; amended, T-85-41, Dec. 19, 1984; amended May 1, 1985; amended, T-86-46, Dec. 18, 1985; amended May 1, 1986; amended May 1, 1987; amended Dec. 26, 1989; amended April 15, 1991; amended Sept. 12, 1997.)

28-4-405a. Payment. (a) Each provider shall submit a claim to the secretary for payment for a prior-authorized medical treatment within six months of the date of service.

(b) Each claim submitted for payment shall provide the following information:

- (1) the eligible person's name and address;
- (2) the date the medical treatment was provided;
- (3) the appropriate procedure code; and
- (4) the insurance or medicaid status of the eligible person or both insurance and medicaid status, when applicable.

(c) Each provider shall submit to the secretary the explanation of benefits from the insurance carrier or the remittance advice from medicaid, as applicable, for final adjudication of each claim.

(d) Claims by individuals or hospitals who do not meet the requirements of subsections (a) to (j), inclusive, of K.A.R. 28-4-405, as amended, may be allowed by the secretary if the individual or hospital provides emergency medical treatment for an eligible person, or with the prior authorization of the secretary, provides specialized medical treatment for an eligible person. (Authorized by and implementing K.S.A. 65-5a08; effective, T-85-41, Dec. 19, 1984; amended May 1, 1985; amended, T-86-46, Dec. 18, 1985; amended May 1, 1986; amended Dec. 26, 1989; amended Sept. 12, 1997.)

28-4-405b. Termination. (a) Any provider may be terminated by the secretary from participation in the services for children with special health care needs program for one or more of the following reasons:

(1) Voluntary withdrawal of the provider from participation in the program;

(2) suspension or termination of a required professional license or certificate; or

(3)(A) non-compliance with applicable state laws or regulations; or

(B) unethical or unprofessional conduct.

(b) Any provider may request a hearing before termination of a provider's participation in the services for children with special health care needs program for either of the reasons listed in paragraph (a)(3). (Authorized by K.S.A. 65-5a08; implementing K.S.A. 65-6a09; effective, T-85-41, Dec. 19, 1984; amended May 1, 1985; amended, T-86-46, Dec. 18, 1985; amended May 1, 1986; amended May 1, 1987; amended Dec. 26, 1989; amended Sept. 12, 1997.)

28-4-406. Conditions eligible for treatment. For a person to be eligible for financial assistance under the services for children with special health care needs program, the person shall be diagnosed with one or more of the following conditions:

(a) Myelomeningocele;

(b) Cleft palate, cleft lip, and related problems;

(c) Cardiovascular conditions, except for high blood pressure;

(d) Neurosurgical conditions, limited to permanent spinal cord injury that results in paralysis, or hydrocephalus;

(e) Orthopedic conditions, including the following:

(1) Congenital anomalies leading to physical limitations or functional disabilities which interfere with performance of age-appropriate activities;

(2) Acquired conditions leading to physical handicaps, excluding non-vitamin D resistant rickets;

(3) Fractures in which there is a complication in healing;

(4) Developmental problems requiring surgical correction; or

(5) Muscle problems that are of a disabling nature, limited to muscular dystrophies, myositis ossificans progressiva or poliomyelitis;

(f) Juvenile rheumatoid arthritis;

(g) Specified genetic and metabolic conditions, limited to phenylketonuria, cystic fibrosis, congenital hypothyroid, galactosemia, and sickle cell disease;

(h) Hearing problems that lead to or that present a high risk for permanent hearing loss;

(i) Congenital gastrointestinal problems requiring surgical correction;

(j) Genitourinary problems, limited to exstrophy of bladder or urethral valves which require surgery;

(k) Burns requiring surgical or compression garment treatment;

(l) Seizures, limited to outpatient services;

(m) Craniofacial anomalies; or

(n) Vision problems, limited to glaucoma, congenital cataracts or cataracts resulting from metabolic disease, retinal detachment with retinal defect, retinoblastoma, or retinal disorders excluding retinopathy of prematurity. (Authorized by and implementing K.S.A. 65-5a14; effective May 1, 1982; amended, T-85-41, Dec. 19, 1984; amended May 1, 1985; amended, T-86-46, Dec. 18, 1985; amended May 1, 1986; amended Dec. 26, 1989; amended Sept. 12, 1997.)

28-4-407. System of priorities. Persons with the diagnosis specified in subsection (a) of K.A.R. 28-4-406 shall have priority assistance, with subsequent priorities for assistance established in descending order for the diagnoses listed in subsections (b) through (n), inclusive. Persons with the diagnoses specified in subsection (n) of K.A.R. 28-4-406 shall be assigned the lowest priority for assistance. (Authorized by and implementing K.S.A. 65-5a14; effective May 1, 1982; amended, T-85-41, Dec. 19, 1984; amended May 1, 1985; amended, T-86-46, Dec. 18, 1985; amended May 1, 1986; amended Dec. 26, 1989; amended Sept. 12, 1997.)

28-4-408. Out-of-state service provision. (a) Treatment services may be provided out of state on an individual basis under any of the following conditions.

(1) The medical specialty is not practiced in Kansas.

(2) The medical treatment is not available in Kansas, and two approved medical specialists recommend out-of-state treatment.

(3) Kansas facilities have no hospital beds available for the client.

(4) The eligible person, traveling outside of Kansas but within the United States and its terri-

tories, requires emergency treatment for the eligible condition, if Kansas residency is not severed through action or intent.

(b) Treatment services may be provided out of state for eligible children with specific conditions if there is a written agreement between the secretary and the service provider establishing a treatment site for ongoing care.

(c) When treatment services are provided out of state, the eligible family shall be responsible for the costs of the following:

(1) treatment that is greater than approved charges under the services for children with special health care needs program;

(2) travel for the eligible child and family; and

(3) maintenance of the family during the treatment.

(d) Initial diagnostic services out of state shall not be authorized. (Authorized by and implementing K.S.A. 65-5a08; effective, T-86-46, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended Dec. 26, 1989; amended Sept. 12, 1997.)

HEMOPHILIA PROGRAM

28-4-410. Definitions. (a) "Blood bank" means a licensed facility that supplies blood or clotting factor.

(b) "Clotting factor" means a substance derived from human blood or prepared by recombinant deoxyribonucleic acid technology.

(c) "Cash assets" means money, savings accounts, savings certificates, checking accounts, and stocks and bonds.

(d) "Comprehensive centers" means those facilities that provide services to individuals with hemophilia, and meet the standards established by the national hemophilia foundation medical and scientific advisory council in "standards and criteria: for the care of persons with congenital bleeding disorders," approved on July 10, 1994.

(e) "Emergency" means an unanticipated, urgent event requiring immediate medical treatment.

(f) Family.

(1) "Family," for an eligible person who resides with the person's parents, stepparents or legal guardian or who is considered to be a dependent of that person's parents, stepparents or legal guardian for income tax purposes, means the eligible person who has hemophilia, that person's parents, stepparents or legal guardian and all other persons who reside in the same home as that of

the person who has hemophilia. Family shall not include persons who lease or rent a portion of the residence.

(2) "Family," for an eligible person who has established a separate residence and is no longer considered a dependent of that person's parents, stepparents or legal guardian for income tax purposes, means the eligible person who has hemophilia, that person's spouse and children, and all other relatives and persons who reside in the same home as that of the person who has hemophilia. Family shall not include persons who lease or rent a portion of the residence.

(g) "Family income" means the total income received by all adult members of the family based upon one or more of the following, with the addition of non-taxable benefits from whatever source:

(1) the total amount of adjusted gross income reported for federal income tax purposes on the most recent federal income tax return filed by each adult member of the family; or

(2) three months of pay stubs or a letter of anticipated earning from the employer of each adult member of the family when the most recent federal income tax does not reflect current income.

(h) "Family living allowance" means the amount established by the secretary as specified in K.A.R. 28-4-413.

(i) "Hemophilia" means a bleeding tendency that results from a genetically determined deficiency factor in the blood.

(j) "Hemophilia program" means services that are provided for the care and treatment of persons with hemophilia and that are administered by the secretary.

(k) "Home therapy" or "self therapy" means the administration of transfusions of blood concentrates or blood derivatives in a home setting.

(l) "Health care plan" means documents prepared by the secretary that state a plan of treatment, describe the authorized services, and identify the approved providers of service, the time frame for provision of services and the party responsible for payment for services.

(m) "Infusion" means therapeutic introduction of a fluid into a vein.

(n) "Infusion supplies" means syringes, needles and hemophilia infusion sets.

(o) "Prior authorization" means the approval of a request to obtain blood products and other efficacious agents or educational services pertaining to hemophilia before the provision of the service,

or in an emergency, within two working days after the emergency occurs.

(p) "Secretary" means the secretary of the department of health and environment or the secretary's designee. (Authorized by K.S.A. 65-1,134; implementing K.S.A. 65-1,132, 65-1,133; effective, T-85-41, Dec. 19, 1984; effective May 1, 1985; amended Dec. 26, 1989; amended Sept. 12, 1997.)

28-4-411. Responsibilities of individuals who apply for or who receive assistance. (a) Each applicant shall fulfill these requirements:

(1) supply financial, insurance and family information essential to the establishment of eligibility within 30 days of the request for service, on forms approved by the secretary;

(2) submit written permission on forms prescribed by the secretary for release of information needed to determine medical and financial eligibility; and

(3) report to the secretary changes in any of the following circumstances:

(A) eligible person's address;

(B) the number of persons living in the home;

(C) marital status of the eligible person, parents, or legal guardians;

(D) custody of the eligible person;

(E) medical insurance coverage for the eligible person;

(F) medicaid eligibility or supplemental security income eligibility for the eligible person;

(G) family income or cash assets of more than \$500.00 per year; or

(H) other circumstances that affect the special health care needs of the eligible person.

(b) Each eligible person who is enrolled in the department of social and rehabilitation services' managed care arrangements shall, within 10 working days of enrolling, report the following information:

(1) the eligible person's medical number;

(2) the name of the managed care provider; and

(3) the name of the eligible person's primary care network physician at the time of application or subsequent enrollment in the managed care arrangement.

(c) Each eligible person under 21 years of age enrolled in medicaid shall participate in the kan-be-healthy program.

(d) Each eligible person enrolled in a managed care arrangement under the medicaid program or an insurance policy shall obtain referrals for care as required by the managed care provider.

(e) Each eligible person shall fulfill these requirements:

(1) obtain prior authorization for services;
 (2) apply for insurance, medicaid coverage, supplemental security income or benefits from other sources, when requested;

(3) assign the insurance benefits to hospitals and other providers of service for any medical treatment;

(4) apply the benefits of any non-assignable insurance by making payments to hospitals or other providers of service for items ordered by the attending physician; and

(5) reimburse the secretary for any insurance proceeds sent directly to the recipient if the insurance payment is made for medical treatment provided by the hemophilia program.

(f) Each eligible person shall obtain from one of the comprehensive centers initial and annual evaluations of medical eligibility for the hemophilia program.

(g) Each eligible person shall submit any bills received for prior authorized services to the secretary within six months of the date of service.

(h) Each eligible person shall obtain from one of the comprehensive centers a written prescription for blood products or other efficacious agents and shall provide a copy of the current prescription to the secretary. (Authorized by and implementing K.S.A. 65-1,132; effective, T-85-41, Dec. 19, 1984; effective May 1, 1985; amended Dec. 26, 1989; amended Sept. 12, 1997.)

28-4-412. (Authorized by and implementing K.S.A. 1984 Supp. 65-1,132; effective, T-85-41, Dec. 19, 1984; effective May 1, 1985; revoked Dec. 26, 1989.)

28-4-413. Financial eligibility. (a)(1) The uniform standard for determining eligibility shall be the annual margin as calculated in paragraph (2). If the annual margin is zero or below, the person shall be eligible for financial assistance under the hemophilia program. If the annual margin is above zero, the person shall not be eligible for financial assistance, except as provided in subsections (d) and (e). The factors to be utilized in calculating the annual margin shall be the following items:

- (A) the family income;
- (B) cash assets;
- (C) family living allowance;
- (D) anticipated specialized health care expenditures

for the eligible person and other family members; and

(E) the benefits available under health insurance coverage for the eligible person.

(2) The annual margin shall be calculated by the following method:

(A) add the amount of the family income to the amount of cash assets above the maximum allowed under subsection (c); and

(B) subtract from the total of paragraph (a)(2) (A) the following:

(i) The family living allowance as determined in subsection (b); and

(ii) the amount of the anticipated health care expenditures for the person that will not be paid by the person's health insurance coverage.

(b) The family living allowance shall be 185 percent of the poverty guidelines updated annually in the federal register by the U.S. department of health and human services under the authority of section 673(2) of the omnibus reconciliation act of 1981, effective July 1 following the publication.

(c) The maximum cash assets allowed for a family shall be 15 percent of the family living allowance.

(d) If within 12 months after application the family spends down the annual margin to zero or below per subsection (e) through the family's actual or obligated expenditures for medical care for any family member, the person shall be, at that time, financially eligible for assistance for the remainder of the 12-month period. These expenditures shall be in addition to any expenditure or reimbursement made by a health insurance carrier or other third-party payor.

(e) In order to spend the annual margin down to zero, the family shall agree to pay the following expenses:

(1) medical expenses and travel expenses related to medical treatment, or health support services, supplies or equipment; or

(2) a portion of actual or anticipated medical expenses, and travel expenses related to medical treatment or a portion of health support services, supplies or equipment as documented in the health care plan. (Authorized by and implementing K.S.A. 65-1,132; effective, T-85-41, Dec. 19, 1984; effective May 1, 1985; amended Dec. 26, 1989; amended Sept. 12, 1997.)

28-4-414. Payment. (a) Each provider shall submit a claim to the secretary for payment for a prior-authorized clotting factor or service within six months of the date of service.

(b) Each claim submitted for payment shall provide the following information:

- (1) the eligible person's name and address;
- (2) the date the service was provided;
- (3) the appropriate procedure code;
- (4) the insurance or medicaid status, or both, of the eligible person, when applicable.

(c) Each provider shall submit to the secretary the explanation of benefits from insurance carriers or the remittance advice from medicaid, as applicable, for final adjudication of each claim. (Authorized by K.S.A. 65-1,134; implementing K.S.A. 65-1,133; effective, T-85-41, Dec. 19, 1984; effective May 1, 1985; amended Sept. 12, 1997.)

28-4-415. Conditions eligible for treatment. Each person who is eligible for financial assistance under the hemophilia program shall meet one or more of the following conditions. (a) The person requires continuing home therapy, under the direction of a comprehensive center, with clotting factor to avoid extensive hospitalization and other disabling effects associated with this chronic bleeding condition.

(b) The person requires education concerning the administration and management of home therapy for hemophilia. (Authorized by K.S.A. 65-1,134; implementing K.S.A. 65-1,132, 65-1,133; effective, T-85-41, Dec. 19, 1984; effective May 1, 1985; amended Sept. 12, 1997.)

28-4-416. System of priorities. Provision of clotting factor and infusion supplies for home therapy shall be the highest priority for assistance, education for persons who have hemophilia and for families of persons who have hemophilia shall be the second-highest priority for assistance, and education for physicians, dentists, nurses and other professionals who assist persons with hemophilia shall be the lowest priority for assistance. (Authorized by K.S.A. 65-1,134; implementing K.S.A. 65-1,132, 65-1,133; effective, T-85-41, Dec. 19, 1984; effective May 1, 1985; amended Sept. 12, 1997.)

CHILD CARE CENTERS AND PRESCHOOLS

28-4-420. Definitions. (a) "Administrator" means the staff member of a child care center or preschool who is responsible for the general and fiscal management of the facility.

(b) "Attendance" means the number of children present at any one time.

(c) "Basement" means an area in which all four

outside walls are more than two-thirds below ground level.

(d) "Child care center" means a facility:

(1) which provides care and educational activities for 13 or more children two weeks to 16 years of age for more than three hours and less than 24 hours per day including day time, evening, and nighttime care; or

(2) which provides before and after school care for school-age children. A facility may have fewer than 13 children and be licensed as a center if the program and building meet child care center regulations.

(e) "Child with handicaps" means a child in care who does not function according to age-appropriate expectations to such an extent that the child requires special help, program adjustment, and support services on a regular basis.

(f) "Corporal punishment" means activity directed toward modifying a child's behavior by means of physical contact such as spanking with the hand or any implement, slapping, swatting, pulling hair, yanking the arm, or any similar activity.

(g) "Discipline" means the on-going process of helping children develop inner control so that they can manage their own behavior in a socially-approved manner.

(h) "Enrollment" means the total number of children for whom services are available.

(i) "Evening care" means care provided between 6 o'clock p.m. and midnight of the same day.

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

(k) "Infant" means a child who is between two weeks and 12 months of age, or a child over 12 months who has not learned to walk.

(l) "In-service training" means job-related training provided for employed staff and volunteers.

(m) "Integrated unit" means a center or preschool program serving both handicapped and non-handicapped children, in which not less than $\frac{1}{3}$ and not more than $\frac{2}{3}$ of the children are handicapped.

(n) "License" means a document issued by the Kansas department of health and environment which authorizes a licensee to operate and maintain a child care center or preschool.

(o) "License capacity" means the maximum number of children that is allowed to attend at any one time.

(p) "Licensed physician" means a person licensed to practice medicine and surgery in Kan-

sas as set forth in K.S.A. 65-2869 and 65-2870, and any amendments thereto.

(q) "Licensee" means a person, corporation, firm, association, educational group or other organization which operates or maintains a child care center or preschool.

(r) "Mother's day out" means a program operating more than five consecutive hours or more than one day per week and in which any one child is enrolled for not more than one session per week.

(s) "Nighttime care" means care provided after six o'clock p.m. and continuing until after midnight.

(t) "Preschool" means a facility:

(1) which provides learning experiences for children who have not attained the age of eligibility to enter kindergarten as prescribed in K.S.A. 72-1107(c) and any amendments thereto, and who are 30 months of age or older;

(2) which conducts sessions not exceeding three hours per session;

(3) which does not enroll any child more than one session per day; and

(4) which does not serve a meal. The term "preschool" shall include educational preschools, Montessori schools, nursery schools, church-sponsored preschools, and cooperatives. A facility may have fewer than 13 children and be licensed as a preschool if the program and facility meet preschool regulations.

(u) "Preschool age" means a child who is between 30 months of age and the age of eligibility to enter kindergarten as prescribed in K.S.A. 72-1107(c) and any amendments thereto.

(v) "Program" means a comprehensive and coordinated plan of activities providing for the education, care, protection, and development of children who attend a preschool or a child care center.

(w) "Program director" means the staff member of a child care center or preschool who meets the requirements specified in K.A.R. 28-4-429(b), (c), (d) or (e) and who is responsible for implementing and supervising the program.

(x) "School-age" means a child who will attain the age of six years on or before the first day of September of any school year, but who is not 16 years of age or older.

(y) "Self-contained unit" means an area separated by walls or partitions not less than five feet high which contains indoor learning materials for the maximum number of children permitted in one group as specified in K.A.R. 28-4-428(a).

(z) "Sick child" means a child who has a contagious disease or shows other signs or symptoms of an acute illness.

(aa) "Special purpose unit" means a program in which more than two-thirds of the children enrolled have severe or mild handicaps.

(bb) "Summer program for school-age children" means a program in which school-age children are enrolled for more than three hours daily for more than two consecutive weeks, and shall include summer camps.

(cc) "Swimming pool" means an enclosed body of water more than 12 inches deep.

(dd) "Toddler" means a child who has learned to walk and who is between 12 and 30 months of age.

(ee) "Unit" means the number of children that may be present in one group, as specified in K.A.R. 28-4-428(a). (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1987.)

28-4-421. Terms of license. (a) License capacity shall be specified on the license.

(1) License capacity shall be determined by age of children, available space, program director qualifications, and number of self-contained units per facility.

(2) Permission for a change of license capacity, age of children to be enrolled or number of units shall be requested on forms prescribed by the Kansas department of health and environment. No change shall be made unless permission is granted in writing by Kansas department of health and environment. If granted, permission shall be posted.

(3) Permission for an overlap period of attendance to accommodate lunch time and shift changes shall be requested from the Kansas department of health and environment, and if granted, shall be posted.

(4) Children enrolled on an irregular basis shall not cause the center or preschool to exceed its license capacity.

(5) Each license shall be valid only for the licensee and the address appearing on the license.

(b) A copy of "regulations for licensing child care centers and preschools," provided by the Kansas department of health and environment shall be kept on the premises at all times. (Authorized by K.S.A. 65-508; implementing K.S.A. 1983 Supp. 65-504 and K.S.A. 65-508; effective May 1, 1983; amended May 1, 1984.)

28-4-422. Procedures. (a) General.

(1) Any person, corporation, firm, association, or other organization desiring to conduct a child care center or preschool which will operate for more than five consecutive hours or more than one day per week shall apply for a license on forms supplied by the Kansas department of health and environment.

(2) In lieu of being licensed, preschools operated on the premises of private schools providing kindergarten through grade six shall be governed by Kansas statutes applicable to private schools.

(3) Each application for a license or an application for renewal of license shall be accompanied by the license fee which shall not be refundable.

(4) Children shall not be in attendance at the center or preschool until a license has been issued by the Kansas department of health and environment.

(5) Applicants shall be 18 years of age or older at time of application.

(6) A license shall be issued if the secretary finds that the applicant is in compliance with the requirements of K.S.A. 65-501 *et seq.* and amendments thereof, and the rules and regulations promulgated pursuant to those statutes, and that the applicant has made full payment of the license fee required by the provisions of K.S.A. 65-505 and amendments thereof.

(A) A license for an additional facility operated by a licensee shall not be issued until all existing facilities operated by the licensee are in compliance with licensing regulations.

(B) It shall be the responsibility of the licensee to provide the financial resources necessary to maintain compliance with licensing regulations.

(b) Statement of services offered. When making application to the Kansas department of health and environment for a license to conduct a child care center or preschool, the applicant shall state what services will be provided. Advertisements shall conform to the written statement of services. No claims as to specialized services shall be made unless the facility is staffed and equipped to offer those services. No general claim as to "state approval" shall be made unless the facility has obtained a license issued by the Kansas department of health and environment. The licensing agency shall be notified of any change in the position of program director or any change in program which effects licensure.

(c) Initial application.

(1) Site approval.

(A) The proposed site shall be approved by the Kansas department of health and environment, the local building inspector when required, and a fire safety inspector. Inspection reports shall accompany the application for license.

(B) When a building is to be constructed or an existing building is to be remodeled, construction or remodeling plans shall be submitted to the Kansas department of health and environment.

(C) When additional space in an existing building is to be used, prior approval shall be obtained from the Kansas department of health and environment.

(2) A working telephone shall be on the premises and available at all times for use by staff.

(d) Renewals.

(1) Before an existing license expires, the licensee shall apply for renewal of the license on forms supplied by the Kansas department of health and environment.

(2) Any application may be withdrawn at any time upon request by the applicant. The applicant shall submit a new application to the Kansas department of health and environment prior to re-opening a facility.

(3) A new application and fee shall be submitted for each change of ownership, sponsorship or location.

(e) Grievance procedures.

(1) Each applicant or licensee receiving notice of denial or revocation of license shall be notified of the right to an administrative hearing by the Kansas department of health and environment and subsequently of the right of appeal to the district court.

(2) Each applicant or licensee aggrieved by a licensing evaluation or by licensing procedures may appeal in writing to the Kansas department of health and environment.

(f) Exceptions.

(1) Any applicant or licensee may submit a written request for an exception to a regulation to the Kansas department of health and environment. An exception shall be granted if the secretary determines the exception to be in the best interest of a child or children and their families, and if statutory requirements are not violated.

(2) Written notice from the Kansas department of health and environment stating the nature of the exception and its duration shall be posted with the license. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, 65-504, 65-505 and 65-508; effective May 1, 1983; amended May 1,

1984; amended, T-87-34, Nov. 19, 1986; amended May 1, 1987.)

28-4-423. Physical plant. (a) Premises.

(1) The building shall meet the legal requirements of the community as to fire protection, water supply, and sewage disposal.

(2) The designated area for children's activities shall contain a minimum of thirty-five square feet of floor space per child, exclusive of kitchen, passageways, storage areas, and bathrooms.

(3) The building shall have two exits approved by a fire inspector. One exit shall lead directly to the outside.

(4) Second floors approved by a fire inspector may be used for children 2½ years or over. Second-floor windows shall be guarded.

(5) Finished basements approved by a fire inspector may be used for children 2½ years or older. Basements shall be dry and well-ventilated, heated and cooled as specified in paragraph (a)(20) of this regulation, and lighted as specified in paragraph (a)(18) of this regulation.

(6) When mobile classroom units are used, they shall be securely anchored to the ground and shall meet all requirements for permanent structures.

(7) All stairs which have more than two steps shall be provided with sturdy handrails. When balusters are more than four inches apart, provisions shall be made to prevent a child's head or body from falling through.

(8) Landings or gates shall be provided beyond each exterior door, and any door opening onto a full-length stairway.

(9) Ceiling height shall be not less than seven feet, six inches.

(10) Windows and doors.

(A) Each window and glass door shall be screened or guarded.

(B) Each window and door opened for ventilation shall be screened.

(11) Floors shall be smooth and not slippery, free from cracks, clean and in good condition. A floor covering shall be required over concrete.

(12) Carpeting shall be clean and in good repair. Newly-installed carpeting shall meet fire safety requirements of the state fire marshal.

(13) Walls shall be clean and free of cracks.

(14) All surfaces shall be free of toxic materials.

(15) Electrical outlets within the reach of children under five years of age shall be provided with receptacle covers when not in use.

(16) Extension cords shall not be used.

(17) Each room occupied by children shall have a minimum of 20 foot candles of light in all parts of the room. Each sleeping room shall be lighted to allow freedom of movement.

(18) The premises shall be maintained in good condition and shall be clean at all times, free from accumulated dirt and trash, and any evidence of vermin or rodent infestation. Each outdoor trash and garbage container shall be covered, and the contents shall be removed at least weekly.

(19) Each room occupied by the children shall be heated, ventilated and cooled. The temperature in each room shall not be less than 65°F. nor more than 90°F. Each area occupied by children shall be free of drafts.

(20) Each electric fan if used, shall be mounted high on the wall or shall be guarded.

(21) When a gas heater is used, it shall be approved by a fire inspector before use. Open-faced heaters shall be prohibited.

(22) All heating elements, including hot water pipes, shall be insulated or installed in such a way that children cannot come in contact with them. Asbestos insulation shall not be used. Fireplaces shall not be used when children are present.

(23) Medicines, household poisons, and other dangerous substances and instruments shall be in locked storage.

(24) Storage of firearms in any area used for children's activities shall be prohibited. Firearms stored in any other area of the premises shall be in locked storage, or shall be equipped with trigger locks.

(b) Water supply.

(1) The water supply shall be from a source approved by a health department, or by the Kansas department of health and environment.

(2) Sanitary drinking facilities shall be available to children while indoors or outdoors. One of the following methods shall be used:

(A) Individual disposable cups and a water dispenser;

(B) individually-marked glasses or cups which shall be washed daily; or

(C) a fountain designed so that a child can get a drink of water without assistance.

(3) Drinking fountains shall not be plumbed to sinks.

(4) Water from drinking fountains shall be under pressure so that the stream is not less than three inches high.

(5) Cold water and hot water not exceeding 110°F. shall be supplied to lavatory fixtures accessible to children.

(c) Toilet and lavatory facilities.

(1) All plumbing fixtures and building sewers shall be connected to public sewers where available.

(2) When a public sewer is not available, a private sewage disposal system meeting requirements of the county health department or the Kansas department of health and environment shall be installed and connected to all plumbing fixtures.

(3) Plumbing shall be installed and maintained according to local and state plumbing codes.

(4) Bathroom facilities shall be readily accessible to the children, and shall be placed low or be provided with safety steps.

(5) There shall be one toilet and one washbasin for each fifteen children.

(6) Bathroom facilities shall be planned to assure privacy for staff.

(7) Soap, individual cloth towels or paper towels, and toilet paper shall be provided. The use of common towels and wash cloths shall be prohibited. When cloth towels and wash cloths are used, they shall be labeled with the child's name, and laundered at least weekly. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983; amended May 1, 1985.)

28-4-424. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983; amended May 1, 1985; revoked May 1, 1986.)

28-4-425. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983; amended May 1, 1984; amended, T-85-41, Dec. 19, 1984; amended May 1, 1985; revoked May 1, 1986.)

28-4-426. Administration. (a) Line of authority. There shall be a written delegation of administrative authority designating the person in charge in the facility for all hours of operation.

(b) Admission policy.

(1) Arrangements for the admission of children shall be made prior to the admission date to the center or preschool.

(2) Each admission policy shall be non-discriminatory in regard to race, color, religion, national origin, ancestry, physical handicap, or sex, in accordance with K.S.A. 44-1009. A copy of the admission policy shall be available for review.

(3) Each parent shall be informed of services offered.

(4) Each parent shall be informed when religious training is included in the program.

(c) Insurance.

(1) Accident insurance shall be carried on children.

(2) Liability insurance shall be carried by the center or preschool to provide recourse to parents of children enrolled in the event of negligence.

(3) Documentation of insurance coverage shall be on file, including the name of the insurance company or companies, policy number or numbers and dates of coverage.

(d) Staff records. The following records shall be maintained for each staff person:

(1) A record of education and experience;

(2) date of employment;

(3) a record of scheduled hours;

(4) a record of in-service training;

(5) a health certificate; and

(6) work references.

(e) Children's records.

(1) A daily attendance record shall be maintained and kept on file at the facility.

(2) The following emergency information shall be readily accessible to and near the telephone:

(A) Name, date of birth, and sex of child;

(B) name, home and business address, and phone numbers of parents or legal guardian;

(C) name, address, and telephone number of physician, hospital, and person to notify in case of emergency; and

(D) persons authorized to call for the child.

(3) A file shall be maintained for each child which includes:

(A) The application for enrollment, including beginning date and date of termination;

(B) a record of scheduled hours and days of attendance;

(C) a health assessment and immunization record;

(D) each accident report; and

(E) signed parental permission for field trips, transfer of records, and when applicable, walking to and from activities away from the facility.

(4) Children's records shall be confidential. Staff shall not disclose nor discuss personal information regarding children and their relatives with any unauthorized person.

(5) Each child's records and reports shall be made available to the child's parents on request. Children's health records shall be returned to the parents when the children are no longer enrolled. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983; amended May 1, 1985; amended May 1, 1986.)

28-4-427. Program. (a) Programs shall be conducted in self-contained units with staff and children designated for each unit. Centers or pre-schools which cannot develop self-contained units shall present a plan for space use to the Kansas department of health and environment for approval.

(b) Equipment.

(1) Low, open shelves shall be provided for play equipment and materials so that they are readily accessible to the children.

(2) Equipment shall be scaled to the size of the children.

(3) Equipment shall be of sound construction with no sharp, rough, loose, nor pointed edges, and in good operating condition.

(4) Equipment shall be placed to avoid danger of accident or collision, and to permit freedom of movement.

(5) Equipment shall be provided in a sufficient quantity so that each child has a choice of at least three activities when all children are using equipment at the same time.

(6) Storage space located conveniently for the staff shall be provided for supplies and equipment not in use.

(7) Each child shall have individual space for the child's garments, clothing, and possessions during the session attended.

(c) Learning experiences.

(1) There shall be a written program plan which includes daily learning experiences appropriate to the developmental level of the children. Experiences shall be designed to develop:

- (A) Self-esteem and positive self-image;
- (B) social interaction skills;
- (C) self-expression and communication skills;
- (D) creative expression;
- (E) large and small muscle skills; and
- (F) intellectual growth.

(2) The program schedule shall be planned to provide a balance of active, quiet, individual and group activities.

(3) A written program plan shall be posted in each unit.

(d) Discipline.

(1) There shall be a written discipline policy outlining methods of guidance appropriate to the ages of the children enrolled. This policy shall be made available to staff and parents.

(2) Prohibited punishment. Punishment which is humiliating, frightening or physically harmful to the child shall be prohibited. Prohibited methods of punishment include:

(A) Corporal punishment;

(B) verbal abuse, threats, or derogatory remarks about the child or the child's family;

(C) binding or tying to restrict movement, or enclosing in a confined space such as a closet, locked room, box, or similar cubicle; and

(D) withholding or forcing foods. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983.)

28-4-428. Staff requirements. Each licensee shall ensure that all of the following requirements are met:

(a) Minimum staff-child ratio.

(1) The ratio between staff members and children shall be determined by the ages of the children and the type of care provided.

(2) The minimum staff-child ratio and the maximum number of children per unit shall be the following, at all times:

Age of children	Minimum staff-child ratio	Maximum number of children per unit
Infants	1 to 3	9
Infants and other children under the age of 6	1 to 4 (including not more than 2 infants)	8 (including not more than 4 infants)
Toddlers	1 to 5	10
Children at least 2 years of age but under the age of 3	1 to 7	14
Children at least 2½ years of age but under school-age	1 to 10	20
Children at least 3 years of age but under school-age	1 to 12	24
Kindergarten enrollees	1 to 14	28
School-age	1 to 16	32

(3) No child shall be left unsupervised.

(b) Substitute staff. Each preschool and each child care center shall have two additional adults who are available to work in case of illness or emergency. These adults' names and phone numbers shall be posted and these individuals' health certificates shall be on file at the preschool or child care center.

(c) Volunteers. Each volunteer shall be at least 14 years of age. Any volunteer may be counted in the staff-child ratio if the individual is at least 16 years of age, completes the education and training requirements for a volunteer specified in K.A.R. 28-4-428a, and is supervised at all times by a staff member who is not a volunteer.

(d) Program director.

(1) Each preschool and each child care center shall have a program director who is employed full time.

(2) Each preschool and each child care center licensed for more than 60 children shall employ a program director who has no other assigned responsibilities.

(3) Each preschool and each child care center licensed for more than 60 children shall have an administrator, who may also be the program director.

(e) References. Each staff member shall provide work references to the licensee at the time of application for employment. (Authorized by and implementing K.S.A. 2016 Supp. 65-508; effective May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended May 12, 2017.)

28-4-428a. Education and training requirements. (a) Orientation.

(1) Each person shall, before applying for a license, complete an orientation program on the requirements for operating a preschool or a child care center. If the person is not an individual, the person shall designate an individual to meet this requirement. The orientation shall be provided by the county health department or the secretary's designee that serves the county in which the preschool or child care center will be located.

(2) Each licensee shall provide orientation to each program director not later than seven calendar days after the date of employment and before the program director is given sole responsibility for implementing and supervising the program.

(3) Each licensee shall ensure that orientation is completed by each staff member who will be counted in the staff-child ratio and by each volunteer who will be counted in the staff-child ratio. Each staff member and each volunteer shall complete the orientation within seven calendar days after the date of employment or volunteering. Each staff member shall complete the orientation before being given sole responsibility for the care and supervision of children.

(4) Each licensee shall ensure that the orientation for each program director, staff member, and volunteer is related to work duties and responsibilities and includes the following:

(A) Licensing regulations;

(B) the policies and practices of the preschool or child care center, including emergency procedures, behavior management, and discipline;

(C) the schedule of daily activities;

(D) care and supervision of children in care, including any special needs and known allergies;

(E) health and safety practices; and

(F) confidentiality.

(b) Health and safety training.

(1) Each staff member who is counted in the staff-child ratio, each volunteer who is counted in the staff-child ratio, and each program director shall complete health and safety training either before employment or volunteering or not later than 30 calendar days after the date of employment or volunteering. Each staff member shall complete the training before being given sole responsibility for the care and supervision of children.

(2) The health and safety training shall be approved by the secretary and shall include the following subject areas:

(A) Recognizing the signs of child abuse or neglect, including prevention of shaken baby syndrome and abusive head trauma, and the reporting of suspected child abuse or neglect;

(B) basic child development, including supervision of children;

(C) safe sleep practices and sudden infant death syndrome if the individual will be caring for children under 12 months of age;

(D) prevention and control of infectious diseases, including immunizations;

(E) prevention of and response to emergencies due to food and allergic reactions;

(F) building and premises safety, including identification of and protection from hazards that could cause bodily injury, including electrical hazards, bodies of water, and vehicular traffic;

(G) emergency preparedness and response planning for emergencies resulting from a natural disaster or a human-caused event, including violence at a facility;

(H) handling and storage of hazardous materials and the appropriate disposal of bio-contaminants, including blood and other bodily fluids or waste; and

(I) precautions when transporting children, if transportation is provided.

(3) Each staff member counted in the staff-child ratio, each volunteer counted in the staff-child ratio, and each program director who was employed at the facility before July 1, 2017 and who has completed the training in the subject areas specified in paragraphs (b)(2)(A), (B), and (C) shall be exempt from training in the subject areas specified in paragraphs (b)(2)(D) through (I).

(c) Pediatric first aid and cardiopulmonary resuscitation (CPR) certifications.

(1) Each staff member counted in the staff-child ratio, each volunteer counted in the staff-child ratio, and each program director shall obtain certification in pediatric first aid and in pediatric CPR as specified in this subsection either before the date of employment or volunteering or not later than 30 calendar days after the date of employment or volunteering.

(2) Each individual who is required to obtain the certifications shall maintain current certifications.

(3) Each licensee shall ensure that, for each unit in a preschool or child care center, at least one staff member or volunteer counted in the staff-child ratio who has current certification in pediatric first aid and current certification in pediatric CPR is present at all times.

(d) Medication administration training. Each program director and each staff member designated to administer medications shall complete the training in medication administration as specified in this subsection.

(1) The training shall be approved by the secretary.

(2) Each program director and each staff member designated to administer medications who was employed at the facility before July 1, 2017 shall complete the training not later than December 31, 2017. The program director or the staff member designated to administer medications shall not administer medications after December 31, 2017 unless the individual has completed the training.

(3) Each program director and each staff member designated to administer medications who is employed at the facility on or after July 1, 2017 shall complete the training before administering medication to any child.

(e) Education requirements. Each program director shall be a high school graduate or the equivalent. For each unit in a preschool or child care center, there shall be present at all times at least one staff member who has a high school diploma or the equivalent, as required in K.A.R. 28-4-429.

(f) Annual in-service training requirements.

(1) For purposes of this subsection, "licensure year" shall mean the period beginning on the effective date and ending on the expiration date of a license.

(2) In each licensure year, each program director shall assess the training needs of each staff

member and each volunteer and shall provide or arrange for annual in-service training as needed.

(3) In each licensure year, each program director shall complete in-service training as follows:

(A) For each licensure year ending during the 2017 calendar year, five clock-hours;

(B) for each licensure year ending during the 2018 calendar year, five clock-hours;

(C) for each licensure year ending during the 2019 calendar year, 12 clock-hours; and

(D) for each licensure year ending during the 2020 calendar year, and for each subsequent licensure year, 16 clock-hours.

(4) In each licensure year, each staff member counted in the staff-child ratio and each volunteer counted in the staff-child ratio shall complete in-service training as follows, based on the staff member's or volunteer's job responsibilities and the training needs identified by the program director:

(A) For each licensure year ending during the 2017 calendar year, 10 clock-hours;

(B) for each licensure year ending during the 2018 calendar year, 10 clock-hours;

(C) for each licensure year ending during the 2019 calendar year, 12 clock hours; and

(D) for each licensure year ending during the 2020 calendar year, and for each subsequent licensure year, 16 clock-hours.

(5) The training shall be approved by the secretary.

(g) Documentation. Each licensee shall ensure that documentation of all orientation, training, certifications, and education requirements is kept in each individual's file in the preschool or child care center. (Authorized by and implementing K.S.A. 2016 Supp. 65-508; effective Feb. 3, 2012; amended May 12, 2017.)

28-4-429. Staff qualifications. (a) Program directors shall be 18 years of age or older and shall meet the training requirements for the license capacity of the facility.

(b) Facilities with fewer than 13 children shall have a program director who meets the training requirements by one of the following options:

(1) Option 1: Six months' teaching experience in licensed facilities with children of the same age as enrolled in present facility.

(2) Option 2: (A) Five sessions of observation for not less than 2½ consecutive hours per observation in licensed facilities with children of the same age as enrolled in present facility; and

(B) 10 clock hours of workshops approved by the state licensing staff;

(3) Option 3: (A) A minimum of three semester hours of academic credit or equivalent training in child development, early childhood education, and curriculum resources; and

(B) supervised observation in high school or college or three months' work experience with children of the same age as enrolled in present facility; or

(4) Option 4: A child development associate credential.

(c) Facilities licensed for not less than 13 and not more than 24 children shall have a program director who meets the training requirements by one of the following options:

(1) Option 1: (A) Five sessions of observation for not less than 2½ consecutive hours per observation in licensed preschools or child care centers. Child care center staff shall plan their observations so that daily activities during morning, lunch, nap time and late afternoon can be observed; and

(B) one year of teaching experience in licensed centers or preschools, or one year of supervised practicum in licensed centers or preschools; or

(2) Option 2: (A) Seven to nine semester hours of academic credit or equivalent training in child development or early childhood education; and

(B) three months' teaching experience in licensed centers or preschools, or one year of supervised practicum in licensed centers or preschools; or

(3) Option 3: A child development associate credential.

(d) Facilities licensed for more than 24 children shall have a program director who meets the training requirements by one of the following options:

(1) Option 1: (A) Twelve semester hours of academic study or equivalent training in child development, early childhood education, curriculum resources, nutrition, child guidance, parent education, supervised practicum, and administration of early childhood programs; and

(B) six months' teaching experience in licensed centers or preschools;

(2) Option 2: A child development associate credential and one year of teaching experience in licensed centers or preschools, or supervised practicum in licensed centers or preschools;

(3) Option 3: (A) An associate of arts degree or a two-year certificate in child development; and

(B) one year of teaching experience in licensed

centers or preschools, or a supervised practicum in licensed centers or preschools;

(4) Option 4: (A) An A.B. or B.S. degree in child development or early childhood education, including a supervised practicum; and

(B) three months' teaching experience in licensed centers or preschools; or

(5) Option 5: (A) An A.B. or B.S. degree in a related academic discipline, and 12 hours of academic study or equivalent training in child development, early childhood education, curriculum resources, nutrition, child guidance, parent education, supervised practicum, and administration of early childhood programs; and

(B) six months teaching experience in licensed centers or preschools.

(e) Facilities licensed for more than one hundred children shall have a program director who meets the following requirements:

(1)(A) A degree in child development or early childhood education; or

(B) an A.B. or B.S. degree in a related academic discipline and 12 hours of academic study or equivalent training in child development, early childhood education, curriculum resources, nutrition, child guidance, parent education, supervisor practicum, and administration of early childhood programs; and

(2) one year of experience as a program director in a center licensed for more than 24 children, or one year of experience as an assistant program director in a center licensed for more than 100 children.

(f) Facilities licensed for more than 100 children shall have an assistant program director who meets the requirements for program director specified in 28-4-429(d).

(g) Facilities licensed for more than 160 children shall have an assistant program director who meets the requirements for program director specified in 28-4-429(d), and who has no other assigned responsibilities.

(h) Each unit shall have one staff person who is at least 18 years of age and who has a high school diploma or its equivalent. Units enrolling fewer than 13 children shall have a staff person who meets the training requirements specified in subsection (b) of this rule and regulation. Units enrolling 13 to 24 children shall have a staff person who meets the training requirements specified in subsection (c) of this rule and regulation. Units enrolling more than 24 school-age children shall have a staff person who meets the require-

ments specified in subsection (d) of this rule and regulation.

(i) Assistant teachers shall be at least 16 years of age and shall participate in staff orientation at time of employment. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983; amended May 1, 1984; amended May 1, 1987.)

28-4-430. Health practices; illness and abuse; general health requirements for staff.

(a) Children's health assessments.

(1) A preentrance health assessment conducted within six months before enrollment shall be required for each child. The assessment shall be conducted by a licensed physician or by a nurse approved to perform health assessments.

(2) The results of the health assessment shall be kept on file at the child care facility.

(3) Children transferring from one child care facility to another shall not be required to obtain a new health assessment if the previous assessment record is available.

(4) Tuberculin testing shall be required only if the child comes in contact with a new active or reactivated case of tuberculosis. The results of the examination shall become a part of the child's health record.

(5) Immunizations for each child in care shall be current as medically appropriate and shall be maintained current for protection from the diseases specified in K.A.R. 28-1-20(d). A record of each child's immunizations shall be maintained on the child's medical record form.

(6) Exceptions to the requirement for immunizations shall be permitted as specified in K.S.A. 65-508, and amendments thereto. Documentation of each exception shall be maintained on file at the child care facility.

(7) Each licensee shall provide information to the parents of children in care about the benefits of annual, well-child health assessments for children under six years of age, and biennial health assessments for children six years of age and older. Each licensee shall also provide information about the importance of seeking medical advice when a child exhibits health problems. This information may be either given on a form provided by the Kansas department of health and environment to the parent at the time the child is enrolled or posted in a conspicuous place, with copies of the form available to parents on request.

(b) Health practices.

(1) Each child's hands shall be washed with

soap and water before and after eating and after toileting.

(2) Children shall be allowed to go to the bathroom individually as needed.

(c) Illness and abuse.

(1) If a child is absent due to a communicable disease, staff shall inform all parents of the nature of the illness.

(2) Each communicable disease shall be reported to the county health department.

(3) Each staff member shall be trained to observe symptoms of illness, neglect, and child abuse and shall observe each child's physical condition daily.

(4) Symptoms of illness shall be reported upon discovery to parents.

(5) All evidence of neglect or unusual injuries, including bruises, contusions, lacerations, and burns, shall be noted on the child's record and shall be reported upon discovery to the program director or, in the absence of the program director, the person designated in charge of the child care facility.

(6) The program director or, in the absence of the program director, the person designated in charge of the child care facility shall report within 24 hours to the Kansas department of social and rehabilitation services any evidence of suspected child abuse or neglect. When the local offices of the department of social and rehabilitation services are not open, reports shall be made to local law enforcement agencies.

(7) If care of sick children is to be provided, written plans regarding the needs of a sick child and the care of a sick child shall be prepared in consultation with the public health nurse and shall be presented to the parents at the time of enrollment. The requirements for the infectious and contagious diseases specified in K.A.R. 28-1-2 and for the isolation and quarantine of individuals with the infectious and contagious diseases specified in K.A.R. 28-1-6 shall be met.

(8) A quiet area shall be provided for any sick child. Each sick child shall be supervised by an adult.

(9) Non-prescription medications shall not be administered to any child except on written order of the parent or guardian. Each order shall be renewed yearly. Each non-prescription medication shall be administered by a designated staff member.

(10) Each prescription medication shall be administered by a designated staff member, from a pharmacy container labeled with the child's name,

the name of the medication, the dosage and dosage intervals, the name of the physician, and the date the prescription was filled. The label shall be considered the order from the physician.

(11) A record of the name of the designated staff member who administered the medication and the date and time the medication was given to the child shall be kept in the child's file.

(d) Staff.

(1) Smoking shall be prohibited in the child care center or preschool.

(2) Alcohol, as defined in K.S.A. 41-102 and amendments thereto, and non-prescribed controlled substances, as defined in K.S.A. 65-4101 and amendments thereto, shall not be consumed on the premises during the hours of operation and shall not be consumed while children are present.

(3) Each child residing in the same location as that of a child care center or preschool shall meet the requirements specified in subsection (a). (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended July 11, 2008.)

28-4-431. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983; amended May 1, 1986; revoked May 10, 1996.)

28-4-432. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983; revoked May 1, 1986.)

28-4-433. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983; amended May 1, 1985; revoked May 1, 1986.)

28-4-434. Preschools. (a) Inside area. Any building used as a residence shall be licensed as a preschool only if there is a room or rooms designated exclusively for preschool use.

(b) Nutrition.

(1) A nutritious snack shall be provided daily and shall include at least one of the following foods:

- (A) Milk, milk product, or food made with milk;
- (B) fruit, vegetable, or full-strength fruit or vegetable juice;
- (C) meat;
- (D) peanut butter; or
- (E) bread or cereal product.

(2) Fluid dairy products shall be Grade A pasteurized. Solid dairy products shall be pasteurized.

(3) Refrigeration shall be provided for perishable foods.

(4) If reusable table service is used for snacks, appropriate dishwashing methods shall be followed as specified in K.A.R. 28-4-439(k).

(5) Appropriate table service shall be used for serving snacks. Children's food shall not be placed on the bare table.

(c) Outdoor play. Outdoor play space shall not be required. If outdoor play is included in the preschool program, the requirements of K.A.R. 28-4-437 shall be met. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983; amended May 1, 1984.)

28-4-435. Programs serving children with handicapping conditions. (a) Records. Written parental permission shall be on file for evaluation and placement of children.

(b) Physical plant.

(1) Programs which include non-ambulatory children shall be conducted on the ground floor. All exits and steps shall have ramps approved by a fire inspector.

(2) Facilities enrolling children who use walkers or wheelchairs shall have 50 square feet of space for each physically handicapped child.

(3) When physically handicapped children are enrolled, toilets and washbasins shall be designed to accommodate them.

(c) Transportation. A second adult shall ride in the rear seat of the vehicle when three or more handicapped children are being transported.

(d) Staff requirements. Facilities shall have staff who meet the qualifications listed in K.A.R. 28-4-429. The following additional requirements shall be met:

(1) The parent of a child enrolled in the unit shall not be a teacher in that unit.

(2) Each unit shall have a staff person who has a minimum of six hours of academic credits or equivalent clock hours in understanding the needs of handicapped children, and in developing individual program plans.

(3) Consultants shall meet the educational requirements of their profession.

(e) Minimum staff/child ratios. If fewer than one-third of the children enrolled have handicapping conditions, the minimum staff/child ratios shall be those as specified in K.A.R. 28-4-428. If one-third or more of the children enrolled have handicapping conditions, the following minimum staff/child ratios shall be maintained:

Age of children	Integrated unit or center		Special purpose unit or center	
	Adult/child	Max. unit	Adult/child	Max. unit
Under 2½ years	1 to 3	9	1 to 2	6
2 years to 3 years	1 to 4	12	1 to 3	9
2½ years and above	1 to 6	18	1 to 4	12

(f) In-service training. All staff shall have 10 clock-hours of annual in-service training specific to handicapping conditions.

(g) Program. A written individual program plan shall be on file for each handicapped child enrolled, and in consultation with the parents, shall be reviewed and revised annually. The plan shall assign responsibility for the delivery of services, and shall indicate the anticipated change in the child's behavior, and how these changes will be measured. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983.)

28-4-436. Child care centers: physical plant. (a) Inside area. A building used as a residence shall be licensed as a child care center only if there is a room or rooms designated exclusively for child care use.

(b) Napping and sleeping.

(1) Children remaining at the center more than four hours shall be encouraged to nap or rest according to their individual needs. Children who do not sleep shall be permitted to have a quiet time through the use of equipment or activities which will not disturb other children.

(2) Centers shall have a crib, cot or pad for each child. Pads shall be enclosed in washable covers and shall be used only over carpet. When pads are used, they shall be long enough so that the child's head does not rest on the carpet. Bunk beds shall be prohibited.

(3) Each crib or cot shall be equipped with individually-labeled bottom sheet. Every child shall have a cover. Children shall not share bedding.

(4) There shall be a complete change of bedding after each five uses, immediately when wet or soiled, and always upon a change in occupancy. Blankets shall be laundered monthly.

(5) Cribs, cots, or pads, when in use, shall be separated from each other by at least two feet in all directions except when bordering on the wall. When not in use, they shall be stored in a clean and sanitary manner.

(6) Nighttime care.

(A) Movable screens shall be available to insure privacy as needed.

(B) Separate sleeping areas shall be provided for boys and girls over six years of age.

(C) A center in which children sleep for more than three consecutive hours shall be provided with a smoke detector installed in consultation with a fire inspector.

(c) Laundry facilities.

(1) If laundry is done at the center, laundry fixtures shall be located in an area separate from food preparation areas and shall be installed and used in such a manner as to safeguard the health and safety of the children.

(2) Separate areas shall be provided for soiled and clean items. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983.)

28-4-437. Child care centers: outside area. (a) There shall be at least 75 square feet of outdoor play space on the premises for each child using the space at a given time. The total outdoor space shall accommodate not less than one-half of the licensed capacity, or shall include a minimum of 750 square feet, whichever is greater.

(b) The boundaries of outdoor play space shall be enclosed with a fence not less than four feet high.

(c) The outdoor play space shall be located to provide both sunshine and shade. A hard-surfaced area or gravel shall not be used under anchored play equipment.

(d) The outdoor play space shall be well drained and free of hazards.

(e) Outdoor play equipment shall be safely constructed and in good repair. Climbing equipment and swings shall be anchored in the ground with metal straps or pins, or set in cement. Swings shall be safely located and shall have canvas or soft rubber seats. Teeter-totters and merry-go-rounds designed for school-age children shall not be used for children under six years.

(f) Sandboxes shall be maintained in a safe and sanitary condition.

(g) A rooftop used as a play area shall be enclosed with a flat board fence or a chainlink fence angled toward the play area. The fence shall not be less than six feet high. An approved fire escape shall lead from the roof to the ground.

(h) The play area shall be arranged so that staff can provide close supervision at all times.

(i) Outdoor equipment shall be provided in sufficient quantity so that each child has access to

at least one activity appropriate to the child's age level.

(j) There shall be bathroom facilities accessible to the play area. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983; amended May 1, 1984.)

28-4-438. Child care centers: program.

(a) The program shall provide regularity in routines such as eating and napping, and protection from excess fatigue and overstimulation.

(b) Unless extreme weather conditions prevail, children shall have a daily period of outdoor play under the supervision of an adult. Children spending more than four consecutive hours at the center shall play outdoors for at least one hour daily.

(c) Routines such as toileting and eating, and intervals between activities shall be planned so that children do not have to wait in lines, or assemble in large groups.

(d) If television is on the premises, its use shall be limited to children's programs.

(e) Activities shall be available for children during the entire time they are in attendance, including early morning and late afternoon. (Authorized by and implementing K.S.A 65-508; effective May 1, 1983.)

28-4-439. Child care centers: food service. (a) Single or multi-unit centers serving a meal prepared at the center to 13 or more children shall employ a staff person who:

- (1) Has knowledge of nutritional needs of children;
- (2) understands quantity food preparation and service;
- (3) practices sanitary methods of food handling and storage;
- (4) is sensitive to individual and cultural food tastes of children; and
- (5) is willing to work with the program director in planning learning experiences for children relative to nutrition.

(b) Centers shall serve meals and snacks as follows:

Length of Time at Center	Food Served
2½ to 4 hours	1 snack
4 to 8 hours	1 snack & 1 meal
8 to 10 hours	2 snacks & 1 meal or 1 snack & 2 meals
10 hours or more	2 meals & 2 or 3 snacks

(c) Meals and snacks.

(1) Breakfasts shall include:
(A) A fruit, vegetable, or full-strength fruit or vegetable juice;

(B) bread, a bread product or cereal; and

(C) milk.

(2) Noon or evening meals shall include one item from each of the following:

(A) Meat, poultry, fish, egg, cheese, cooked, dried peas or beans, or peanut butter;

(B) two vegetables, 2 fruits, or one vegetable and one fruit;

(C) bread, bread product or cereal; and

(D) milk.

(3) Mid-morning and mid-afternoon snacks shall include at least two of the following:

(A) Milk, milk product or food made with milk;

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

(C) meat or a meat alternate; or

(D) bread, bread product or cereal.

(d) A sufficient quantity of food shall be prepared for each meal to allow the children second portions of vegetables or fruit, bread, and milk.

(e) Food allergies or special dietary needs of specific children shall be known to cooks, staff members, child care workers, and substitutes.

(f) Menus shall be posted where parents can see them. Copies of menus served the previous month shall be kept on file.

(g) Staff shall sit at the table with the children, and socialization shall be encouraged. Children shall be encouraged to serve themselves. Spoons and forks shall be provided for each child's use. Appropriate service shall be used for meals and snacks.

(h) Children's food shall not be placed on a bare table.

(i) Toothbrushes shall be provided for each child's use. They shall be used daily after meals, and shall be stored in a sanitary manner out of children's reach.

(j) When meals are prepared on the premises, the kitchen shall be separate from the eating, play, and bathroom areas, and shall not be used as a passageway while food is being prepared.

(k) Food shall be stored as follows:

(1) Poisonous or toxic materials shall not be stored with food. Medications requiring refrigeration shall be labeled and kept in locked storage in the refrigerator.

(2) All perishables and potentially hazardous foods shall be continuously maintained at 45°F or lower in the refrigerator, or 10°F or lower in the

freezer, with 0°F recommended. Each cold storage facility shall be provided with a clearly visible, accurate thermometer.

(3) All foods stored in the refrigerator shall be covered.

(4) Foods not requiring refrigeration shall be stored at least six inches above the floor in clean, dry, well-ventilated storerooms or other areas.

(5) Dry, bulk foods which are not in their original, unopened containers shall be stored in metal, glass or food-grade plastic containers with tight-fitting covers, and shall be labeled.

(1) Table service shall be maintained in sanitary condition using one of the following methods:

(1) Disposable plates and cups, and plastic utensils of food grade, medium weight; or

(2) a three-compartment sink supplied with hot and cold running water and a drainboard for washing, rinsing, sanitizing, and air-drying; or

(3) a mechanical dishwasher.

(m) Dishes shall have smooth, hard-glazed surfaces, and shall be entirely free from cracks or chips.

(n) Tables shall be washed before and after meals, and floors shall be swept after meals.

(o) If meals are catered:

(1) Food shall be obtained from sources licensed by the Kansas department of health and environment.

(2) Food shall be transported in covered and temperature-controlled containers, and shall not be allowed to stand. Hot foods shall be maintained at not less than 140°F, and cold foods shall be maintained at 45°F or less.

(p) Fluid dairy products shall be Grade A pasteurized. Solid dairy products shall be pasteurized. Dry milk shall be used only for cooking.

(q) Meat shall be from government-inspected sources.

(r) Home-canned food, food from dented, rusted, bulging, or leaking cans, or food from cans without labels shall not be used.

(s) Garbage shall be placed in covered containers inaccessible to children, and shall be removed from the kitchen daily. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983; amended May 1, 1984; amended May 1, 1985.)

INFANT AND TODDLER PROGRAM

28-4-440. Infant and toddler programs.

(a) Infant and toddler programs shall be conducted on the ground floor only.

(b) Each unit of infants and each unit of toddlers shall be separate from each unit of older children.

(c) Floor furnaces shall be prohibited.

(d) A sleeping area separate from the play area shall be provided for infants.

(e) A crib or playpen shall be provided for each infant in care at any one time. Cribs and playpens shall be maintained in good condition. Clean individual bedding shall be provided.

(f) Each licensee shall ensure that the following requirements are met:

(1) The use of stacking cribs, cribs with water mattresses, or bassinets shall be prohibited.

(2) Cribs and playpens shall have slats not more than 2 $\frac{3}{8}$ inches apart.

(3) All sides of each crib or playpen shall be up while the crib or playpen is in use.

(4) On and after December 28, 2012, each licensee shall ensure that no crib purchased before June 28, 2011 is in use in the facility.

(g) Each licensee shall make any necessary changes to follow the recommendations of any consumer warning or recall of a crib or a playpen as soon as the warning or recall is known.

(h) Each licensee shall develop and implement safe sleep policies and practices for infants and toddlers and shall ensure that the policies and practices are discussed with the parent or legal guardian of each child before the first day of care. The safe sleep policies and practices shall include the following requirements:

(1) Each staff member who cares for children and each volunteer who cares for children shall follow the safe sleep policies and practices of the child care center.

(2) Each staff member who cares for infants and each volunteer who cares for infants shall ensure that all of the following requirements are met:

(A) Each infant shall nap or sleep in a crib or a playpen.

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

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

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

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

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

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

(i) When children are awake, they shall not be left unattended in cribs or other confinement for more than 30 minutes.

(j) An adult-size rocking chair shall be provided for each unit of infants.

(k) Children not held for feeding shall have low chairs and tables, infant seats with trays, or high chairs with a wide base and a safety strap.

(l) Either individually labeled towels and washcloths or disposable products shall be provided.

(m) Items that children can place in their mouths shall be washed and sanitized daily and shall be washed and sanitized before being used by another child, if contaminated by saliva or other bodily fluids.

(n) Each licensee shall ensure that at least one staff member who meets one of the following staff requirements is present for each unit of infants and each unit of toddlers:

(1) Option 1: An individual who meets the qualifications of K.A.R. 28-4-429(b) and has at least three months' experience caring for infants and toddlers;

(2) option 2: a licensed L.P.N. or R.N. with three months' experience in pediatrics or in licensed child care centers enrolling infants and toddlers; or

(3) option 3: a child development associate credential in infant and toddler care.

(o) Each licensee shall ensure that the following program requirements are met:

(1) Daily activities shall contribute to the following:

(A) Gross and fine motor development;

(B) visual-motor coordination;

(C) language stimulation; and

(D) social and personal growth.

(2) Infants and toddlers shall spend time outdoors daily unless extreme weather conditions prevail.

(p) Each licensee shall ensure that the following food service requirements are met:

(1) The nitrate content of water for children under one year of age shall not exceed 10 milligrams per liter (10 mg/l) as nitrogen.

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

(3) Infants shall be held when bottle-fed until they can hold their own bottles.

(4) Infants and toddlers shall not be allowed to sleep with bottles in their mouths.

(5) Each bottle that contains prepared formula or breast milk shall be refrigerated with the nipple covered. The bottle shall be labeled with the child's name, the contents, and the date received and shall be used within 24 hours of the date on the label. If a child does not finish a bottle, the contents of the bottle shall be discarded. No formula or breast milk shall be heated in a microwave oven.

(6) Solid foods shall be offered when the program director and the parent or legal guardian of a child determine that the child is ready for solid foods. Opened containers of solid foods shall be labeled with child's name, the contents, and the date opened. Containers shall be covered and refrigerated. The food shall be used within three calendar days of the date opened. Food in previously opened containers shall be reheated only once and shall not be served to another child.

(q) Each licensee shall ensure that the following toileting requirements are met:

(1) Children's clothing shall be changed whenever wet or soiled.

(2) Each child shall have at least two complete changes of clothing.

(3) Handwashing facilities shall be in or adjacent to the diaper-changing area.

(4) A changing table shall be provided for each unit of infants and each unit of toddlers.

(5) Each changing table shall have an impervious, undamaged surface. Each table shall be sturdy and shall be equipped with railings or safety straps.

(6) Changing tables shall be sanitized after each use by washing with a disinfectant solution of ¼ cup of chlorine bleach to one gallon of water or with an appropriate commercial disinfectant.

(7) Wet or soiled washable diapers or training pants shall be stored in a labeled, covered container or plastic bag and shall be returned home with the parent.

(8) Wet or soiled disposable diapers shall be placed in a covered container or plastic bag, which shall be emptied daily.

(9) There shall be one potty chair or child-sized toilet for every five toddlers. When a potty chair is used, the following requirements shall be met:

(A) Potty chairs shall be left in the toilet room.

(B) The wastes shall be disposed of immediately in a flush toilet.

(C) The container shall be sanitized after each use and shall be washed with soap and water daily.

(D) Potty chairs shall not be counted as toilets.

(10) Each individual shall wash that individual's hands after diapering, assisting a child with toileting, or changing a child's wet or soiled clothing.

(11) Changing and toileting procedures shall be posted.

(r) There shall be daily communication between the parent, parents, or legal guardian and the staff about each child's behavior and development. (Authorized by and implementing K.S.A. 2010 Supp. 65-508; effective May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-34, Nov. 19, 1986; amended May 1, 1987; amended Feb. 3, 2012.)

28-4-441. Programs for school-age children. (a) Physical plant. Centers shall have a minimum of 35 foot candles of light in each area used for reading, study, and other close work.

(b) Staffing. (1) Single or multi-unit centers shall employ teaching staff who meet the requirements under one of the following options:

Option 1: As specified in K.A.R. 28-4-429; or

Option 2: An A.B. or B.S. degree in elementary education, physical education, child development or a related academic discipline, and three months' experience with school-age children.

(2) Each unit for school-age children shall be separate from units for younger children, except for periods not to exceed two hours before and after school. Staff/child ratios and unit size shall conform to the provisions of K.A.R. 28-4-428 and shall be based on the age of the youngest child in the group.

(c) Program.

(1) Educational and recreational activities shall meet the individual needs of the children.

(2) Children shall be provided the opportunity to plan activities appropriate to their age.

(3) Activities shall include arts, crafts, music, reading, table games, and sports.

(4) Program plans shall be written and posted.

(5) Written parental permission shall be obtained for children to participate in activities away from the center.

(d) Summer programs for school-age children.

(1) License applications or application renewals for summer programs shall be submitted to the Kansas department of health and environment not later than April 15.

(2) Summer programs shall be based in facilities which meet license requirements.

(3) Sack lunches may be served. Sack lunches and beverages shall be refrigerated. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986.)

28-4-442. (a) Definitions.

(1) "Adult" means a person 18 years of age or older.

(2) "Child" means a person as defined in K.A.R. 28-4-420(u), (x) and (dd).

(3) "Infant" means a person as defined in K.A.R. 28-4-420(k).

(b) When adults are cared for in the same premises as children, adults shall have space, staff and equipment separate from the children. Intergenerational activities shall be permitted when the facility is in compliance with K.A.R. 28-4-442.

(c) Each adult shall sign a consent form indicating willingness to participate in intergenerational activities.

(d) Written parental permission shall be on file for each child participating in intergenerational activities.

(e) No infant shall participate in intergenerational activities.

(f) There shall be an intergenerational activities program coordinator.

(g) There shall be a written activity plan which includes program objectives, space to be used and staffing patterns. Special needs of both adults and children shall be addressed.

(h) A weekly schedule of activities and participants shall be posted in both adult and child care facilities.

(i) A staff person from the adult care unit shall be in attendance while adults are with children.

(j) Adults from the intergenerational program who volunteer in the child care center shall not be counted in the child/staff ratio. (Authorized by and implementing K.S.A. 1988 Supp. 65-510; effective Feb. 26, 1990.)

SCREENING OF NEWBORN INFANTS

28-4-501. Definitions. (a) "Applicable income" means the total monies received by all adult members of the family based on any of the follow-

ing, with the addition of nontaxable benefits from any private, state, and federal funding sources:

(1) The total amount of adjusted gross income reported on one of the federal income tax forms 1040, 1040A, or 1040EZ, including a copy of all W-2 forms filed by each adult member of the family;

(2) the six most recent pay stubs; or

(3) a letter of anticipated earnings from the employer of each adult member of the family if the most recent federal income tax form does not reflect current income.

(b) "Birth attendant" means the person assisting with an out-of-institution delivery of the infant, in the absence of a physician.

(c) "Borderline hypothyroid" means an abnormally low level of thyroxine and a higher than normal level of thyroid-stimulating hormone in the blood, the combination of which is not usually indicative of hypothyroidism.

(d) "Cash assets" means accessible money, including savings accounts, certificates of deposit, checking accounts, stocks, and bonds. This term shall not include individual retirement accounts and retirement plans.

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

(f) "Eligible person" means an individual who qualifies for any necessary treatment products or medically necessary food treatment products, or both.

(g) "Family," for the purposes of these regulations, means an eligible person who meets one of the following conditions and all other persons who reside in the home with the eligible person;

(1) Resides with and is considered to be a dependent of the person's parents, stepparents, or legal guardian for income tax purposes; or

(2) establishes a separate residence and is no longer considered a dependent of the person's parents, stepparents, or legal guardian for income tax purposes.

The term "family" shall not include any person who leases or rents a portion of the residence or who lives with the other persons who are not responsible for the financial support of the eligible person.

(h) "Galactosemia" means the disease of genetic origin due to galactose uridyl transferase enzyme deficiency in which the individual is completely or partially incapable of normal metabolism of galactose, which results in an abnormal increase in the concentration of galactose in the blood.

(i) "Hemoglobin disease" means the presence of abnormal hemoglobin and the absence of adult hemoglobin, the combination of which is indicative of disease and requires ongoing medical treatment.

(j) "Hemoglobin trait" means the presence of abnormal hemoglobin, which is not indicative of disease and does not usually require ongoing medical treatment.

(k) "Hypothyroidism" means a congenital disease in which the individual is unable to produce thyroxine normally, which may be detected by an abnormally low serum level of thyroxine and abnormally high serum level of thyroid-stimulating hormone in the blood. For purposes of these newborn screening regulations, this term shall exclude diseases referred to as secondary hypothyroidism.

(l) "Institution" means a hospital or other organized agency providing obstetrical services.

(m) "Kit" means the multiple-page laboratory requisition with the attached filter paper to be used for blood collection and with a place for identifying the infant, physician, and sending agency data. The kits shall be provided by the department.

(n) "Laboratory" means the division of health and environmental laboratories, Kansas department of health and environment.

(o) "Maple syrup urine disease" and "MSUD" mean an inherited disease of amino acid metabolism that causes acidosis, central nervous system symptoms, and urine that can smell sweet like maple syrup.

(p) "Medical specialist" means a medical doctor who has training in the treatment of a specific disease entity and who has a contract with the department to serve as a consultant and to provide or direct diagnosis and treatment services.

(q) "Medically necessary food treatment product" means a specifically formulated product that has less than one gram of protein per serving and is intended to be used under the direction of a physician for the dietary treatment of any inherited metabolic disease. This term shall not include any foods that are naturally low in protein.

(r) "Necessary treatment product" means a medical protein source used under the direction of a physician to treat specific metabolic diseases in order to prevent, delay, or reduce medical complications.

(s) "Newborn screening coordinator" means the designee in the department providing the follow-up program activities.

(t) “Other genetic disease” means any condition inherited in a recognized pattern that can be detected in a filter paper blood specimen and that the secretary has designated as part of the newborn screening battery of tests.

(u) “Phenylketonuria” and “PKU” mean any disease, usually due to a single enzyme deficiency of genetic origin, in which the individual is completely or partially incapable of normal metabolism of phenylalanine, which results in an abnormal increase in the concentration of phenylalanine in the blood.

(v) “Presumptive positive” means a screening test result that indicates the possible presence of a disease, requiring further testing to confirm or not confirm the diagnosis.

(w) “Secretary” means the secretary of the Kansas department of health and environment.

(x) “Sending agency” means the agency or person identified on the kit to be the recipient of the report.

(y) “Specimen” means the saturated blood spots on the filter paper and the laboratory requisition with complete identifying data on the infant, physician, and sending agency. (Authorized by K.S.A. 65-101 and 65-180, as amended by 2006 SB 579, Sec. 1; implementing K.S.A. 65-180, as amended by 2006 SB 579, Sec. 1, and 65-181; effective, T-87-48, Dec. 19, 1986; effective May 1, 1987; amended April 14, 2000; amended, T-28-7-5-06, July 5, 2006; amended Oct. 20, 2006.)

28-4-502. Responsibility to obtain specimen. (a) The administrative officer or other person in charge of each institution or the attending physician are responsible for obtaining an adequate initial specimen for newborn screening on infants born in that institution.

(b) The attending physician or other birth attendant is responsible for obtaining an adequate specimen for newborn screening on infants born outside of an institution.

(c) The attending physician or other birth attendant is responsible for obtaining repeat specimens when needed to complete the screening process. (Authorized by K.S.A. 65-101; implementing K.S.A. 65-181; effective, T-87-48, Dec. 19, 1986; effective May 1, 1987.)

28-4-503. Timing of specimen collections. (a) The initial specimen from each infant born in an institution shall be obtained as follows:

(1) (A) When the infant is at least 24 hours of age but less than 48 hours of age; or

(B) if the infant is discharged from the institution of birth before 24 hours of age, before the infant is discharged;

(2) before the infant is transferred from the institution of birth to another institution; and

(3) before the infant receives any blood transfusion.

(b) The initial specimen from each infant born outside of an institution shall be obtained as follows:

(1) When the infant is at least 24 hours of age but less than 48 hours of age; and

(2) before the infant receives any blood transfusion.

(c) A repeat specimen shall be obtained from each infant born in an institution or outside of an institution under any of the following conditions:

(1) The specimen is unsatisfactory as specified in K.A.R. 28-4-505.

(2) Follow-up recommendations have been issued by the department.

(3) The infant is less than 24 hours old when the initial specimen is taken. (Authorized by K.S.A. 65-101 and K.S.A. 65-180; implementing K.S.A. 65-180 and K.S.A. 65-181; effective, T-87-48, Dec. 19, 1986; effective May 1, 1987; amended April 14, 2000; amended Dec. 3, 2010; amended Dec. 7, 2018.)

28-4-504. Methods of specimen collection. (a) The specimen shall be collected using kits provided by the department.

(b) The form provided with the kit shall be completed before collection of the blood specimen.

(c) The outlined circles on the filter paper portion of the kit shall be saturated with blood in the manner specified on the filter paper.

(d) The specimen shall be delivered by carrier or mailed first-class to the laboratory after the blood has dried and not later than 24 hours from time of collection. (Authorized by K.S.A. 65-101; implementing K.S.A. 1998 Supp. 65-181; effective, T-87-48, Dec. 19, 1986; effective May 1, 1987; amended April 14, 2000.)

28-4-505. Unsatisfactory specimens. (a) Each unsatisfactory specimen shall be retained by the department. The sending agency or facility shall be notified that the specimen is unsatisfactory. The physician or birth attendant shall be notified that the specimen is unsatisfactory with a request to submit another specimen.

(b) A specimen shall be labeled unsatisfactory if one of the following criteria is met:

(1) Identifying information is missing.

(2) More than 10 days have elapsed since the date of collection.

(3) The specimen is of unacceptable quality or quantity for analysis. (Authorized by K.S.A. 65-101 and K.S.A. 2009 Supp. 65-180; implementing K.S.A. 2009 Supp. 65-180 and K.S.A. 65-181; effective, T-87-48, Dec. 19, 1986; effective May 1, 1987; amended April 14, 2000; amended Dec. 3, 2010.)

28-4-506. (Authorized by K.S.A. 65-101; implementing K.S.A. 65-180; effective, T-87-48, Dec. 19, 1986; effective May 1, 1987; revoked May 10, 1996.)

28-4-507. (Authorized by K.S.A. 65-101; implementing K.S.A. 65-181; effective, T-87-48, Dec. 19, 1986; effective May 1, 1987; revoked May 10, 1996.)

28-4-508. (Authorized by K.S.A. 65-101; implementing K.S.A. 65-181; effective, T-87-48, Dec. 19, 1986; effective May 1, 1987; revoked May 10, 1996.)

28-4-509. Registry. (a) The registry shall be a computerized data system that includes the diagnosed individuals' name, birth-date, unique identification number, diagnosis, address including telephone number, parental names and addresses, guardian, nuclear family size and health status.

(b) Persons or guardians of minor children with a confirmed diagnosis of phenylketonuria, hypothyroidism or galactosemia shall forward to the newborn screening coordinator any address and health status changes within three months of the change. (Authorized by K.S.A. 65-101; implementing K.S.A. 65-180; effective, T-87-48, Dec. 19, 1986; effective May 1, 1987.)

28-4-510. Diagnosis and monitoring. (a) Each person with a confirmed diagnosis of any of the diseases specified in K.S.A. 65-180, and amendments thereto shall be eligible to receive medical specialist monitoring upon the department's annual receipt of the person's current address, insurance data, and documentation of continued medical need from a medical specialist.

(b) Each medical specialist shall meet the following requirements:

(1) Provide consultation and diagnosis; and

(2) provide and coordinate ongoing monitoring. (Authorized by K.S.A. 65-101; implement-

ing K.S.A. 65-180, as amended by 2006 SB 579, Sec. 1; effective, T-87-48, Dec. 19, 1986; effective May 1, 1987; amended, T-28-7-5-06, July 5, 2006; amended Oct. 20, 2006.)

28-4-511. Test refusal. Refusal to take part in the testing procedure shall be documented in the child's record at the institution or physician's office or both. (Authorized by K.S.A. 65-101; implementing K.S.A. 65-182; effective, T-87-48, Dec. 19, 1986; effective May 1, 1987.)

28-4-512. Parental education. (a) Providers of prenatal health care shall discuss and distribute written material describing the newborn screening program as a component of the prenatal care to pregnant women.

(b) Prior to obtaining the specimen for newborn screening, the person responsible for obtaining the specimen shall inform the parent or parents about the newborn screening program, including how the test can be refused. (Authorized by K.S.A. 65-101; implementing K.S.A. 65-182; effective, T-87-48, Dec. 19, 1986; effective May 1, 1987.)

28-4-513. Professional education. (a) Consultation with medical specialists shall be available without charge to primary care providers and others involved in the care of persons at risk for or diagnosed with phenylketonuria, congenital hypothyroidism, galactosemia, or hemoglobin diseases and traits.

(b) Notification letters and telephone calls reporting abnormal test results to the physicians shall contain information including interpretation of data and recommendations for follow-up.

(c) Upon request, workshops and other educational presentations concerning newborn screening shall be provided by the department when a specific need is identified.

(d) The newborn screening coordinator and personnel in the newborn screening section of the laboratory shall respond to telephone and written inquiries concerning specimens within five working days of receipt. (Authorized by K.S.A. 65-101; implementing K.S.A. 1998 Supp. 65-180; effective, T-87-48, Dec. 19, 1986; effective May 1, 1987; amended April 14, 2000.)

28-4-514. MSUD and PKU; financial assistance availability for certain related expenses. (a)(1) The following factors shall be used to determine each family's eligibility for fi-

financial assistance for necessary treatment products or medically necessary food treatment products, or both:

(A) Applicable income; and

(B) cash assets in excess of 15 percent of the applicable income.

(2) If a family seeking financial assistance under this regulation has more than one family member with MSUD or PKU, the family shall be considered eligible for financial assistance at a level that is 100 percent less than the eligibility level for a family with one family member.

(b) Each individual who applies for or who receives financial assistance under this regulation shall also meet the requirements in K.A.R. 28-4-401.

(c) The following eligibility requirements shall apply to each family:

(1) Each family with applicable income and cash assets less than or equal to 185 percent of the federal poverty level shall be eligible to receive 100 percent of the cost of necessary treatment products. This family shall be eligible each year for up to \$1,000 of medically necessary food treatment products for family members who are 18 years of age and younger.

(2) Each family with applicable income and cash assets more than 185 percent but not more than 285 percent of the federal poverty level shall be eligible to receive 50 percent of the cost of necessary treatment products.

(3) Each family with applicable income and cash assets more than 285 percent but not more than 385 percent of the federal poverty level shall be eligible to receive 25 percent of the cost of necessary treatment products.

(4) No family with applicable income and cash assets over 385 percent of the federal poverty level shall be eligible to receive any of the cost of necessary treatment products.

(d) If a family's health insurance covers a portion of the cost of necessary treatment products, the family's financial responsibility for this cost shall be determined pursuant to subsection (c).

(e) If the department orders any necessary treatment products for a family that is responsible for part of the cost, that family shall receive a statement indicating the amount to be reimbursed to the department. If reimbursement is not received from the family within 60 days of the statement date, the placement of any future orders for necessary treatment products for that family shall no longer be processed by the department. (Authorized by K.S.A. 65-101 and K.S.A. 2009 Supp.

65-180; implementing K.S.A. 2009 Supp. 65-180; effective, T-28-7-5-06, July 5, 2006; effective Oct. 20, 2006; amended Dec. 3, 2010.)

28-4-520. Definitions. In addition to the definitions in K.S.A. 65-1,241 and amendments thereto, each of the following terms shall have the meaning assigned in this regulation:

(a) "Abnormal condition" means any condition established at conception or acquired in utero that results in a morphologic, metabolic, functional, or behavioral disorder requiring medical or other intervention.

(b) "Birth defects information system" means the Kansas birth defects reporting system, which collects, maintains, analyzes, and disseminates information regarding abnormal conditions, birth defects, and congenital anomalies of each stillbirth and of each child from birth to five years of age with a birth defect.

(c) "Congenital anomaly" means an error of morphogenesis that is established at conception or acquired during intrauterine life, which is also referred to as a birth defect.

(d) "ICD-9-CM" means the clinical modification of the "international classification of diseases," ninth revision, published by Ingenix inc., which is used to code and classify morbidity data from inpatient and outpatient records, physician offices, and most surveys from the national center for health statistics. The following portions of volume one of this document are hereby adopted by reference:

(1) "Genetic and metabolic conditions," codes 243 through 279.2 on pages 49 through 60;

(2) "sickle cell anemia and other hemoglobinopathies," codes 282.4 through 282.7 on pages 61 and 62;

(3) "congenital anomalies," codes 740 through 759 on pages 227 through 240; and

(4) "fetal alcohol syndrome," code 760.71 on page 241.

(e) "Primary diagnosis" means the principal disease or condition assigned to an infant by a licensed physician based on the history of the disease process, signs and symptoms, laboratory data, and special tests. (Authorized by and implementing K.S.A. 2009 Supp. 65-1,245; effective Dec. 3, 2010.)

28-4-521. Reporting abnormal conditions and congenital anomalies. (a) Reporting requirements. Each physician, hospital, and free-

standing birthing center shall report to the birth defects information system, pursuant to K.S.A. 65-1,241 and amendments thereto, the abnormal conditions and congenital anomalies listed in the portions of ICD-9-CM adopted by reference in K.A.R. 28-4-520.

(b) Method of reporting. Each abnormal condition and congenital anomaly that is required to be reported under this regulation shall be reported to the birth defects information system on a form approved by the secretary.

(c) Removal of reported information. Any parent or legal guardian may request the removal of reported information from the birth defects information system by using the removal form in accordance with K.S.A. 65-1,244, and amendments thereto. (Authorized by K.S.A. 2009 Supp. 65-1,245; implementing K.S.A. 2009 Supp. 65-1,241, 65-1,244, and 65-1,245; effective Dec. 3, 2010.)

28-4-525. (Authorized by and implementing L. 1987, Ch. 229, Sec. 7; effective, T-88-56, Dec. 16, 1987; effective May 1, 1988; revoked Aug. 7, 1998.)

28-4-526. (Authorized by L. 1987, Ch. 229, Sec. 7; implementing L. 1987, Ch. 229, Sec. 2; effective, T-88-56, Dec. 16, 1987; effective May 1, 1988; revoked Aug. 7, 1998.)

28-4-527 to 28-4-528. (Authorized by L. 1987, Ch. 229, Sec. 7; implementing L. 1987; Ch. 229, Sec. 4; effective, T-88-56, Dec. 16, 1987; effective May 1, 1988; revoked Aug. 7, 1998.)

28-4-529. (Authorized by and implementing L. 1987, Ch. 229, Sec. 7; effective, T-88-56, Dec. 16, 1987; effective May 1, 1988; revoked Aug. 7, 1998.)

28-4-530. (Authorized by and implementing K.S.A. 1990 Supp. 65-1,150; effective Oct. 7, 1991; revoked April 14, 2000.)

28-4-531. (Authorized by and implementing K.S.A. 1990 Supp. 65-1,150, 65-1,151, 65-1,152; effective Oct. 7, 1991; revoked April 14, 2000.)

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28-4-550. Definitions. (a) “Assessment” means the initial and ongoing procedures used by qualified personnel to identify early intervention services.

(b) “Child find” means a public awareness program provided by community and state agencies

that prepares information on the availability of early intervention services, disseminates information given to parents of infants and toddlers with disabilities to all primary referral sources, and adopts procedures for assisting the primary referral sources for the purpose of identifying the potential need for early intervention services.

(c) “Collaboration” means the establishment and maintenance of open communication and cooperative working relationships among service providers and other caregivers and the family when identifying goals and delivering care to children.

(d) “Community” means an interacting population of various kinds of individuals in a common location.

(e) “Community-based,” when used to describe a place, means a place where small groups of infants and toddlers without disabilities are typically found, including child care centers and day care facilities.

(f) “Continuing education experience” means either of the following:

(1) College and university coursework completed after an individual receives a professional credential; or

(2) an inservice, workshop, or conference that offers professional continuing education credit.

(g) “Developmental delay” means any of the following conclusions obtained using evidence-based instruments and procedures in one or more areas of development, including cognitive, physical, communication, social or emotional, or adaptive development:

(1) There is a discrepancy of 25 percent or more between chronological age, after correction for prematurity, and developmental age in any one area.

(2) There are delays of at least 20 percent in two or more areas.

(3) The informed clinical opinion of a multidisciplinary team concludes that a developmental delay exists when specific tests are not available or when testing does not reflect the child’s actual performance.

(h) “Early intervention records” means reports, letters, and educational and medical records that are collected, maintained, or used by the local lead agency in the screening, evaluation, and development of an IFSP or in the delivery of services, or both.

(i) “Eligible,” when used to describe a child, means a child from birth through two years who has one of the following:

(1) A developmental delay or a known condition leading to a developmental delay; or

(2) an established risk for developmental delay. The developmental delay does not have to be exhibited at the time of diagnosis, but the common history of the condition indicates the need for early intervention services.

(j) "Evaluation" means the procedures used by qualified personnel to determine a child's eligibility for early intervention services.

(k) "Family" means the individuals identified by the parent or parents of an infant or a toddler with special needs to be involved in developing the IFSP and early intervention services.

(l) "Family service coordinator" means a person who is responsible for coordinating all early intervention services required under part C across agency lines and for serving as the single point of contact for carrying out these early intervention services.

(m) "Family service coordination services" means the services provided by a family service coordinator.

(n) "Home-based," when used to describe a site, means a site identified by a family as the home where individualized services for a child and family are delivered.

(o) "IDEA" means the individuals with disabilities education act, as specified in 20 U.S.C. 1400 et seq.

(p) "Individualized family service plan" and "IFSP" mean a written plan for providing early intervention services to an eligible child and the child's family.

(q) "Local community" means a geographic service area with various boundaries, including cities, counties, parts of counties, and multicounty regions, as defined by a local council.

(r) "Local fiscal agency" means a legal entity designated by a local council and approved by the secretary that ensures compliance with part C of IDEA grant award and maintains an accounting system that meets the state and federal requirements under IDEA for generally accepted accounting principles for recording receipts, obligations, and disbursements of grant funds.

(s) "Local lead agency" means a legal entity designated by the local council and approved by the secretary that ensures compliance with part C of IDEA.

(t) "Local tiny-k program" means the part C early intervention services network, as determined by the local council, that serves a specific geographic area.

(u) "Local tiny-k program coordinator" means the person designated by the local lead agency to be the central contact for the local tiny-k program.

(v) "Mediation" means the process by which parties, together with the assistance of an impartial individual, move toward resolution or resolve a dispute through discussion of options, alternatives, and negotiation.

(w) "Multidisciplinary IFSP team" means a parent and two or more individuals from separate professions who determine the early intervention services needed.

(x) "Multidisciplinary evaluation and assessment team" means individuals from two or more professions, which may include one individual who is qualified in more than one profession, who complete an assessment and an evaluation.

(y) "Parent" means any of the following:

(1) A biological or adoptive parent of a child;

(2) a foster parent, unless state law or a contractual obligation with a state or local entity prohibits the foster parent from acting as a parent;

(3) a guardian authorized to act as a child's parent or authorized to make decisions regarding early intervention services, education, health, or development for a child;

(4) an individual acting in the place of a biological or adoptive parent; or

(5) a child advocate, as specified in K.A.R. 28-4-568.

(z) "Part C" means the portion of IDEA that governs the grant program for states to develop a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

(aa) "Party," when used in K.A.R. 28-4-569 to identify any participant in a complaint proceeding, means the lead agency, any local tiny-k program, any provider of early intervention services, or any person that files a complaint with the lead agency.

(bb) "Payor of last resort" means the federal program that makes part C funds available to pay for early intervention services for an eligible child that are not paid from other public or private sources.

(cc) "Person," when used in this regulation and in K.A.R. 28-4-569 to identify any participant in a complaint proceeding, means a parent, an individual, or an organization.

(dd) "Potentially eligible," when used to describe a child, means that the child receives early intervention services at least 90 days before that

child's third birthday or that the child is identified as eligible for part C at least 45 days before that child's third birthday.

(ee) "Primary referral source" means any of the following:

- (1) A hospital;
- (2) a physician;
- (3) a parent;
- (4) a child care program;
- (5) an early learning program;
- (6) a local educational agency;
- (7) a school;
- (8) a public health facility;
- (9) a public health agency;
- (10) a social service agency;
- (11) a clinic;
- (12) a health care provider;
- (13) a public agency in the child welfare system;
- (14) a homeless family shelter; or
- (15) a domestic violence shelter.

(ff) "Referral to the local tiny-k program" means a transfer of information by a primary referral source to determine eligibility for part C or to initiate or continue early intervention services.

(gg) "Screening process" means the clinical observation of or the use of a developmentally appropriate screening tool by a local tiny-k program to determine the need for evaluation.

(hh) "Secretary" means secretary of the Kansas department of health and environment. (Authorized by and implementing K.S.A. 75-5649; effective Jan. 30, 1995; amended Aug. 15, 1997; amended March 7, 2014.)

28-4-551. (Authorized by and implementing K.S.A. 1993 Supp. 75-5649; effective Jan. 30, 1995; revoked Aug. 15, 1997.)

28-4-552. (Authorized by and implementing K.S.A. 1996 Supp. 75-5649; effective Jan. 30, 1995; amended Aug. 15, 1997; revoked March 7, 2014.)

28-4-553 to 28-4-555. (Authorized by and implementing K.S.A. 1993 Supp. 75-5649; effective Jan. 30, 1995; revoked Aug. 15, 1997.)

28-4-556. (Authorized by and implementing K.S.A. 1996 Supp. 75-5649; effective Jan. 30, 1995; amended Aug. 15, 1997; revoked March 7, 2014.)

28-4-557. (Authorized by and implementing K.S.A. 1993 Supp. 75-5649; effective Jan. 30, 1995; revoked Aug. 15, 1997.)

28-4-558 to 28-4-563. (Authorized by and implementing K.S.A. 1994 Supp. 75-5649; effective Jan. 30, 1995; amended May 3, 1996; revoked Aug. 15, 1997.)

28-4-564. Personnel requirements. (a) Early intervention services shall be provided by qualified personnel.

(b) Qualified personnel shall meet state-approved or state-recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individual is providing early intervention services.

(1) Each audiologist shall be licensed by the Kansas department for aging and disability services.

(2) Each clinical professional counselor shall be licensed by the Kansas behavioral sciences regulatory board.

(3) Each marriage and family therapist shall be licensed by the Kansas behavioral sciences regulatory board.

(4) Each nurse shall be licensed as a registered professional nurse by the Kansas board of nursing.

(5) Each nutritionist shall be a dietitian licensed by the Kansas department for aging and disability services.

(6) Each occupational therapist shall be licensed by the Kansas board of healing arts.

(7) Each orientation and mobility specialist shall meet the following requirements:

(A) (i) Have at least a bachelor's degree with an orientation and mobility endorsement, from an accredited university or college; or

(ii) have a bachelor's degree from an accredited university or college in any field of study and verification of orientation and mobility certification from an accredited university or college; and

(B) have completed 350 hours of supervised practice as an orientation and mobility specialist that includes direct service hours, related telephone calls, meetings, observations, and report writing. The practice shall be supervised by a certified orientation and mobility specialist.

(8) Each physician, including each pediatrician, shall be licensed by the Kansas board of healing arts and board-certified in the specialty area.

(9) Each physical therapist shall be licensed by the Kansas board of healing arts.

(10) Each psychologist shall be licensed by the Kansas behavioral sciences regulatory board or licensed as a school psychologist by the Kansas state board of education.

(11) Each family service coordinator shall have a bachelor's degree in education, health studies, nutrition, social welfare, or the human services field and have at least six months of experience in early childhood development. Each individual working as a family service coordinator before June 1, 2013 shall be deemed to have met the education and experience requirements of this paragraph.

(12) Each social worker shall be licensed by the Kansas behavioral sciences regulatory board.

(13) Each special educator and each special instruction provider shall be licensed by the Kansas state board of education in early childhood special education or in early childhood unified education.

(14) Each speech-language pathologist shall be licensed by the Kansas department for aging and disability services.

(15) Each teacher of the hearing-impaired shall be licensed as a teacher of the hearing-impaired by the Kansas state board of education.

(16) Each teacher of the blind and visually impaired shall be licensed as a teacher of the blind and visually impaired by the Kansas state board of education.

(c) The continuing education requirements for licensure, registration, or certification for personnel providing early intervention services shall be determined by the regulatory body governing each profession.

(1) Continuing education shall include discipline or cross-discipline information clearly related to the enhancement of the practice, value, skills, and knowledge of working with children with special needs, from birth through age two, and their families.

(2) If continuing education is a requirement for licensure, certification, or registration renewal, at least one-third of the required number of credits, units, points, or hours shall focus on the content specified in paragraph (c)(1).

(3) If continuing education is not a requirement for licensure, certification, or registration renewal, 24 continuing education hours that focus on the content specified in paragraph (c)(1) and are obtained in a three-year period shall be required.

(d) Aides, assistants, and paraeducators in local tiny-k programs shall work under the supervision of a professional in that discipline according to the standards of that profession. (Authorized by and implementing K.S.A. 75-5649; effective Jan. 30, 1995; amended March 7, 2014.)

28-4-565. Local tiny-k program responsibilities. (a) Each local tiny-k program shall have a local council that has as one of its purposes the coordination of part C for infants and toddlers with disabilities and their families.

(1) The local council shall consist of members who reflect the community, including at least the following:

(A) A parent of a child who has received part C services;

(B) a representative of a health or medical agency;

(C) a representative of an educational agency;

(D) a representative of a social service agency; and

(E) a representative of the local tiny-k program.

(2) The names of local council members shall be submitted to and acknowledged by the lead agency.

(3) The chair of the local council shall be elected by the local council. The name of the local council chair shall be provided to the lead agency. A local council chair shall not be a local tiny-k program coordinator.

(4) The responsibilities of the local council shall include the following:

(A) Identifying local service providers who can provide early intervention services to infants and toddlers with disabilities and their families;

(B) advising and assisting local service providers; and

(C) communicating, combining, cooperating, and collaborating with other local councils on issues of concern.

(b) Each local tiny-k program coordinator, in collaboration with the local council, shall develop a plan describing the system for coordinating part C. The plan shall include the following:

(1) Identification of a local lead agency, which shall be acknowledged by the secretary of the lead agency;

(2) identification of a local fiscal agency, which shall be acknowledged by the secretary of the lead agency. The local lead agency and local fiscal agency may be the same agency, if the local lead agency is a legal entity;

(3) a description of identified community needs and resources;

(4) a description of written interagency agreements or memoranda of understanding and the way those agreements or memoranda are used in the development of an IFSP for eligible children and their families;

(5) a public awareness program that informs community members about child find, the central point of contact for the community, and the availability of early intervention services;

(6) a provision that part C shall be at no cost to eligible infants and toddlers and their families; and

(7) an assurance that the information regarding the plan is available in the community.

(c) Each local tiny-k program coordinator and local council requesting part C and state funds shall submit an annual grant application to the lead agency, which shall meet the following requirements:

(1) Include the plan for part C, as described in subsection (b); and

(2) be in compliance with the grant application materials provided by the lead agency.

(d) Each local tiny-k program shall be required to utilize multiple funding sources with part C funds utilized as the payor of last resort. (Authorized by and implementing K.S.A. 75-5649; effective Jan. 30, 1995; amended Aug. 15, 1997; amended March 7, 2014.)

28-4-566. (Authorized by and implementing K.S.A. 1993 Supp. 75-5649; effective Jan. 30, 1995; revoked Aug. 15, 1997.)

28-4-567. (Authorized by and implementing K.S.A. 1994 Supp. 75-5649; effective Jan. 30, 1995; amended May 3, 1996; revoked Aug. 15, 1997.)

28-4-568. Child advocates. (a) Each local tiny-k program coordinator, with the assistance of the secretary, if needed, shall determine the legal relationship between a parent and a child before evaluation and assessment.

(b) The lead agency shall assign a child advocate to a child if at least one of the following conditions is met:

(1) No parent can be identified.

(2) A local tiny-k program, after reasonable efforts, cannot locate a parent.

(3) The child is in the custody of the state under the laws of Kansas, and parental rights have been severed.

(c) The method used for assigning a child advocate shall be as follows:

(1) Each local tiny-k program shall inform the lead agency or its contracting agency upon determining that a child needs a child advocate.

(2) Each local tiny-k program shall be assisted in locating an appropriate child advocate by the secretary. A child advocate shall be assigned under the authority of the lead agency or, if the child

is in the custody of the state, appointed by the district court having jurisdiction over the custody proceedings for the child.

(d) Each child advocate shall be selected from a list of individuals who have completed training in advocacy for individuals or have demonstrated knowledge of the power, duties, and functions necessary to provide adequate representation of a child. This list shall be maintained by the lead agency or its contracting agency.

(e) The lead agency or its contracting agency shall ensure that each individual selected as a child advocate meets the following conditions:

(1) Has no interest that conflicts with the interests of the child;

(2) has knowledge and skills that ensure representation of the child; and

(3) is not an employee of the lead agency or any agency involved in the provision of early intervention services or any other services to the child.

(f) A child advocate shall not be considered an employee of the lead agency or any agency involved in the provision of early intervention services or any other services to the child solely because the individual is paid by a public agency to serve as a child advocate.

(g) Each child advocate shall have the same rights as those of a parent under part C.

(h) The contracting agency shall make reasonable efforts to ensure that a child advocate is assigned to a child less than 30 days after it is determined that the child needs a child advocate. (Authorized by and implementing K.S.A. 75-5649; effective Jan. 30, 1995; amended March 7, 2014.)

28-4-569. Resolution of complaints. (a) Complaints. Any person believing that there has been any violation of part C may file a complaint with the lead agency. A complaint may allege any violation of part C that occurred no more than one year before the lead agency received the complaint.

(b) Complaint proceedings. Any person who files a complaint may participate in the resolution of the complaint through one or more of the proceedings specified in subsections (c), (d), and (e), which may occur individually or simultaneously. Each person shall be responsible for that person's legal fees.

(c) Formal complaint. Any person may file a formal complaint against the lead agency, any local tiny-k program, or any provider of early intervention services, or any combination of these.

(1) Each formal complaint shall be submitted on a form provided by the lead agency or shall be submitted as a written and signed statement that includes the following information:

(A) Any alleged violations of part C requirements;

(B) the alleged circumstances on which the formal complaint is based;

(C) the contact information of the person filing the formal complaint; and

(D) a proposed resolution to the extent known and available to the person.

(2) If the formal complaint alleges any violation regarding a specific child, the formal complaint shall include the following additional information:

(A) The child's name and address;

(B) the name of the local tiny-k program providing early intervention services for the child;

(C) a description of any alleged violations regarding the child; and

(D) a proposed resolution of the problem, to the extent known and available to the person.

(3) Any person may submit additional written information about the allegations in the formal complaint within five days after filing the formal complaint.

(d) Mediation. A mediation may be requested by any party.

(1) A mediation shall be conducted if it meets the following requirements:

(A) Is voluntary by each party;

(B) does not deny or delay a parent's right to a due process hearing or any other rights under part C; and

(C) is conducted by an impartial mediator trained in mediation techniques.

(2) Each mediator appointed by the lead agency shall meet the following requirements:

(A) Be selected on a random or impartial basis by the lead agency;

(B) have knowledge of the laws and regulations relating to early intervention services;

(C) not be an employee of the lead agency or the provider of early intervention services; and

(D) be impartial and not have a private or professional interest in the outcome of the mediation.

(3) Each mediation shall be scheduled by agreement of each party and shall be held in a location convenient to each party.

(4) Each mediator shall perform the following duties:

(A) Listen to the presentation of each party to determine facts and issues;

(B) assist in the development of creative alternatives to resolve the complaint; and

(C) facilitate negotiation and decision making.

(5) If the parties resolve a dispute through mediation, the parties shall execute a legally binding mediation agreement.

(6) All discussions that occur during a mediation shall remain confidential.

(e) Due process hearing. Each due process hearing shall be conducted by a hearing officer who has knowledge of part C and early intervention services.

(1) Each due process hearing shall be conducted at a time and place convenient to the parents.

(2) Each hearing officer shall meet the requirements for impartiality specified in paragraph (d) (2), except that the hearing officer shall be selected by the office of administrative hearings.

(3) The hearing officer shall perform the following duties:

(A) Schedule the hearing;

(B) listen to each party's presentation;

(C) examine the information presented by each party;

(D) issue a written decision and provide the written decision to each party within 30 days after the lead agency receives the due process complaint; and

(E) provide a written or electronic verbatim transcription of the hearing.

(4) Each parent involved in a due process hearing shall have the following rights:

(A) To be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services;

(B) to present evidence and testimony from witnesses;

(C) to prohibit the introduction of any evidence that has not been disclosed to the parent at least five days before the hearing; and

(D) to be provided with the written decision of the hearing officer and the verbatim transcription of the hearing at no cost.

(f) Each local lead agency and each local fiscal agency shall be responsible for the costs of remediation of part C complaints through formal complaint, mediation, or due process hearing proceedings, except legal fees. (Authorized by and implementing K.S.A. 75-5649; effective Jan. 30, 1995; amended Aug. 15, 1997; amended March 7, 2014.)

28-4-570. (Authorized by and implementing K.S.A. 1994 Supp. 75-5649; effective Jan. 30, 1995; amended May 3, 1996; revoked Aug. 15, 1997.)

28-4-571 to 28-4-572. (Authorized by and implementing K.S.A. 1993 Supp. 75-5649; effective Jan. 30, 1995; revoked Aug. 15, 1997.)

28-4-573. System of payments. (a) Part C funds shall be available at no cost to a family even if that family provides consent to bill third-party sources, including private insurance.

(b) Funds under part C may be used only for early intervention services that infants and toddlers with disabilities need if the early intervention services are not paid for by any other federal source or any Kansas, local, or private source, in accordance with 34 C.F.R. 303.520. (Authorized by and implementing K.S.A. 75-5649; effective March 7, 2014.)

SCHOOL-AGE PROGRAMS

28-4-576. Definitions. (a) “Academic credit hour” means credit earned for coursework through an accredited postsecondary educational institution.

(b) “Administrative order” means an order that is issued by the secretary as specified in K.S.A. 65-501 et seq., and amendments thereto, and that is subject to the Kansas administrative procedures act.

(c) “Administrator” means the staff member who is responsible for the general and fiscal management of the program.

(d) “Adult responsible for a child or youth” means any of the following adults who is other than the child’s or youth’s legal parent and who is responsible for the care and upbringing of the child or youth:

- (1) A stepparent;
- (2) a grandparent;
- (3) another relative; or
- (4) a foster parent.

(e) “Animal” means any living creature, other than a human being, that has the ability to move voluntarily and shall include mammals, rodents, fish, reptiles, insects, spiders, and birds.

(f) “Annual renewal date” means the date assigned to each licensee for the submission of the documents required to renew the license and payment of the annual license fee.

(g) “Applicant” means any person who has submitted an initial application for a license to oper-

ate a school-age program but has not received a temporary permit or license.

(h) “Available space for activities” means the indoor and outdoor space on the premises that is used by children and youth during the hours of operation in carrying out the program of activities. The following shall not be counted as available space for activities:

- (1) Kitchens;
- (2) rest rooms;
- (3) hallways and passageways;
- (4) storage areas;
- (5) offices;
- (6) teacher or employee lounges and work-rooms; and
- (7) any other space not used by the children or youth for activities.

(i) “Basement” means an area with a floor level more than 30 inches below ground level on all four sides.

(j) “Building” means a structure used for shelter that has a roof and is enclosed by walls on all sides.

(k) “Child or youth with special needs” means a child or youth who requires specialized programs, services, interventions, or technologies while attending the program, due to any of the following conditions:

- (1) A developmental disability;
- (2) mental retardation;
- (3) mental illness;
- (4) an emotional or behavioral difficulty;
- (5) sensory or motor impairment; or
- (6) a chronic illness.

(l) “Day reporting program” means a program that provides specialized services designed to enable juvenile offenders 10 years of age and older to remain offense-free while living in the community.

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

(n) “Drop-in program” means a child care facility as defined in K.A.R. 28-4-700(e).

(o) “Group” means a limited number of children or youth assigned to a staff member or team of staff members.

(p) “High-risk sport or recreational activity” means a sport or recreational activity that poses a significant risk of injury to the participant. Safe participation in the activity shall require specialized instruction and may require protective safety gear.

(q) “Individualized program plan” and “IPP” mean a written, goal-oriented plan of specialized services for each child or youth with special needs

or for each juvenile offender attending a day reporting program. Each operator shall ensure that the IPP assigns responsibility for the delivery of the specialized services.

(r) “Job-related experience” means experience approved by the secretary that includes teaching, working, and volunteering with school-age children and youth.

(s) “Kindergarten-age child” means a child who is attending kindergarten or who has completed kindergarten and has not entered first grade.

(t) “License” means the document issued by the secretary that authorizes a person to operate a school-age program.

(u) “License capacity” means the maximum number of children or youth, or both, authorized by the temporary permit or license to attend the program at any one time.

(v) “Meal” means breakfast, lunch, or dinner.

(w) “Mobile summer program” means a program that operates only during the summer months. Children and youth meet at a designated pick-up and drop-off site, and are transported daily to locations off the premises for program activities.

(x) “Notice of survey findings” means a written record documenting the results of an inspection or investigation conducted by the secretary’s designee to determine compliance with applicable statutes and regulations.

(y) “Operator” means a person who holds a temporary permit or license to conduct a school-age program.

(z) “Outdoor summer camp” means a program that operates only during the summer months and is conducted at an outdoor location for the duration of the program, but does not include any summer instructional camps as defined in K.S.A. 65-501, and amendments thereto.

(aa) “Premises” means the location, including the building or buildings and adjoining grounds, for which the operator has a temporary permit or license to conduct a school-age program.

(bb) “Professional development training” means training approved by the secretary that is related to working with school-age children and youth.

(cc) “Program director” means the staff member who is approved by the secretary as meeting the qualifications specified in K.A.R. 28-4-587 and who is responsible for implementing and supervising the program of activities.

(dd) “Program director designee” means the staff member whom the operator designates to

conduct the program in the temporary absence of the program director for a period not to exceed two consecutive weeks, or at the beginning and end of any day that exceeds eight hours.

(ee) “Program of activities” means a comprehensive and coordinated plan of activities that meets the following criteria:

(1) Promotes cognitive, emotional, social, and physical development;

(2) supports the well-being of each child or youth; and

(3) protects the safety of each child and youth in attendance.

(ff) “Public recreation center” means any building used by a political or taxing subdivision of this state, or by an agency of a state subdivision, for recreation programs that serve children and youth.

(gg) “Regularly volunteering” means working in a program on a recurring basis and without compensation. This term shall not apply to guest speakers and to persons who make one or more presentations on a specific subject.

(hh) “School-age child” and “child” mean an individual who is of kindergarten age through the academic year in which the child is in the sixth grade and who is attending the program. Each school-age child shall be included in the license capacity.

(ii) “School-age program” and “program” mean a child care facility that serves exclusively school-age children and youth, but shall not include a drop-in program as defined in this regulation.

(jj) “School-age youth” and “youth” mean an individual who meets the following conditions:

(1) Has completed sixth grade or is 12 years of age or older;

(2) is less than 18 years of age;

(3) is attending the program; and

(4) is not a volunteer or employee.

Each school-age youth shall be included in the license capacity.

(kk) “Secretary” means the secretary of the Kansas department of health and environment.

(ll) “Secretary’s designee” means the person designated by the secretary to assess compliance with program regulations.

(mm) “Snack” means supplemental food served between meals.

(nn) “Specialized services” means additional services provided by the program to meet the special needs identified in the IPP for a specific child or youth.

(oo) “Staff member” means both of the following:

(1) All personnel, including employees, substitutes, and volunteers, who provide administrative or direct services to children and youth; and

(2) auxiliary personnel, including cooks, drivers, office workers, and housekeeping staff, who provide indirect services.

(pp) "Supervisory ratio" means the ratio consisting of the number of staff members required to provide direct services and supervision to a specified number of children or youth.

(qq) "Temporary permit" means the document issued pursuant to K.S.A. 65-504, and amendments thereto, that authorizes a person to operate a school-age program before receiving a license as required by K.S.A. 65-501, and amendments thereto.

(rr) "Time-out area" means a designated, supervised space in the activity area that is used to separate a child or youth from the group for a limited period of time, to allow the child or youth to regain self-control.

(ss) "Use zone" means the surface under and around a piece of equipment onto which a child or youth falling from or exiting the equipment would be expected to land. (Authorized by and implementing K.S.A. 65-508; effective, T-28-4-1-02, April 1, 2002; effective Jan. 10, 2003; amended, T-28-3-19-04, March 19, 2004; amended Sept. 10, 2004.)

28-4-577. Terms of temporary permit or license. (a) License capacity.

(1) Building-based programs. The license capacity of each building-based program shall be determined by the combined indoor and outdoor available space for activities. For each child or youth counted in the license capacity, each operator shall provide 35 square feet of indoor available space for activities. If outdoor space is used, the license capacity may be increased by one child or youth for each 75 square feet of outdoor available space for activities, with the total license capacity not to exceed 175% of the license capacity based on the indoor space.

(2) Outdoor summer camps. The license capacity of each outdoor summer camp shall be determined by the available space for activities. For each child or youth counted in the license capacity, the operator shall provide 75 square feet of available space for activities.

(3) Mobile summer programs. The license capacity of each mobile summer program shall be determined by the available space for activities at the drop-off and pick-up site. Each operator shall

provide 20 square feet of available space for activities at the site for each child and youth.

(b) Posting temporary permit or license. Each operator shall post each temporary permit or license in a conspicuous place on the premises that is visible to parents.

(c) License capacity not to be exceeded. Each operator shall limit the number of children and youth attending the program at any one time within the license capacity specified on the license.

(d) Provisions for issuing license. No license shall be issued by the secretary until all the applicable provisions of the following have been met:

(1) K.S.A. 65-501 through K.S.A. 65-516, and amendments thereto;

(2) K.S.A. 65-523 through K.S.A. 65-529, and amendments thereto;

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

(4) all applicable regulations.

(e) Validity of temporary permit or license.

(1) Each temporary permit or license shall be valid only for the person and the address specified on the temporary permit or license.

(2) When an initial or amended license becomes effective, all temporary permits, licenses, or certificates of registration previously issued to the operator at the same address shall become invalid.

(f) Withdrawal of application. Any applicant or operator may, at any time, submit a request to withdraw the application for a license or a license renewal. If an application for license or license renewal is withdrawn, each temporary permit or license issued to the operator based on that application shall become invalid. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-504; effective, T-28-4-1-02, April 1, 2002; effective Jan. 10, 2003; amended, T-28-3-19-04, March 19, 2004; amended Sept. 10, 2004.)

28-4-578. Licensure; amended license; exceptions; notification; renewal. Each person shall have a temporary permit or license to operate a school-age program before children or youth are in attendance.

(a) Temporary permit or license required. Each person desiring to operate a school-age program that meets one or more of the following criteria shall obtain a temporary permit or license from the secretary to operate a child care facility as specified in K.S.A. 65-503, and amendments thereto:

(1) The program is designed to allow two or more school-age children on a drop-in or enrolled basis to attend 12 hours a week or more for more

than two consecutive weeks, and is not an instructional class or activity as specified in paragraph (b) (3) of this regulation.

(2) The public agency providing funding to the program requires the program to be licensed as a child care facility.

(3) The program is a day reporting program for children 10 years of age or older and youth.

(4) The program is a specialized treatment, therapeutic, correctional, or rehabilitative program for school-age children or youth that children or youth attend 12 hours a week or more for more than two consecutive weeks.

(b) Exclusions. The following shall not be considered child care facilities:

(1) An "extraordinary school program," as defined in K.S.A. 72-8238, and amendments thereto, or a similar extended school day program that is conducted on the premises of an accredited non-public school, is attended only by pupils enrolled in the school in which the program is being conducted, and is staffed by certified elementary school teachers;

(2) a "summer program," as defined in K.S.A. 72-8237, and amendments thereto;

(3) an instructional class or activity in which a child or youth is enrolled for the purpose of participating in only one specific subject or skill-building area, including religious instruction in a specific doctrine or tenet, academic or remedial instruction, a basketball clinic, a baseball league, dance or drama class, or a class in martial arts;

(4) a program of activities that serves exclusively school-age youth and that is not required to be licensed as specified in subsection (a) of this regulation;

(5) a program of activities that serves exclusively youth who are 16 years of age and older; and

(6) a program that is operated by a local unit of government or school district and that operates for no more than four consecutive hours per day or for no more than two consecutive weeks.

(c) New temporary permit or license required. Each operator shall submit a new application, the required forms, and the license fee, and shall obtain a new temporary permit or license from the secretary, as follows:

(1) Before a program that has been closed is reopened;

(2) if there is a change in the location of the program; or

(3) if there is a change of ownership of the program.

(d) Amended temporary permit or license.

(1) Each operator who intends to change the terms of the temporary permit or license, including the license capacity or the age of children and youth served, shall submit an application for an amended temporary permit or license on a form supplied by the department, and a nonrefundable \$35 amendment fee. An amendment fee shall not be required if the request to change the terms of license is made at the time of the annual review of the program.

(2) The operator shall not consider the amendment granted until the amended temporary permit or license is issued by the secretary.

(e) Exceptions.

(1) Any operator may submit a written request for an exception to a school-age program regulation on a form supplied by the department.

(2) An exception may be granted if the secretary determines that the exception is in the best interest of a child's or youth's health, safety, or well-being, serves the needs of the child's or youth's family, and does not violate statutory requirements.

(3) If an exception is granted, each operator shall receive written notice of the approval of the exception and its duration. The approval shall be posted with the temporary permit or license. The exception shall not be considered granted until written approval is given by the secretary.

(f) Notification requirements. Each applicant or operator shall notify the secretary in writing before withdrawing the application, closing the program, or changing any of the following:

(1) High-risk sports or recreational activities offered by the program;

(2) the program director;

(3) the physical structure of the program site due to new construction or substantial remodeling that affects the license capacity; or

(4) the use of any part of the premises that affects the license capacity.

(g) Annual renewal.

(1) Before the annual renewal date, each licensee wishing to renew the license shall submit the annual nonrefundable license fee and shall complete and submit the following to the secretary on forms supplied by the department:

(A) An application to renew the license;

(B) the program director's annual report; and

(C) a request to conduct a criminal history and child abuse registry background check.

(2) Failure to submit the annual renewal documents and fee as required by paragraph (g)(1) of

this regulation shall result in an assessment of a \$10.00 late renewal fee payable to the secretary and may result in suspension of the license. Each late renewal fee assessed shall be paid upon request. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, 65-504, 65-505, and 65-516; effective, T-28-4-1-02, April 1, 2002; effective Jan. 10, 2003; amended, T-28-3-19-04, March 19, 2004; amended Sept. 10, 2004.)

28-4-579. Applicant requirements. (a) Each individual submitting an application for a license shall be 21 years of age or older at the time of application.

(b) Each corporation applying for a license shall be in good standing with the Kansas secretary of state. (Authorized by K.S.A. 2001 Supp. 65-508; implementing K.S.A. 2001 Supp. 65-504 and 65-508; effective, T-28-4-1-02, April 1, 2002; effective Jan. 10, 2003.)

28-4-580. Application procedures; advertising. (a) Application procedures.

(1) Each person wishing to conduct a school-age program shall submit a complete application on forms supplied by the department. The application shall be submitted at least 90 calendar days before the planned opening date of the program and shall include the following:

(A) A description of the program of activities and services to be offered, including the following:

(i) A statement of the program's purpose and goals;

(ii) the number and ages of children and youth for whom the program is designed; and

(iii) the anticipated opening date and the projected hours and months of operation;

(B) a request for a criminal history and child abuse registry background check as specified in K.A.R. 28-4-584; and

(C) a nonrefundable license fee of \$20.00.

(2) If an existing building is to be used, the applicant shall submit a floor plan describing all of the following:

(A) The intended use of the space;

(B) the location of each activity area within the building;

(C) the measurements for each room used by children and youth for activities;

(D) the location of each rest room designated for use, including the number of toilets, urinals, and hand sinks; and

(E) the location of entrances and exits.

(3) If new construction or remodeling is planned, the applicant shall submit a building and site plan to the secretary at least 45 calendar days before the construction or remodeling is scheduled to begin. Each building and site plan shall include all of the information listed in paragraph (a)(2) of this regulation. Each applicant shall obtain approval of the plan from the secretary before beginning construction or remodeling. If changes are made to the building or site plan following the secretary's approval, the applicant shall submit a description of the proposed changes to the secretary for approval before construction or remodeling begins.

(4) If outdoor activities are conducted on the premises, the applicant shall include a diagram of the outside activity area for approval by the secretary. The diagram shall include the following:

(A) Measurements of the space to be used;

(B) the location relative to the building;

(C) the means of access to the area from the building;

(D) the placement of anchored equipment; and

(E) the location of any hazards adjacent to the outside activity area, including heavily traveled streets, railroad tracks, and bodies of water.

(5) Each applicant for a license to conduct an outdoor summer camp shall submit documentation of site approval as specified in K.A.R. 28-4-586.

(b) Advertising. If an applicant advertises the availability of the program, the advertisement shall not contradict the written description of the program of activities and services submitted with the application. The applicant shall not make a claim of "state approval" until the secretary issues a temporary permit or license. (Authorized by K.S.A. 2001 Supp. 65-508; implementing K.S.A. 2001 Supp. 65-505 and 65-508; effective, T-28-4-1-02, April 1, 2002; effective Jan. 10, 2003.)

28-4-581. Inspections; surveys; investigations; posting administrative order.

(a) Entry and access. Each applicant and each operator shall give the secretary or the secretary's designee immediate entry and access to the premises and to any records required to be kept, to determine compliance with applicable statutes and school-age program regulations. To ensure access, the applicant or operator shall authorize the program director or program director's designee to grant to the secretary, or the secretary's designee, immediate entry and access to the premises and required records.

(b) Notification of noncompliance.

(1) Applicant. If an applicant is notified in writing that the applicant is not in compliance with statutes or regulations governing school-age programs, the applicant shall make any changes or alterations identified in the notice before a temporary permit or license is issued by the secretary.

(2) Operator. If, following an inspection or complaint investigation, the operator is notified in writing that the program is not being conducted in compliance with statutes or regulations governing school-age programs, the operator shall make any changes or alterations identified in the notice necessary to achieve and maintain compliance.

(3) Explanation of findings. If an applicant or operator disagrees with a notice documenting any finding of noncompliance with licensing statutes or regulations, the applicant or operator may request an explanation of the finding from the secretary's designee. If the explanation is not satisfactory to the applicant or operator, the applicant or operator may submit a written request to the department for reconsideration of the finding. The written request shall identify the finding in question and explain why the applicant or operator believes that the finding should be changed. This request shall be made to the department within 10 calendar days after receiving the explanation.

(c) Posting of an administrative order. Each applicant or operator receiving an administrative order from the secretary shall post the order in a conspicuous place on the premises that is accessible to parents or potential users of the program. Each order shall be posted for 90 calendar days following the date the order becomes final. (Authorized by K.S.A. 2001 Supp. 65-508 and 65-513; implementing K.S.A. 2001 Supp. 65-504, 65-508, and 65-512; effective, T-28-4-1-02, April 1, 2002; effective Jan. 10, 2003.)

28-4-582. Administration; training; recordkeeping. (a) Building compliance. Before receiving a temporary permit or license, each applicant shall obtain documentation that the building complies with applicable building codes, fire safety requirements, and zoning codes. This documentation shall be on file on the premises or at a designated central office location that is accessible for review by the secretary's designee.

(b) Financial resources. Each operator shall have the financial resources necessary to maintain the program in compliance with licensing regulations.

(c) Lines of authority. Each operator shall define in writing the lines of authority governing the operation of the program.

(d) Delegation of authority. Each operator shall delegate administrative authority so that each program has a program director or a program director designee in charge during all hours of operation.

(e) Children and youth records.

(1) Each operator shall obtain the following information for each child or youth before or on the first day of attending the program:

(A) The first and last name, date of birth, and gender;

(B) a health history as specified in K.A.R. 28-4-590(d);

(C) the anticipated schedule of hours and days of attendance or a notation that attendance is on a drop-in basis; and

(D) the name, address, and telephone number of each parent or other adult responsible for the child or youth, the names of any other persons authorized to pick up the child or youth, and emergency contact information.

(2) Each operator shall obtain written authorization for emergency medical care, signed by the parent or legal guardian of each child or youth, before attending the program or within the first week of attendance.

(3) Except as specified in paragraph (4) of this subsection, each operator shall obtain written permission signed by the parent or other adult responsible for the child or youth before participating in the activity that will allow each child or youth to participate in the following activities, as applicable:

(A) Swimming and water activities;

(B) high-risk sports and recreational activities, as specified in K.A.R. 28-4-588;

(C) transportation provided by the program; and

(D) off-premises activities.

(4) If an operator is unable to obtain written information and records required for the child's or youth's participation in the program, the operator shall document that a reasonable effort has been made to obtain the necessary information and records. The operator shall develop and implement a plan, approved by the secretary, that provides the following information:

(A) Reasonable assurance that medical treatment can be obtained for each child or youth in case of emergency;

(B) reasonable assurance that each child or youth has permission to participate in the program of activities as specified in paragraph (e)(3) of this regulation; and

(C) reasonable assurance that each child or youth has current immunizations and has no allergies or other health conditions that would interfere with participation in program activities.

(5) Each health history and parental or other adult permission, as specified in this subsection, shall be recorded on forms provided by the department or approved by the secretary.

(6) Each child's or youth's record shall be confidential. Each operator shall have a written confidentiality policy, which shall be shared with each staff member and each parent or other adult responsible for the child or youth and which shall be followed. Nothing in this regulation shall limit access to confidential records by the secretary, the secretary's designee, the secretary of social and rehabilitation services, or law enforcement personnel.

(f) Staff records. Each operator shall have the following information on file on the premises or at a designated central office location that is accessible for review by the secretary's designee:

(1) If applicable, documentation of the required health information as specified in K.A.R. 28-4-590, and the date of participation in program orientation for each staff member as specified in K.A.R. 28-4-587;

(2) a copy of the identifying information submitted to the secretary for the completion of the criminal history and child abuse registry background check as specified in K.A.R. 28-4-584;

(3) a copy of current certification for first aid and certification for CPR as specified in K.A.R. 28-4-592; and

(4) if applicable, a copy of the program director's approval letter and documentation of professional development training for each director as specified in K.A.R. 28-4-587.

(g) Attendance of children and youth.

(1) Each operator shall maintain a daily attendance record that shall include each child's or youth's name, daily arrival time, and daily departure time. This record may be completed by a staff member or by each child or youth when arriving at or departing the premises. Each attendance record shall be kept on file for one year on the premises or at a designated central office location and shall be accessible for review by the secretary's designee.

(2) No operator shall allow any child or youth to attend the program for more than 16 hours in a 24-hour period, unless the program of activities includes overnight activities. The operator shall ensure that children and youth do not attend more than two consecutive weeks of overnight activities.

(h) Each operator shall make the records and reports of the child or youth available to the parent or other adult responsible for the child or youth, on request. (Authorized by K.S.A. 2001 Supp. 65-508; implementing K.S.A. 2001 Supp. 65-507 and 65-508; effective, T-28-4-1-02, April 1, 2002; effective Jan. 10, 2003.)

28-4-583. Access to the premises; safety of off-premises activities. (a) Access to the premises. Each operator shall give each custodial parent or other adult responsible for a child or youth attending the program immediate access to the premises during all hours of operation.

(b) Arrivals and departures. Each operator of a program in which children and youth attend on a regular basis shall meet the following requirements:

(1) Each operator shall develop and implement a policy regarding the hours of operation, the times for arrival and departure of each child and youth, and supervision during arrival and departure. The operator shall define in the policy the supervisory and notification responsibilities of each staff member if a child or youth does not arrive at the established time or if a parent or other authorized individual is late picking up the child or youth.

(2) Each operator shall inform each parent or other adult responsible for a child or youth of the policy specified in paragraph (b)(1) and shall ensure that each staff member complies with the policy.

(c) Program-sponsored off-premises activities.

(1) Each operator shall obtain prior written permission, as specified in K.A.R. 28-4-582, for each child or youth to go off the premises for program-sponsored activities.

(2) Each off-premises location and activity shall be related directly to the program of activities and the goals and purpose of the program. Each location shall be used with strict regard for the health and safety of each child or youth, shall be age-appropriate, and shall have sufficient space and equipment for the activities being conducted at that location.

(3) Each operator shall maintain on the premises a record of the following information:

- (A) Each destination;
- (B) the time at which the children or youth leave the premises;
- (C) the name of each adult supervising the children or youth while the children or youth are off the premises;
- (D) a telephone number for reaching an adult supervising the children or youth, in case of emergency; and
- (E) the estimated time of return.

(4) Each operator shall ensure that a method is in place for notifying each parent or other adult responsible for the child or youth before each off-premises activity occurs. These methods for notification may consist of any of the following:

- (A) Posting the notification in a place accessible to the parent or other adult responsible for each child or youth;
- (B) providing a calendar of scheduled off-premises activities to the parent or other adult responsible for each child or youth; or
- (C) providing a written notification to the parent or other adult responsible for each child or youth before each off-premises activity.

(5) Each operator and each staff member shall have a method of accounting for each child or youth while off the premises to ensure that no child or youth is forgotten or left behind. (Authorized by and implementing K.S.A. 65-508; effective, T-28-4-1-02, April 1, 2002; effective Jan. 10, 2003; amended, T-28-3-19-04, March 19, 2004; amended Sept. 10, 2004.)

28-4-584. Background checks. Each applicant and each operator shall meet the following requirements:

(a) Submit to the department the identifying information necessary to complete background checks for each individual at least 14 years of age who works or regularly volunteers in the program and any other individual in the program whose activities involve either supervised or unsupervised access to children. The identifying information shall be submitted as follows:

- (1) When submitting an application for a license;
- (2) when submitting an application to renew a license; and
- (3) before allowing any individual to work or regularly volunteer in the program and before allowing any individual whose activities involve

either supervised or unsupervised access to children to be in the program;

(b) ensure that fingerprint-based background checks are completed for each of the following individuals:

- (1) The applicant;
- (2) the operator;
- (3) each program director;
- (4) each program director designee;
- (5) each staff member;
- (6) each volunteer counted in the supervisory ratio; and

(7) any other individual regularly in the program whose activities involve unsupervised access to children;

(c) ensure that the information submitted for each individual specified in subsection (b) includes the required information for background checks from each state of residence throughout

the five-year period before allowing the individual to work or regularly volunteer in the program;

(d) ensure that name-based background checks by the Kansas bureau of investigation and the Kansas department for children and families are completed for each of the following individuals:

(1) Each volunteer who is not counted in the supervisory ratio and who does not have unsupervised access to children;

(2) each student of an accredited secondary or postsecondary school who is at least 16 years of age and who is participating in an educational experience arranged by the school, if the student is not counted in the supervisory ratio and does not have unsupervised access to children; and

(3) any other individual regularly in the program whose activities do not involve unsupervised access to children; and

(e) ensure that no individual works or regularly volunteers in the program until the results of the individual's background checks verify that the individual is not prohibited from working, regularly volunteering, or residing in a facility pursuant to K.S.A. 65-516, and amendments thereto. (Authorized by K.S.A. 2017 Supp. 65-508; implementing K.S.A. 2017 Supp. 65-516; effective, T-28-4-1-02, April 1, 2002; effective Jan. 10, 2003; amended June 7, 2018.)

28-4-585. Building and outdoor premises. (a) Safety and maintenance of each building.

(1) Each operator shall ensure that the program is located in a building that meets the requirements specified in K.S.A. 65-508 and amend-

ments thereto, the applicable building code, and any applicable local ordinances. Each operator shall ensure that no child or youth is knowingly exposed to environmental hazards, including asbestos, lead paint, and pesticides.

(2) Hot and cold running water shall be supplied to hand sinks except as specified in this paragraph. The hot water temperature shall not exceed 120°F. Outdoor summer camps and mobile summer programs shall be exempt from the requirement to provide hot running water to hand sinks.

(3)(A) Each operator shall ensure that each building shall have a minimum of one working flush toilet and one working hand sink for each 30 children or youth in the license capacity. One urinal may be substituted for each additional toilet in the boys' rest room.

(B) Each operator shall designate the rest rooms to be used by the program. A separate rest room shall be provided for each gender unless the rest room is designated for single occupancy.

(C) Each rest room shall be located to allow for the following:

- (i) Supervision of children and youth;
- (ii) immediate access to the rest room facilities by children, youth, and adults; and
- (iii) privacy while using the toilet.

(D) If the rest rooms are also used by non-program participants during the hours of operation of the program, the operator shall develop and implement policies for rest room use for the protection of children and youth attending the program.

(E) Toilet paper, soap, and either paper towels or hand dryers shall be available in each rest room.

(4) Each operator shall provide adequately for the health, safety, and comfort of each child, youth, and adult by maintaining the space used by the program according to the following requirements:

(A) The space shall be uncluttered and free from accumulated dirt, trash, vermin, and rodent infestation.

(B) Each indoor trash container shall be emptied daily or more often if the contents are overflowing or the removal is needed to control odor.

(C) Floors shall not be slippery or cracked.

(D) Each rug or carpet used as a floor covering shall be slip-resistant and free from tripping hazards. A floor covering, paint, or sealant shall be required over concrete floors for all buildings.

(E) Each exit shall be marked. No exit shall be blocked at any time.

(5) Heating appliances shall be vented, used as intended, safely located, and maintained in operating condition. Power strips, if used, shall have a UL rating.

(6) Each operator shall safely store toxic substances and materials, including cleaning supplies, pesticides, and poisons, in a locked janitor's closet, locked room, or other locked area. No child or youth shall have unsupervised access to toxic substances and materials.

(b) Public and accredited non-public school buildings.

(1) Inside premises. If a program is located in a public or accredited non-public school building, the operator shall ensure that the building complies with subsection (a) of this regulation and with fire safety and building code requirements applicable to schools as required by K.S.A. 65-527, and amendments thereto.

(2) Outside premises.

(A) Each existing outside playground or activity area and equipment acceptable for use by students of the same age during the academic day may be used by children and youth in the program if the equipment is in sound condition.

(B) Additional impact-absorbent surfacing material shall not be required under anchored climbing equipment, slides, and swings if the equipment is acceptable for use by students of the same age during the academic day.

(c) Public recreation center buildings. If the program is located in a public recreation center, the operator shall ensure that the building complies with subsection (a) of this regulation and with fire safety and building code requirements applicable to public recreation centers as specified in K.S.A. 65-527, and amendments thereto.

(d) Buildings that are not public or accredited non-public school buildings or public recreation centers.

(1) If the program is located in a building that is not a public or accredited non-public school or a public recreation center, the operator shall ensure that the following requirements are met for the building used:

(A) The building shall meet the requirements in subsection (a) of this regulation.

(B) The building shall not be a residence or a single-family dwelling.

(C) Each stairway with more than two steps shall be railed.

(D) If windows and doors are left open, they shall be screened, with each screen in good con-

dition to prevent insects from entering the premises.

(2) If a program uses a non-public source for the water supply, the water shall be safe for drinking and shall be tested annually by a department-certified laboratory. The well shall be approved by the local environmental protection program (LEPP).

(e) Outside premises of public recreation centers and of other programs, including outdoor summer camps, that are not conducted in public schools or accredited non-public schools.

(1) General requirements.

(A) Each operator shall ensure that the outdoor activity area meets the following requirements:

(i) The area shall be located and arranged to reduce the risk of injury and to enable staff to provide close visual supervision at all times.

(ii) Each area shall be well drained and free of known health and environmental hazards.

(iii) There shall be no tall weeds or grass, untrimmed shrubbery, or trash in the activity area.

(iv) Each outdoor trash and garbage container shall be covered, and the contents shall be removed weekly.

(B) If the outdoor activity area is accessible to the public, each operator shall define boundaries for the children and youth attending the program and, to the extent possible, use space reserved exclusively for the program.

(2) Safety of outdoor equipment and the activity area. Each operator shall comply with the following safety requirements in the outside activity area:

(A) Equipment shall be safely located, age-appropriate, and in good repair. Equipment that is broken, hazardous, or unsafe or that does not have adequate impact-absorbent surfacing material in the use zone as specified in this regulation shall not be used.

(B) Impact-absorbent surfacing material shall be installed in each use zone under and around anchored play or recreational equipment over four feet in height, including climbing equipment, slides, and swings. Impact-absorbent surfacing material shall consist of any loose fill material specified in paragraph (e)(2)(G) of this regulation, unitary surfacing material, or synthetic impact material. Before any equipment over 11 feet in height is used, the operator shall meet the requirements specified in K.A.R. 28-4-588(e).

(C) Each use zone shall be at least six feet from all sides of the structure. However, the side of

some equipment, including a swing, shall not be required to have impact-absorbent surfacing material on each side if the potential for a fall to the side is minimal.

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

(E) If unitary surfacing material or synthetic impact material, including rubber mats, rubber tiles, and poured-in-place material, is installed in the use zone, the material shall be used and maintained according to the manufacturer's recommendations. The manufacturer's recommendations shall be on file on the premises or at a designated central office location and shall be accessible for review by the secretary's designee.

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

(G) If loose fill material is installed in the use zone, the material shall be specifically developed for playground use, and the type and depth of material used shall conform to the following chart:

Required depth of impact-absorbent surfacing material for the height of equipment

Maximum height of equipment	Type of material	Minimum depth of material
6 feet 10 feet 11 feet	shredded bark mulch	6 inches 9 inches 12 inches
7 feet 10 feet 11 feet	wood chips	6 inches 9 inches 12 inches
6 feet 9 feet	fine sand	6 inches 12 inches
7 feet 10 feet	fine gravel	9 inches 12 inches
10 feet or less	shredded rubber	6 inches

(3) Protection from environmental hazards. Each operator shall ensure that each child or youth is protected from environmental hazards as follows:

(A) If a small fish pond or decorative pool with water 24 inches deep or less is on the premises, no child shall have unsupervised access to it.

(B) Each outdoor activity area shall have a fence, partial fence, or other barrier to reduce the safety risk to children and youth, and to prevent chance access to any adjacent hazard, including the following:

(i) A busy street;
 (ii) railroad tracks; or
 (iii) a water hazard, including a ditch, irrigation ditch, pond, lake, and any standing water over 24 inches deep. Each public recreation center shall be exempt from paragraph (e)(3) of this regulation. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-508 and K.S.A. 65-527; effective, T-28-4-1-02, April 1, 2002; effective Jan. 10, 2003; amended, T-28-3-19-04, March 19, 2004; amended Sept. 10, 2004.)

28-4-586. Outdoor summer camps and mobile summer programs. (a)(1) Each operator conducting an outdoor summer camp or mobile summer program shall meet the requirements specified in this regulation and the requirements in K.A.R. 28-4-577 through K.A.R. 28-4-584, K.A.R. 28-4-587 through K.A.R. 28-4-590, and K.A.R. 28-4-592.

(2) Each operator shall meet the following requirements if the secretary determines that they are applicable to the program and services:

- (A) K.A.R. 28-4-576;
 - (B) K.A.R. 28-4-585;
 - (C) K.A.R. 28-4-591; and
 - (D) K.A.R. 28-4-593 through K.A.R. 28-4-596.
- (b) Outdoor summer camps.
- (1) Premises.

(A) Each outdoor summer camp shall be held in a city or county park or park-like setting that has at least 75 square feet of available space for each child or youth for the program of activities. Each operator shall use the premises according to its intended purpose, with strict regard for the health, safety, and well-being of each child or youth who attends the outdoor summer camp. No child or youth shall be exposed to environmental hazards, including asbestos, lead paint, and pesticides.

(B) If a lake, pond, river, or other large body of water is located within 100 yards of the premises, each operator shall ensure that the water hazard is physically separated from the activity area to prevent access by each child or youth, or shall submit to the secretary a plan for protecting each child and youth from unsupervised access. The plan, which shall be approved by the secretary before the premises are used for an outdoor summer camp, shall include the following:

- (i) A description of any natural barriers separating the activity area from the water;
- (ii) the approximate distance from the activity area to the water; and

(iii) a plan for increased supervision.

(C) Each outdoor summer camp shall have access to the following:

(i) A shelter or permanent building for protection from inclement weather and for dining purposes, as needed, that is large enough to accommodate the number of children and youth in attendance and for each child and youth to be comfortably sheltered without being crowded; and

(ii) rest room and hand-washing facilities as specified in K.A.R. 28-4-585.

(D) Rest room facilities shall be located in visual proximity to each program activity area.

(E) Each shelter structure shall be in sound condition and good repair and shall be free from accumulated dirt and trash.

(F) If a building is used, the operator shall ensure that the building meets the requirements specified in K.A.R. 28-4-585. A shelter house that has a roof and is enclosed by walls on all sides shall be considered a building and shall be included in determining the license capacity based on 35 square feet of available space for each child or youth.

(G) Each outdoor summer camp shall have facilities for sanitary dish washing available as specified in K.A.R. 28-4-591. If hot water is not available to the sink or if the dish-washing facilities do not meet the requirements specified in K.A.R. 28-4-591, each operator shall obtain approval from the secretary's designee for the use of alternate methods for sanitary dish washing.

(H) Each operator of an outdoor summer camp shall conduct a daily safety assessment of the premises to ensure that the premises are maintained to protect the health, safety, and well-being of each child and youth.

(2) Policies. Each operator of an outdoor summer camp shall develop and implement policies for the following:

(A) The protection and shelter of children and youth in case of inclement weather; and

(B) the use and maintenance of the shelter and rest room facilities, including policies for use and maintenance if the shelter and rest room facilities are owned and operated by another entity.

(3) Transportation. If the operator transports children and youth to and from the outdoor summer camp premises to a designated pick-up and drop-off location, the operator shall meet the requirements specified in K.A.R. 28-4-583, K.A.R. 28-4-593, and paragraphs (c)(4) and (5) of this regulation.

(c) Mobile summer programs.

(1) Each license for a mobile summer program shall be issued for the address of the designated drop-off and pick-up site. Each operator shall submit a new application for each change of location in the drop-off and pick-up site, and for any change in the license capacity.

(2) Each drop-off and pick-up site shall contain a shelter or a permanent building that provides adequate protection from inclement weather for each child or youth.

(3) Each operator shall ensure that no child or youth waits at the drop-off or pick-up site for more than one hour at the beginning of the program day or for more than one and one-half hours at the end of the program day.

(4) Each operator shall ensure that children or youth do not board the transporting vehicle until immediately before it is time to leave.

(5) Each operator of a mobile summer program shall ensure that the program has exclusive use of the licensed area during the entire time that children or youth involved in the program are present.

(6) Each operator of a mobile summer program shall meet the transportation requirements specified in K.A.R. 28-4-593 and the requirements for off-premises activities specified in K.A.R. 28-4-583.

(d) Staff records. Any operator of an outdoor summer camp or a mobile summer program may keep the staff records specified in K.A.R. 28-4-582 at a designated central office location. Each operator shall make these records available to the secretary or the secretary's designee upon request. Each operator shall keep health records and contact information for emergency notification immediately available in case of emergency.

(e) Children and youth records. Any operator may keep children and youth records as specified in K.A.R. 28-4-582 on file at a designated central office location. Each operator shall make these records available to the secretary or the secretary's designee upon request. Each operator shall ensure that the following records for each child or youth are immediately available in case of emergency:

- (1) Health history;
- (2) authorization for emergency medical care; and
- (3) emergency contact information. (Authorized by and implementing K.S.A. 2001 Supp. 65-508; effective, T-28-4-1-02, April 1, 2002; effective Jan. 10, 2003.)

28-4-587. Staff member qualifications; professional development training; staffing requirements. (a) Staff qualifications. Each operator and each staff member shall demonstrate an understanding of children and youth and shall act with reasonable care and judgment.

(b) Program director.

(1) Each operator shall hire a program director who meets the following qualifications:

(A) Is at least 18 years of age and is at least three years older than the oldest youth in the program;

(B) demonstrates the following:

(i) Knowledge of child and youth development;

(ii) knowledge of the licensing regulations governing school-age programs;

(iii) administrative and supervisory skills;

(iv) the ability to communicate clearly; and

(v) the competence to manage the program in compliance with the program policies, the program plan, and the licensing regulations governing school-age programs; and

(C) holds either a high school diploma or a general educational development (GED) credential.

(2) In addition to meeting the requirements specified in paragraph (b)(1), each program director shall meet one of the following qualifications, based on the license capacity:

(A) For a license capacity of 30 or fewer children or youth, has been approved as a program director as specified in K.A.R. 28-4-429(b) or (c), or has at least three months of job-related experience;

(B) for a license capacity of 31 through 60 children or youth, meets one of the following requirements:

(i) Has been approved as a program director as specified in K.A.R. 28-4-429(d) or (e);

(ii) has 15 academic credit hours; or

(iii) has six months of job-related experience;

(C) for a license capacity of 61 through 120 children or youth, meets one of the following requirements:

(i) Has been approved as a program director as specified in K.A.R. 28-4-429(e);

(ii) has 60 academic credit hours;

(iii) has 12 months of job-related experience; or

(iv) has a combination of 30 academic credit hours and six months of job-related experience; or

(D) for a license capacity of 121 or more children or youth, holds at least a bachelor's degree from an accredited college or university and has job-related experience.

(3) Within 10 calendar days after hiring each

program director, each operator shall comply with one of the following:

(A) Obtain from the program director a copy of the approval letter issued by the secretary to document that the program director is qualified for the license capacity; or

(B) submit a request to the secretary for approval of the program director who has been hired.

(4) Each program director designee shall meet the requirements specified in paragraphs (b)(1) and (2)(A).

(c) Administrator. Each operator of a program that has a license capacity of 91 or more children or youth shall employ an administrator who meets the following qualifications:

(1) Is not the program director or a group leader;

(2) is at least 18 years of age;

(3) holds either a high school diploma or a GED credential; and

(4) possesses administrative ability, knowledge of the licensing regulations governing school-age programs, and the skill to supervise the business operation of the program.

(d) Group leader.

(1) Each individual designated as group leader shall meet the following qualifications:

(A) Is at least 18 years of age and is at least three years older than the oldest youth in the group;

(B) holds either a high school diploma or a GED credential; and

(C) has job-related experience working with school-age children or school-age youth.

(2) Each group leader shall possess the following:

(A) Knowledge of child and youth development;

(B) knowledge of the licensing regulations governing school-age programs;

(C) an understanding of age-appropriate activities;

(D) the ability to communicate clearly;

(E) skills and abilities to implement the program of activities; and

(F) the ability to foster positive, healthy relationships with children or youth.

(3) Each group leader shall meet the following requirements:

(A) Provide supervision and direction to the children and youth assigned to the group;

(B) supervise group activities during all hours children and youth are present; and

(C) provide supervision and direction to an assistant group leader.

(e) Assistant group leader.

(1) Each individual designated as assistant group leader shall meet the following qualifications:

(A) Is at least 16 years of age and is at least three years older than the oldest youth in attendance in the group; and

(B) possesses the following:

(i) The ability to provide supervision and guidance to a group of children or youth under the direction of a group leader;

(ii) the skill and ability to carry out the program of activities; and

(iii) the ability to foster positive, healthy relationships with children and youth.

(2) Each assistant group leader shall be under the supervision and direction of a group leader.

(f) Substitute staff members.

(1) Each operator shall ensure that substitutes are available to work if there is an emergency or a staff member absence.

(2) Each substitute shall meet the requirements for the staff member whom the substitute is temporarily replacing.

(3) The name and telephone number of each substitute shall be available to the program director or the program director's designee.

(g) Volunteers.

(1) Each volunteer shall be at least 14 years of age and, if working directly with the children and youth, shall be at least three years older than the oldest youth in the group.

(2) No volunteer shall be counted in the supervisory ratio unless the volunteer meets all the requirements of a group leader or assistant group leader and is designated as a group leader or assistant group leader by the program director.

(h) Documentation of qualifications. In addition to meeting the staff record requirements in K.A.R. 28-4-582, each operator shall have on file an application form completed by each staff member, including documentation of the staff member's qualifications. The documentation shall be on file on the premises or at a designated central office location that is accessible for review by the secretary's designee.

(i) Professional development training.

(1) Orientation training. Each operator shall provide orientation training to each program director and each staff member who is counted in the supervisory ratio. The training shall be provided before or within the first week the program director or staff member works with children or youth. Each staff member shall complete the training before being given sole responsibility

for the care and supervision of children or youth. The training shall be related to work duties and responsibilities and shall include the following subject areas:

- (A) the mission and goals of the program;
- (B) the licensing regulations governing school-age programs;
- (C) the program policies and practices, including security and behavior management;
- (D) the program of activities;
- (E) supervision of children and youth, including any special needs and known allergies;
- (F) confidentiality;
- (G) recognizing and reporting symptoms of illness, child abuse, child neglect, and critical incidents as specified in K.A.R. 28-4-592;
- (H) prevention of and response to emergencies due to food and allergic reactions;
- (I) prevention and control of infectious diseases, including immunizations;
- (J) premises safety, including identification of and protection from hazards that could cause bodily injury, including electrical hazards, bodies of water, and vehicular traffic;
- (K) emergency preparedness and response planning for emergencies resulting from a natural disaster or a human-caused event, including violence at a premises;
- (L) handling and storage of hazardous materials and the appropriate disposal of bio-contaminants, including blood and other bodily fluids or waste; and
- (M) precautions when transporting children and youth, if transportation is provided.

(2) Ongoing professional development training.

(A) For purposes of this subsection, "licensure year" shall mean the period beginning on the effective date and ending on the expiration date of a license.

(B) In each licensure year, each program director shall complete professional development training as follows:

- (i) For each licensure year ending during the 2017 calendar year, 15 clock-hours;
- (ii) for each licensure year ending during the 2018 calendar year, 15 clock-hours; and
- (iii) for each licensure year ending during the 2019 calendar year, and for each subsequent licensure year, 16 clock-hours.

(C) In each licensure year, each operator or program director shall assess the training needs of the staff members and shall provide or arrange for staff training as needed to maintain the program

in compliance with the licensing regulations governing school-age programs.

(D) In each calendar year, each staff member shall complete professional development training as follows, based on the staff member's job responsibilities and the training needs identified by the operator or the program director:

- (i) For each licensure year ending during the 2019 calendar year, 12 clock-hours; and
- (ii) for each licensure year ending during the 2020 calendar year, and for each subsequent licensure year, 16 clock-hours.

(E) Each operator shall ensure that documentation of training is kept in each staff member's file on the premises or at a designated central office location that is accessible for review by the secretary's designee.

(j) Staffing requirements.

(1) Staff coverage. Each operator shall have a sufficient number of staff members on duty to supervise the children and youth during all hours of operation and to provide for their health, safety, and well-being. Each operator shall provide staff coverage if there is an emergency or a staff member absence.

(2) Supervision.

(A) Each operator shall ensure that the program has a qualified group leader for each 30 children or youth attending the program, except as specified in K.A.R. 28-4-596.

(B) Each operator shall maintain additional qualified staff to ensure that the supervisory ratio of one staff member for each 15 children and youth is not exceeded.

(C) Each staff member counted in the supervisory ratio shall be assigned responsibility for the supervision of children and youth and shall meet the following requirements:

- (i) Meet the applicable qualifications for a group leader or assistant group leader; and
- (ii) be physically present with the children or youth.

(3) Groups. Except as specified in K.A.R. 28-4-596, the number of children and youth in a group shall be limited by the following:

- (A) The available space for activities; and
- (B) the type of activity.

(4) Supervision of children and youth. Each staff member working with children and youth shall provide supervision to protect the health, safety, and welfare of the children and youth, and to reduce the risk of injury, illness, or abuse.

(5) Positive relationships. Each staff mem-

ber shall encourage the development of positive adult-to-child and adult-to-youth relationships and shall be actively engaged with the children or youth under the staff member's supervision.

(6) Location of each child and each youth. Each group leader or assistant group leader shall know the location of each child and each youth under the supervision of that group leader or assistant group leader at all times.

(7) Unescorted child or youth. Any group leader or assistant group leader may, based on the policy of the program and the age and responsibility level of the child or youth, give a child or youth permission to walk unescorted from one supervised activity area to another supervised activity area or to the rest room. (Authorized by and implementing K.S.A. 2016 Supp. 65-508; effective, T-28-4-1-02, April 1, 2002; effective Jan. 10, 2003; amended, T-28-3-19-04, March 19, 2004; amended Sept. 10, 2004; amended June 23, 2017.)

28-4-588. Program plan, program of activities, and use of space. (a) Program plan. Each operator shall develop and implement a written program plan that includes a program of activities, services, and schedules in keeping with the overall mission, goals, and purpose of the program and the developmental needs and interests of the children and youth.

(b) Program of activities.

(1) Each operator shall ensure that each activity is adapted to the number of children and youth participating in the activity and the space available. Whenever possible, each operator shall encourage each child and youth to participate in planning the program of activities.

(2) Each operator shall ensure that each activity meets the following conditions:

(A) Is developmentally appropriate and age-appropriate;

(B) helps each child or youth develop useful skills, a positive self-concept, a sense of independence, and positive relationships;

(C) provides a variety of structured, unstructured, and self-directed activities in keeping with the goals and purpose of the program and the hours of operation; and

(D) is scheduled to allow adequate time to transition from one activity to another.

(3) Each operator shall ensure that television programs, videos, and movies are limited to those with age-appropriate content and are shown only for special occasions or educational instruction.

(c) Use of available space for activities.

(1) If activities that are not part of the school-age program are conducted on the same premises as those for the school-age program, each operator shall designate space for exclusive use by the program during the hours of operation.

(2) Each operator shall provide sufficient space in each area for children and youth to engage comfortably in the activity without being crowded.

(d) Materials, equipment, and furnishings.

(1) Each operator shall provide a sufficient quantity of program materials, equipment, furnishings, and supplies to keep each child and youth engaged and to carry out the program of activities.

(2) Each operator shall ensure compliance with the following safety requirements:

(A) Equipment, furnishings, and supplies shall be used as intended and shall be safely stored to prevent injury or misuse.

(B) Equipment shall be maintained in good repair.

(C) If bedding is used, it shall be stored in a sanitary manner.

(3) Each operator shall ensure that there are no firearms, ammunition, hunting knives, and other weapons on the premises. Archery equipment and air-powered guns, including BB guns and pellet guns, shall be prohibited unless both of the following conditions are met:

(A) The equipment and guns are used as part of an instructional activity that meets the requirements for high-risk sports and recreational activities specified in subsection (e) of this regulation.

(B) The equipment and guns are kept in locked storage, and no child or youth has unsupervised access to the equipment and guns.

(e) High-risk sports and recreational activities.

(1) Before any high-risk sport or recreational activity is included in the program, each operator shall submit a description of the sport or activity to the secretary for written approval. Each description shall include the following information:

(A) The required qualifications for the instructor of the sport or activity;

(B) the goals of the instruction;

(C) the protective measures that will be followed to conduct the sport or activity safely;

(D) the plans for increased staff supervision;

(E) the type of protective gear, if required for the sport or activity;

(F) the operator's written assurance that each sport or activity will be age-appropriate; and

(G) any special procedures to be followed in conducting the sport or activity.

(2) Each operator shall keep the written approval from the secretary on file on the premises or at a designated central office location. This approval shall be accessible for review by the secretary's designee.

(3) Only an instructor who meets the qualifications for conducting a high risk sport or recreational activity shall instruct and supervise the children and youth engaged in that sport or activity.

(4) Before participating in a high-risk sport or recreational activity, each child or youth shall have written permission, as specified in K.A.R. 28-4-582, on file on the premises or at a designated central office location. Each written permission shall be accessible for review by the secretary's designee.

(f) Children or youth with special needs.

(1) If the operator and the parent or other adult responsible for a child or youth agree that the child or youth will be provided with specialized services while attending the program, an IPP shall be developed and implemented by the following individuals:

(A) The program director and each staff member of the program who is responsible for implementing the IPP;

(B) the parent or other adult responsible for the child or youth;

(C) a professional who is licensed or credentialed and who is qualified to work with the child or youth regarding the child's or youth's special need; and

(D) the child or youth, as appropriate.

(2) Each IPP shall contain the following information:

(A) The date each IPP is developed and updated;

(B) each special need identified as requiring specialized services;

(C) each specialized service to be provided while the child or youth is attending the program and the name of the person who will provide each service;

(D) the anticipated goal of each specialized service; and

(E) the name and position of each person participating in the development of the IPP.

(3) Each operator shall ensure that each IPP is reviewed and updated annually to meet the special needs of the child or youth.

(4) Each operator shall provide a copy of each

IPP and each updated IPP to the participants who developed the IPP. The operator shall keep a copy in the child's or youth's file.

(5) Each program operating concurrently under a school-age program license issued by the secretary and a license issued by the secretary of social and rehabilitation services as specified in K.S.A. 75-3307b, and amendments thereto, shall be exempt from the following regulations if the program is in compliance with the licensing requirements of the secretary of social and rehabilitation services:

(A) K.A.R. 28-4-587;

(B) subsection (b), subsection (e), and paragraphs (f)(1) through (4) of this regulation; and

(C) any IPP requirements specified in K.A.R. 28-4-589(d). (Authorized by and implementing K.S.A. 2001 Supp. 65-508; effective, T-28-4-1-02, April 1, 2002; effective Jan. 10, 2003.)

28-4-589. Behavior management. (a) Behavior management practices.

(1) Behavior management practices shall be consistent with the goals and purposes of the program and appropriate to the age and developmental level of the child or youth.

(2) Each staff member shall practice methods of behavior management that are designed to help each child or youth develop inner controls and manage the child's or youth's own behavior in a socially acceptable manner.

(b) Time-out. If time-out is used to manage behavior, the child or youth shall remain in time-out only long enough to regain self-control. Each child or youth in time-out shall be kept under visual staff supervision. If a separate room is used, the door shall remain open, or the staff member responsible for providing supervision shall remain in the room with the child or youth.

(c) Prohibited punishment.

(1) No operator or any staff member shall use any of the following methods of punishment:

(A) Punishment that is humiliating, frightening, or physically harmful to the child or youth;

(B) corporal punishment, including spanking with the hand or any implement, slapping, swatting, pulling hair, yanking the arm, excessive exercise, exposure to extreme temperatures, and any other measure that produces physical pain or threatens the child's or youth's health or safety;

(C) verbal abuse, threats, or derogatory remarks about the child or youth or the child's or youth's family;

(D) enclosing the child or youth in a confined space, including any closet, box, and locked room;

(E) withholding or forcing foods or liquids; and

(F) placing soap, or other substances that sting, burn, or have a bitter taste, in the child's or youth's mouth or on the tongue, or placing substances that sting or burn on other parts of the child's or youth's body.

(2) Each operator and each staff member shall be prohibited from giving medications, herbal or folk remedies, and drugs to control or manage behavior except as prescribed by the child's or youth's licensed physician or licensed nurse practitioner.

(3) Each operator and each staff member shall be prohibited from using physical restraint to manage behavior unless all of the requirements of subsection (d) of this regulation are met.

(d) Physical restraint.

(1) Before physical restraint is used, de-escalation methods shall be attempted. If de-escalation methods fail and the behavior of a child or youth makes physical restraint necessary for the child's or youth's own protection or the protection of others, the child or youth shall be held as gently as possible to manage the behavior. If physical restraint is used, two staff members shall be present and shall remain with the child or youth until physical restraint is no longer necessary.

(2) The child or youth shall be restrained no longer than necessary for the child or youth to regain self-control. No bonds, ties, or straps shall be used to restrict movement.

(3) Each staff member using physical restraint shall have a current certificate on file documenting training in de-escalation methods and specific restraint procedures or techniques. The physical restraint training curriculum shall be approved by the secretary before the curriculum is used to train the staff members.

(4) Each child or youth whose behavior cannot be managed by other less intrusive methods and whose behavior requires the use of ongoing physical restraint for the child's or youth's protection or the protection of others shall have on file an IPP authorizing the use of physical restraint.

(e) Notification requirements. Each operator shall inform the parent or other adult responsible for a child or youth each time that physical restraint is used. The operator shall document each use of physical restraint on a critical incident report form supplied by the department. (Autho-

rized by and implementing K.S.A. 2001 Supp. 65-508; effective, T-28-4-1-02, April 1, 2002; effective Jan. 10, 2003.)

28-4-590. Health-related requirements.

(a) Tobacco use prohibited. Each operator shall ensure that tobacco products are not used during the hours of operation of the program and while children or youth are in attendance.

(b) Health of individuals working or volunteering in the program.

(1) Each operator and each staff member shall be free from physical, mental, and emotional handicaps as necessary to protect the health, safety, and welfare of the children or youth.

(2) No individual working or volunteering in a program shall be under the influence of alcohol or illegal substances, or impaired due to the use of prescription or nonprescription drugs.

(3) Each individual working or volunteering in the program shall be free from any infectious or contagious disease, as specified in K.A.R. 28-1-6.

(4) Each operator and each staff member who has regular, ongoing contact with children or youth shall attest to that individual's health status on a form supplied by the department or approved by the secretary. The health status form shall indicate if the individual has been exposed to an active case of tuberculosis or has been diagnosed with suspect or confirmed active tuberculosis. Each individual shall update the health status form annually or more often if there is a change in the health status or if the individual has been exposed to an active case of tuberculosis.

(5) If an operator or staff member in contact with children or youth experiences significant changes in physical, mental, or emotional health or if the individual has been exposed to an active case of tuberculosis, an assessment of the individual's current health status may be required by the secretary. A licensed health care provider qualified to diagnose and treat the condition shall conduct the health assessment. Each assessment shall be kept in the individual's file and shall be submitted to the secretary on request.

(c) Tuberculin testing.

(1) If an operator, program director, staff member, child, or youth is exposed to an active case of tuberculosis or if the location of the program is in an area identified by the local health department or the secretary as a high-risk area for tuberculosis exposure, that individual shall obtain a Mantoux test or a chest x-ray.

(2) Each individual diagnosed with suspected or confirmed active tuberculosis shall be excluded from the program until the operator receives authorization from the secretary for the individual to return.

(3) Each operator shall notify the secretary if any individual identified in paragraph (c)(1) of this regulation indicates exposure to an active case of tuberculosis, has a diagnosis of suspected or confirmed active tuberculosis, or has a positive Mantoux test or positive chest x-ray indicating active disease.

(d) Health of children and youth.

(1) Each operator shall obtain a health history for each child or youth, on a form supplied by the department or approved by the secretary. Each health history shall be maintained in the child's or youth's file on the premises.

(2) Each operator shall require that each child or youth attending the program has current immunizations as specified in K.A.R. 28-1-20 or has an exemption for religious or medical reasons.

(3) An exemption from immunization requirements shall be granted if one of the following is obtained:

(A) A written statement, submitted on a form supplied by the department and signed by a parent of the child or youth, that the parent is an adherent of a religious denomination whose teachings are opposed to health assessments or immunizations; or

(B) a certification from a licensed physician that the physical condition of the child or youth is such that immunizations would endanger the child's or youth's life or health.

(4) Children or youth who are currently attending or who had attended in the preceding school year a public or accredited non-public school in Kansas, Missouri, or Oklahoma shall not be required to provide documentation of current immunizations or exemptions from immunizations.

(e) Administration of medication.

(1) Nonprescription medication. If nonprescription medication is to be administered during the time children or youth are attending the program, each operator shall ensure compliance with the following procedures:

(A) Obtain written permission from the child's or youth's parent or other adult responsible for the child or youth before administering nonprescription medication to that child or youth;

(B) administer each medication from the original container and according to instructions on the label; and

(C) require that each nonprescription medication supplied by a parent or other adult responsible for the child or youth be in the original container that is labeled with the first and last name of the child or youth for whom the medication is intended.

(2) Prescription medication. If prescription medication is administered during the time children or youth are attending the program, each operator shall ensure compliance with the following procedures:

(A) Obtain written permission from the child's or youth's parent or other adult responsible for the child or youth before administering prescription medication to that child or youth;

(B) administer medication ordered by a licensed physician or licensed nurse practitioner only to the designated child or youth and in the dosage recommended;

(C) keep each prescription medication in the original container labeled by a pharmacist with the following information:

(i) The first and last name of the child or youth;

(ii) the date the prescription was filled;

(iii) the name of the licensed physician or licensed nurse practitioner who wrote the prescription;

(iv) the expiration date of the medication; and

(v) specific, legible instructions for administration and storage of the medication;

(D) consider the instructions on each label to be the order from the licensed physician or licensed nurse practitioner; and

(E) administer the medication in accordance with the instructions on the label.

(3) Requirements for administering medication.

(A) If nonprescription or prescription medication is administered, each operator shall designate staff members to administer the medication. Before administering medication, each designated staff member shall receive training in medication administration approved by the secretary.

(B) Each operator shall record in the file of each child or youth who is scheduled to receive medication the following identifying information, on forms supplied by the department:

(i) The name of each staff member who administered each medication;

(ii) the date and time the medication was given;

(iii) any change in the child's or youth's behavior, response to the medication, or adverse reaction; and

(iv) any change in the administration of the

medication from the instructions on the label or a notation about each missed dose.

(C) Each record shall be signed by the individual who was responsible for administering the medication, and a copy of the record shall be made available to the parent or other adult responsible for the child or youth.

(4) Storage of medication. Each operator shall keep each medication at the recommended temperature and, except as specified in paragraph (e)(5) (D) of this regulation, in locked storage. Each medication container shall have a child-protective cap.

(5) Self-administration of medication.

(A) Any operator may permit each child or youth with a chronic illness, a condition requiring prescription medication on a regular basis, or a condition requiring the use of an inhaler to administer the medication under staff supervision. The operator shall obtain written permission for the child or youth to self-administer medication from the child's or youth's parent or other adult responsible for the child or youth, and from the licensed physician or nurse practitioner treating the condition of the child or youth.

(B) Written permission for self-administration of medication shall be kept in the child's or youth's file.

(C) Self-administration of each medication shall follow the procedures specified in paragraphs (e) (2)(B), (C), (D), and (E) of this regulation.

(D) Each child or youth who is authorized to self-administer medication shall have immediate access to that child's or youth's medication for administration purposes. Each operator shall safely store each medication to prevent unauthorized access by others.

(E) Each operator shall record the date and time each medication was self-administered.

(f) Health care practices.

(1) Hand washing.

(A) Each operator shall encourage each child and youth to wash the hands with soap and water before and after eating and after toileting.

(B) Each staff member shall wash the hands with soap and water before and after eating and after toileting.

(C) Waterless sanitizing cleanser or sanitizing wipes shall not be used as a substitute for soap and running water. Individuals shall not share towels or washcloths.

(2) Each staff member shall be sensitive to the health status of each child or youth and shall take precautions to prevent the following:

(A) Dehydration;

(B) heat exhaustion;

(C) sunburn;

(D) frostbite;

(E) allergic reactions; and

(F) other preventable conditions hazardous to a child's or youth's health. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-507 and 65-508; effective, T-28-4-1-02, April 1, 2002; effective Jan. 10, 2003; amended, T-28-3-19-04, March 19, 2004; amended Sept. 10, 2004.)

28-4-591. Food preparation, service, safety, and nutrition. (a) If meals or snacks are served in the program, the operator shall ensure that the following requirements are met:

(1) Sanitary practices.

(A) Each individual engaged in food preparation and food service shall know and use sanitary methods of food handling, food service, and storage.

(B) No individual shall be in the food preparation area who is vomiting, has diarrhea, or has other signs, symptoms, or positive laboratory tests indicative of an infectious illness that can be transmitted through food handling.

(C) No individual shall handle or serve food until the individual is no longer infectious as required by K.A.R. 28-1-6.

(D) Each individual involved in food handling shall comply with all of the following requirements:

(i) Hands shall be washed with soap and running water in a designated hand-washing sink immediately before the individual engages in food preparation and before the individual serves food.

(ii) If the food preparation sink is used for hand washing, the sink shall be sanitized before using it for food preparation.

(iii) Individual towels, disposable paper towels, or air dryers shall be used to dry hands.

(iv) Each individual serving food shall use utensils or single-use gloves.

(v) Each individual with infectious skin sores or with open or infected injuries on the hands or forearms shall cover the sores or injuries with a bandage when handling or serving food.

(2) Food service and preparation area. If food is prepared on the premises, each operator shall provide a food preparation area that is separate from the eating area, activity area, laundry area, and rest rooms and that is not used as a passageway during the hours of food preparation and cleanup.

(A) Surfaces used for food preparation and dining shall be made of smooth, nonporous material and shall be cleaned and sanitized before and after use.

(B) The floors shall be swept daily and mopped when spills occur.

(C) Garbage shall be disposed of in a garbage disposal or in a covered container. If a container is used, the container shall be removed at the end of the day or more often as needed to prevent overflowing or to control odor.

(3) Food storage and refrigeration.

(A) Food shall be stored at least six inches above the floor in a clean, dry, well-ventilated area that is free from vermin and rodent infestation. Dry bulk foods that are not in their original, unopened containers shall be stored in metal, glass, or food-grade plastic containers with tightly fitting covers and shall be labeled.

(B) Food shall not be stored with poisonous or toxic materials. If cleaning agents cannot be stored in a room separate from food storage areas, the cleaning agents shall be clearly labeled and kept in locked cabinets not used for the storage of food.

(C) Each refrigerator and freezer used by the operator for food storage and refrigeration shall be kept clean inside and out and shall have an interior thermometer. The temperature shall be maintained at 40°F or lower in the refrigerator, and food stored in the freezer shall be maintained frozen.

(D) Hot foods that are to be refrigerated and stored shall be transferred to shallow containers in food layers less than three inches deep and shall not be covered until cool.

(E) All food stored in the refrigerator shall be covered, wrapped, or otherwise protected from contamination. Unserved, leftover perishable foods shall be dated, refrigerated immediately after service, and eaten within three days.

(F) Ready-to-eat commercially processed foods, including luncheon meats, cream cheese, and cottage cheese, shall be eaten within five days after opening the package.

(G) Hot foods shall be maintained at temperatures of at least 140°F.

(H) Cold foods shall be maintained at temperatures of 40°F or less.

(b) Table service.

(1) Each operator shall provide clean forks, spoons, and knives as appropriate for the food being served and shall provide one of the following:

(A) Clean cups and dishes that have smooth, hard-glazed surfaces and are free from cracks or chips; or

(B) disposable, single-use table service that is of food grade, medium weight, and disposed of after each use.

(2) If nondisposable table service and cooking utensils are used, each operator shall use one of the following methods to clean them:

(A) A commercial dishwasher for programs serving more than 30 children, or a domestic dishwasher for programs with 30 or fewer children;

(B) a three-compartment sink; or

(C) a two-compartment sink and a basin for sanitizing the table service and cooking utensils.

(c) Meals or snacks prepared on the premises.

(1) Food safety requirements. Each operator shall comply with the following requirements:

(A) Dairy products shall be pasteurized.

(B) Meat shall be from government-inspected sources.

(C) Raw fruits and vegetables shall be washed thoroughly before being eaten or used for cooking.

(D) Frozen foods shall be defrosted in the refrigerator, under cold running water, in a microwave oven using the defrost setting, or during the cooking process. Frozen foods shall not be defrosted by leaving them at room temperature or in standing water.

(2) Each operator shall ensure that the following foods are prohibited:

(A) Home-canned food;

(B) food from dented, rusted, bulging, or leaking cans; and

(C) food from cans without labels.

(d) Meals or snacks not prepared on the premises.

(1) If the operator serves a meal or snack that is not prepared on the premises, the meal shall be obtained from a food service establishment, summer feeding program, or catering service licensed by the secretary. If perishable food is transported to the premises, each operator shall serve only food that has been transported promptly in temperature-controlled, clean, covered containers.

(2)(A) Any operator may permit parents or other adults responsible for a child or youth to provide snacks and sack lunches.

(B) If sack lunches are provided either by the operator or by the parent or other adult responsible for each child or youth, each operator shall ensure that all of the following requirements are met:

(i) Each sack lunch shall be labeled with the name of the child or youth, and sack lunches shall not be shared.

(ii) Perishable foods and drinks shall be kept at the temperatures specified in paragraph (a)(3)(H) through the use of insulated sacks and either a coolant or refrigeration.

(iii) Each sack lunch shall be positioned so that neither ice nor water causes the food in the sack to become wet or contaminated.

(iv) Ice that will be ingested shall be kept wrapped and shall not come in contact with sack lunches, food, cans, or other substances.

(e) Nutrition.

(1) Each operator shall ensure that safe drinking water is readily available at all times to each individual participating in the program.

(2) Each operator shall ensure that meals and snacks are available to each child or youth according to the following schedule:

Length of time at the program	Food served
at least 2½ hours but fewer than 4 hours	1 snack
at least 4 hours but fewer than 8 hours	1 snack and 1 meal
at least 8 hours but fewer than 10 hours	2 snacks and 1 meal or 1 snack and 2 meals
10 hours or more	2 meals and 2 snacks

(3) Each operator of a school-age program that meets after school during the school year shall ensure that at least one snack is served daily to each child or youth who attends the program after school. (Authorized by and implementing K.S.A. 65-508; effective, T-28-4-1-02, April 1, 2002; effective Jan. 10, 2003; amended, T-28-3-19-04, March 19, 2004; amended Sept. 10, 2004.)

28-4-592. Safety and emergency procedures; reporting requirements. (a) Telephone.

(1) Each operator shall ensure that there is a working telephone readily available to the operator and staff members to receive all incoming calls and make outgoing calls during all hours of operation.

(2) Each operator shall post emergency telephone numbers for the police, fire department, ambulance, hospital or hospitals, and poison control center next to the telephone, or shall have the numbers immediately accessible to staff members.

(b) Emergency plan; drills.

(1) Each operator shall develop and implement an emergency plan to provide for the safety of children, youth, and staff members in emergen-

cies. The emergency plan shall include the following information:

(A) The types of emergencies likely to occur on or near the premises, including a fire, a weather-related event, a missing or runaway child or youth, a chemical release, a utility failure, an intruder, an act of terrorism, and an unscheduled closing;

(B) a designated shelter-in-place area and a designated off-premises relocation site and evacuation routes for each area and for each site;

(C) procedures to meet the needs of individual children and youth, including each child or youth with special needs;

(D) procedures for notifying each parent or adult responsible for a child or youth of any off-premises relocation;

(E) procedures for reuniting each child and each youth with the parent or adult responsible for the child or youth; and

(F) procedures designating the tasks to be followed by each staff member in an emergency, including the following:

(i) As appropriate, contacting 911 or other emergency response entities;

(ii) assisting the children and youth, including children and youth with special needs, to move to a designated shelter-in-place area and to a designated off-premises relocation site; and

(iii) ensuring that emergency supplies are readily available.

(2) Each emergency plan shall be kept on file on the premises.

(3) Each operator shall ensure that the emergency plan is provided to the parent or adult responsible for the child or youth before the first day the child or youth begins attending the program.

(4) Each staff member shall follow the emergency plan.

(5) Each operator shall review the emergency plan at least annually and update it as needed.

(6) Each operator shall ensure that each staff member practices, at least annually, the procedures for assisting the children and youth to move to a designated shelter-in-place area and to a designated off-premises relocation site. The date and time of each practice and a list of all participating staff members shall be recorded and kept on file on the premises.

(7) Each operator shall ensure that each staff member, child, and youth participates in the following drills:

(A) Fire drills shall be conducted monthly. A record of the date and time of each fire drill and

a record of each evacuation time shall be kept on file on the premises for one year.

(B) Tornado drills shall be conducted monthly. A record of the date and time of each tornado drill and a record of each evacuation time shall be kept on file on the premises for one year.

(c) First aid and cardiopulmonary resuscitation (CPR).

(1) Each operator shall ensure that there is at least one staff member on the premises who is readily available to each child or youth at all times and who has a current certification in first aid and a current certification in CPR appropriate to the age of children and youth attending the program.

(2) Each operator shall maintain first-aid supplies in a first-aid kit, carrying case, box, or other container. The first-aid supplies shall include the following:

- (A) First-aid manual;
 - (B) single-use gloves;
 - (C) adhesive bandages of assorted sizes;
 - (D) adhesive tape;
 - (E) a roll of sterile gauze;
 - (F) sharp scissors;
 - (G) sterile gauze squares at least four inches by four inches in size;
 - (H) a cleansing agent or liquid soap;
 - (I) an elastic bandage;
 - (J) tweezers; and
 - (K) a bottle of water for washing and cleansing.
- (d) Standard precautions for handling blood and other bodily fluids or waste. Each operator shall ensure that each staff member complies with the following standard precautions when handling blood and other bodily fluids or waste:

(1) Each staff member shall avoid coming into direct contact with blood and other bodily fluids or waste.

(2) Each staff member shall wear single-use gloves in the following situations:

- (A) When cleaning contaminated surfaces or areas;
- (B) before dressing a cut or sore that is leaking body fluids; and
- (C) when cleaning up each spill, including urine, feces, blood, saliva, vomit, and tissue discharge.

(3) Each contaminated surface or area on which a spill occurs shall be cleaned by removing any visible spill from the surface or area with a water-saturated disposable paper towel or wipe. After the surface or area has been cleaned, the surface or area shall be sanitized by wetting the entire surface or area with a disinfectant solution of chlo-

rine bleach mixed according to the directions on the label, or an appropriate commercial disinfectant used according to the directions on the label.

(4) Each mop used to clean up a contaminated area shall be cleaned and rinsed in a disinfecting solution, wrung as dry as possible, and hung to dry.

(5) Each paper towel, sponge, or other material used for cleaning up a contaminated area shall be placed in a plastic bag with a secure tie and thrown away in a covered container.

(e) Emergency medical care.

(1) If a child or youth needs emergency medical care and is taken to an emergency care source, each operator shall ensure that the parent or adult responsible for the child or youth is notified immediately and shall make the following documents and information immediately available to emergency care personnel:

- (A) The child's or youth's health history;
- (B) the name, address, and telephone number of the following individuals:
 - (i) The parent or adult responsible for the child or youth;
 - (ii) a designated emergency contact; and
 - (iii) the physician designated by the parent or adult responsible for the child or youth to be called in case of emergency; and
- (C) authorization for emergency medical care.

(2) If the operator has been unable to obtain the necessary documents as specified in K.A.R. 28-4-582, the operator shall follow the plan approved by the secretary.

(3) A staff member shall accompany a child or youth to the source of emergency care and shall remain with the child or youth until a parent or other responsible adult assumes responsibility for the child or youth. When a staff member goes to the source of emergency care with a child or youth, the operator shall ensure that there is an adequate number of staff members available to supervise the remaining children and youth in the program.

(f) Reporting illnesses.

(1) If a child or youth becomes ill while attending the program, the operator shall immediately notify the parent or adult responsible for the child or youth.

(2) If an operator, staff member, child, or youth in a program contracts a reportable infectious or contagious disease listed in K.A.R. 28-1-2, the operator shall report the disease to the secretary's designee by the next working day.

(3) The operator shall follow the protocol recommended by the county health department and

shall cooperate fully with any investigation, disease control, or surveillance procedures initiated by the county health department or the department.

(g) Reporting critical incidents.

(1) Each operator shall report the following critical incidents immediately to each parent or adult responsible for a child or youth affected by the critical incident, on a form provided by the department:

(A) Fire damage or other damage to the building, or damage to the property that affects the structure of the building or safety of the children and youth;

(B) a vehicle collision involving children or youth;

(C) a missing child or youth;

(D) physical restraint of a child or youth by staff members;

(E) the injury of a child or youth that requires medical attention;

(F) the death of a child, youth, or staff member; and

(G) any other incident that jeopardizes the safety of any child or youth.

(2) Each operator shall report each critical incident specified in paragraph (g)(1) to the secretary's designee by the next working day, on a form provided by the department. A copy of each critical incident report shall be kept on file for not less than one year on the premises or at a designated central office location.

(3) Each operator shall ensure that a report is made to the secretary's designee of all known facts concerning the time, place, manner, and circumstances of the death of a child or a youth attending the program when submitting a critical incident report as specified in paragraph (g)(1).

(h) Reporting suspected child abuse or neglect. Each operator and each staff member shall report to the Kansas department for children and families or to law enforcement any suspected child abuse or child neglect within 24 hours. (Authorized by and implementing K.S.A. 2016 Supp. 65-508; effective, T-28-4-1-02, April 1, 2002; effective Jan. 10, 2003; amended June 23, 2017.)

28-4-593. Program-sponsored transportation. (a) If the operator provides or arranges for transportation for children and youth to and from the premises or for program-sponsored activities, the operator shall ensure that prior written permission is obtained for each child or youth to be transported as specified in K.A.R. 28-4-582. The operator shall ensure that the authorization for emergency medical care for each child or youth

is in the vehicle in which the children or youth are being transported or is immediately available to emergency personnel. If the operator is unable to obtain written permission or authorization for emergency medical care, the operator shall follow the plan approved by the secretary as specified in K.A.R. 28-4-582.

(b) Transportation safety.

(1) Each operator shall ensure that the following transportation safety requirements are met when transporting children or youth:

(A) No child or youth under 13 years of age shall be seated in the front seat of a vehicle that is equipped with a passenger air bag.

(B) No child or youth shall be transported in a trailer pulled by another vehicle, a camper shell, or a truck bed.

(C) Each vehicle that is owned or leased by the operator and is used to transport children or youth shall be maintained in safe operating condition and shall contain a first-aid kit.

(2) Each driver shall comply with the following safety requirements:

(A) Be 18 years of age or older, hold an operator's license of the type appropriate for the vehicle being used, and observe all traffic laws;

(B) not allow the capacity of the transporting vehicle to be exceeded;

(C) remove accumulated trash from the transporting vehicle daily;

(D) lock or have under control each vehicle door while the vehicle is in motion;

(E) maintain order in the vehicle and ensure that all parts of each passenger's body remain inside the vehicle at all times;

(F) not permit any child or youth to enter the vehicle from or exit the vehicle into a traffic lane;

(G) leave no child or youth unattended in the vehicle at any time and, when the vehicle is vacated, ensure that no child or youth is left in the vehicle;

(H) prohibit smoking in the vehicle while children or youth are in the vehicle;

(I) not use a cellular phone while the vehicle is in motion; and

(J) transport each child or youth directly to the location designated by the operator and make no unauthorized stops along the way except in an emergency.

(d) Vehicle seat belt restraints.

(1) Except as specified in paragraph (d)(2), each operator shall ensure that each driver and each child or youth uses an individual seat belt restraint

and that no more than one child or youth is restrained in each seat belt.

(2) If buses of the type used by schools are used to transport children and youth and are not equipped with individual restraints, no operator shall be required to install individual restraints. (Authorized by and implementing K.S.A. 2001 Supp. 65-508; effective, T-28-4-1-02, April 1, 2002; effective Jan. 10, 2003.)

28-4-594. Swimming, wading, and water activities. (a) General.

(1) Each operator shall have written permission on file as specified in K.A.R. 28-4-582 for each child or youth participating in water activities.

(2) Each operator shall ensure that an individual who can swim and who has a current certificate in first aid and a current certificate in CPR appropriate to the age of the children and youth attending the program is in attendance if children or youth are participating in water activities.

(3) Each activity shall be conducted with strict regard for the life and safety of each child and youth.

(4) Each staff member responsible for the supervision of children or youth who are participating in swimming, wading or water activities shall review the safety rules with each child or youth before the child or youth participates in the activity.

(5) Each operator shall ensure that no child or youth is permitted to dive from a diving board unless the requirements governing high-risk sports and recreational activities as specified in K.A.R. 28-4-588 are met.

(b) Swimming pools on the premises.

(1) Safety and maintenance. Each operator shall ensure that the following requirements for safety and maintenance are met:

(A) The water in each swimming pool shall be maintained between pH 7.2 and pH 7.6. The available free chlorine content shall be between 1.0 and 3.0 parts per million.

(B) Each swimming pool shall be cleaned daily, and the chlorine level and pH level shall be tested daily during the swimming season. The results of these tests shall be recorded and kept on file at the premises.

(C) Each swimming pool more than six feet in width, length, or diameter shall be provided with a ring buoy and rope or with a shepherd's hook. This equipment shall be long enough to reach the center of the pool from the edge of the pool.

(D) A sensor or a remote monitor shall not be used in lieu of a fence around each swimming pool.

(E) During the months a swimming pool is not in use, the pool shall be covered with a safety cover.

(F) If a swimming pool on the premises is to be used by children or youth enrolled in the program, the operator shall ensure that legible safety rules for the use of the pool are posted in a conspicuous location.

(2) In-ground swimming pools. Each operator shall ensure that the following requirements are met:

(A) Each in-ground swimming pool located outdoors shall be enclosed by a five-foot fence on all four sides to prevent chance access by children and youth. The fence shall have a gate that has a self-closing latch with a locking device.

(B) If an in-ground swimming pool is within a building, the building shall be designed to prevent unsupervised access to the pool by each child and youth.

(C) Each in-ground swimming pool shall be surrounded by a nonskid surface that is at least four feet wide, is in good repair, and is free of tears, breaks, and splinters.

(3) Aboveground swimming pools. Each operator shall ensure that the following requirements are met:

(A) Each aboveground swimming pool shall have sides at least five feet high or shall be enclosed by a five-foot fence. Side extenders may be installed to increase the height of the sides of the swimming pool.

(B) Ladders shall be removed when the aboveground pool is not in use.

(4) Swimming pools operated by governmental entity. Each swimming pool operated by a governmental entity for public use shall be governed by the entity's policies and regulations on pool safety and maintenance and shall meet the regulations applicable to swimming pools included in this regulation, with the exception of paragraphs (b)(1)(A) and (B).

(c) Wading pools. The water in each wading pool shall be emptied immediately after use.

(d) Spas and hot tubs. Each spa or hot tub shall be covered with an insulated cover, which shall be secured by locks when the spa or hot tub is not in use.

(e) Ponds, rivers, and lakes on or off the premises. If a pond, river, or lake is used for swimming, the operator shall ensure that the body of water is approved for swimming by one of the following:

(1) The local health department of the county in which the swimming site is located, if the swimming site is in Kansas;

(2) the secretary; or

(3) the designated authority in the state in which the swimming site is located, if the swimming site is not in Kansas. (Authorized by and implementing K.S.A. 2001 Supp. 65-508; effective, T-28-4-1-02, April 1, 2002; effective Jan. 10, 2003.)

28-4-595. Animals on the premises. (a)(1) If animals are kept on the premises, each operator shall ensure that each area in which an animal is permitted is maintained in a clean and sanitary manner, with no evidence of flea, tick, or worm infestation in the area.

(2) Each operator shall prohibit poisonous animals, pit bulls, and other animals that present a health or safety hazard to children and youth on the premises, unless the animals are displayed as part of an animal exhibit and are supervised at all times by trained animal care personnel.

(b) Each operator shall ensure that animals are not present in the following areas:

(1) The kitchen while food is being prepared;

(2) the dining area while children or youth are eating; and

(3) each food storage area.

(c) Each staff member and each child or youth shall wash that individual's hands with soap and water after handling animals, animal food, and animal wastes.

(d) Each operator shall ensure that each domesticated cat, dog, or ferret on the premises has a current rabies vaccination. A record of each vaccination shall be kept on file on the premises or at a designated central office location and shall be available for review by the secretary's designee.

(e) Each operator shall ensure that each child or youth is taught safe procedures to follow when handling animals. The operator or staff member supervising the activity shall separate a child or youth from an animal immediately if either of the following occurs:

(1) The animal shows signs of distress or aggression.

(2) The child or youth shows signs of treating the animal inappropriately.

(f) If a child or youth is injured by an animal, the operator shall immediately notify the parent or other adult responsible for the child or youth about the injury. The operator shall submit a critical incident report about the injury to the sec-

retary's designee by the next working day. The operator shall keep a copy of the incident report in the child's or youth's file. (Authorized by and implementing K.S.A. 2001 Supp. 65-508; effective, T-28-4-1-02, April 1, 2002; effective Jan. 10, 2003.)

28-4-596. Day reporting program. (a)(1) Each operator conducting a day reporting program shall comply with the requirements specified in this regulation and the requirements in K.A.R. 28-4-577 through K.A.R. 28-4-584, K.A.R. 28-4-587, and K.A.R. 28-4-589 through K.A.R. 28-4-592.

(2) Each operator shall meet the following requirements if the secretary determines that they are applicable to the program and services:

(A) K.A.R. 28-4-576;

(B) K.A.R. 28-4-585 or K.A.R. 28-4-586; and

(C) K.A.R. 28-4-593 through K.A.R. 28-4-595.

(3) If the requirements of this regulation appear to conflict with any other regulation governing school-age programs, the more stringent regulation shall apply.

(b)(1) Each operator shall ensure that the program is administered by an individual with job-related experience working with juvenile offenders, and a knowledge of laws and standards governing programs for juvenile offenders.

(2) Each operator shall ensure that each child or youth who attends the program is 10 years of age or older and meets one of the following criteria:

(A) The child or youth is in the custody of the juvenile justice authority.

(B) The child or youth is court-ordered to attend.

(C) The child or youth is required to attend as a condition of diversion, probation, or release from a juvenile correctional facility, or diverted by the court from direct commitment to a juvenile correctional program.

(c) Each operator conducting a day reporting program shall develop and implement an IPP for each child or youth, which shall include any combination of the following:

(1) Assistance to each child or youth in organizing a daily schedule of activities;

(2) monitoring the child's or youth's court orders;

(3) situational counseling and referrals, if needed;

(4) conflict resolution and crisis intervention;

(5) contact with each child's or youth's parent or other adult responsible for the child or youth;

(6) drug testing and substance abuse education;

(7) pregnancy prevention and human sexuality education;

(8) assistance with educational and vocational needs;

(9) employment training, as appropriate; and

(10) community service work.

(d) Each operator shall keep the following in the child's or youth's file:

(1) The information required by K.A.R. 28-4-582;

(2) the child's or youth's legal status as specified in paragraph (b)(2);

(3) the date the child or youth was admitted to the program;

(4) intake information for each child or youth gathered at the time of admission;

(5) a summary of the child's or youth's daily activities;

(6) the IPP, progress reports, and any changes made in the plan;

(7) the discharge summary; and

(8) any critical incident reports.

(e)(1) Each operator shall establish written rules of child and youth conduct that define expected behaviors and related consequences. Each operator shall give each child or youth attending the program a rule book specifying the expected behaviors, ranges of consequences, and disciplinary procedures.

(2) Each operator shall obtain a signed acknowledgment from each child or youth that the child or youth has received a copy of the rule book and understands it. The signed acknowledgment shall be kept in the child's or youth's file.

(f) Each operator shall ensure that child and youth services are coordinated with the referring agency or the court, the local mental health center, the local school district, and the local health department, as necessary to implement the day reporting program.

(g) The supervisory ratio shall be one staff member for every 10 children and youth attending the day reporting program. The maximum group size shall not exceed 20 children or youth.

(1) Each operator shall ensure that each group has a program director who meets the following qualifications:

(A) Is 21 years of age or older;

(B) meets the staff qualifications for a program director for the licensed capacity of the program, as specified in K.A.R. 28-4-587; and

(C) has knowledge and experience working with juvenile offenders, high-risk children and youth,

community youth programs, or social service programs serving children and youth.

(2) Each operator shall ensure that each group has a group leader who meets the following qualifications:

(A) Is 21 years of age or older;

(B) meets the staff qualifications for group leader as specified in K.A.R. 28-4-587; and

(C) has knowledge and experience working with juvenile offenders, high-risk children and youth, community youth programs, or social service programs serving children and youth.

(3) Each operator shall ensure that each group has an assistant group leader who meets the following qualifications:

(A) Is 18 years of age or older and at least three years older than the oldest child and youth in the group to which the assistant group leader is assigned;

(B) meets the qualifications for an assistant group leader as specified in K.A.R. 28-4-587; and

(C) has experience working with children and youth. (Authorized by and implementing K.S.A. 2001 Supp. 65-508; effective, T-28-4-1-02, April 1, 2002; effective Jan. 10, 2003.)

NEWBORN INFANT HEARING SCREENING ACT

28-4-600. Definitions. (a) "Accepted medical practices" means the following:

(1) Physiologic hearing screening of all newborns;

(2) follow-up hearing assessment before three months of age for those newborns and infants who did not pass the hearing screening;

(3) follow-up medical evaluation for those newborns and infants with confirmed hearing loss; and

(4) follow-up early intervention services to meet the needs of each newborn and infant with hearing loss and each parent before the child reaches six months of age.

(b) "Audiologic assessment" means the physiological tests required to evaluate and describe hearing status.

(c) "Audiologist" has the meaning specified in K.S.A. 65-6501, and amendments thereto.

(d) "Auditory brainstem response" and "ABR" mean an objective, electrophysiologic measurement of the brainstem's response to acoustic stimulation of the ear.

(e) "Automated auditory brainstem response" and "AABR" mean an objective, electrophysiologic measurement of the brainstem's response to acoustic stimulation of the ear, obtained with

equipment that automatically indicates whether the child has passed the hearing screening.

(f) “Automated otoacoustic emissions” and “AOAE” mean an objective, physiologic response from the cochlea, obtained with equipment that automatically indicates whether the child has passed the hearing screening.

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

(h) “Discharge” means a newborn’s or infant’s release from the premises of a medical care facility and into the care of the parent of the newborn or infant. This term shall not include transporting the newborn or infant between medical care facilities.

(i) “Early intervention services” has the meaning specified in K.S.A. 75-5648, and amendments thereto.

(j) “Follow-up” means the following:

(1) Referring newborns and infants for further hearing testing if these children either missed or did not pass the initial hearing screening;

(2) referring newborns and infants with confirmed hearing loss for ongoing audiologic services to monitor hearing;

(3) referring newborns and infants with confirmed hearing loss for speech, language, and aural habilitation services; and

(4) referring newborns and infants with confirmed hearing loss for other early intervention services, as needed by these children and their parents.

(k) “Hearing screening” means the following:

(1) The completion of an objective, physiologic test or battery of tests on newborns and infants by using instrumentation and procedures specified by the department; and

(2) for other than pass results, referring the newborn or infant to an audiologist for audiologic assessment.

(l) “Hearing screening state program coordinator” means the audiologist in the department who is designated to coordinate the statewide “sound beginnings” activities.

(m) “Infant” means a child from 30 days through 12 months of age.

(n) “Initial hearing screening” means the procedure or procedures employed for the purpose of screening hearing before discharge.

(o) “Medical care facility” means a hospital, birthing center, or other licensed facility that provides obstetrical and newborn services.

(p) “Newborn” means a child through 29 days of age.

(q) “Otoacoustic emissions” and “OAE” mean an objective, physiologic response from the cochlea. This term may include transient evoked otoacoustic emissions and distortion product otoacoustic emissions.

(r) “Parent” means a natural parent, adoptive parent, stepparent, foster parent, legal guardian, or other legal custodian of a child.

(s) “Primary medical care provider” means the physician or health care agent who provides the newborn’s or infant’s routine medical care in the locale where the child resides after discharge.

(t) “Protocol” means the guidelines followed to conduct hearing screening.

(u) “Receiving agency” means the facility that agrees to provide hearing screening for sending agencies.

(v) “Risk indicator” means a factor known to place a newborn or an infant at risk for being born with or developing a hearing loss.

(w) “Sending agency” means a hospital with fewer than 75 births averaged over three years that chooses not to do hearing screening. Each sending agency shall arrange for hearing screening to be performed at another facility.

(x) “Sound beginnings” means the Kansas program consisting of hearing screening, tracking, and follow-up for newborns and infants.

(y) “Tracking” means using information about the newborn’s or infant’s hearing screening status to ensure that the newborn or infant receives timely and appropriate services to complete the screening and referral process. (Authorized by and implementing K.S.A. 65-1,157a; effective July 2, 2004.)

28-4-601. Initial hearing screening test: technology and protocol.

(a) Trained personnel at each medical care facility shall provide initial hearing screening using ABR, AABR, OAE, and AOAE, in combination or alone, which objectively assesses the physiologic status of the ear and which has no greater than a 30-40 dB HL (decibel hearing level) criterion for a pass result or a referral for additional screening.

(b) Trained personnel at each medical care facility shall follow an initial hearing screening protocol that has been approved by the hearing screening state program coordinator.

(c) The initial hearing screening protocol shall include the following:

(1) The type of screening equipment to be used;

(2) the time frame for the first screening and, if needed, the second screening, before discharge;

(3) the plan for providing the results to the parent, the newborn's or infant's primary medical care provider, and the department;

(4) the methods and materials to be used to inform the parent of the following:

(A) The purpose, benefits, and limitations of hearing screening for newborns and infants;

(B) the procedures used for hearing screening;

(C) the risk indicators for delayed-onset, progressive, and acquired hearing loss;

(D) the factors that could result in a referral for further hearing screening, including debris in the ear canal and fluid in the middle ear;

(E) the effects of hearing loss on infant development, including speech and language development;

(F) the importance of follow-up hearing assessment;

(G) the benefits of early identification and intervention;

(H) the timelines for maximizing early intervention; and

(I) a list of facilities that provide audiologic assessment for newborns and for infants younger than five months of age; and

(5) the referral plan to be used if the hearing screening results are incomplete or if the newborn or infant does not pass the hearing screening. (Authorized by and implementing K.S.A. 65-1,157a; effective July 2, 2004.)

28-4-602. Location of hearing screening for newborns and infants. (a) Except as specified in K.A.R. 28-4-609(a), the hearing of each newborn or infant shall be screened in both ears before discharge.

(b)(1) Except as specified in paragraph (b)(2), hearing screening shall be carried out in one of the following:

(A) The medical care facility where the newborn is born;

(B) if the newborn is transferred to one or more medical care facilities before being discharged, in the last medical care facility to which the child is transferred; or

(C) if the medical care facility averages fewer than 75 births per year over a three-year period, that medical care facility or, by contract or written agreement, another facility that provides hearing screening in compliance with this article.

(2) If the newborn is born outside of a medical care facility, the newborn's primary medical care provider shall arrange for the hearing screening in compliance with this article and before the

newborn is one month of age, unless a different time period is medically indicated. (Authorized by and implementing K.S.A. 65-1,157a; effective July 2, 2004.)

28-4-603. Responsibilities of medical care facility's administrator. (a) Each medical care facility administrator shall be responsible for the following:

(1) Designating a hearing screening manager or coordinator to be responsible for overseeing the facility's hearing screening program and ensuring compliance with the applicable statutes and regulations;

(2) designating a physician to be responsible for overseeing the medical aspects of the facility's hearing screening program;

(3) designating an audiologist on staff or a consulting audiologist to be responsible for overseeing the audiologic aspects of the facility's hearing screening program, including screening, tracking, referral for evaluation, and personnel training; and

(4) budgeting for personnel, equipment, and supplies needed to carry out the program.

(b) If the medical care facility administrator determines that the facility is a sending agency as defined in K.A.R. 28-4-600, the administrator shall ensure that the results of the hearing screening are obtained from the receiving agency for the newborn's medical record. (Authorized by and implementing K.S.A. 65-1,157a; effective July 2, 2004.)

28-4-604. Responsibilities of medical care facility's hearing screening manager or coordinator. Each manager or coordinator shall be responsible for the following:

(a) Writing and implementing a medical care facility policy for the newborn hearing screening program in consultation with the facility's medical director, staff audiologist or consulting audiologist, obstetrics nurse manager, and nursery nurse manager, and with the hearing screening state program coordinator;

(b) providing for the maintenance and accurate operation of the hearing screening equipment;

(c) developing a back-up hearing screening plan to ensure continuation of hearing screening if the equipment malfunctions or when there is a change in personnel administering the hearing screening;

(d) ensuring that the hearing screening is performed by appropriately trained and supervised personnel, as specified in K.A.R. 28-4-608;

(e) overseeing data management and reporting to the department, as specified in K.A.R. 28-4-605; and

(f) ensuring that the following requirements of the hearing screening program are met:

(1) Coordinating the supervision of or supervising the personnel who provide hearing screening, including the ongoing monitoring of their competency and retraining;

(2) monitoring the results of the screening program, including the number of newborns discharged before screening and the referral rates;

(3) before the newborn's or infant's discharge, informing the parent of the results of the hearing screening and providing a copy of the results;

(4) before or upon discharge of any newborn or infant who has passed the hearing screening, providing the child's parent with written information describing the following:

(A) The purpose, benefits, and limitations of hearing screening;

(B) the procedures used for hearing screening;

(C) the risk indicators for delayed-onset, progressive, and acquired hearing loss; and

(D) normal infant developmental milestones regarding hearing, speech, and language;

(5) before or upon discharge of any newborn or infant who has not passed the hearing screening, providing the child's parent with written information describing the following:

(A) The purpose, benefits, and limitations of hearing screening;

(B) the procedures used for hearing screening;

(C) the factors that could result in a referral for further hearing screening, including debris in the ear canal and fluid in the middle ear;

(D) the effects of hearing loss on infant development, including speech and language development;

(E) the risk indicators for delayed-onset, progressive, and acquired hearing loss;

(F) the recommendation for follow-up hearing screening;

(G) a list of options of personnel or sites that provide follow-up hearing screening; and

(H) a timeline for follow-up hearing screening in accordance with accepted medical practices;

(6) before or upon discharge, informing the newborn's or infant's primary medical care provider of the results of the hearing screening and the recommendations made to the child's parent;

(7) retaining the hearing screening results in the newborn's or infant's medical record; and

(8) if a newborn or infant is discharged before hearing screening or if a newborn or infant needs additional procedures to complete the hearing screening, ensuring that the following requirements are met:

(A) Informing the parent of the need for hearing screening;

(B) providing a mechanism by which hearing screening can occur at no additional cost to the family;

(C) making a reasonable effort to ensure that the newborn has a hearing screening before the child is 30 days old. To be considered a reasonable effort, the manager or coordinator shall document at least two attempts to contact the newborn's parent by mail or phone. If necessary, the manager or coordinator shall use information available from the facility's own records, the newborn's primary medical care provider, the local public health office, or other agencies; and

(D) notifying the newborn's primary medical care provider after two unsuccessful attempts to contact the newborn's parent. (Authorized by and implementing K.S.A. 65-1,157a; effective July 2, 2004.)

28-4-605. Reporting to the department.

Each manager or coordinator of the hearing screening program at each medical care facility shall report to the department the following:

(a) The program's protocol, policies, types of equipment, and personnel, which shall be reported annually;

(b) any changes in protocol, policies, and types of equipment, which shall be reported within 30 days of the change;

(c) the data for each newborn and infant, which shall be reported within seven days after the hearing screening;

(d) all cumulative data, which shall be reported annually; and

(e) the qualifications and training of the hearing screening administrative and support personnel, as defined in K.A.R. 28-4-608, which shall be reported annually. (Authorized by and implementing K.S.A. 65-1,157a; effective July 2, 2004.)

28-4-606. Responsibilities of the staff audiologist or consulting audiologist.

Each staff audiologist or consulting audiologist shall meet the following requirements:

(a) Be licensed to practice audiology in Kansas;

(b) have experience in using hearing screening technology options to screen the hearing of newborns and infants;

(c) have experience or training in developing and maintaining a hearing screening program;

(d) recommend hearing screening equipment and a protocol to the manager or coordinator; and

(e) work with the manager or coordinator to develop policy and procedures for the medical care facility, including the following:

- (1) Conducting the hearing screening program;
- (2) documenting results;
- (3) making referrals;
- (4) providing the screening results to the parent and the primary medical care provider;
- (5) providing data on hearing screening and follow-up to the department;
- (6) outlining a process for the periodic review of each screener's competency;
- (7) monitoring the performance of the screening program, including referral rates and the competency of screening personnel; and
- (8) providing information, training, and technical assistance to the medical care facility, as needed. (Authorized by and implementing K.S.A. 65-1,157a; effective July 2, 2004.)

28-4-607. Responsibilities of support personnel. (a) Each person who screens the hearing of newborns and infants shall meet the following criteria:

- (1) Meet the minimum qualifications specified in K.A.R. 28-4-608;
- (2) periodically demonstrate the competency-based skills necessary to perform the specific tasks assigned by the medical care facility;
- (3) follow the policies and procedures of the medical care facility; and
- (4) successfully complete the training specified in K.A.R. 28-4-608.

(b) Support personnel shall not perform the following:

- (1) Interpret screening results and other clinical data; and
- (2) refer a newborn's or infant's parent to any other professional or agency without a specific policy established by the medical care facility. (Authorized by and implementing K.S.A. 65-1,157a; effective July 2, 2004.)

28-4-608. Qualifications and training of support personnel. (a) Each person who screens

the hearing of newborns and infants and who is not licensed in Kansas for hearing screening shall meet the following criteria:

- (1) Be 18 years of age or older;
 - (2) have a high school diploma or its equivalent;
 - (3) be current with the immunizations required by the medical care facility and be free of infectious diseases transmittable to newborns and infants; and
 - (4) complete the required training as specified in subsection (c).
- (b) A training program for the support personnel at each medical care facility shall be established under the direction of the staff audiologist, consulting audiologist, or physician as identified in K.A.R. 28-4-603(a)(2) and (3).

(c) The training program shall include the following:

- (1) Instruction in the following:
 - (A) The operation of the screening equipment;
 - (B) the anatomy and physiology of the ear;
 - (C) the nature of the responses being measured;
 - (D) patient and non-patient factors that influence responses;
 - (E) the hearing screening procedures, including documentation of results;
 - (F) the confidentiality requirements;
 - (G) the communication skills necessary to provide accurate and appropriate information;
 - (H) safety and infection control procedures, including universal precautions for blood-borne pathogens and tuberculosis, according to the medical care facility's guidelines;
- (2) the medical care facility's emergency procedures; and
- (J) risk management and incident-reporting procedures; and

(2) supervised practice and individual observation and assessment to determine the ability of the support person to perform the duties associated with hearing screening, which shall include the following:

- (A) Working independently, accurately, and consistently;
 - (B) meeting the physical demands of the hearing screening process, including applying small objects safely to each newborn's and infant's ears and head; and
 - (C) following the precise sequence of instructions for the hearing screening protocol.
- (d) All support personnel shall receive ongoing assessment of proficiency and shall receive retraining, as specified in K.A.R. 28-4-604(f)(1).

(Authorized by and implementing K.S.A. 65-1,157a; effective July 2, 2004.)

28-4-609. Exceptions: parental right to refuse, medical care facility, medically fragile newborns, and home births. (a) If the newborn's or infant's parent objects to the mandatory screening for the detection of hearing loss, the parent's objection shall be documented in the child's medical record.

(b) If the medical care facility meets the definition of sending agency as specified in K.A.R. 28-4-600, that sending agency shall meet the following requirements:

(1) Have a contract or written agreement with a receiving agency that defines the responsibilities of each agency, including which agency is responsible for tracking and follow-up and for submitting the required data to the department;

(2) have the written agreement on file with the department;

(3) before each newborn's or infant's discharge, meet the following requirements:

(A) Schedule the hearing screening for the child at the receiving agency;

(B) provide the parent with the following information:

(i) The importance of early detection of hearing loss;

(ii) the normal infant developmental milestones regarding hearing, speech, and language;

(iii) the purpose, benefits, and limitations of newborn hearing screening;

(iv) the procedures used for newborn hearing screening; and

(v) the risk indicators for delayed-onset, progressive, and acquired hearing loss; and

(C) obtain a signed consent form from the parent to permit the receiving agency to share the results of the hearing screening; and

(4) obtain the hearing screening results and place them in the newborn's medical record.

(c) If a medically fragile newborn is transferred immediately after birth to a neonatal intensive care unit and has not had the hearing screened before the transfer, the medical care facility that releases the child to the home shall be responsible for the following:

(1) Screening the child's hearing before discharge; and

(2) meeting the responsibilities specified in K.A.R. 28-4-603 through K.A.R. 28-4-605.

(d)(1) For home births at which a primary med-

ical care provider is in attendance, the primary medical care provider shall be responsible for the following:

(A) Coordination and referral of the newborn to a licensed audiologist or medical care facility providing hearing screening; and

(B) assisting the parent to obtain hearing screening for the newborn before the child is 30 days old.

(2) For home births at which a primary medical care provider is not in attendance, the newborn's primary medical care provider shall be responsible for the coordination and referral for hearing screening following accepted medical practices. (Authorized by and implementing K.S.A. 65-1,157a; effective July 2, 2004.)

28-4-610. Responsibilities of the primary medical care provider. Each primary medical care provider shall be responsible for the following:

(a) Ensuring that the medical care facility implements hearing screening for the provider's patients according to accepted medical practices;

(b) ensuring that the hearing screening results are discussed with the parent;

(c) ensuring that the parent receives written information about risk indicators for hearing loss;

(d) monitoring for delayed-onset, progressive, and acquired hearing loss during the infant's routine medical care;

(e) assisting the parent of a newborn or infant who does not pass the hearing screening to obtain audiologic and other appropriate medical consultation, follow-up, and diagnosis for the child before the child is three months old;

(f) assisting the parent of a newborn or infant with confirmed hearing loss to obtain appropriate intervention services for the child before the child is six months old; and

(g) working with other health care professionals and with the newborn's or infant's parent in the coordination of care for a child with confirmed hearing loss. (Authorized by and implementing K.S.A. 65-1,157a; effective July 2, 2004.)

28-4-611. Responsibilities of persons providing hearing screening after discharge. (a) Hearing screening conducted after discharge shall be completed before the newborn is 30 days old, unless a different time period is medically indicated.

(b) Each person providing hearing screening after discharge shall be responsible for the following:

(1) Following the hearing screening protocol, as specified in K.A.R. 28-4-601;

(2) providing the screening results to the following:

(A) The newborn's or infant's parent;

(B) the newborn's or infant's primary medical care provider;

(C) the department, as specified in K.A.R. 28-4-605; and

(D) with parental consent, the medical care facility or facilities where the newborn was delivered and discharged;

(3) providing information to the parent about normal hearing, speech, and language development;

(4) providing information to the parent about delayed-onset, progressive, and acquired hearing loss;

(5) providing information to the parent about follow-up audiologic assessment if the newborn or infant does not pass the hearing screening; and

(6) providing a list of audiologic assessment provider sites for infants younger than five months of age.

(c) For missed appointments, each person providing hearing screening after discharge shall make a reasonable effort to contact the parent to reschedule the hearing screening.

To be considered a reasonable effort, the person shall document at least two attempts to contact the newborn's or infant's parent by mail or phone. If necessary, the person shall use information available from the referring agency, the newborn's or infant's primary medical care provider, the local public health office, or other agencies.

(d) Each person providing hearing screening after discharge shall notify the newborn's or infant's primary medical care provider after two unsuccessful attempts to contact the child's parent. (Authorized by and implementing K.S.A. 65-1,157a; effective July 2, 2004.)

28-4-612. Responsibilities of persons providing audiologic assessment after discharge. Each person who determines that a newborn or infant has a hearing loss shall be responsible for the following:

(a) Being licensed to practice audiology in Kansas;

(b) providing the test results to the parent, the child's primary medical care provider, and the medical care facility where the child was born;

(c) reporting the test results to the department;

(d) providing information to the parent regarding the following topics:

(1) Normal hearing, speech, and language development;

(2) progressive and acquired hearing loss;

(3) the importance of medical evaluation and diagnosis;

(4) the importance of early intervention;

(5) amplification options;

(6) assistive device options;

(7) local early intervention services and educational programs; and

(8) the availability and importance of parent-to-parent support;

(e) in consultation with the newborn's or infant's primary care physician, referring the child and parent to an otolaryngologist for medical assessment;

(f) discussing referral for additional specialty evaluations, including genetics, ophthalmology, and child development, with the parent and the child's primary care physician;

(g) if appropriate, ensuring that medical clearance for amplification has been obtained and initiating the amplification process;

(h) providing information and referral for funding assistance, if necessary; and

(i) with the permission of the parent, referring the parent and the newborn or infant to early intervention services and working with the parent and providers of early intervention services in developing a service plan. (Authorized by and implementing K.S.A. 65-1,157a; effective July 2, 2004.)

28-4-613. Inability to pay. No newborn or infant shall be refused hearing screening because of the parent's inability to pay for the procedure or in the absence of a third-party payor. (Authorized by and implementing K.S.A. 65-1,157a; effective July 2, 2004.)

DROP-IN PROGRAMS

28-4-700. Definitions. (a) "Adult responsible for a child or youth" means any of the following adults who is other than the child's or youth's legal parent and who is responsible for the care and upbringing of the child or youth:

(1) A stepparent;

(2) a grandparent;

(3) another relative; or

(4) a foster parent.

(b) "Annual renewal date" means the date assigned to each licensee for the submission of the documents required to renew the license and payment of the annual license fee.

(c) “Applicant” means any person who has submitted an initial application for a license to operate a drop-in program but has not received a temporary permit or a license.

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

(e) “Drop-in program” means a child care facility that is not located in an individual’s residence, that serves exclusively school-age children and youth, and in which the operator permits children and youth to arrive at and depart from the program at their own volition and at unscheduled times. This term shall not include a program, instructional class, or activity as specified in K.A.R. 28-4-578(b).

(f) “Kindergarten-age child” means a child who is attending kindergarten or who has completed kindergarten and has not entered first grade.

(g) “License” means the document issued by the secretary that authorizes a person to operate a drop-in program.

(h) “Operator” means a person who holds a temporary permit or a license to conduct a drop-in program.

(i) “Premises” means the location, including each building and the adjoining grounds, for which the operator has a temporary permit or a license to conduct a drop-in program.

(j) “School-age child” and “child” mean an individual who is of kindergarten age through the academic year in which the child is in the sixth grade and who is attending the drop-in program.

(k) “School-age youth” and “youth” mean an individual who meets the following conditions:

(1) Has completed sixth grade or is 12 years of age or older;

(2) is less than 18 years of age;

(3) is attending the program; and

(4) is not a volunteer or employee.

(l) “Secretary” means the secretary of the Kansas department of health and environment.

(m) “Secretary’s designee” means the person designated by the secretary to assess compliance with drop-in program regulations.

(n) “Staff member” means both of the following:

(1) All personnel, including employees’ substitutes and volunteers, who provide administrative or direct services to children and youth; and

(2) auxiliary personnel, including cooks, drivers, office workers, and housekeeping staff, who provide indirect services.

(o) “Temporary permit” means the document issued pursuant to K.S.A. 65-504, and amendments thereto, that authorizes a person to oper-

ate a drop-in program before receiving a license as required by K.S.A. 65-501, and amendments thereto. (Authorized by and implementing K.S.A. 65-508; effective, T-28-3-19-04, March 19, 2004; effective Sept. 10, 2004.)

28-4-701. Licensure; application; renewal. (a) Each person shall have a temporary permit or a license to operate a drop-in program before children or youth are in attendance.

(b) Each operator shall submit a new application, the required forms, and the license fee, and shall obtain a new temporary permit or a new license from the secretary, as follows:

(1) Before a drop-in program that has been closed is reopened;

(2) if there is a change in the location of the drop-in program; or

(3) if there is a change of ownership of the drop-in program.

(c) Each person wishing to conduct a drop-in program shall submit a complete application on forms supplied by the department. The application shall be submitted at least 90 calendar days before the planned opening date of the drop-in program and shall include the following:

(1) A description of activities and services to be offered;

(2) a request for a criminal history and child abuse registry background check as specified in K.A.R. 28-4-705; and

(3) a nonrefundable license fee of \$20.00.

(d) Each individual applying for a license shall be 21 years of age or older at the time of application, and shall comply with K.A.R. 28-4-587(b)(2) (A), (B), (C), or (D).

(e) Each corporation applying for a license shall be in good standing with the Kansas secretary of state.

(f)(1) Before the annual renewal date, each licensee wishing to renew the license shall submit the annual nonrefundable license fee and shall complete and submit the following to the secretary, on forms supplied by the department:

(A) An application to renew the license; and

(B) a request to conduct a criminal history and child abuse registry background check.

(2) Each failure to submit the annual renewal documents and fee as required by paragraph (f) (1) of this regulation shall result in an assessment of a \$10.00 late fee payable to the secretary and may result in suspension of the license. Each late renewal fee assessed shall be paid upon request. (Authorized by K.S.A. 65-508; implementing

K.S.A. 65-501, 65-504, 65-505, and 65-516; effective, T-28-3-19-04, March 19, 2004; effective Sept. 10, 2004.)

28-4-702. Inspections; investigations. Each applicant and each operator shall give the secretary or the secretary's designee immediate entry and access to the premises and to any records kept, to determine compliance with applicable statutes and with the drop-in program regulations. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-512; effective, T-28-3-19-04, March 19, 2004; effective Sept. 10, 2004.)

28-4-703. Recordkeeping. (a) Each operator shall obtain the following information for each child or youth before or on the first day of attending the drop-in program:

- (1) The first and last name and date of birth; and
- (2) the name, address, and telephone number of each parent or other adult responsible for the child or youth, the names of any other persons authorized to pick up the child or youth, and emergency contact information.

(b) Each operator shall obtain written authorization for emergency medical care, signed by the parent or legal guardian of each child or youth, before the child or youth attends the program or within the second week of attendance. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-507 and 65-508; effective, T-28-3-19-04, March 19, 2004; effective Sept. 10, 2004.)

28-4-704. Attendance policy; supervision. (a) Each operator of a drop-in program shall meet the following requirements:

- (1) Each operator shall develop and implement an attendance policy that allows children and youth to arrive at and depart the premises unsupervised, at unscheduled times and at their own volition.

- (2) The operator shall inform the parent or other adult responsible for each child or youth of the policy specified in paragraph (a)(1). The parent or guardian of each child or youth utilizing the drop-in program shall receive a written disclosure describing the activities in which the child or youth can participate and the level of supervision provided.

- (3) Each operator shall immediately notify the parent or guardian when a child or youth either is injured and requires medical attention or dies.

(b) Each staff member working with children and youth shall provide attentive supervision to

protect the health, safety, and welfare of the children and youth, and to reduce the risk of injury, illness, and abuse. (Authorized by and implementing K.S.A. 65-508; effective, T-28-3-19-04, March 19, 2004; effective Sept. 10, 2004.)

28-4-705. Background checks. Each applicant and each operator shall meet the following requirements:

(a) Submit to the department the identifying information necessary to complete background checks for each individual who works or regularly volunteers in the drop-in program and any other individual in the drop-in program whose activities involve either supervised or unsupervised access to children. The identifying information shall be submitted as follows:

- (1) When submitting an application for a license;

- (2) when submitting an application to renew a license; and

- (3) before allowing any individual to work or regularly volunteer in the drop-in program and before allowing any individual whose activities involve either supervised or unsupervised access to children to be in the drop-in program;

(b) ensure that fingerprint-based background checks are completed for each of the following:

- (1) The applicant;

- (2) the operator;

- (3) each staff member;

- (4) each volunteer providing supervision to children; and

- (5) any other individual regularly in the drop-in program whose activities involve unsupervised access to children;

(c) ensure that the information submitted for each individual specified in subsection (b) includes the required information for background checks from each state of residence throughout the five-year period before allowing the individual to work or regularly volunteer in the drop-in program;

(d) ensure that name-based background checks by the Kansas bureau of investigation and the Kansas department for children and families are completed for each of the following individuals:

- (1) Each volunteer who does not have unsupervised access to children;

- (2) each student of an accredited secondary or postsecondary school who is at least 16 years of age and who is participating in an educational experience arranged by the school, if the student

does not have unsupervised access to children; and

(3) any other individual regularly in the drop-in program if the individual's activities do not involve unsupervised access to children; and

(e) ensure that no individual works or regularly volunteers in the drop-in program until the results of the individual's background checks verify that the individual is not prohibited from working, regularly volunteering, or residing in a facility pursuant to K.S.A. 65-516, and amendments thereto. (Authorized by K.S.A. 2017 Supp. 65-508; implementing K.S.A. 2017 Supp. 65-516; effective, T-28-3-19-04, March 19, 2004; effective Sept. 10, 2004; amended June 7, 2018.)

LICENSING FAMILY FOSTER HOMES FOR CHILDREN

28-4-800. Definitions. For the purposes of K.A.R. 28-4-800 through K.A.R. 28-4-825, the following definitions shall apply:

(a) "Age-mates" means children whose difference in age does not exceed three years.

(b) "Applicant" means an individual who has applied for a license but who has not yet been granted a license to operate a family foster home. This term shall include an applicant who has been granted a temporary permit to operate a family foster home.

(c) "Basement" means the lowest level or story of a family foster home that has its floor below ground level on all sides.

(d) "Caregiver" means any individual who provides care to a child in foster care in or away from the family foster home, including the following:

(1) An applicant who has been granted a temporary permit to operate a family foster home or a licensee;

(2) a substitute caregiver;

(3) an adult member of a family providing informal visitation;

(4) an individual who comes into the family foster home to provide care when the licensee is present; and

(5) any respite care provider.

(e) "Case plan" means the comprehensive written plan of care developed for each child in foster care by the child's child-placing agent.

(f) "Child in foster care" means either of the following:

(1) Any individual under 16 years of age who is placed for care in a family foster home; or

(2) any individual who is at least 16 years of age

but not yet 23 years of age and who is in the custody of the state of Kansas and is placed for care in a family foster home.

(g) "Child-placing agent" means a person that possesses the legal right to place a child into a family foster home. This term shall include the child's parent, legal guardian, a public or private child-placing agency, and the court.

(h) "De-escalation methods" means types of intervention used to help reduce a child's level of anxiety or anger. This term shall include physical restraint.

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

(j) "Discipline" means positive methods of child behavior management, including instruction, re-direction, and de-escalation methods.

(k) "Exception" means a waiver of compliance with a specific family foster home regulation or any portion of a specific family foster home regulation that is granted by the secretary to an applicant or a licensee.

(l) "Exotic animal" means either of the following:

(1) Any non-human mammal that is not one of the following:

(A) A domesticated dog, a domesticated cat, a feral cat, or a domesticated ferret;

(B) a hoofed animal, including a cow, sheep, goat, pig, and llama, that is kept for farming or ranching purposes;

(C) a horse;

(D) a pet rabbit;

(E) a pet rodent, including a mouse, rat, hamster, gerbil, guinea pig, and chinchilla; or

(F) a potbellied pig; or

(2) any animal that typically lives in the wild and is determined by the secretary to be a substantial threat to the health and safety of a child in foster care.

(m) "Family foster home" means a type of child care facility as defined in K.A.R. 28-4-311.

(n) "Foster family" means all of the individuals living in a family foster home other than the child in foster care.

(o) "High-risk sport or recreational activity" means any sport or recreational activity, including watercraft activities and motorized activities, that poses a significant risk of injury to the participant. Safe participation in the activity shall require specialized instruction and may require protective safety gear.

(p) "Informal visitation" means visitation by a child in foster care in the home of an extended

family member of the licensee that is for 48 hours or less each month and that is for the purpose of normal socialization for the child in foster care.

(q) “Licensee” means an individual who has been granted a license to operate a family foster home.

(r) “Living space” means the rooms in a family foster home that are used for family activities, including the living room, dining room, family room, game or television room, and sleeping rooms. This term shall not include bathrooms, laundry rooms, and garages.

(s) “Long-term respite care” means respite care that is provided to a child in foster care for 24 hours or more each week.

(t) “Physical restraint” means the bodily holding of a child in foster care by a caregiver as a means to help the child regain self-control when the child is behaving in a manner that presents a danger to self or others.

(u) “Respite care” means the temporary care of a child in foster care in a family foster home other than the family foster home in which the child is placed. This term shall not include any activity that is solely for the purpose of socialization of a child in foster care.

(v) “Secretary” means the secretary of the Kansas department of health and environment.

(w) “Short-term respite care” means respite care that is provided to a child in foster care for less than 24 hours each week.

(x) “Sleepover” means an overnight social event with age-mates, away from the family foster home, that does not exceed a 24-hour period.

(y) “Smoking” means being in possession of a lighted cigarette, cigar, pipe, or burning tobacco in any device.

(z) “Sponsoring child-placing agency” means the public or private child-placing agency responsible for sponsoring the family foster home, including providing assessment, training, support, inspection, and monitoring for the licensee’s compliance with the regulations governing family foster homes.

(aa) “Substitute caregiver” means an individual who provides care and supervision in the family foster home for a child in foster care in the absence of the licensee.

(bb) “Water hazard” means a body of water at least 24 inches deep that is not a swimming pool, wading pool, or hot tub. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-503, 65-504, and 65-508; effective March 28, 2008.)

28-4-801. License required. (a) An individual shall obtain a license to operate a family foster home when providing 24-hour care to one or more children under 16 years of age who are unrelated to the individual, in the absence of the child’s parent or guardian.

(b) No individual shall be required to obtain a license to operate a family foster home under any of the following circumstances:

(1) All of the following conditions are met:

(A) The individual provides 24-hour care for one or more children less than 16 years of age.

(B) The total number of days the individual provides care does not exceed 90 calendar days during a calendar year.

(C) The individual does not receive payment or other compensation for providing care.

(D) The individual does not provide care for any children who are in the custody of the state of Kansas.

(E) The individual does not provide care for any children placed in Kansas from other states through the interstate compact for the placement of children (ICPC) or any successor compact.

(2) The individual provides care solely for the purpose of enabling the child to participate in a social activity that is normal for the child’s age and development.

(3) The individual provides informal visitation as defined in K.A.R. 28-4-800. (Authorized by K.S.A. 2012 Supp. 65-508; implementing K.S.A. 2012 Supp. 65-504 and K.S.A. 2012 Supp. 65-508; effective March 28, 2008; amended Sept. 6, 2013.)

28-4-802. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-504 and 65-508; effective March 28, 2008; revoked Sept. 8, 2017.)

28-4-803. Licensing procedure. The granting of a license to any applicant may be refused by the secretary if the applicant is not in compliance with the requirements of the following:

(a) K.S.A. 65-501 through 65-516, and amendments thereto;

(b) K.S.A. 65-523 through 65-529, and amendments thereto;

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

(d) all regulations governing family foster homes. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-504 and 65-508; effective March 28, 2008.)

28-4-804. Terms of license; validity of temporary permit or license; renewal of license; amendments; exceptions; withdrawal of application or request to close. (a) Terms of license.

(1) A temporary permit or a license may be granted to an applicant for a maximum of four children in foster care, with a maximum total of six children in the home, including the applicant's or licensee's own children under 16 years of age. There shall be no more than two children in the home under 18 months of age.

(2) Each child in foster care shall be at least five years younger than the youngest applicant or licensee.

(3) The maximum number of children and the age range authorized by the temporary permit or license shall not be exceeded and shall be limited by the following:

(A) The number of sleeping rooms that meet the requirements of these regulations;

(B) the assessment and recommendation of the sponsoring child-placing agency; and

(C) the ability of the applicant or licensee to maintain compliance with the statutes and regulations governing family foster homes.

(4) A license to maintain a family foster home shall not be granted or held in conjunction with any license or certificate authorizing another form of child care in a family foster home.

(5) An applicant or a licensee shall not provide care in the family foster home to any adult unrelated to the applicant or licensee.

(b) Validity of temporary permit or license.

(1) Each temporary permit or license shall be valid only for the individual or individuals and the address specified on the temporary permit or license.

(2) Each temporary permit or license shall be posted conspicuously in the family foster home.

(3) When an initial or amended license becomes effective, all temporary permits or licenses previously granted to the applicant or licensee at the same address shall become void.

(c) Renewal of license. Before each renewal date, the licensee shall complete and submit an application for renewal on forms provided by the department, including requests for the background checks specified in K.A.R. 28-4-805.

(d) Amendments. Each licensee who intends to change the terms of the license, including the maximum number or the age of children served, shall submit a request for an amendment on a form supplied by the department.

(e) Exceptions.

(1) Any applicant or licensee may request an exception from the secretary. Any request for an exception may be granted if the secretary determines that the exception is in the best interest of a child in foster care and the exception does not violate statutory requirements.

(2) Written notice from the secretary stating the nature of the exception and its duration shall be kept on file in the family foster home and shall be readily accessible to the department, the child-placing agent, the sponsoring child-placing agency, the Kansas department of social and rehabilitation services, and the Kansas juvenile justice authority.

(f) Withdrawal of application or request to close. Any applicant may withdraw the application for a license. Any licensee may submit, at any time, a request to close the family foster home operated by the licensee. If an application is withdrawn or a family foster home is closed, the current temporary permit or license granted to the applicant or licensee for that family foster home shall become void. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-504, 65-505, and 65-508; effective March 28, 2008.)

28-4-805. Background checks. (a) With each initial application or renewal application, the applicant or licensee shall submit a request to conduct a background check by the Kansas bureau of investigation and a background check by the Kansas department of social and rehabilitation services in order to comply with the provisions of K.S.A. 65-516, and amendments thereto. Each request shall be submitted to the department on a form provided by the department. The request shall list the required information for the following:

(1) Each individual 10 years of age and older who resides, works, or regularly volunteers in the family foster home, excluding children placed in foster care;

(2) each caregiver 14 years of age and older; and

(3) each resident of a home in which informal visitation occurs who is at least 10 years of age.

(b) Each licensee shall submit a request to the department to conduct a background check by the Kansas bureau of investigation and a background check by the Kansas department of social and rehabilitation services before any of the following occurs:

(1) A new individual at least 10 years of age begins residing, working, or regularly volunteer-

ing in the family foster home, excluding children placed in foster care.

(2) A new caregiver at least 14 years of age begins caring for the child in foster care in the family foster home.

(3) A new individual at least 10 years of age begins residing in a home in which informal visitation occurs.

(c) Each individual submitting an initial application for a family foster home license shall obtain the following:

(1) For each individual 18 years of age and older residing in the home, a child abuse and neglect background check from each previous state of residence throughout the five-year period before the date of application; and

(2) for each applicant or licensee, a fingerprint-based background check from the national crime identification databases (NCID).

(d) Each individual who received a family foster home license on or after July 1, 2007 shall obtain the following:

(1) For each individual 18 years of age and older residing in the home, a child abuse and neglect background check from each previous state of residence throughout the five-year period before the date of application; and

(2) for each licensee, a fingerprint-based background check from the national crime identification databases (NCID).

(e) Each licensee shall obtain background checks on any additional individual at least 10 years of age who resides, works, or regularly volunteers in the family foster home if requested by the department or the sponsoring child-placing agency.

(f) Background checks shall be obtained following the procedures of the department.

(g) All fees associated with obtaining child abuse and neglect background checks from other states and NCID checks shall be the responsibility of the applicant or the licensee. (Authorized by K.S.A. 65-508; implementing K.S.A. 2007 Supp. 65-516; effective March 28, 2008.)

28-4-806. Training. (a) Prelicensure training. Before a license is issued, each applicant shall participate in and successfully complete the following:

(1) A face-to-face, instructor-led family foster home preparatory program approved by the department;

(2) a face-to-face, instructor-led first aid training course that lasts at least three clock-hours;

(3) training in universal precautions; and

(4) medication administration training.

(b) In-service training. Each licensee shall obtain at least eight clock-hours of training in each licensing year, including at least two clock-hours obtained through participation in group training, including workshops, conferences, and academic coursework. The training topics shall provide the opportunity to develop competency in two or more of the following areas:

(1) Attachment issues and disorders;

(2) behavior and guidance, including managing aggressive behavior and de-escalation methods, including the use of time-out;

(3) child development;

(4) communicating with the families of children in foster care;

(5) constructive problem solving;

(6) health;

(7) home safety;

(8) human sexuality;

(9) interactions with children;

(10) regulations governing family foster homes;

(11) medication administration;

(12) post-traumatic stress disorder;

(13) separation issues; and

(14) specific topics related to children with special needs.

(c) Additional training requirements.

(1) Each licensee shall participate in any additional or alternative training required by the sponsoring child-placing agency.

(2) Each caregiver using physical restraint shall have a current certificate documenting completion of physical restraint and de-escalation training approved by the secretary.

(d) Failure to meet training requirements.

(1) Each licensee who fails to meet training requirements for any licensing year shall complete a corrective action plan developed with the sponsoring child-placing agency to comply with prior licensing year requirements. The training hours obtained under the corrective action plan shall apply only to the prior licensing year. Failure to successfully complete the corrective action plan within 30 days after the initiation of the corrective action plan may result in an enforcement action.

(2) Each corrective action plan shall include the licensee's plan for maintaining compliance with this regulation.

(3) A licensee shall not accept any new child for placement until the sponsoring child-placing agency documents that the corrective action plan

has been successfully completed by the licensee and the training obtained by the licensee that meets the requirements of subsection (b). (Authorized by and implementing K.S.A. 65-508; effective March 28, 2008.)

28-4-807. Reporting requirements for infectious or contagious disease; positive tuberculin test; critical incidents; abuse and neglect. (a) Reporting infectious or contagious disease. Each licensee shall be responsible for reporting if any resident of the family foster home, including a child in foster care, contracts a reportable infectious or contagious disease specified in K.A.R. 28-1-2 as follows:

(1) Each licensee shall report the disease to the local county health department by the next working day. Each licensee shall follow the protocol recommended by the county health department and shall cooperate with any investigation, disease control, or surveillance procedures initiated by the county health department or the department.

(2) Each licensee shall notify the sponsoring child-placing agency of the incident for each child in foster care.

(b) Hospitalization or emergency room care. If a child in foster care requires hospitalization or emergency room care, the licensee shall notify the sponsoring child-placing agency in accordance with the sponsoring child-placing agency's policies and procedures.

(c) Positive tuberculin test. If any individual residing, working, or volunteering in the family foster home who is required to have tuberculin testing has a positive tuberculin test, each licensee shall report the results to the department's TB control program by the next working day.

(d) Reporting critical incidents.

(1) Each licensee shall report any of the following critical incidents immediately to the child's child-placing agent and the sponsoring child-placing agency:

(A) Fire damage or other damage to the dwelling or damage to the property that affects the structure of the dwelling or the safety of the child in foster care;

(B) a vehicle accident involving any child in foster care;

(C) a missing or runaway child in foster care;

(D) the physical restraint of a child in foster care;

(E) the injury of a child in foster care that requires medical attention;

(F) the death of a child or any other resident of the family foster home;

(G) the arrest of a child in foster care;

(H) any incident involving the presence of law enforcement;

(I) all complaint investigations by the department or the Kansas department of social and rehabilitation services; and

(J) any other incident that jeopardizes the safety of a child in foster care.

(2) Each licensee shall submit a written report for each critical incident specified in paragraph (d)(1) to the sponsoring child-placing agency by the next working day. This report shall contain the following information:

(A) The child's name and birth date;

(B) the date and time of the incident;

(C) a factual summary of the incident, including the name of each individual involved;

(D) a factual summary of the immediate action taken, including the name of each individual involved;

(E) the signature of the licensee; and

(F) the date of the report.

(3) Each licensee shall ensure that a report is submitted to the department by the next working day. The report shall contain all known facts concerning the time, place, manner, and circumstances of the death of a child in foster care or any individual living in the family foster home.

(4) A copy of each critical incident report shall be kept on file at the family foster home.

(e) Reporting abuse and neglect.

(1) For the purposes of this subsection, "neglect," "physical, mental, or emotional abuse," and "sexual abuse" shall have the meanings specified in K.S.A. 38-2202, and amendments thereto.

(2) Each caregiver shall report any suspected neglect, physical, mental, or emotional abuse, and sexual abuse of a child in foster care within 24 hours of discovery, by telephone or in writing, to the secretary of the Kansas department of social and rehabilitation services or to the local law enforcement agency.

(3) Each licensee shall notify the sponsoring child-placing agency of suspected neglect, physical, mental, or emotional abuse, and sexual abuse of a child in foster care within 24 hours of discovery, by telephone or in writing. (Authorized by and implementing K.S.A. 65-508; effective March 28, 2008.)

28-4-808. Recordkeeping requirements; confidentiality. Each licensee shall ensure that all records pertaining to the licensure and operation of the family foster home, including the records specified within this regulation, are kept at the family foster home and are accessible to the secretary and the sponsoring child-placing agency.

(a) Family foster home records. Each licensee shall keep the following documents in the family foster home:

(1) The sponsoring child-placing agency's approval for any of the following, if applicable:

(A) Approval for the licensee to provide respite care;

(B) approval for use of informal visitation; and

(C) an approved outdoor safety plan;

(2) a copy of the safety rules for the use of the swimming, wading pools, or hot tubs posted as specified in K.A.R. 28-4-824;

(3) any exceptions that have been granted;

(4) a copy of the regulations governing family foster homes;

(5) documentation of the information submitted for background checks as specified in K.A.R. 28-4-805;

(6) a copy of the licensee's documentation of each critical incident for each child in foster care as specified in K.A.R. 28-4-807;

(7) a copy of the record of each rabies vaccination for each domesticated dog and each domesticated cat owned by any occupant of the family foster home; and

(8) documentation of accident and liability insurance for each vehicle used to transport children in foster care.

(b) Caregiver records. A file that contains the following information shall be kept for each caregiver:

(1) Documentation of the training specified in K.A.R. 28-4-806;

(2) a health assessment that meets the requirements in K.A.R. 28-4-819 and documentation of a negative tuberculosis test or chest X-ray;

(3) a copy of a valid driver's license, if applicable. A copy of the license shall also be provided to the sponsoring child-placing agency; and

(4) all information for the extended family members identified for informal visitation, as specified in K.A.R. 28-4-814.

(c) Foster family members 16 years of age and older. The record for each child 16 years of age and older, excluding children placed in foster care, shall include the following information:

(1) A health assessment that meets the requirements specified in K.A.R. 28-4-819 and documentation of any negative tuberculosis test or chest X-ray;

(2) a current immunization record; and

(3) a copy of a valid driver's license, if transporting any child in foster care. A copy of the license shall also be provided to the sponsoring child-placing agency.

(d) Foster family members less than 16 years of age. The records for each child less than 16 years of age who was born to, or adopted by, the licensee shall include a health assessment that meets the requirements in K.A.R. 28-4-819 and documentation of immunizations as specified in K.A.R. 28-4-819.

(e) Child in foster care. Each licensee shall keep a file for each child in foster care that contains the following information:

(1) All required placement information specified in K.A.R. 28-4-809;

(2) authorization, if any, regarding disclosure of confidential information for the child in foster care;

(3) documentation, if applicable, of a case plan authorizing the use of physical restraint;

(4) documentation, if applicable, of each use of physical restraint on a physical restraint report form as specified in K.A.R. 28-4-815;

(5) medical and surgical consent forms;

(6) the name, address, and telephone number of a physician to be called in case of emergency; and

(7) the medical information record specified in K.A.R. 28-4-819.

(f) Confidentiality of records of each child in foster care. Each licensee shall keep each child's recorded information confidential. The records shall be kept on file at the family foster home in a manner that ensures confidentiality. Nothing in this regulation shall prevent access to the child's records by the child's child-placing agent, the sponsoring child-placing agency, the department, law enforcement, or the court. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-507 and 65-508; effective March 28, 2008.)

28-4-809. Basic placement information; other required placement information; departure requirements. (a) Basic placement information. Any licensee may accept a child in foster care for placement if the following information is received before or at the time of placement:

(1) The approval of the sponsoring child-placing agency;

(2) signed medical and surgical consent forms or, in the case of an after-hours emergency placement, a provision for obtaining medical and surgical consent forms;

(3) a completed placement agreement or a completed emergency placement form;

(4) a description of the circumstances leading to the current placement and, if known, the reason the child in foster care came into custody;

(5) a description of the child's recent circumstances, including any medical problems, mental health concerns, and safety concerns, including any assaultive behavior and victimization concerns, if known;

(6) information about the child's medication and dietary needs, and the name of each of the child's current health care providers, if known;

(7) any allergies from which the child suffers, if known; and

(8) the name, address, and telephone number of the contact individual for the last educational program the child attended.

(b) Other required placement information.

(1) No later than 14 calendar days after placement, each licensee shall review the following information:

(A) A copy of the court order or other document authorizing the child-placing agent to place the child in foster care;

(B) a designation of the race or cultural heritage of the child, including tribal affiliation, if any;

(C) a completed and signed placement agreement, including emergency contact information, if not received at the time of placement;

(D) signed medical and surgical consent forms, if not received at the time of placement;

(E) the name, address, and telephone number of the child's parents or legal guardian;

(F) the spiritual or religious affiliation of the child and the child's family;

(G) the child's placement history summary, including the name, address, and telephone number of any advocates;

(H) a description of positive attributes and characteristics of the child and, if available, any related information from the child, the child's family including siblings, and concerned individuals in the child's life;

(I) the name, address, telephone number, and, if applicable, the e-mail address of the child-placing agent who is responsible for supervising the child's placement; and

(J) a copy of the current case plan, if completed. If this plan has not been completed, the licensee shall obtain a copy within 14 calendar days of the completion of the plan.

(2) If the licensee does not have the information specified in paragraph (b)(1), the licensee shall request the information from the sponsoring child-placing agency and shall document the request.

(c) Departure requirements. When any child in foster care moves from the family foster home, the licensee shall send the following with the child:

(1) All possessions brought with the child in foster care to the family foster home that are usable or that have special significance to the child;

(2) all savings from gifts, allowances, and earnings;

(3) all usable clothing, school supplies, recreational equipment, gifts, and any other items purchased specifically for and given to the child during placement in the family foster home, including items provided by the foster parents; and

(4) the child's life book, which may include birth family history, placement history, pictures, school information, and a record of personal achievements. (Authorized by and implementing K.S.A. 65-508; effective March 28, 2008.)

28-4-810. Case plan. (a) Each licensee shall be an active participant on the case-planning team with each child's child-placing agent, the sponsoring child-placing agency, and other appropriate parties to develop and implement the child's case plan.

(b) The licensee's participation shall include the following:

(1) Identifying and sharing information, as appropriate, with individuals who are directly involved in the child's case plan, including any treatment outcomes the child achieves while in the family foster home and the attainment of developmentally appropriate life skills that the child needs to become functional in the community;

(2) reporting the child's behaviors and other important information to the child's child-placing agent, the sponsoring child-placing agency, and others as indicated in the child's case plan;

(3) recommending changes in the child's case plan to the child's child-placing agent, if needed, including any approval needed for special activities or privileges, and participating in the case-planning conferences for the child; and

(4) giving the child-placing agent additional significant information about the child in foster care as it becomes known.

(c) A licensee shall not disclose medical or social information relating to any child in foster care without authorization from the child's child-placing agent, unless the disclosure is directly related to obtaining necessary services for the child or to ensuring safe involvement in age-appropriate activities.

(d) In order to meet the needs of each child placed in the home, each licensee shall implement the provisions assigned to the licensee in the case plan and shall follow the policies of the sponsoring child-placing agency for the care of the child.

(e) Each licensee shall seek consultation and direction from the child's child-placing agent or the sponsoring child-placing agency if issues arise that cannot be resolved between the licensee and the child in foster care. (Authorized by and implementing K.S.A. 65-508; effective March 28, 2008.)

28-4-811. Caregiver qualifications; supervision. (a) Caregiver qualifications. Each caregiver shall be qualified by the temperament, emotional maturity, judgment, and the understanding of children necessary to maintain the health, comfort, safety, and welfare of children in foster care pursuant to K.S.A. 65-504 and 65-508, and amendments thereto.

(b) General supervision. Each licensee shall ensure that each child in foster care is supervised in accordance with the child's age, maturity, risk factors, and developmental level. Additional supervision shall be provided for any child in foster care of any age in any of the following situations:

(1) The child has mental health issues that place the child at higher concern for risk-taking behaviors that could result in unintentional injury or drowning.

(2) The child would be a danger to self or others.

(3) The child functions below the child's chronological age level.

(4) The child is unable to engage in self-care.

(c) Substitute care and supervision. Each licensee shall ensure that substitute care and supervision are provided in each of the following situations:

(1) During the absence of the licensee between the hours of six a.m. and midnight, the following requirements shall apply:

(A) For an absence of less than four hours, the substitute caregiver shall be at least 14 years of age and at least three years older than the oldest child in foster care; and

(B) for an absence of four to 10 hours, the substitute caregiver shall be at least 16 years of age and at least three years older than the oldest child in foster care.

(2) In the absence of the licensee for more than 10 hours or for any period between the hours of midnight and six a.m., the substitute caregiver shall be at least 18 years of age and at least three years older than the oldest child in foster care.

(d) Self-care. Any child in foster care at least 12 years of age may be permitted to stay at home without adult supervision for certain periods of time between the hours of six a.m. and midnight if all of the following requirements and conditions are met:

(1) The potential for self-care is identified and written approval is included in the child's case plan.

(2) Each child in foster care's specific risk factors, including age, maturity level, behavior disorders, suicidal tendencies, developmental delays, thrill-seeking behavior, and difficulty with anger control, shall be considered in developing the self-care plan.

(3) Each licensee has established a written self-care plan for the care and supervision for each child in foster care in the home in the absence of the licensee. The written self-care plan shall take into consideration the number of children in the home, the behavior, emotional stability, and maturity level of the children in the home, and any neighborhood safety issues. The self-care plan shall be approved by the sponsoring child-placing agency and the child's child-placing agent.

(4) Only children residing in the home may be present during self-care.

(5) The following minimum age and maximum time limits for self-care for each child in foster care shall apply:

(A) Any child who is at least 12 years of age may be in self-care for a maximum of two consecutive hours, for no more than four hours each day.

(B) Any child who is at least 14 years of age may be in self-care for no more than four hours each day.

(C) Any child who is at least 16 years of age may be in self-care for no more than 10 hours each day. (Authorized by and implementing K.S.A. 65-508; effective March 28, 2008.)

28-4-812. Respite care. (a) Requirements. Respite care may be provided for a child placed in another foster home if both of the following requirements are met:

(1) The respite care provider shall be in compliance with all regulations governing family foster homes.

(2) The sponsoring child-placing agency shall have approved the family foster home to provide respite care and the written approval is on file in the family foster home.

(b) Short-term respite care. The number and age range authorized by the temporary permit or the license may be exceeded by a maximum of two additional children in foster care or a sibling group of any size. If short-term respite care is provided during sleeping hours, an individual bed shall be available for each child.

(c) Long-term respite care. Long-term respite care may be provided if the addition of the child in foster care to be receiving long-term respite care does not cause the license capacity for the family foster home in which respite care will be provided to be exceeded. (Authorized by and implementing K.S.A. 65-508; effective March 28, 2008.)

28-4-813. Child growth and development. (a) Social development. Each licensee shall provide for the growth and development of each child in foster care by providing the following:

(1) Contact with the family of the child in foster care in accordance with the case plan prepared by the child's child-placing agent;

(2) access to individual, school, and community recreational activities according to the child's age and interest; and

(3) privacy.

(b) Culture and religion. Each licensee shall meet the cultural and religious needs of each child in foster care placed in the family foster home.

(c) Recreational development. Each licensee shall provide an adequate supply of play equipment, materials, and books that meet the following requirements:

(1) Are suitable to the developmental needs and interests of each child in foster care; and

(2) are safe, clean, and in good repair.

(d) Education and basic skills. Each licensee shall provide the following to each child in foster care:

(1) Facilitation of the child's timely enrollment and school attendance in a local school district or, when appropriate, the child's district of residence and facilitation of the child's regular attendance at school or any other place of instruction in accordance with the child's individual education plan; and

(2) assistance to each child in learning basic life skills that allow the opportunity to improve self-concept and strengthen identity in preparation for life after foster care. (Authorized by and implementing K.S.A. 65-508; effective March 28, 2008.)

28-4-814. Family life. (a) Family activities. Taking into consideration the age, needs, and case plan of each child in foster care, each licensee shall provide the following opportunities for each child in foster care:

(1) Inclusion of the child in foster care in the daily life of the family, including eating meals with the family and participating in recreational activities;

(2) ensuring that each child in foster care is provided with the same opportunities that are provided to the other children residing in the home; and

(3) ensuring that each child in foster care is provided access to schools, church, recreational and health facilities, and other community resources.

(b) Daily routine. Each licensee shall provide a daily routine in accordance with the age and needs of each child in foster care that includes the following:

(1) Active and quiet play, both indoors and outdoors, weather permitting;

(2) rest and sleep; and

(3) nutritious meals and snacks.

(c) Essential and special items.

(1) Each licensee shall ensure that each child in foster care is provided with essential items to meet each child's needs, including the following:

(A) Food and shelter;

(B) nonprescription medical needs;

(C) clothing and shoes;

(D) toiletries and personal hygiene products; and

(E) birthday and holiday gifts.

(2) Each licensee shall notify the sponsoring child-placing agency and the child's child-placing agent when a licensee identifies a need for additional resources to provide a special item for a child in foster care. Special items may include the following:

(A) Clothing and fees for instructional or extracurricular activities;

(B) school pictures;

(C) athletic and band instrument fees; and

(D) cap and gown rental and prom clothing.

(d) Allowance. Each licensee shall provide an allowance to each child in foster care equal to that of any other children of similar age in the family foster home who receive an allowance.

(e) Work opportunity. Each child in foster care shall have the opportunity to earn spending money at tasks or jobs according to the child's age, ability, and case plan. The money shall be the child's, and the child shall not be forced to provide for needs that otherwise would be provided by the licensee.

(f) Routine tasks. Each licensee shall permit each child in foster care to perform only those routine tasks that are within the child's ability, are reasonable, and are similar to the routine tasks expected of other members of the household of similar age and ability.

(g) Informal visitation. Any licensee may identify extended family members 18 years of age and older as resources for informal visitation.

(1) For each extended family member identified as a resource, each licensee shall meet the following requirements:

(A) Describe the relationship of the individual to the licensee;

(B) submit a request for background checks as specified in K.A.R. 28-4-805;

(C) obtain a copy of the current driver's license for each individual who could provide transportation during visitation;

(D) provide to the sponsoring child-placing agency documentation that each individual has read and agrees to follow the confidentiality policy and the discipline policy of the sponsoring child-placing agency;

(E) ensure that each individual has emergency contact numbers and a crisis plan in case of emergency; and

(F) ensure that either an original or a copy of each medical consent form and each health assessment is provided for each child in foster care participating in informal visitation.

(2) Each licensee shall obtain the sponsoring child-placing agency's approval of the informal visitation plan before using informal visitation.

(3) Each licensee shall provide the sponsoring child-placing agency with the information specified in paragraphs (g)(1)(A) through (F) and shall keep a copy on file in the family foster home.

(4) Each licensee shall report the following to the sponsoring child-placing agency:

(A) The date on which each informal visitation occurs; and

(B) the identified extended family member's name and address.

(5) Each licensee shall ensure that both of the following conditions are met:

(A) Each identified extended family member 18

years of age and older is informed of the content of the regulations governing family foster homes.

(B) Supervision that ensures the health, safety, and welfare of each child in foster care is provided by an individual 18 years of age and older.

(h) Sleepovers. Any licensee may permit a child in foster care to participate in sleepovers in unlicensed homes if all of the following conditions are met:

(1) The purpose of the stay is to allow the child to participate in a social event that is normal for the child's age and development.

(2) Participation in sleepovers is not precluded in the child's case plan.

(3) The licensee confirms the invitation with the parent of the child to be visited and determines that supervision will be provided by an individual 18 years of age and older to ensure the health, safety, and welfare of the child.

(i) High-risk sport or recreational activity. Any licensee may permit a child in foster care to engage in any high-risk sport or recreational activity if all of the following conditions are met:

(1) Written permission for the specific activity is obtained from the parent, legal guardian, or legal custodian of the child in foster care and from the child's child-placing agent.

(2) The licensee assesses the individual child-specific risk factors before giving permission. These factors shall include the age and maturity level of the child, behavior disorders, suicidal tendencies, developmental delays, thrill-seeking behavior, and difficulty with anger control.

(3) Protective safety gear is used, if required for the sport or activity.

(4) A safety plan is developed and followed. This plan shall include instruction on the activity and compliance with any manufacturer's specifications and general safety guidelines.

(5) Direct supervision by an individual 18 years of age and older is provided to ensure safe participation.

(j) The use of trampolines in home settings shall be prohibited for children in foster care. (Authorized by and implementing K.S.A. 2012 Supp. 65-508; effective March 28, 2008; amended Sept. 6, 2013.)

28-4-815. Behavior management practices; prohibited punishment; physical restraint; notification requirements. (a) Behavior management practices.

(1) Each licensee shall ensure that positive methods are used for behavior management that

are appropriate to the age and developmental level of the child in foster care and encourage cooperation, self-direction, and independence.

(2) Each caregiver shall use methods of behavior management that are designed to help each child in foster care develop inner controls and manage the child's own behavior in a socially acceptable manner.

(3) If time-out is used to manage behavior, the child in foster care shall remain in time-out in accordance with the child's age and developmental level and only long enough to regain self-control.

(4) For each child in foster care who is not able to develop self-control or self-management, behavior management techniques shall be approved, in writing, by the case planning team.

(b) Prohibited punishment.

(1) No individual shall use any of the following means or methods of punishment of a child:

(A) Punishment that is humiliating, frightening, or physically harmful to the child;

(B) corporal punishment, including hitting with the hand or any object, yanking arms or pulling hair, excessive exercise, exposure to extreme temperatures, or any other measure that produces physical pain or threatens the child's health or safety;

(C) restricting movement by tying or binding;

(D) confining a child in a closet, box, or locked area;

(E) forcing or withholding food, rest, or toilet use;

(F) refusing a child access to the family foster home;

(G) mental and emotional cruelty, including verbal abuse, derogatory remarks about a child in foster care or the child's family, statements intended to shame, threaten, humiliate, or frighten the child, or threats to expel a child from the home; and

(H) placing soap, or any other substance that stings, burns, or has a bitter taste, in the child's mouth or on the tongue or any other part of the child's body.

(2) Each caregiver shall be prohibited from giving medications, herbal or folk remedies, and drugs to control or manage behavior, except as prescribed by the licensed physician or licensed nurse practitioner of the child in foster care.

(3) No child in foster care shall be forced to participate in publicity or promotional activities.

(4) Each caregiver shall be prohibited from publicly identifying any child in foster care to the embarrassment of the child.

(5) No child in foster care shall be forced to acknowledge dependency on the family foster home or to express gratitude to the licensee.

(6) Each caregiver shall be prohibited from using physical restraint to manage behavior unless all of the requirements of subsection (c) are met.

(c) Physical restraint.

(1) Each caregiver shall ensure that before using physical restraint, other de-escalation methods are used. If other de-escalation methods fail and the behavior of the child in foster care makes physical restraint necessary for the child's own protection or the protection of others, the child shall be held as gently as possible to manage the child's behavior.

(2) No bonds, ties, or straps shall be used to restrict movement. The child in foster care shall be held only until one of the following is achieved:

(A) The child regains behavioral control.

(B) The child is no longer a threat to self or others.

(C) The restraint has lasted 20 minutes with no improvement in the child's behavior.

(3) Each caregiver using physical restraint in any situation other than an emergency shall have a current certificate on file documenting the training in de-escalation methods and physical restraint procedures and techniques specified in K.A.R. 28-4-806.

(4) The licensee shall have on file a case plan authorizing the use of physical restraint for each child in foster care whose behavior cannot be managed by other less intrusive methods and whose behavior requires the use of ongoing physical restraint on a recurring basis for the child's protection or the protection of others.

(d) Notification requirements. Each caregiver shall inform the child's child-placing agent and the sponsoring child-placing agency each time physical restraint is used.

(1) The licensee shall document each use of physical restraint on a form that contains the following:

(A) The child's name and birth date;

(B) the date and the start and end times of the physical restraint;

(C) a description of the other de-escalation methods attempted before the use of physical restraint;

(D) a description of the child's behaviors and condition and the incidents that led to the use of physical restraint;

(E) a description of the child's behavior during and following the physical restraint;

(F) a description of any follow-up actions taken;
 (G) the name of the individual who used physical restraint on the child; and

(H) the name of the licensee completing the report and the date completed.

(2) Each licensee shall file the report with the sponsoring child-placing agency no later than the next working day following the use of physical restraint. The use of physical restraint as an emergency intervention shall be reported to the sponsoring child-placing agency at the conclusion of the intervention when the child is no longer a danger to self or others. (Authorized by and implementing K.S.A. 65-508; effective March 28, 2008.)

28-4-816. Transportation. Each licensee shall ensure that all of the following requirements are met: (a) If a vehicle used for transportation of a child in foster care is owned or leased by a foster family member or is driven by a child in foster care, the following requirements shall be met:

(1) Trailers pulled by another vehicle, camper shells, and truck beds shall not be used for the transportation of children in foster care.

(2) The transporting vehicle shall be maintained in a safe operating condition.

(3) The transporting vehicle shall be covered by accident and liability insurance as required by the state of Kansas.

(4) A first-aid kit shall be in the transporting vehicle and shall include disposable nonporous gloves, a cleansing agent, scissors, bandages of assorted sizes, adhesive tape, a roll of gauze, one package of gauze squares at least four inches by four inches in size, and one elastic bandage.

(b) Each driver of any vehicle that is used to transport any child in foster care shall hold a valid driver's license appropriate for the type of vehicle being used.

(c) The use of seat belts and child safety seats shall include the following:

(1) Each individual shall be secured by the use of a seat belt or a child safety seat when the vehicle is in motion.

(2) No more than one individual shall be secured in any seat belt or child safety seat.

(3) Each seat belt shall be properly anchored to the vehicle.

(4) When a child safety seat, including booster seat, is required, the seat shall meet the following requirements:

(A) Have current federal approval;

(B) be installed according to the manufacturer's instructions and vehicle owner's manual;

(C) be appropriate to the height, weight, and physical condition of the child, according to the manufacturer's instructions and Kansas statutes and regulations;

(D) be maintained in a safe operating condition at all times;

(E) have a label with the date of manufacture and model number, for use in case of a product recall; and

(F) have no missing parts or cracks in the frame and have not been in a crash.

(d) The health and safety of the children riding in the vehicle shall be protected as follows:

(1) All passenger doors shall be locked while the vehicle is in motion.

(2) Order shall be maintained at all times. The driver shall be responsible for ensuring that the vehicle is not in motion if the behavior of the occupants prevents safe operation of the vehicle.

(3) All parts of each child's body shall remain inside the vehicle at all times.

(4) Children shall neither enter nor exit from the vehicle from or into a lane of traffic.

(5) Children less than 10 years of age shall not be left in a vehicle unattended by an adult. When the vehicle is vacated, the driver shall make certain that no child is left in the vehicle.

(6) Smoking in the vehicle shall be prohibited when a child in foster care is in placement in a family foster home, whether or not the child in foster care is physically present in the vehicle.

(7) Medical and surgical consent forms and health assessment records shall be in the vehicle when a child in foster care is transported 60 miles or more from the family foster home.

(e) Before a child in foster care is allowed to drive, all of the following requirements shall be met:

(1) The licensee, child-placing agent, or sponsoring child-placing agency shall obtain permission from the parent or legal guardian.

(2) The privilege of driving shall be included in the child's case plan.

(3) The child shall possess a valid driver's license and shall meet the requirements of the Kansas motor vehicle drivers' license act, K.S.A. 8-234a et seq. and amendments thereto.

(f) Any resident of the home who is at least 16 years of age but not yet 18 years of age may transport a child in foster care who attends middle school or junior high school to and from school

without an accompanying adult if all of the following conditions are met:

(1) All of the requirements of subsections (a) through (e) are met.

(2) The driver has a valid driver's license and meets the requirements of the Kansas motor vehicle drivers' license act, K.S.A. 8-234a et seq. and amendments thereto.

(3) The parent or legal guardian of the child in foster care and the child's child-placing agent give their written approval.

(g) Any child in foster care who attends high school may be transported to and from school, work, or social activities without an accompanying adult by a driver who is at least 16 years of age but not yet 18 years of age if both of the following conditions are met:

(1) The driver has a valid driver's license and meets the requirements of the Kansas motor vehicle drivers' license act, K.S.A. 8-234a et seq. and amendments thereto.

(2) The parent or legal guardian of the child in foster care and the child's child-placing agent give their written approval.

(h) Any child in foster care who is a parent and who meets the requirements of subsections (a) through (e) may transport any child of that parent. (Authorized by and implementing K.S.A. 2012 Supp. 65-508; effective March 28, 2008; amended Sept. 6, 2013.)

28-4-817. Nutrition; food handling and storage. (a) Each licensee shall ensure that, for each child in foster care, all of the following requirements are met:

(1) Each child less than 12 months of age shall be held when bottle-fed until the child can hold the child's own bottle.

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

(3) Prepared formula and juice shall be refrigerated until used. Leftover formula and juice shall be refrigerated with the nipple covered and shall be used within 24 hours.

(4) For each child less than 12 months of age, solid foods shall be introduced in consultation with the child's health care provider.

(b) Nutritious meals and snacks shall be planned and shall be served in accordance with the food and drug administration's recommended daily allowances.

(c) A sufficient quantity of food shall be available to allow each child in foster care to have sec-

ond servings of bread, milk, and either vegetables or fruit.

(d) Only pasteurized milk products shall be served.

(e) Food allergies and special dietary needs of each child in foster care shall be accommodated.

(f) Dishes shall be either washed, rinsed, and stacked or placed in a dishwasher after each meal, but no later than the next day.

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

(1) Each individual engaged in food preparation and food service shall use sanitary methods of food handling, food service, and storage.

(2) Each individual involved in food handling shall wash the individual's hands with soap and running water immediately before engaging in food preparation and service. (Authorized by and implementing K.S.A. 65-508; effective March 28, 2008.)

28-4-818. Storage and administration of medication. (a) Storage of medication. Each licensee shall ensure that all prescription and nonprescription medication is kept in the original container at the recommended temperature in accordance with the instructions on the label and, except as specified in paragraph (e)(4), in locked storage and inaccessible to children.

(b) Nonprescription medication.

(1) When nonprescription medication is administered to any child in foster care, each caregiver shall administer the medication from the original container and according to instructions on the label.

(2) Substances including herbal supplements, folk remedies, natural medicines, and vitamin supplements other than a daily multivitamin shall be administered only with documented approval by a licensed medical practitioner.

(c) Prescription medication. When prescription medication is administered to a child in foster care, each licensee shall ensure compliance with the following requirements:

(1) Prescription medication shall be administered only to the designated child and in accordance with instructions on the label.

(2) Each prescription medication shall be kept in the original container labeled by a pharmacist with the following information:

(A) The first and last name of the child;

(B) the date the prescription was filled;

(C) the name of the licensed physician who wrote or approved the prescription;

(D) the expiration date of the medication; and
 (E) specific, legible instructions for administration and storage of the medication.

(3) The instructions on each label shall be considered the order from the licensed physician.

(4) If a daily or weekly medication container is used for a child in foster care, all of the following requirements shall be met:

(A) The medication container shall be labeled with the child's name.

(B) The medication container shall be used only for medications that are not affected by exposure to air or light and that can touch other medications without affecting the efficacy of any of the medications.

(C) The medications shall be placed in the medication container by the licensee.

(D) Each dose shall be placed in the medication container according to the correct time of day.

(E) The medication container shall be kept in locked storage.

(F) The remainder of each of the child's medications shall be stored in the respective original container until the prescription is completed or discontinued.

(G) If any child in foster care is required to receive medication during a visit or during any absence from the foster home, all medication sent for the child shall be in containers that meet the requirements of paragraph (c)(2) and shall be given to the individual taking responsibility for the child.

(H) When a child in foster care moves from the family foster home, all current medications shall be in the individual original containers and shall be given to the individual taking responsibility for the child.

(I) At no time shall any medication be in the possession of a child in foster care, except as specified in paragraph (e)(4).

(d) Requirements for administering prescription and nonprescription medication.

(1) Before administering medication, each licensee shall receive training in medication administration as specified in K.A.R. 28-4-806. Each licensee shall ensure that each individual administering medication knows the purpose, side effects, and possible contraindications of each medication.

(2)(A) For prescription medications, each caregiver shall record on each child's medication record the following information:

(i) The name of the individual who administered each medication;

(ii) the date and time the medication was given;

(iii) any change in the child's behavior, any response to the medication, or any adverse reaction;

(iv) any change in the administration of the medication from the instructions on the label or a notation about each missed dose; and

(v) any direction from the physician to change the order as written on the label.

(B) Each medication record shall be signed by the caregiver and shall be made a part of the child's medical record.

(e) Self-administration of medication.

(1) Any licensee may permit each child in foster care with a condition requiring prescription medication on a regular basis to self-administer the medication under adult supervision. Each licensee shall obtain written permission for the child to self-administer medication from the licensed physician, licensed physician's assistant, or advanced registered nurse practitioner treating the child's condition.

(2) Written permission for self-administration of medication shall be kept in the child's file at the family foster home.

(3) Self-administration of each medication shall follow the procedures specified in paragraph (b)(2).

(4) Each child in foster care who is authorized to self-administer medication shall have access to the child's medication for self-administration purposes. The child shall have immediate access to medication prescribed for a condition for which timely treatment is a life-preserving requirement. Each child with asthma, allergies, or any other life-threatening condition shall have immediate access to that child's own medication for emergency purposes. Each licensee shall ensure the safe storage of self-administered medication to prevent unauthorized access by others.

(5) The date and time that each medication was self-administered shall be recorded on the child's medication record. Any noted adverse reactions shall be documented. Each licensee shall review the record for accuracy and shall check the medication remaining in the container against the expected remaining doses. (Authorized by and implementing K.S.A. 65-508; effective March 28, 2008.)

28-4-819. Health care. (a) Infectious or contagious disease. Each individual residing in the family foster home shall be free from any infectious or contagious disease specified in K.A.R. 28-1-6.

(b) Health of caregivers.

(1) Each caregiver shall be in a state of physical, mental, and emotional health, as necessary to protect the health, safety, and welfare of the children in foster care.

(2) No caregiver shall be in a state of impaired ability due to the use of alcohol or other chemicals, including prescription and nonprescription drugs.

(3) Each individual regularly caring for a child in foster care in the family foster home shall have a health assessment conducted by a physician with a current license to practice in Kansas or by a nurse with a current license to practice in Kansas who is approved to perform health assessments. Each health assessment shall be conducted no earlier than one year before the date of the initial application for a license, employment, or volunteering and no later than 30 days after the date of the initial application, employment, or volunteering. The results of each assessment shall be recorded on a form provided by the department.

(4) If a caregiver experiences a significant change in the caregiver's physical, mental, or emotional health, including indications of substance abuse, an assessment of the caregiver's current health status may be requested by the secretary or by the sponsoring child-placing agency.

(A) The assessment or evaluation shall be performed at the expense of the licensee or other caregiver and by a practitioner who is licensed or certified in Kansas to diagnose and treat the specific condition that is the basis for the assessment or evaluation.

(B) Each licensee shall ensure that at least one potential practitioner has been approved by the requesting department or the sponsoring child-placing agency in order to have the assessment or evaluation accepted by the requesting department or child-placing agency.

(C) Each licensee shall provide the requesting department or sponsoring child-placing agency with an executed release of medical information to enable the department or the child-placing agency to obtain information directly from the practitioner.

(c) Health of the foster family members.

(1) Each individual living in the family foster home, other than the child in foster care, shall have a health assessment conducted by a physician with a current license to practice in Kansas or by a nurse with a current license to practice in Kansas who is approved to perform health as-

sessments. Each assessment shall be conducted within one year before the date of application or the individual residing in the home and no later than 30 days after the date of the licensee's initial application or the individual becoming a resident of the home. The results of the health assessment shall be recorded on forms provided by the department.

(2) Each child born to or adopted by the licensee who is less than 16 years of age and is living in the home shall have current immunizations. An exemption from this requirement shall be permitted only with one of the following:

(A) A written certification from a physician with a current license to practice in Kansas stating that the physical condition of the child is such that the immunization would endanger the child's life or health; or

(B) a written statement from the child's parent or legal guardian that the child is an adherent of a religious denomination whose teachings are opposed to immunizations.

(d) Medical and dental health of each child in foster care.

(1) Each licensee shall ensure that emergency and ongoing medical and dental care is obtained for each child in foster care by providing timely access to basic, emergency, and specialized medical, mental health, and dental care and treatment services provided by qualified practitioners.

(2) Each licensee shall ensure that, at the time of the initial placement, each child in foster care has had a health assessment conducted within the past year by a physician with a current license to practice in Kansas or by a nurse with a current license to practice in Kansas who is approved to conduct assessments.

(3) A health assessment shall be obtained annually for each child in foster care who is less than six years of age and every two years for each child in foster care who is six years of age and older.

(4) Each health assessment required in paragraphs (d)(2) and (3) shall be on file at the family foster home within 30 days after the child's placement in the home.

(5) The immunizations for each child in foster care less than 16 years of age shall be current or in process at the time the license is issued. An exemption from this requirement shall be permitted only with one of the following:

(A) A written certification from a physician with a license to practice in Kansas stating that the physical condition of the child is such that the

immunization would endanger the child's life or health; or

(B) a written statement from the child's parent or legal guardian that the child is an adherent of a religious denomination whose teachings are opposed to immunizations.

(6) An annual dental examination shall be obtained for each child in foster care who is three years of age or older. Follow-up care shall be provided. The child's dental record shall be recorded on forms provided by the department and shall be kept current.

(7) The medical information record for each child in foster care shall be kept current and shall document each illness, the action taken by the licensee, and the date of the child's medical, psychological, or dental care. When the child leaves the family foster home, the licensee shall ensure that the record, including the health assessments, dental records, medication administration record, immunization record, medical and surgical consent forms, and emergency medical treatment authorization, is given to the child's child-placing agent.

(e) Tuberculin testing.

(1) Each individual 16 years of age and older living, working, or regularly volunteering in the family foster home and each child in foster care 16 years of age and older shall be required to have a record of a negative tuberculin test or X-ray obtained not more than two years before the employment or initial application for a license or shall obtain the required record no later than 30 days after the date of employment, initial application, or becoming a resident of or volunteer in the home.

(2) Additional tuberculin testing shall be required if significant exposure to an active case of tuberculosis occurs or if symptoms compatible with tuberculosis develop. Proper treatment or prophylaxis shall be instituted, and the results of the follow-up shall be recorded on the individual's health record. The department shall be informed of each occurrence described within this paragraph.

(3) The results of each tuberculin test shall be recorded on, or attached to, the health assessment form and kept on file at the family foster home. Each licensee shall report any positive tuberculin skin test to the department's TB control program by the next working day.

(4) A child in foster care less than 16 years of age shall not be required to have tuberculin tests unless the child has been recently exposed to tu-

berculosis or exhibits symptoms compatible with tuberculosis.

(f) Tobacco use limitations.

(1) To prevent exposure of a child in foster care to secondhand smoke, each licensee shall ensure that both of the following conditions are met:

(A) Smoking is prohibited inside the family foster home when a child in foster care is in placement, whether the child is physically present on the premises or not.

(B) Smoking by any member of the foster family is prohibited outside the family foster home within 10 feet of a child in foster care.

(2) Each licensee shall prohibit smoking and the use of any other tobacco product by a child in foster care less than 18 years of age.

(g) Handwashing.

(1) Each caregiver shall wash the caregiver's hands with soap and water before preparing food, before eating, after toileting, after petting animals, and after diapering or changing soiled clothing.

(2) Each caregiver shall encourage each child in the family foster home to wash the child's hands with soap and water before and after eating, after petting an animal, and after toileting. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-507 and 65-508; effective March 28, 2008.)

28-4-820. General environmental requirements. Each licensee shall ensure that all of the requirements in this regulation are met.

(a) Local requirements. Each family foster home shall meet the legal requirements of the community as to zoning, fire protection, water supply, and sewage disposal.

(b) Sewage disposal. If a private sewage disposal system is used, the system shall meet the requirements specified in K.A.R. 28-4-55.

(c) Use of private water supply. If a private water system is used, the system shall meet the requirements specified in K.A.R. 28-4-50. The water supply shall be safe for human consumption. Testing of the water supply shall be completed at the time of initial licensing and annually thereafter to document the nitrate and bacteria levels. Additional testing may be required if there is a change in environmental conditions that could affect the integrity of the water supply. If children less than 12 months of age receive care in a family foster home that uses private well water, then commercially bottled drinking water shall be used for these children until a laboratory test confirms

that the nitrate content is not more than 10 milligrams per liter (10 mg/l) as nitrogen.

(d) Family foster home structural and furnishing requirements. The family foster home shall be constructed, arranged, and maintained to provide for the health, safety, and welfare of all occupants and shall meet the following requirements:

(1) The home shall contain sufficient furnishings and equipment to accommodate both the foster family and each child in foster care.

(2) The floors shall be covered, painted, or sealed in all living areas of the home, kept clean, and maintained in good repair.

(3) The interior finish of all ceilings, stairs, and hallways shall meet generally accepted standards of building, including safety requirements.

(4) Each closet door shall be designed to be opened from the inside and shall be readily opened by a child.

(5) Each stairway with two or more stairs and a landing shall have a handrail and be guarded on each side if there is a drop-off of more than 21 inches from the stairs or landing to the floor or ground.

(6) If any stairway is guarded by balusters and the family foster home is or is intended to be licensed for children in foster care less than six years of age, the space between balusters shall not exceed four inches, except as specified in this paragraph. If the space between balusters exceeds four inches, the licensee shall make provisions necessary to prevent a child's head from becoming entrapped in the balusters or a child's body from falling through the balusters or becoming entrapped in them.

(7) When a child in foster care less than three years of age is present, each stairway with two or more stairs and a landing shall be gated to prevent unsupervised access by the child. Each gate shall have a latching device that an adult can open readily in an emergency. Accordion gates shall be prohibited throughout the premises, and pressure gates shall be prohibited for use at the top of any stairway.

(8) If the family foster home is or is intended to be licensed for children in foster care less than six years of age, each electrical outlet shall be covered.

(9) At least one bathroom in the family foster home shall have at least one sink, one flush toilet, and one tub or shower. All fixtures shall be working at all times.

(10) Each bathroom shall have a solid door that affords privacy to the occupant and that can be

opened from each side without the use of a key in case of an emergency.

(11) A working telephone shall be on the premises and available for use at all times. Emergency telephone numbers shall be readily accessible or be posted next to the telephone for the police, fire department, ambulance, hospital or hospitals, and poison control center. The name, address, and telephone number of the primary care physician used for each child in foster care shall be posted next to the telephone or readily accessible in case of an emergency.

(12) A working smoke detector shall be centrally installed on each level of the home and in each room used for sleeping by a child in foster care and by the licensee.

(13) One working carbon monoxide detector shall be installed according to the manufacturer's instructions in an area adjacent to each room used for sleeping by a child in foster care and by the licensee.

(e) Cleanliness. The interior of the family foster home shall be free from accumulation of visible dirt, any evidence of vermin infestation, and any objects or materials that could cause injury to children in foster care.

(f) Lighting and ventilation.

(1) All rooms used for living space shall be lighted, vented, heated, and plumbed pursuant to K.S.A. 65-508, and amendments thereto.

(2) Each window and door used for ventilation shall be screened to minimize the entry of insects.

(3) The family foster home shall have lighting of at least 10 foot-candles in all parts of each room, within each living area of the home. There shall be lighting of at least 30 foot-candles in each area used for reading, study, or other close work.

(g) Firearms and other weapons.

(1) No child in the home shall have unsupervised access to any of the following:

(A) Firearms, ammunition, and other weapons;

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

(C) hunting and fishing knives; and

(D) any archery and martial arts equipment.

(2) All firearms, including air-powered guns, BB guns, pellet guns, and paint ball guns, shall be stored unloaded in a locked container, closet, or cabinet. If the locked container, closet, or cabinet is constructed in whole or in part of glass or plexiglass, each firearm shall be additionally secured with a hammer lock, barrel lock, or trigger guard.

(3) Ammunition shall be kept in a separate locked storage container or locked compartment designed for that purpose.

(4) All archery equipment, hunting and fishing knives, and other weapons shall be kept in a locked storage compartment.

(5) Each key to a locked storage container, closet, or compartment of guns, ammunition, and other weapons, and to gun locks shall be in the control of a licensee at all times.

(h) Storage of household chemicals, personal care products, tools, and sharp instruments. The following requirements shall apply when a child in foster care is in placement in the family foster home:

(1) All household cleaning supplies and all personal care products that have warning labels advising the consumer to keep those supplies and products out of reach of children or that contain alcohol shall be kept in locked storage or stored out of reach of children less than six years of age.

(2) All chemicals and household supplies with warning labels advising the consumer to keep those chemicals and supplies out of reach of children shall be kept in locked storage or stored out of reach of children less than 10 years of age.

(3) Sharp instruments shall be stored in drawers equipped with childproof devices to prevent access by children or stored out of reach of children less than six years of age.

(4) Tobacco, tobacco products, cigarette lighters, and matches shall be inaccessible to individuals less than 18 years of age.

(5) Tools shall be inaccessible to each child in foster care when the tools are not in use and shall be used by a child in foster care only with supervision by an individual 18 years of age and older.

(i) Heating appliances.

(1) Each heating appliance using combustible fuel, including a wood-burning stove or a fireplace, shall be vented to the outside.

(2) Each fireplace and each freestanding heating appliance using combustible fuel, including a wood-burning stove, shall stand on a noncombustible material according to the manufacturer's specifications, Kansas statutes and regulations, and local ordinances.

(3) Each heating appliance designed by the manufacturer to be unvented shall be used according to the manufacturer's specifications, Kansas statutes and regulations, and local ordinances.

(4) If a child in foster care less than three years of age is in placement in the family foster home, a

protective barrier shall be provided for each fireplace and each freestanding heating appliance as necessary to protect from burns.

(5) If a propane heater is used, the heater shall be installed in accordance with the manufacturer's recommendations, Kansas statutes and regulations, and local ordinances.

(6) Each flue or chimney of any heating appliance that uses combustible fuel shall be checked annually and cleaned as recommended by a qualified chimney sweep.

(j) Clothes dryers. Each clothes dryer shall be vented to the outside or to a venting device installed and used according to the manufacturer's specifications, Kansas statutes and regulations, and local ordinances.

(k) Play space. Each family foster home shall have a space for indoor play and access to an outdoor play space.

(l) Mobile home requirements. In addition to requirements specified in this regulation, if the family foster home is a mobile home, both of the following requirements shall be met:

(1) The mobile home shall have two exits that are located at least 20 feet apart, with one exit within 35 feet of each bedroom door.

(2) Each mobile home shall be skirted with latticed or solid skirting and securely anchored by cable to the ground.

(m) Special inspections. A special inspection of the family foster home by a fire, health, sanitation, or safety official may be required by the secretary or the sponsoring child-placing agency to assist in making a decision about the safety of the home for a child in foster care. (Authorized by and implementing K.S.A. 2012 Supp. 65-508; effective March 28, 2008; amended Sept. 6, 2013.)

28-4-821. Sleeping arrangements. (a) Each licensee shall ensure that sufficient space for sleeping is provided to accommodate the number of foster family members and each child in foster care. Sleeping space shall not include any of the following places:

(1) An unfinished attic;

(2) an unfinished basement;

(3) a hall;

(4) a closet;

(5) a laundry room;

(6) a garage;

(7) any living space that is normally used for other than sleeping arrangements; or

(8) any room that provides routine passage to a

common use room, to another bedroom, or to the outdoors.

(b) Each licensee shall ensure that each bedroom used for sleeping by a child in foster care meets the following requirements:

(1) Each bedroom shall have at least 70 square feet.

(2) Each bedroom shall have at least 45 square feet for each individual sharing the room.

(3) The exit path from each bed to each outside exit shall have a minimum ceiling height of six feet eight inches.

(4) Each bedroom shall have a solid door to ensure privacy.

(5) Each bedroom shall have at least two means of escape. Each means of escape shall be easily opened from the inside.

(A) At least one means of escape shall be an unobstructed pathway leading to an exit door to the outside.

(B) The second means of escape shall give direct access to the outside and shall be an unobstructed door or window that is able to be opened from the inside without the use of tools.

(C) For each window used as a means of escape, all of the following requirements shall be met:

(i) The window shall have a width of at least 20 inches and a height of at least 24 inches.

(ii) The window shall be within 44 inches of the floor or shall have permanent steps or another immovable fixture that brings the window to within 44 inches of the top of the steps or fixture.

(iii) If the window is screened, the screen shall be easily removed from the inside.

(iv) The licensee shall ensure that each occupant of the bedroom can easily exit through the window.

(D) If one means of escape is a sliding glass door, the door shall be easily opened from the inside.

(6) All false ceilings, curtains, drapes, or fabric used in decoration for ceilings or walls in each room used for sleeping shall be made of fire-rated materials.

(c) Privacy for the occupants of all bedrooms shall be ensured.

(d) Each child in foster care shall have a separate bed or crib that meets the following requirements:

(1) Is intact, fully functional, and in good repair to prevent injury or entrapment of the child;

(2) is of sufficient size to accommodate the size and weight of the child;

(3) has a mattress that is clean and has a waterproof covering, if needed; and

(4) has bedding adequate to the season and appropriate to the age of the child.

(e) Each bed that requires bed springs shall have springs in good condition.

(f) If a bunk bed is used by any child in foster care, the following requirements shall be met:

(1) The upper bunk shall be protected on all sides with rails. Headboards and footboards may substitute for rails on the ends of the bed.

(2) Each child in foster care using the upper bunk shall be at least six years of age.

(g) No rollaway bed, hideaway bed, or other temporary bed shall be used, except when children in foster care are visiting in the family foster home for a social event or for short-term respite care.

(h) Each child in foster care less than 12 months of age shall sleep in a crib. For the purposes of a nap, the child may sleep in a playpen. Each crib and each playpen shall meet the following requirements:

(1) If a crib or playpen is slatted, the slats shall be spaced no more than $2\frac{3}{8}$ inches apart.

(2) Each crib shall have a firm mattress fitted so that no more than two fingers can fit between the mattress and the crib side when the mattress is set in the lowest position.

(3) The crib corner post extensions shall not exceed $1\frac{1}{16}$ inch.

(4) When the crib is in use, the drop side of the crib shall be secured in the up position.

(5) No pillow, quilt, comforter, blanket, bumpers, or other soft product that could cause suffocation shall be used in the crib or the playpen when a child who is less than 12 months of age is sleeping in the crib or playpen.

(i) Each child in foster care who is less than 12 months of age shall be put to sleep on the child's back unless ordered otherwise by the child's physician. If the child in foster care is able to turn over independently, that child shall be placed on the child's back but then shall be allowed to remain in a position preferred by the child.

(j) Each child in foster care 12 months and older may sleep in a crib until that child is 18 months of age or until the child is of such height that the upper rail of the crib is at the child's breast level when the child is standing and the crib mattress is at the lowest level.

(k) Each child in foster care 18 months but not yet 30 months of age may sleep in a crib when prescribed by that child's physician.

(l) At night each caregiver shall sleep within hearing distance of the child in foster care.

(m) When any child in foster care five years of age or older shares a room, the following requirements shall be met:

(1) The child shall share the room only with children of the same sex.

(2) The children sharing the room shall be age-mates, unless the following requirements have been met:

(A) The licensee shall notify the family foster home's sponsoring child-placing agency of the proposed sleeping arrangement.

(B) The licensee shall request that the sponsoring child-placing agency and the child's placing agent determine if the proposed sleeping arrangement is appropriate.

(C) The licensee shall maintain documentation of the approval of the sponsoring child-placing agency for the sleeping arrangement.

(3) A child who is known to be a sexual perpetrator or a sexual abuse victim shall not share a room until the following conditions are met:

(A) The potential roommate arrangements are assessed by the child's placing agent, the home's sponsoring child-placing agency, and the licensee; and

(B) based on the assessment, a determination is made by the child's placing agency that it is unlikely that further sexual abuse will result from the child sharing a room.

(n) If any child in foster care under five years of age shares a room with any other child, all of the children sharing the room shall be age-mates or shall be under five years of age. The children sharing the room may be of the opposite sex if all of the children are under five years of age.

(o) A child in foster care who is a parent may share a room with the parent's own child or children. The room shall meet the requirements in paragraph (b)(2).

(p) A child in foster care may sleep in the bedroom of the licensee under any of the following circumstances:

(1) The child in foster care is less than 12 months of age.

(2) The child in foster care is ill.

(3) The child in foster care has special developmental or medical needs requiring close supervision as documented by a physician.

(q) If a child in foster care sleeps in the licensee's bedroom, the bedroom shall have at least 130 square feet.

(r) Each licensee shall ensure that separate and accessible drawer space for personal belongings and closet space for clothing are available for each child in foster care. (Authorized by and implementing K.S.A. 2012 Supp. 65-508; effective March 28, 2008; amended Sept. 6, 2013.)

28-4-822. Safety procedures; emergency plan; drills. (a) Each licensee shall make the following preparations for emergencies:

(1) Each licensee shall ensure that a telephone and emergency information are available as specified in K.A.R. 28-4-820.

(2) Each licensee shall develop an emergency plan for the family foster home to provide for the safety of all residents of the home in emergencies including fires, tornadoes, storms, floods, and serious injuries.

(3) Each emergency plan shall be posted in a conspicuous place in the family foster home.

(4) Each licensee and each individual providing care in the family foster home shall be informed of and shall follow the emergency plan.

(b) Each licensee shall ensure that prior arrangements are made at a hospital or clinic for emergency treatment for each child in foster care and shall ensure that all medical and surgical consent forms are acceptable to the hospital or clinic.

(c) If the child in foster care is taken to the hospital or clinic for emergency treatment, each licensee shall ensure that the child's health assessment forms and the medical and surgical consent forms are taken to the hospital or clinic.

(d) If a caregiver accompanies a child in foster care to the source of emergency care, that caregiver shall remain with the child. Each licensee shall ensure that an arrangement is made and followed to ensure supervision of the other children in the family foster home if a child requires emergency care.

(e) Each licensee shall ensure that a fire drill is conducted monthly and that the drills are scheduled to allow participation by each family member and child in foster care. The date and time of each drill shall be recorded and kept on file in the family foster home.

(f) Each licensee shall ensure that a tornado drill is conducted monthly during April through September and that the drill is scheduled to allow participation by each resident of the family foster home. The date and time of each drill shall be recorded and kept on file in the family foster home. (Authorized by and implementing K.S.A. 65-508; effective March 28, 2008.)

28-4-823. Outside premises. Each licensee shall ensure that all of the following requirements are met:

(a) General safety.

(1) The outside premises of the home shall be free from any objects, materials, and conditions that constitute a danger to the health or safety of each child in foster care.

(2) No child less than six years of age shall have unsupervised access to either of the following:

(A) A fish pond or a decorative pool containing water 24 inches deep or less; or

(B) any safety hazard specified in subsection (d).

(b) Outdoor play area.

(1) The play area shall be located, arranged, and maintained to allow for supervision by the caregiver and to reduce the risk of injury.

(2) The play area shall be well drained and free of known health, safety, and environmental hazards.

(3) Play equipment shall be located in an area free from hazards, be age-appropriate, and be in good repair. The play equipment shall be placed far enough away from potential hazards, including trees, structures, fences, and power lines, to minimize the risk of injury while the play equipment is in use. Equipment that is broken, hazardous, or unsafe shall not be used. Swings and climbing equipment shall be anchored and shall not be used over hard-surfaced materials, including asphalt, concrete, and bare, hard-packed dirt.

(c) Trampolines. Trampolines shall be prohibited on the premises of the family foster home.

(d) Protection from safety hazards.

(1) Each licensee shall ensure that each child in foster care is protected from all safety hazards adjacent to or within 50 yards of the house, as follows:

(A) A busy street;

(B) railroad tracks; or

(C) a water hazard, including a ditch, a pond, a lake, and any standing water over 24 inches deep.

(2) The licensee shall develop and follow a written outdoor safety plan before a child in foster care is allowed to be outdoors in an unfenced area of the family foster home. The plan shall be approved by the sponsoring child-placing agency and shall include all of the following:

(A) A description of any safety hazard and of any natural or man-made barrier separating the area from the safety hazard;

(B) the approximate distance from the unfenced area to each safety hazard;

(C) a description of the provisions made for increased supervision; and

(D) a requirement for a caregiver to be outdoors with each child in foster care less than six years of age. (Authorized by and implementing K.S.A. 65-508; effective March 28, 2008.)

28-4-824. Swimming pools, wading pools, and hot tubs; off-premises swimming and wading activities. (a) General safety on the premises of the family foster home.

(1) If any swimming pool or wading pool with water over 12 inches deep or any hot tub is on the premises, the pool or tub shall be constructed, maintained, and used in such a manner that safeguards the lives and health of the children in foster care.

(2) If children in foster care have access to a swimming pool, wading pool, or hot tub, at least one adult shall be physically present and shall directly supervise the children. A minimum ratio of one adult to six children, including children in foster care, shall be maintained.

(3) Each licensee shall post legible safety rules for the use of a swimming pool or hot tub in a conspicuous location. If the pool or hot tub is available for use, the licensee shall read and review the safety rules weekly with each child in foster care.

(b) Swimming pools on the premises.

(1) Each in-ground swimming pool shall be enclosed by a fence at least five feet high. Each gate in the fence shall be kept locked and shall be self-locking. The wall of a house or other building containing a window designed to open or a door shall not be used in lieu of a fence.

(2) Each aboveground swimming pool shall be at least four feet high or shall be enclosed by a fence at least five feet high with a gate that is kept closed and is self-locking. Steps shall be removed and stored away from the pool when the pool is not in use. Each aboveground pool with a deck or berm that provides a ground-level entry on any side shall be treated as an in-ground pool.

(3) Sensors or pool covers shall not be used in lieu of a fence.

(4) The pH of the water in the swimming pool shall be maintained between 7.2 and 8.2. The available chlorine content shall be between 0.4 and 3.0 parts per million. The pool shall be cleaned daily, and the chlorine level and pH level shall be tested before each use. The results of these tests shall be recorded and available if requested.

(5) An individual with a life-saving certificate or an individual with training in CPR who can swim shall be in attendance while any child in foster care is using a swimming pool.

(6) Each swimming pool more than six feet in width, length, or diameter shall be provided with a ring buoy and rope or with a shepherd's hook. The equipment shall be of sufficient length to reach the center of the pool from each edge of the pool.

(c) Wading pools on the premises.

(1) No child in foster care shall be permitted to play without adult supervision in any area where there is a wading pool containing water.

(2) The water in each wading pool shall be emptied daily.

(d) Hot tubs on the premises.

(1) Each hot tub shall be covered when not in use with an insulated, rigid cover secured by locks or surrounded by a fence that meets the requirements of paragraph (b)(1).

(2) The chlorine and pH levels shall be tested and maintained as required by the manufacturer's specifications for use.

(3) Each licensee shall ensure that no child in foster care less than four years of age uses a hot tub. Each licensee shall ensure that each child in foster care four years of age and older is permitted to use the hot tub only in accordance with the manufacturer's specifications and recommendations for use.

(e) General safety off the premises of the family foster home. Any child in foster care who knows how to swim and who is at least six years of age may be permitted to swim in ponds, lakes, rivers, and other natural bodies of water that are approved for swimming by the county health department, the Kansas department of health and environment, or the designated authority in the state in which the swimming site is located.

(1) Each licensee shall ensure that each child in foster care while wading, swimming, or involved in other activities near, in, or on a pond, lake, river, or other natural body of water is directly supervised by a designated adult.

(2) Each child in foster care who is a nonswimmer or who is less than six years of age shall wear a safety vest certified by the manufacturer as appropriate for the child's age and weight specifications, when wading or playing near a pond, lake, river, or other natural body of water or when boating.

(3) Each caregiver shall review boating and

swimming safety rules with each child in foster care before the activity and shall be responsible for enforcing the safety rules.

(4) If a certified lifeguard is not on duty, an individual with a life-saving certificate or training in CPR who can swim shall be in attendance. (Authorized by and implementing K.S.A. 65-508; effective March 28, 2008.)

28-4-825. Animals. (a) Each licensee shall ensure that when any animal is kept on the premises, the pet area is kept clean, with no evidence of flea, tick, or worm infestation in the area.

(b) Each licensee shall ensure that each animal that is in contact with any child in foster care meets the following requirements:

(1) Is in good health, with no evidence of disease; and

(2) is friendly and poses no threat to the health, safety, and well-being of children.

(c) Each domesticated dog and each domesticated cat shall have a current rabies vaccination that is given by a veterinarian or given under the direct supervision of a veterinarian.

(d) A record of each current rabies vaccination shall be kept on file in the family foster home, and a copy shall be supplied to the sponsoring child-placing agency.

(e) If any animal that represents a hazard to children is on the premises, each child in foster care shall be protected from that animal.

(f) Pit bulls, exotic animals, and venomous or constricting reptiles shall not be kept or brought on to the family foster home premises. (Authorized by and implementing K.S.A. 65-508; effective March 28, 2008.)

PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES (PRTF)

28-4-1200. Definitions. For the purposes of K.A.R. 28-4-1200 through K.A.R. 28-4-1218, the following definitions shall apply: (a) "Administrator" means a person employed by a PRTF who is responsible for the overall administration of the PRTF.

(b) "Applicant" means a person who has applied for a license but who has not yet been granted a license to operate a PRTF. This term shall include an applicant who has been granted a temporary permit to operate a PRTF.

(c) "Basement" means each area in a building with a floor level more than 30 inches below ground level on all sides.

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

(e) “Direct care staff” means the staff members employed by the PRTF to supervise the residents.

(f) “Exception” means a waiver of compliance with a specific PRTF regulation or any portion of a specific PRTF regulation that is granted by the secretary to an applicant or a licensee.

(g) “Individual plan of care” means a written, goal-oriented treatment plan and therapeutic activities designed to move the resident to a level of functioning consistent with living in a community setting.

(h) “Licensee” means a person who has been granted a license to operate a PRTF.

(i) “Program” means the comprehensive and coordinated activities and services providing for the care and treatment of residents.

(j) “Program director” means the staff person responsible for the oversight and implementation of the program.

(k) “Psychiatric residential treatment facility” and “PRTF” mean a residential facility for which the applicant or licensee meets the requirements of K.A.R. 28-4-1201.

(l) “Resident” means an individual who is at least six years of age but not yet 22 years of age and who is accepted for care and treatment in a PRTF.

(m) “Resident record” means any electronic or written document concerning a resident admitted to a PRTF that is created or obtained by an employee of the PRTF.

(n) “Restraint” means the application of physical force or any mechanical devices or the administration of any drugs for the purpose of restricting the free movement of a resident’s body.

(o) “Seclusion” means the involuntary confinement of a resident in a separate or locked room or an area from which the resident is physically prevented from leaving.

(p) “Secretary” means the secretary of the Kansas department of health and environment.

(q) “Treatment” means comprehensive, individualized, goal-directed, therapeutic services provided to residents. (Authorized by K.S.A. 65-508 and 65-510; implementing K.S.A. 65-503 and 65-508; effective Oct. 9, 2009.)

28-4-1201. License requirements. (a) Each applicant and each licensee shall meet all of the following requirements in order to obtain and maintain a license to operate a PRTF:

(1) The state and federal participation requirements for medicaid reimbursement;

(2) receipt of accreditation of the PRTF by one of the following accrediting organizations:

(A) Council on accreditation of rehabilitation facilities (CARF);

(B) council on accreditation of child and family agencies (COA);

(C) the joint commission or the joint commission on accreditation of healthcare organizations (JCAHO); or

(D) an accrediting body approved by the Kansas health policy authority (KHPA), the Kansas department of social and rehabilitation services (SRS), and the Kansas juvenile justice authority (JJA); and

(3) receipt of approval of the PRTF by the Kansas department of social and rehabilitation services as meeting the state requirements.

(b) Each applicant and each licensee, if a corporation, shall be in good standing with the Kansas secretary of state.

(c) Each applicant and each licensee shall maintain documentation of compliance with all applicable building codes, fire safety requirements, and zoning codes. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-504 and 65-508; effective Oct. 9, 2009.)

28-4-1202. Application procedures. (a) Each person, in order to obtain a license, shall submit a complete application on forms provided by the department. The application shall be submitted at least 90 calendar days before the planned opening date of the PRTF and shall include the following:

(1) A description of the program and services to be offered, including the following:

(A) A statement of the PRTF’s purpose and goals; and

(B) the number, ages, and gender of residents for whom the PRTF is designed;

(2) the anticipated opening date;

(3) a request for the background checks for staff members and volunteers specified in K.A.R. 28-4-1205;

(4) documentation of compliance with the license requirements in K.A.R. 28-4-1201; and

(5) the license fee specified in K.A.R. 28-4-92.

(b) Each applicant shall notify the school district where the PRTF is to be located of the following:

(1) The planned opening date and the number,

age range, gender, and anticipated special education needs of the residents to be served;

(2) a statement indicating whether the residents will attend public school or will receive educational services on-site at the PRTF; and

(3) documentation that the notification was received by the school district at least 90 days before the planned opening date.

The 90-day notification to the local school district may be waived by the secretary upon receipt of a written agreement by the local school district.

(c) Each applicant shall submit to the department floor plans for each building that will be used as a PRTF. Each floor plan shall state whether or not any building will rely on locked entrances and exits or on delayed-exit mechanisms to secure the PRTF. Each applicant wanting to use delayed-exit mechanisms or to use hardware to lock or otherwise secure the exits shall obtain and shall submit to the department prior written approval from the Kansas state fire marshal, the Kansas department of social and rehabilitation services, the Kansas juvenile justice authority, and the Kansas health policy authority.

(d) Each applicant shall provide the department with a copy of the approval of the Kansas state fire marshal's office for the floor plan and the use of any delayed-exit mechanism or hardware to lock or otherwise secure the exits before a license is issued.

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

(1) K.S.A. 65-504 through 65-508 and amendments thereto;

(2) K.S.A. 65-512 and 65-513 and amendments thereto;

(3) K.S.A. 65-516 and amendments thereto;

(4) K.S.A. 65-531 and amendments thereto; and

(5) all regulations governing psychiatric residential treatment facilities. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, 65-504, 65-505, and 65-508 and K.S.A. 2008 Supp. 65-516; effective Oct. 9, 2009.)

28-4-1203. Capacity; posting requirements; validity of temporary permit or license; new application required; advertising; closure.

(a) Capacity. The maximum number, the age range, and the gender of residents authorized by the temporary permit or license shall not be exceeded.

(b) Posting requirements. The current temporary permit or the current license shall be posted conspicuously within the PRTF.

(c) Validity of temporary permit or license. Each temporary permit or license shall be valid only for the applicant or licensee and for the address specified on the temporary permit or the license. When an initial or amended license becomes effective, all temporary permits or licenses previously granted to the applicant or licensee at the same address shall become void.

(d) New application required. A new application and the fee specified in K.A.R. 28-4-92 shall be submitted for each change of ownership or location at least 90 calendar days before the planned change.

(e) Advertising. The advertising for each PRTF shall conform to the statement of services as given on the application. A claim for specialized services shall not be made unless the PRTF is staffed and equipped to offer those services.

(f) Closure. Any applicant may withdraw the application for a license. Any licensee may submit, at any time, a request to close the PRTF operated by the licensee. If an application is withdrawn or a PRTF is closed, the current temporary permit or license granted to the applicant or licensee for that PRTF shall become void. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-504, 65-505, and 65-508; effective Oct. 9, 2009.)

28-4-1204. Licensure; renewal; notifications; exceptions; amendments. (a) No person shall operate a PRTF unless issued a temporary permit or a license by the secretary.

(b) No earlier than 90 days before the renewal date but no later than the renewal date, each licensee who wishes to renew the license shall complete and submit an application for renewal on forms provided by the department, including the requests for background checks specified in K.A.R. 28-4-1205, and shall submit the fee specified in K.A.R. 28-4-92.

(c) Failure to submit the renewal application and fee as required by subsection (b) shall result in an assessment of a late renewal fee pursuant to K.S.A. 65-505, and amendments thereto, and may result in closure of the PRTF.

(d) Each licensee shall notify the department within 24 hours of any change in approval or accreditation required in K.A.R. 28-4-1201.

(e) Any applicant or licensee may request an exception from the secretary.

(1) Any request for an exception may be granted if the secretary determines that the exception is in the best interest of one or more residents or the

family of a resident and the exception does not violate statutory requirements.

(2) Written notice from the secretary stating the nature of each exception and its duration shall be kept on file at the PRTF and shall be readily accessible to the department, SRS, and JJA.

(f) Each licensee shall obtain the secretary's written approval before making any change in any of the following:

(1) The use or proposed use of the buildings;

(2) any changes to the physical structure of any building, including the following:

(A) An addition or alteration as specified in K.A.R. 28-4-1215;

(B) any change in the use of locked entrances or exits; and

(C) any change in any delayed-exit mechanisms;

(3) the addition or removal of a locking system for any room used for seclusion, as specified in K.A.R. 28-4-1212; or

(4) the program, provided through either of the following:

(A) Direct services; or

(B) agreements with specified community resources.

(g) Any licensee may submit a written request for an amended license.

(1) Each licensee who intends to change the terms of the license, including the maximum number, the age range, or the gender of residents to be served, shall submit a request for an amendment on a form provided by the department and a nonrefundable amendment fee of \$35. An amendment fee shall not be required if the request to change the terms of the license is made at the time of the renewal.

(2) Each request for a change in the maximum number, the age range, or the gender of residents to be served shall include written documentation of the notification to the school district where the PRTF is located, as specified in K.A.R. 28-4-1202.

(3) The licensee shall make no change to the terms of the license, including the maximum number of residents, the age range of residents to be served, the gender of residents, and the type of license, until an amendment is granted, in writing, by the secretary. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-504, 65-505, and 65-508 and K.S.A. 2008 Supp. 65-516; effective Oct. 9, 2009.)

28-4-1205. Background checks. (a) With each initial application or renewal application, each applicant or licensee shall submit a request

to conduct a background check by the Kansas bureau of investigation and a background check by the Kansas department of social and rehabilitation services in order to comply with the provisions of K.S.A. 65-516, and amendments thereto. Each request shall be submitted on a form provided by the department. The request shall list the required information for each individual 10 years of age and older who will be residing, working, or regularly volunteering in the PRTF.

(b) Each licensee shall submit a request to the department to conduct a background check by the Kansas bureau of investigation and a background check by the Kansas department of social and rehabilitation services before each new individual begins residing, working, or regularly volunteering in the PRTF.

(c) A copy of each request for a background check shall be kept on file at the PRTF.

(d) Residents admitted into a PRTF for care and treatment shall not be considered to be residing in the PRTF for the purposes of background checks. (Authorized by K.S.A. 65-508; implementing K.S.A. 2008 Supp. 65-516; effective Oct. 9, 2009.)

28-4-1206. Administration. (a) Each PRTF shall be governed by one of the following entities:

(1) A public agency, which shall employ an administrator for the PRTF; or

(2) a private entity with a governing board that is legally responsible for the operation, policies, finances, and general management of the PRTF. The private entity shall employ an administrator for the PRTF. The administrator shall not be a voting member of the governing board.

(b) Each licensee shall develop and implement written policies and procedures for the operation of the PRTF that shall include detailed descriptions of the roles and the responsibilities for staff and volunteers. The staff practices shall conform to the written policies and procedures and to all regulations governing PRTFs.

(c) A licensee or a staff member of a PRTF shall not accept permanent legal guardianship of any individual before the individual is admitted to the PRTF or while the individual is in treatment at the PRTF.

(d) A copy of the regulations governing PRTFs shall be kept on the premises at all times and shall be made available to all staff members.

(e) Each licensee shall make available to the department all reports and findings of on-site surveys, periodic performance reviews, monitoring

visits, and accreditation reports by the PRTF's accrediting body.

(f) Each licensee shall have sufficient finances to ensure the provision of program activities and services to each resident. Each licensee shall provide the financial resources necessary to maintain compliance with these regulations.

(g) Each resident's personal money shall be kept separate from the PRTF's funds. Each licensee shall maintain financial records of each resident's personal money. (Authorized by and implementing K.S.A. 65-508; effective Oct. 9, 2009.)

28-4-1207. Staff requirements. (a) Each individual working or volunteering in a PRTF shall be qualified by temperament, emotional maturity, judgment, and understanding of residents necessary to maintain the health, comfort, safety, and welfare of individuals placed in psychiatric residential treatment facilities.

(b) Each food service staff member shall demonstrate compliance with all of the following requirements through ongoing job performance:

(1) Knowledge of the nutritional needs of residents;

(2) understanding of quantity food preparation and service;

(3) sanitary food handling and storage methods;

(4) willingness to consider individual, cultural, and religious food preferences of the residents; and

(5) willingness to work with the program director in planning learning experiences for residents about nutrition. (Authorized by and implementing K.S.A. 65-508; effective Oct. 9, 2009.)

28-4-1208. Records. Each licensee shall develop and implement written policies and procedures that address PRTF recordkeeping requirements, including resident records, personnel records, and general records. (a) Resident records. Each licensee shall maintain an individual record for each resident, which shall include the following information:

(1) A health record that meets the requirements in K.A.R. 28-4-1211;

(2) a copy of each written report of any incidents involving the resident and specified in K.A.R. 28-4-1209 and K.A.R. 28-4-1214;

(3) documentation of each use of seclusion for the resident; and

(4) a financial record of the resident's personal money as specified in K.A.R. 28-4-1206.

(b) Personnel records. Each licensee shall maintain an individual personnel record for each staff member, which shall include the following information:

(1) A health record that meets the requirements in K.A.R. 28-4-1211, including a record of the results of any health examinations and tuberculin tests;

(2) the staff member's current job responsibilities;

(3) documentation that the staff member has read, understands, and agrees to all of the following:

(A) The statutes and regulations regarding the mandatory reporting of suspected child abuse, neglect, and exploitation;

(B) all regulations governing PRTFs; and

(C) the PRTF's policies and procedures applicable to the job responsibilities of the staff member; and

(4) a copy of a valid driver's license of a type appropriate for the vehicle being used, for any staff member who transports any resident.

(c) Volunteer records. Each licensee shall maintain an individual record for each volunteer of the PRTF, which shall include the following information:

(1) A health record that meets the requirements in K.A.R. 28-4-1211, including a record of the results of any health examinations and tuberculin tests, for each volunteer in contact with residents; and

(2) a copy of a valid driver's license of a type appropriate for the vehicle being used, for any volunteer who transports any resident.

(d) General records. Each licensee shall ensure that general records are completed and maintained, which shall include the following:

(1) Documentation of the requests submitted to the department for the purpose of background checks for each staff member and volunteer in order to comply with the provisions of K.S.A. 65-516, and amendments thereto;

(2) documentation of notification to the school district;

(3) documentation of each approval granted by the secretary for any change, exception, or amendment as specified in K.A.R. 28-4-1204 and K.A.R. 28-4-1215;

(4) the policies and procedures of the PRTF;

(5) all reports and findings of on-site visits, periodic performance reviews, monitoring visits to determine compliance with PRTF regulations

and standards, and any accreditation reports by the PRTF's accrediting body;

(6) all written reports of the following:

(A) All incidents or events specified in K.A.R. 28-4-1209 and K.A.R. 28-4-1214; and

(B) the use of restraint or seclusion;

(7) all documentation specified in K.A.R. 28-4-1218 for transporting residents;

(8) all documentation specified in K.A.R. 28-4-1212 for the locking systems for the door of each room used for seclusion, including documentation of the state fire marshal's approval;

(9) all documentation specified in K.A.R. 28-4-1214 for emergency plans, fire and tornado drills, and written policies and procedures on the security and control of the residents;

(10) all documentation specified in K.A.R. 28-4-1214 for the inspection and the maintenance of security devices, including locking mechanisms and any delayed-exit mechanisms on doors;

(11) documentation of approval of any private water or sewage systems as specified in K.A.R. 28-4-1215; and

(12) documentation of vehicle and liability insurance for each vehicle used by the PRTF to transport residents as specified in K.A.R. 28-4-1218. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-507 and 65-508 and K.S.A. 2008 Supp. 65-516; effective Oct. 9, 2009.)

28-4-1209. Notification and reporting requirements. (a) Each licensee shall ensure that the following notifications are submitted verbally or in writing upon discovery of the incident or event, but no later than 24 hours after the discovery:

(1) Each instance of suspected abuse or neglect of a resident shall be reported to the Kansas department of social and rehabilitation services or to law enforcement.

(2) Each incident resulting in the death of any resident shall be reported to the following:

(A) Law enforcement;

(B) the department;

(C) the parent or guardian of the resident;

(D) the resident's placing agent;

(E) the state medicaid agency;

(F) the Kansas department of social and rehabilitation services; and

(G) the state-designated protection and advocacy entity.

(3) Each incident resulting in the death of a staff member while on duty at the PRTF shall be

reported to the department and to any other entities according to the policies of the PRTF.

(4) Each incident resulting in a serious injury to any resident, including burns, lacerations, bone fractures, substantial hematomas, and injuries to internal organs, shall be reported to the following:

(A) The department;

(B) the county health department in which the PRTF is located;

(C) the parent or legal guardian of any resident involved in the incident;

(D) the placing agent of any resident involved in the incident;

(E) the state medicaid agency;

(F) the Kansas department of social and rehabilitation services; and

(G) the state-designated protection and advocacy entity.

(5) Each incident of suspected sexual assault involving a resident as a victim or as a perpetrator shall be reported to the following:

(A) Law enforcement;

(B) the Kansas department of social and rehabilitation services;

(C) the parent or legal guardian of the resident;

(D) the resident's placing agent; and

(E) the department.

(6) Each suicide attempt by a resident shall be reported to the following:

(A) The department;

(B) the resident's placing agent;

(C) the parent or guardian of the resident;

(D) the state medicaid agency;

(E) the Kansas department of social and rehabilitation services; and

(F) the state-designated protection and advocacy entity.

(7) Each natural disaster shall be reported to the department.

(8) Each instance of work stoppage shall be reported to the department.

(9) Each incident that involves a riot or the taking of hostages shall be reported to the department.

(10) Each fire shall be reported to the department and to the state fire marshal.

(11) Each incident that involves any suspected illegal act committed by a resident while in the PRTF or by a staff member while on duty at the PRTF shall be reported to law enforcement in accordance with the policies of the PRTF.

(12) If any resident, staff member, or volunteer of the PRTF contracts a reportable infectious or

contagious disease specified in K.A.R. 28-1-2, the licensee shall ensure that a report is submitted to the local county health department within 24 hours, excluding weekends and holidays.

(b) Each licensee shall complete a written report within five calendar days of the discovery of any incident or event identified in subsection (a). (Authorized by and implementing K.S.A. 65-508; effective Oct. 9, 2009.)

28-4-1210. Admission requirements. (a) No individual less than six years of age shall be admitted to a PRTF. No individual 21 years of age or older shall be admitted to a PRTF as a new resident, but any current resident may continue to receive treatment until that resident reaches 22 years of age.

(b) Each individual who shows evidence of being physically ill, injured, or under the influence of alcohol or drugs shall be assessed in accordance with the PRTF's policies and procedures to determine the appropriateness of admission and any need for immediate medical care. (Authorized by and implementing K.S.A. 65-508 and 65-510; effective Oct. 9, 2009.)

28-4-1211. Health care. (a) Policies for resident health care. Each licensee, in consultation with a physician, shall develop written policies that include provisions for the following:

(1) A health checklist and review for each resident upon admission, including the following:

(A) Current physical, including oral, health status;

(B) any allergies, including medication, food, and plant;

(C) any current pain, including cause, onset, duration, and location;

(D) preexisting medical conditions;

(E) current mood and affect;

(F) any current suicidal thoughts and history of suicide attempts;

(G) any infectious or contagious diseases;

(H) documentation of current immunizations or documentation of an exemption for medical or religious reasons as specified in K.A.R. 28-1-20;

(I) any drug or alcohol use;

(J) any current medications;

(K) any physical disabilities;

(L) menstrual history, if applicable;

(M) any sexually transmitted disease; and

(N) any history of pregnancy;

(2) follow-up health care, including a health as-

essment and referrals for any concerns identified in the health checklist and review;

(3) if medically indicated, chronic care, convalescent care, and preventive care;

(4) care for minor illness, including the use and administration of prescription and nonprescription drugs;

(5) care for residents under the influence of alcohol or other drugs;

(6) consultation regarding each individual resident, if indicated;

(7) infection control measures and universal precautions to prevent the spread of blood-borne infectious diseases, including medically indicated isolation; and

(8) maternity care as required by K.A.R. 28-4-279.

(b) Physical health of residents at admission and throughout placement. Each licensee shall maintain a health record for each resident to document the provision of health services, including dental services.

(1) Each licensee shall ensure that a health checklist is completed for each resident at the time of admission by the individual who admits the resident. The health checklist shall serve as a guide to determine if a resident is in need of medical or dental care and to determine if the resident is using any prescribed medications.

(2) Each licensee shall ensure that the PRTF's physician, a physician's assistant operating under a written protocol as authorized by a responsible physician, or an advanced registered nurse practitioner (ARNP) operating under a written protocol as authorized by a responsible physician and operating under the ARNP's scope of practice is contacted for any resident who is taking a prescribed medication at the time of admission, to assess the need for continuation of the medication.

(3) Each change of prescription or directions for administering a prescription medication shall be ordered by the authorized medical practitioner with documentation placed in the resident's record. Prescription medications shall be administered only to the designated resident as ordered by the authorized medical practitioner.

(4) Each licensee shall ensure that a physician, a physician's assistant operating under a written protocol as authorized by the responsible physician, or an ARNP operating under a written protocol as authorized by a responsible physician and operating within the ARNP's scope of practice is contacted for any resident who has acute symptoms of illness or who has a chronic illness.

(5) Within 72 hours of admission, a physician, a physician's assistant operating under a written protocol as authorized by a responsible physician, or a nurse approved to conduct screening and health assessments shall review the health checklist. Based upon health indicators derived from the checklist or in the absence of documentation of a screening within the past 24 months, the reviewing physician, physician's assistant, or nurse shall determine whether or not a full screening and health assessment are necessary. If a full screening and health assessment are necessary, the following requirements shall be met:

(A) The screening and health assessment shall be conducted by a licensed physician, a physician's assistant operating under a written protocol as authorized by a responsible physician, or a nurse approved to conduct these examinations.

(B) The screening and health assessment shall be completed within 10 days of admission.

(6) Each licensee shall ensure that each resident receives a screening for symptoms of tuberculosis. A Mantoux test, a tuberculin blood assay test, or a chest X-ray shall be required if any of the following occurs:

(A) The resident has a health history or shows symptoms compatible with tuberculosis.

(B) The location of the PRTF is in an area identified by the local health department or the secretary as a high-risk area for tuberculosis exposure.

(C) Significant exposure to an active case of tuberculosis occurs, or symptoms compatible with tuberculosis develop.

(D) If there is a positive reaction to the diagnostic procedures, proof of proper treatment or prophylaxis shall be required. Documentation of the test, X-ray, or treatment results shall be kept on file in the resident's health record, and the county health department shall be informed of the results.

(7) Each licensee shall ensure that written policies and procedures prohibit the use of tobacco in any form by any resident while in care.

(c) Oral health of residents. Each licensee shall ensure that the following requirements are met:

(1) Dental care shall be available for all residents.

(2) Each resident who has not had a dental examination within the year before admission to the PRTF shall have a dental examination no later than 60 days after admission.

(3) Each resident shall receive emergency dental care as needed.

(4) Each licensee shall develop and implement a plan for oral health education and staff supervision of residents in the practice of good oral hygiene.

(d) Health record. Each licensee shall maintain a health record for each resident to document the provision of health services required in subsections (a), (b), and (c).

(e) Personal health and hygiene of residents.

(1) Each resident shall have access to drinking water, a lavatory, and a toilet.

(2) Each licensee shall ensure that each resident is given the opportunity to bathe upon admission and daily.

(3) Each licensee shall furnish each resident with toothpaste and a toothbrush.

(4) Each licensee shall ensure that each resident is given the opportunity to brush the resident's teeth after each meal.

(5) Each licensee shall make opportunities available to the residents for daily shaving and regular haircuts.

(6) Each resident's washable clothing shall be changed and laundered at least twice a week. Each licensee shall ensure that clean underwear and socks are available to each resident on a daily basis.

(7) Each female resident shall be provided personal hygiene supplies for use during her menstrual cycle.

(8) Each licensee shall ensure that clean, individual washcloths and bath towels are issued to each resident at least twice each week.

(9) Each licensee shall allow each resident to have at least eight hours of sleep each day.

(f) Personal health of staff members and volunteers of the PRTF.

(1) Each individual shall meet the following requirements:

(A) Be free from any infectious or contagious disease requiring isolation or quarantine as specified in K.A.R. 28-1-6;

(B) be free of any physical, mental, or emotional health conditions that would adversely affect the individual's ability to fulfill the responsibilities listed in the individual's job description and to protect the health, safety, and welfare of the residents; and

(C) be free from impaired ability due to the use of alcohol, prescription or nonprescription drugs, or other chemicals.

(2) Each individual who has contact with any resident or who is involved in food preparation

or service shall have received a health assessment within one year before employment. This assessment shall be conducted by a licensed physician, a physician's assistant operating under a written protocol as authorized by a responsible physician, or a nurse authorized to conduct these assessments.

(3) The results of each health assessment shall be recorded on forms provided by the department and shall be kept on file.

(4) A health assessment record may be transferred from a previous place of employment if the assessment occurred within one year before the individual's employment at the PRTF and if the assessment was recorded on the form provided by the department.

(5) The initial health examination shall include a screening for symptoms of tuberculosis. A Mantoux test, a tuberculin blood assay test, or a chest X-ray shall be required if any of the following occurs:

(A) The individual has a health history or shows symptoms compatible with tuberculosis.

(B) The PRTF is located in an area identified by the local health department or the secretary as a high-risk area for tuberculosis exposure.

(C) Significant exposure to an active case of tuberculosis occurs, or symptoms compatible with tuberculosis develop.

(D) If there is a positive reaction to any of the diagnostic procedures, proof of proper treatment or prophylaxis shall be required. Documentation of the test, X-ray, and treatment results shall be kept on file in the individual's health record, and the county health department shall be informed of the results.

(6) If an individual experiences a significant change in physical, mental, or emotional health, including any indication of substance abuse, an assessment of the individual's current health status may be required by the licensee or the secretary. A licensed health care provider qualified to diagnose and treat the condition shall conduct the health assessment. A written report of the assessment shall be kept in the individual's personnel record and shall be submitted to the secretary on request.

(g) Tobacco products shall not be used inside the PRTF. Tobacco products shall not be used by staff members or volunteers of the PRTF in the presence of residents. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-507 and 65-508; effective Oct. 9, 2009.)

28-4-1212. Health and safety requirements for the use of seclusion rooms. (a) Each licensee shall ensure that the following requirements are met for each room used for seclusion:

(1) The locking system shall be approved by the state fire marshal.

(2) No room used for seclusion shall be in a basement.

(3) Each door shall be equipped with a window mounted in a manner that allows inspection of the entire room.

(4) Each window in a room used for seclusion shall be impact-resistant and shatterproof.

(5) The walls shall be completely free of objects.

(6) A mattress shall be available, if needed. If a mattress is used, the mattress shall be clean and in good repair.

(b) No more than one resident shall be placed in a room used for seclusion at the same time.

(c) Before any resident is admitted to a room used for seclusion, all items that could be used to injure oneself or others shall be removed from the resident.

(d) Each resident shall be permitted to wear clothing necessary to maintain modesty and comfort at all times. Paper clothing may be substituted if a resident uses clothing for self-harm. Sheets, towels, blankets, and similar items shall not be substituted for clothing.

(e) Each resident shall receive all meals and snacks normally served and shall be allowed time to exercise and perform necessary bodily functions.

(f) Each resident shall have ready access to drinking water and bathroom facilities upon request. (Authorized by and implementing K.S.A. 65-508; effective Oct. 9, 2009.)

28-4-1213. Library; recreation; work. (a) Library.

(1) Each licensee shall have written policies and procedures that govern the PRTF's library program, including acquisition of materials, hours of availability, and staffing.

(2) Library services shall be available to all residents.

(A) Reading and other library materials may be provided for use during non-library hours.

(B) The reading and library materials shall be age-appropriate and suitable for various levels of reading competency and shall reflect a variety of interests.

(b) Recreation.

(1) Each licensee shall ensure that indoor and outdoor recreational areas and equipment are provided where security and visual supervision can be maintained at all times. Unless restricted for health reasons or for inclement weather, all residents shall be allowed to engage in supervised indoor and outdoor recreation on a daily basis.

(2) Each licensee shall ensure that art and craft supplies, books, current magazines, games, and other indoor recreational materials are provided for leisure activities.

(c) Work.

(1) Work assignments shall not be used as a substitute for recreation.

(2) Residents shall be prohibited from performing any of the following duties:

(A) Personal services for the staff members;

(B) cleaning or maintaining areas away from the PRTF;

(C) replacing employed staff members; or

(D) any work experience classified as hazardous by the Kansas department of labor regulations governing child labor.

(d) Auxiliary staff members may supervise library, recreation, or work activities. Direct care staff shall be within visual and auditory distance to provide immediate support, if necessary. (Authorized by and implementing K.S.A. 65-508; effective Oct. 9, 2009.)

28-4-1214. Emergency plan; drills; facility security and control of residents; storage and use of hazardous substances and unsafe items.

(a) Emergency plan. Each licensee shall develop an emergency plan to provide for the safety of all residents in emergencies, including fires, tornadoes, storms, floods, and serious injuries. The licensee shall review the plan at least annually and update it as needed.

(1) The emergency plan shall contain provisions for the care of residents in emergencies.

(2) Each licensee that permits the use of seclusion shall have a policy and procedure to evacuate each resident in seclusion if an emergency occurs.

(3) All of the staff members in the PRTF shall be informed of the emergency plan, which shall be posted in a prominent location.

(b) Fire and tornado drills. The PRTF staff shall conduct at least one fire drill and one tornado drill during each shift during each quarter. Drills shall be planned to allow participation by the residents in at least one fire drill and at least one tornado drill during each quarter.

(c) Facility security and control of residents. Each licensee shall develop and implement written policies and procedures that include the use of a combination of supervision, inspection, and accountability to promote safe and orderly operations. The policies and procedures shall prohibit the use of mace, pepper spray, and other chemical agents.

(1) All written policies and procedures for facility security and the control of residents shall be available to all staff members. Each licensee shall review the policies and procedures at least annually, update them as needed, and ensure that all of the requirements are met. These policies and procedures shall include all of the following requirements:

(A) Written operational shift assignments shall state the duties and responsibilities for each assigned position in the PRTF.

(B) Supervisory staff shall maintain a permanent log and prepare shift reports that record routine and emergency situations.

(C) All security devices, including locking mechanisms on doors and any delayed-exit mechanisms on doors, shall have current written approval from the state fire marshal and shall be regularly inspected and maintained, with any corrective action completed as necessary and recorded.

(D) No resident shall have access to any ammunition or weapons, including firearms and air-powered guns. If a licensee prohibits carrying a concealed weapon on the premises of the PRTF, the licensee shall post notice pursuant to K.S.A. 75-7c11, and amendments thereto.

(E) Procedures shall be developed and implemented for the control and use of keys, tools, medical supplies, and culinary equipment.

(F) No resident or group of residents shall exercise control or authority over another resident, have access to the records of another resident, or have access to or the use of keys that control security.

(G) Procedures shall be developed and implemented for knowing the whereabouts of all residents at all times and for handling runaways and unauthorized absences.

(H) Safety and security precautions pertaining to the PRTF and any staff vehicles used to transport residents shall be developed and implemented.

(2) Each licensee shall ensure the development of policies and procedures that govern documentation of all incidents, including riots, the taking of hostages, and the use of restraint.

(A) The policies and procedures shall require submission of a written report of all incidents to the program director no later than the conclusion of that shift. A copy of the report shall be kept in the record of each resident involved in the incident.

(B) Reports of incidents shall be made to document compliance with K.A.R. 28-4-1209.

(3) A written plan shall provide for continuing operations if a work stoppage occurs. A copy of this plan shall be available to each staff member.

(d) Storage and use of hazardous substances and unsafe items.

(1) No resident shall have unsupervised access to poisons, hazardous substances, or flammable materials. These items shall be kept in locked storage when not in use.

(2) Each licensee shall develop and implement policies and procedures for the safe and sanitary storage and distribution of personal care and hygiene items. The following items shall be stored in an area that is either locked or under the control of staff:

- (A) Aerosols;
- (B) alcohol-based products;
- (C) any products in glass containers; and
- (D) razors, blades, and any other sharp items.

(3) Each licensee shall develop and implement policies and procedures for the safe storage and disposal of prescription and nonprescription medications. All prescription and nonprescription medications shall be stored in a locked cabinet located in a designated staff-accessible and supervised area. All refrigerated medications shall be stored under all food items in a locked refrigerator, in a refrigerator in a locked room, or in a locked medicine box in a refrigerator. Medications taken internally shall be kept separate from other medications. All unused medications shall be accounted for and disposed of in a safe manner, including being returned to the pharmacy, transferred with the resident, or safely discarded.

(4) Each PRTF shall have first-aid supplies, which shall be stored in a locked cabinet located in a staff-accessible and supervised area. First-aid supplies shall include the following:

- (A) Assorted adhesive strip bandages;
- (B) adhesive tape;
- (C) a roll of gauze;
- (D) scissors;
- (E) a package of gauze squares;
- (F) liquid soap;
- (G) an elastic bandage;

(H) tweezers;

(I) rubbing alcohol; and

(J) disposable nonporous gloves in assorted sizes. (Authorized by and implementing K.S.A. 65-508; effective Oct. 9, 2009.)

28-4-1215. Environmental standards. (a) General building requirements.

(1) Each licensee shall ensure that public water and sewage systems, where available, are used. If public water and sewage systems are not available, each licensee shall maintain approval by the appropriate health authorities for any private water and sewage systems that are used.

(2) A licensed architect shall be responsible for the plans for any newly constructed building or for any major addition or major alteration to an existing building.

(A) For a new building, preliminary plans and outline specifications, including plot plans, shall be submitted to the department for review before commencing the final working drawings and specifications. Each licensee shall submit the final working drawings, construction specifications, and plot plans to the department for review and written approval before the letting of contracts.

(B) For an addition or alteration to an existing building, each licensee shall submit a written statement defining the proposed use of the construction and detailing the plans and specifications to the department for review and written approval before commencing construction.

(3) If construction is not commenced within one year of submitting a proposal for a new building or an addition or alteration to an existing building, each licensee shall resubmit the plans and proposal to the department before proposed construction begins.

(b) Location and grounds requirements.

(1) Community resources, including health services, police protection, and fire protection from an organized fire department, shall be available.

(2) There shall be at least 100 square feet of outside activity space available for each resident allowed to utilize each outdoor area at any one time.

(3) The outside activity area shall be free of physical hazards.

(4) Sufficient space for visitor and staff parking at each PRTF shall be provided.

(c) Structural requirements and use of space. Each licensee shall ensure that the PRTF design, structure, interior and exterior environment, and

furnishings promote a safe, comfortable, and therapeutic environment for the residents.

(1) Each PRTF shall be accessible to and usable by persons with disabilities.

(2) Each PRTF's structural design shall facilitate personal contact and interaction between staff members and residents.

(3) Each sleeping room shall meet the following requirements:

(A) No resident's room shall be in a basement.

(B) The minimum square footage of floor space shall be 80 square feet in each room occupied by one resident. Each room occupied by more than one resident shall have at least 60 square feet of floor space for each resident. At least one dimension of the usable floor space unencumbered by furnishings or fixtures shall be at least seven feet.

(C) The minimum ceiling height shall be seven feet eight inches over at least 90 percent of the room area.

(D) An even temperature of between 68 degrees Fahrenheit and 78 degrees Fahrenheit shall be maintained, with an air exchange of at least four times each hour.

(E) Sleeping rooms occupied by residents shall have a window source of natural light. Access to a drinking water source and toilet facilities shall be available 24 hours a day.

(F) Separate beds with level, flat mattresses in good condition shall be provided for each resident. All beds shall be above the floor level.

(G) Clean bedding, adequate for the season, shall be provided for each resident. Bed linen shall be changed at least once a week or more frequently when soiled.

(4) Each sleeping room, day room, and classroom utilized by residents shall have lighting of at least 20 foot-candles in all parts of the room. There shall be lighting of at least 35 foot-candles in areas used for reading, study, or other close work.

(5) Adequate space for study and recreation shall be provided.

(6) Each living unit shall contain the following:

(A) Furnishings that provide sufficient seating for the maximum number of residents expected to use the area at any one time;

(B) writing surfaces that provide sufficient space for the maximum number of residents expected to use the area at any one time; and

(C) furnishings that are consistent with the needs of the residents.

(7) Each PRTF shall have adequate central

storage for household supplies, bedding, linen, and recreational equipment.

(8) If the PRTF is on the same premises as that of another licensed facility, the living unit of the PRTF shall be maintained in a separate, self-contained unit. Residents of the PRTF shall not use space shared with another licensed facility at the same time unless the plan for the use of space is approved, in writing, by the secretary and by SRS.

(9) If a PRTF has one or more day rooms, each day room shall provide space for a variety of resident activities. Day rooms shall be situated immediately adjacent to the residents' sleeping rooms, but separated from the sleeping rooms by a floor-to-ceiling wall. Each day room shall provide at least 35 square feet for each resident, exclusive of lavatories, showers, and toilets, for the maximum number of residents expected to use the day room area at any one time.

(10) Each room used for sports and other physical activities shall provide floor space equivalent to at least 100 square feet for each resident utilizing the room for those purposes at any one time.

(11) Sufficient space shall be provided for visitation between residents and nonresidents. The PRTF shall have space for the screening and search of both residents and visitors, if screening and search are included in the PRTF's policies and procedures. Private space shall be available for searches as needed. Storage space shall be provided for the secure storage of visitors' coats, handbags, and other personal items not allowed into the visitation area.

(12) A working telephone shall be accessible to staff members in all areas of the building. Emergency numbers, including those for the fire department, the police, a hospital, a physician, the poison control center, and an ambulance, shall be posted by each phone.

(13) A service sink and a locked storage area for cleaning supplies shall be provided in a room or closet that is well ventilated and separate from kitchen and living areas.

(d) Bathroom facilities.

(1) For each eight or fewer residents of each sex, at least one toilet, one lavatory, and either a bathtub or a shower shall be provided. All toilets shall be above floor level.

(2) Each bathroom shall be ventilated to the outdoors by means of either a window or a mechanical ventilating system, with a minimum of 10 air changes each hour.

(3) Toilet and bathing accommodations and drinking water shall be in a location accessible to sleeping rooms and living and recreation rooms.

(4) Drinking water and at least one bathroom shall be accessible to the reception and admission areas.

(5) Cold water and hot water not exceeding 120 degrees Fahrenheit shall be supplied to lavatories, bathtubs, and showers.

(6) Liquid soap, toilet paper, and paper towels shall be available in all bathroom facilities.

(e) Building maintenance standards.

(1) Each building shall be clean at all times and free from vermin infestation.

(2) The walls shall be smooth, easily cleanable, and sound. Lead-free paint shall be used on all painted surfaces.

(3) The floors and walking surfaces shall be kept free of hazardous substances at all times.

(4) The floors shall not be slippery or cracked.

(5) Each rug or carpet used as a floor covering shall be slip-resistant and free from tripping hazards. A floor covering, paint, or sealant shall be required over concrete floors for all buildings used by the residents.

(6) All bare floors shall be swept and mopped daily.

(7) A schedule for cleaning each building shall be established and maintained.

(8) Washing aids, including brushes, dish mops, and other hand aids used in dishwashing activities, shall be clean and used for no other purpose.

(9) Mops and other cleaning tools shall be cleaned and dried after each use and shall be hung on racks in a well-ventilated place.

(10) Pesticides and any other poisons shall be used in accordance with the product instructions. These substances and all other poisons shall be stored in a locked area.

(11) Toilets, lavatories, sinks, and other such accommodations in the living areas shall be cleaned each day. (Authorized by and implementing K.S.A. 65-508; effective Oct. 9, 2009.)

28-4-1216. Food services. Each licensee shall ensure that food preparation, service, safety, and nutrition meet the requirements of this regulation. For purposes of this regulation, "food" shall include beverages.

(a) Sanitary practices. Each individual engaged in food preparation and food service shall use sanitary methods of food handling, food service, and storage.

(1) Only authorized individuals shall be in the food preparation area.

(2) Each individual who has any symptoms of an illness, including fever, vomiting, or diarrhea, shall be excluded from the food preparation area and shall remain excluded from the food preparation area until the time at which the individual has been asymptomatic for at least 24 hours or provides the PRTF with written documentation from a health care provider stating that the symptoms are from a noninfectious condition.

(3) Each individual who has contracted an infectious or contagious disease specified in K.A.R. 28-1-6 shall be excluded from the food preparation area and shall remain excluded from the food preparation area for the time period required for that disease.

(4) Each individual with an open cut or abrasion on the hand or forearm or with a skin sore shall cover the sore, cut, or abrasion with a bandage before handling or serving food.

(5) The hair of each individual shall be restrained when the individual is handling food.

(6) Each individual handling or serving food shall comply with each of the following requirements for handwashing:

(A) Each individual shall wash that individual's hands and exposed portions of the individual's arms before working with food, after using the toilet, and as often as necessary to keep the individual's hands clean and to minimize the risk of contamination.

(B) Each individual shall use an individual towel, disposable paper towels, or an air dryer to dry that individual's hands.

(7) Each individual preparing or handling food shall minimize bare hand and bare arm contact with exposed food that is not in a ready-to-eat form.

(8) Except when washing fruits and vegetables, no individual handling or serving food may contact exposed, ready-to-eat food with the individual's bare hands.

(9) Each individual shall use single-use gloves, food-grade tissue paper, dispensing equipment, or utensils, including spatulas or tongs, when handling or serving exposed ready-to-eat food.

(b) Nutrition.

(1) Meals and snacks shall meet the nutritional needs of the residents in accordance with the United States department of agriculture's recommended daily allowances. A sufficient quantity of food shall be prepared for each meal to allow each

resident second portions of bread and milk and either vegetables or fruit.

(2) Special diets shall be provided for residents for either of the following reasons:

(A) Medical indication; or

(B) accommodation of religious practice, as indicated by a religious consultant.

(3) Each meal shall be planned and the menu shall be posted at least one week in advance. A copy of the menu of each meal served for the preceding month shall be kept on file and available for inspection.

(c) Food service and preparation areas. If food is prepared on the premises, each licensee shall provide a food preparation area that is separate from the eating area, activity area, laundry area, and bathrooms and that is not used as a passageway during the hours of food preparation and cleanup.

(1) All surfaces used for food preparation and tables used for eating shall be made of smooth, nonporous material.

(2) Before and after each use, all food preparation surfaces shall be cleaned with soapy water and sanitized by use of a solution of one ounce of bleach to one gallon of water or a sanitizing solution used in accordance with the manufacturer's instructions.

(3) Before and after each use, the tables used for eating shall be cleaned by washing with soapy water.

(4) All floors shall be swept daily and mopped when spills occur.

(5) Garbage shall be disposed of in a garbage disposal or in a covered container. If a container is used, the container shall be removed at the end of each day or more often as needed to prevent overflow or to control odor.

(6) Each food preparation area shall have handwashing facilities equipped with soap and hot and cold running water and with individual towels, paper towels, or air dryers. Each sink used for handwashing shall be equipped to provide water at a temperature of at least 100 degrees Fahrenheit. The water temperature shall not exceed 120 degrees Fahrenheit.

(A) If the food preparation sink is used for handwashing, the sink shall be sanitized before using it for food preparation by use of a solution of $\frac{1}{4}$ cup of bleach to one gallon of water.

(B) Each PRTF with 25 or more residents shall be equipped with handwashing facilities that are separate from the food preparation sink.

(7) Clean linen used for food preparation or service shall be stored separately from soiled linen.

(d) Food storage and refrigeration. All food shall be stored and served in a way that protects the food from cross-contamination.

(1) Nonrefrigerated food.

(A) All food not requiring refrigeration shall be stored at least six inches above the floor in a clean, dry, well-ventilated storeroom or cabinet in an area with no overhead drain or sewer lines and no vermin infestation.

(B) Dry bulk food that has been opened shall be stored in metal, glass, or food-grade plastic containers with tightly fitting covers and shall be labeled with the contents and the date opened.

(C) Food shall not be stored with poisonous or toxic materials. If cleaning agents cannot be stored in a room separate from food storage areas, the cleaning agents shall be clearly labeled and kept in locked cabinets not used for the storage of food.

(2) Refrigerated and frozen food.

(A) All perishables and potentially hazardous foods requiring refrigeration shall be continuously maintained at 41 degrees Fahrenheit or lower in the refrigerator or 0 degrees Fahrenheit in the freezer.

(B) Each refrigerator and each freezer shall be equipped with a visible, accurate thermometer.

(C) Each refrigerator and each freezer shall be kept clean inside and out.

(D) All food stored in the refrigerator shall be covered, wrapped, or otherwise protected from contamination. Unserved, leftover perishable foods shall be dated, refrigerated immediately after service, and eaten within three days.

(E) Raw meat shall be stored in the refrigerator in a manner that prevents meat fluids from dripping on other foods.

(F) Ready-to-eat, commercially processed foods, including luncheon meats, cream cheese, and cottage cheese, shall be eaten within five days after opening the package.

(G) If medication requiring refrigeration is stored with refrigerated food, the medication shall be stored in a locked medicine box in a manner that prevents cross-contamination.

(3) Hot foods.

(A) Hot foods that are to be refrigerated shall be transferred to shallow containers in layers less than three inches deep and shall not be covered until cool.

(B) Potentially hazardous cooked foods shall be cooled in a manner to allow the food to cool with-

in two hours from 135 degrees Fahrenheit to 70 degrees Fahrenheit or within six hours from 135 degrees Fahrenheit to 41 degrees Fahrenheit.

(e) Meals or snacks prepared on the premises.

(1) Each licensee shall ensure that all of the following requirements are met:

(A) All dairy products shall be pasteurized. Dry milk shall be used for cooking only.

(B) Meat shall be obtained from government-inspected sources.

(C) Raw fruits and vegetables shall be washed thoroughly before being eaten or used for cooking.

(D) Frozen foods shall be defrosted in the refrigerator, under cold running water, in a microwave oven using the defrost setting, or during the cooking process. Frozen foods shall not be defrosted by leaving them at room temperature or in standing water.

(E) Cold foods shall be maintained and served at temperatures of 41 degrees Fahrenheit or less.

(F) Hot foods shall be maintained and served at temperatures of at least 140 degrees Fahrenheit.

(2) Each licensee shall ensure that the following foods are not served or kept:

(A) Home-canned food;

(B) food from dented, rusted, bulging, or leaking cans; and

(C) food from cans without labels.

(f) Meals or snacks catered. If the licensee serves a meal or snack that is not prepared on the premises, the snack or meal shall be obtained from a food service establishment or a catering service licensed by the secretary of the Kansas department of agriculture. If food is transported to the premises, the licensee shall ensure that only food that has been transported promptly in clean, covered containers is served to the residents.

(g) Table service and cooking utensils.

(1) Each licensee shall ensure that all of the table service, serving utensils, and food cooking or serving equipment is stored in a clean, dry location at least six inches above the floor. None of these items shall be stored under an exposed sewer line or a dripping water line or in a bathroom.

(2) Each licensee shall provide clean table service to each resident, including dishes, cups or glasses, and forks, spoons, and knives, as appropriate for the food being served.

(A) Clean cups, glasses, and dishes designed for repeat use shall be made of smooth, durable, and nonabsorbent material and shall be free from cracks or chips.

(B) Disposable, single-use table service shall

be of food grade and medium weight and shall be disposed of after each use.

(3) If nondisposable table service and cooking utensils are used, each licensee shall sanitize the table service and cooking utensils using either a manual washing method or a mechanical dishwasher.

(A) If using a manual washing method, each licensee shall meet all of the following requirements:

(i) A three-compartment sink with hot and cold running water to each compartment and a drain-board shall be used for washing, rinsing, sanitizing, and air-drying.

(ii) An appropriate chemical test kit, a thermometer, or another device shall be used for testing the sanitizing solution and the water temperature.

(B) If using a mechanical dishwasher, each licensee shall ensure that all of the following requirements are met:

(i) Each commercial dishwashing machine and each domestic-type dishwashing machine shall be installed and operated in accordance with the manufacturer's instructions and shall be maintained in good repair.

(ii) If an automatic detergent dispenser, rinsing agents dispenser, or liquid sanitizer dispenser is used, the dispenser shall be installed and maintained according to the manufacturer's instructions.

(iii) Each dishwashing machine using hot water to sanitize shall be installed and operated according to the manufacturer's specifications and shall achieve surface temperature of at least 160 degrees Fahrenheit for all items.

(iv) If a domestic-type dishwasher is used, the dishwasher shall have the capacity to complete the cleaning cycle for all items in two cycles between each meal. (Authorized by and implementing K.S.A. 65-508; effective Oct. 9, 2009.)

28-4-1217. Laundry. (a) If laundry is done at the PRTF, the laundry sinks, appliances, and countertops or tables used for laundry shall be located in an area separate from food preparation areas and shall be installed and used in a manner that safeguards the health and safety of the residents. Adequate space shall be allocated for the laundry room and the storage of laundry supplies, including locked storage for all chemical agents used in the laundry area.

(b) Adequate space shall be allocated for the storage of clean and dirty linen and clothing. Soiled linen shall be stored separately from clean linen.

(c) Blankets shall be laundered at least once each month or, if soiled, more frequently. Blankets shall be laundered or sanitized before reissue.

(d) Each mattress shall be water-repellent and washed down and sprayed with disinfectant before reissue. Mattress materials and treatments shall meet the applicable requirements of the state fire marshal's regulations. (Authorized by and implementing K.S.A. 65-508; effective Oct. 9, 2009.)

28-4-1218. Transportation. Each licensee shall establish and implement written policies and procedures for transporting residents.

(a) The transportation policies and procedures shall include all of the following information:

(1) A list of the individuals authorized to transport residents for the PRTF;

(2) a description of precautions to prevent the escape of any resident during transfer;

(3) documentation of a current and appropriate license for each PRTF driver for the type of vehicle in use; and

(4) procedures to be followed in case of accident, injury, or other incident as specified in K.A.R. 28-4-1214, including notification procedures.

(b) Each transporting vehicle owned or leased by the licensee shall have a yearly safety check. A record of the yearly safety check and all repairs or improvements made shall be kept on file at the PRTF. When residents are transported in a privately owned vehicle, the vehicle shall be in safe working condition.

(c) Each vehicle used by the PRTF to transport residents shall be covered by accident and liability insurance as required by the state of Kansas.

(d) A first-aid kit shall be kept in the transporting vehicle and shall include disposable nonporous gloves in various sizes, a cleansing agent, scissors, bandages of assorted sizes, adhesive tape, a roll of gauze, one package of gauze squares at least four inches by four inches in size, and one elastic bandage.

(e) Each vehicle used to transport residents shall be equipped with an individual seat belt for the driver and an individual seat belt or child safety seat for each passenger. The driver and each passenger shall be secured by a seat belt or a child safety seat when the vehicle is in motion.

(f) Seat belts and child safety seats shall be used appropriate to the age, weight, and height of each individual and the placement of each individual in the vehicle, in accordance with state statutes

and regulations. Each child safety seat shall be installed and used according to manufacturer's instructions.

(g) Residents who are less than 13 years of age shall not be seated in the front seat of a vehicle that is equipped with a passenger air bag.

(h) Smoking in any vehicle owned or leased by the licensee shall be prohibited whether or not a resident is present in the vehicle.

(i) Residents shall be transported directly to the location designated by the licensee and shall make no unauthorized stops along the way, except in an emergency.

(j) Handcuffs or shackles shall not be used on any resident being transported by staff members.

(k) No 15-passenger vans shall be used to transport residents. Each licensee owning or leasing a 15-passenger van purchased or leased before the effective date of this regulation shall be exempt from the requirements of this subsection. (Authorized by and implementing K.S.A. 65-508; effective Oct. 9, 2009.)

STAFF SECURE FACILITIES

28-4-1250. Definitions. (a) "Administrator" means the individual employed by a facility who is responsible for the daily operation of the facility.

(b) "Applicant" means a person who has applied for a license but who has not yet been granted a temporary permit or a license to operate a facility.

(c) "Auxiliary staff member" means a type of staff member working at a facility in food services, clerical services, or maintenance. This term shall also apply to individuals working in the facility for the purpose of observation of facility entrances and exits.

(d) "Basement" means each area in a building with a floor level more than 30 inches below ground level on all sides.

(e) "Case management" means the comprehensive written goals and services developed for each resident and the provision of those services directly by the staff members or through other resources.

(f) "Case manager" means an individual who is designated by the permittee or licensee to coordinate the provision of services to residents by staff members or other individuals or agencies and who meets the requirements for a case manager in K.A.R. 28-4-1255(f).

(g) "Clinical director" means the individual at a facility who is responsible for the mental health services and who meets the requirements for a clinical director in K.A.R. 28-4-1255(d).

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

(i) “Direct care staff member” means an individual whose primary responsibility is to implement the program on a daily basis, including providing direct supervision of, interaction with, and protection of the residents and who meets the requirements for a direct care staff member in K.A.R. 28-4-1255(h).

(j) “Direct supervision” means the physical presence of staff members in proximity to allow for interaction and direct eye contact with residents.

(k) “In-service training” means job-related training provided for staff members and volunteers.

(l) “License capacity” means the maximum number of residents authorized to be in the facility at any one time.

(m) “Licensed physician” means an individual who is licensed to practice either medicine and surgery or osteopathy in Kansas by the Kansas state board of healing arts.

(n) “Licensee” means a person who has been granted a license to operate a facility.

(o) “Living unit” means the self-contained building or portion of a building in which the facility is operated and maintained, including the sleeping rooms, bathrooms, and areas used by residents for activities, dining, classroom instruction, library services, and indoor recreation.

(p) “Permittee” means a person who has applied for a license and has been granted a temporary permit by the secretary to operate a facility.

(q) “Placing agent” means law enforcement, a state agency, or court possessing the legal authority to place a resident in a facility.

(r) “Professional staff member” means a staff member who is one of the following:

- (1) The clinical director;
- (2) a licensed physician;
- (3) an individual licensed by the Kansas behavioral sciences regulatory board;
- (4) a teacher licensed by the Kansas state department of education;
- (5) a physician’s assistant licensed in Kansas by the Kansas state board of healing arts;
- (6) a professional nurse licensed by the Kansas state board of nursing;
- (7) an advanced practice registered nurse (APRN) licensed by the Kansas state board of nursing;
- (8) a dietician licensed by the Kansas department for aging and disability services; or
- (9) a case manager.

(s) “Program” means the comprehensive and coordinated set of activities and social services providing for the care, health, and safety of residents while in the care of the facility.

(t) “Resident” means an individual who is placed in a facility as authorized by the revised Kansas code for the care of children, K.S.A. 2013 Supp. 38-2201 et seq., and K.S.A. 2013 Supp. 65-535, and amendments thereto.

(u) “Secretary” means secretary of the Kansas department of health and environment.

(v) “Staff member” means any individual employed at a facility, including auxiliary staff members, direct care staff members, and professional staff members.

(w) “Staff secure facility” and “facility” mean a type of “child care facility,” pursuant to K.S.A. 65-503 and amendments thereto, that meets the requirements in K.S.A. 2013 Supp. 65-535, and amendments thereto.

(x) “Trauma-informed care” means the services provided to residents based on an understanding of the vulnerabilities and the emotional and behavioral responses of trauma survivors.

(y) “Trauma-specific intervention” means intervention techniques designed specifically to address the consequences of trauma in residents and to facilitate recovery, including the interrelation between presenting symptoms of trauma and each resident’s past history of trauma.

(z) “Tuberculosis test” means either the Mantoux skin test or an interferon gamma release assay (IGRA).

(aa) “Volunteer” means an individual or group that provides services to residents without compensation.

(bb) “Weapons” means any dangerous or deadly instruments, including the following:

- (1) Firearms;
- (2) ammunition;
- (3) air-powered guns, including BB guns, pellet guns, and paint ball guns;
- (4) any knives, except knives designed and used for table service;
- (5) archery equipment; and
- (6) martial arts equipment. (Authorized by K.S.A. 2013 Supp. 65-508 and 65-535; implementing K.S.A. 2013 Supp. 65-503 and 65-535; effective, T-28-12-17-13, Dec. 17, 2013; effective March 28, 2014.)

28-4-1251. Applicant, permittee, and licensee requirements. (a) Each applicant shall

submit a complete application on forms provided by the department. The application shall be submitted at least 90 calendar days before the planned opening date of the facility and shall include the following:

(1) A description of the program and services to be offered, including the following:

(A) A statement of the facility's purpose and goals; and

(B) the number, ages, and gender of prospective residents;

(2) the anticipated opening date;

(3) a request for the background checks for staff members and volunteers specified in K.A.R. 28-4-1253;

(4) the facility's policies and procedures required in subsection (d); and

(5) the license fee totaling the following:

(A) \$75; and

(B) \$1 multiplied by the maximum number of residents to be authorized under the license.

(b) Each applicant shall be one of the following entities:

(1) A government or governmental subdivision, which shall employ an administrator; or

(2) a person, other than a government or governmental subdivision, with a governing board that is responsible for the operation, policies, finances, and general management of the facility. The applicant shall employ an administrator. The administrator shall not be a voting member of the governing board.

(c) Each applicant, each permittee, and each licensee, if a corporation, shall be in good standing with the Kansas secretary of state.

(d) Each applicant shall develop policies and procedures for operation of the facility to meet the requirements in these regulations and in K.S.A. 2013 Supp. 65-535, and amendments thereto.

(e) Each applicant shall submit to the department floor plans for each building that will be used as a facility. Each floor plan shall show how the facility is separated from any other child care facility. Each applicant shall obtain and submit to the department prior written approval from the Kansas state fire marshal regarding the safety of entrances and exits.

(f) Each applicant shall notify the school district where the facility is to be located at least 90 calendar days before the planned opening date. The 90-day notification to the local school district may be waived by the secretary upon receipt of a written agreement by the local school dis-

trict. The notification to the school district shall include the following:

(1) The planned opening date and the number, age range, gender, and anticipated special education needs of the residents to be served;

(2) a statement that the residents will receive educational services on-site at the facility; and

(3) documentation that the notification was received by the school district at least 90 calendar days before the planned opening date.

(g) Each applicant shall maintain documentation of completion of training required in K.A.R. 28-4-1255(k) by each staff member and each volunteer before the opening date of the facility.

(h) Each applicant, each permittee, and each licensee shall maintain documentation of compliance with all applicable building codes, fire safety requirements, and zoning codes.

(i) The granting of a license to any applicant may be refused by the secretary if the applicant is not in compliance with the requirements of all applicable statutes and regulations governing facilities. (Authorized by K.S.A. 2013 Supp. 65-508 and 65-535; implementing K.S.A. 65-501 and K.S.A. 2013 Supp. 65-504, 65-505, 65-508, 65-516, and 65-535; effective, T-28-12-17-13, Dec. 17, 2013; effective March 28, 2014.)

28-4-1252. Terms of a temporary permit or license. (a) Temporary permit or license required. No person shall operate a facility unless the person has been issued a temporary permit or a license by the secretary.

(b) Requirements. Each permittee and each licensee shall ensure that the following requirements are met:

(1) Each temporary permit or license shall be valid only for the permittee or licensee and for the address specified on the temporary permit or the license. When an initial or amended license becomes effective, all temporary permits or licenses previously granted to the permittee or licensee at the same address shall become void.

(2) The maximum number, the age range, and the gender of residents authorized by the temporary permit or the license shall not be exceeded.

(3) The current temporary permit or the current license shall be posted conspicuously within the facility.

(c) New application required. A new application and the fee specified in K.A.R. 28-4-1251(a) shall be submitted for each change of ownership or location at least 90 calendar days before the planned change.

(d) Changes. Each applicant, each permittee, and each licensee shall obtain the secretary's written approval before making any change in any of the following:

- (1) The use or proposed use of the buildings;
 - (2) the physical structure of any building, including the following:
 - (A) An addition or alteration as specified in K.A.R. 28-4-1265(a)(2)(B);
 - (B) the use of locked entrances; and
 - (C) any delayed-exit mechanisms;
 - (3) the program, provided through either direct services or agreements with specified individuals or community resources; or
 - (4) orientation topics or required in-service training.
- (e) Renewals.

(1) No earlier than 90 calendar days before the renewal date but no later than the renewal date, each licensee shall complete and submit an application for renewal on forms provided by the department, including the requests for background checks specified in K.A.R. 28-4-1253, and the fee specified in K.A.R. 28-4-1251(a).

(2) Failure to submit the renewal application and fee within 30 days after the expiration of the license shall result in an assessment of a late renewal fee pursuant to K.S.A. 65-505, and amendments thereto, and may result in closure of the facility.

(f) Exceptions. Any applicant, permittee, or licensee may request an exception to a specific facility regulation or any portion of a specific facility regulation. Each request shall be submitted to the secretary on a form provided by the department. A copy of each request shall be provided to the Kansas department for children and families and the office of the Kansas attorney general.

(1) A request for an exception may be granted if the secretary determines that the exception is not detrimental to the health, safety, and welfare of one or more residents or the family of a resident and the exception does not violate statutory requirements.

(2) Written notice from the secretary stating the nature of each exception and its duration shall be kept on file at the facility and shall be readily accessible to the department and the Kansas department for children and families.

(g) Amendments. Any licensee may submit a written request for an amended license.

(1) Each licensee who intends to change the terms of the license, including the maximum

number, the age range, or the gender of residents to be served, shall submit a request for an amendment on a form provided by the department and a nonrefundable amendment fee of \$35. An amendment fee shall not be required if the request to change the terms of the license is made at the time of license renewal.

(2) Each request for a change in the maximum number, the age range, or the gender of residents to be served shall include written documentation of the notification to the school district where the facility is located, as specified in K.A.R. 28-4-1251(f).

(3) The licensee shall make no change to the terms of the license, including the maximum number of residents, the age range of residents to be served, the gender of residents, and the type of license, unless an amendment has been granted, in writing, by the secretary.

(h) Closure. Any applicant or permittee may withdraw the application for a license. Any licensee may submit, at any time, a request to close the facility operated by the licensee. If an application is withdrawn or a facility is closed, the current temporary permit or license granted to the permittee or licensee for that facility shall become void. (Authorized by K.S.A. 2013 Supp. 65-508 and 65-535; implementing K.S.A. 2013 Supp. 65-504, 65-505, 65-508, 65-516, and 65-535; effective, T-28-12-17-13, Dec. 17, 2013; effective March 28, 2014.)

28-4-1253. Background checks. (a) With each initial application or renewal application, each applicant or licensee shall submit a request to conduct a background check by the Kansas bureau of investigation and a background check by the Kansas department for children and families in order to comply with K.S.A. 65-516, and amendments thereto. Each request shall be submitted on a form provided by the department. Each request shall list the required information for each individual 10 years of age and older who will be residing, working, or volunteering in the facility.

(b) Each applicant, each permittee, and each licensee shall submit a request to the department to conduct a background check by the Kansas bureau of investigation and a background check by the Kansas department for children and families before each individual begins residing, working, or volunteering in the facility.

(c) A background check shall not be required for any resident admitted to a facility.

(d) A copy of each request for a background check shall be kept on file at the facility. (Authorized by K.S.A. 2013 Supp. 65-508; implementing K.S.A. 2013 Supp. 65-516; effective, T-28-12-17-13, Dec. 17, 2013; effective March 28, 2014.)

28-4-1254. Administration. (a) Each permittee and each licensee shall be responsible for the operation of the facility, including the following:

(1) Developing an organizational chart designating the lines of authority and ensuring that all staff members know which staff member is in charge at any time;

(2) developing and implementing administrative policies and procedures for the operation of the facility, which shall include sufficient staff members to supervise and provide services to residents;

(3) employing an administrator; and

(4) employing a clinical director.

(b) Each permittee and each licensee shall implement policies and procedures for the operation of the facility that shall include detailed descriptions of the roles and responsibilities for each staff member and each volunteer.

(c) Each permittee and each licensee shall ensure the confidentiality of each resident's information.

(d) Each permittee and each licensee shall ensure that the program, all services, and living units of the facility are separate from the children or youth in and the living units used by any other child care facility.

(e) Each permittee and each licensee shall ensure that each staff member and each volunteer is informed of and follows all written policies and procedures necessary to carry out that staff member's or volunteer's job duties.

(f) Each permittee and each licensee shall ensure that a copy of the regulations governing facilities is kept on the premises at all times. A copy of the regulations shall be made available to all staff members.

(g) Each licensee shall ensure that all contracts, agreements, policies, and procedures are reviewed annually and updated as needed. (Authorized by and implementing K.S.A. 2013 Supp. 65-508 and 65-535; effective, T-28-12-17-13, Dec. 17, 2013; effective March 28, 2014.)

28-4-1255. Staff member requirements.

(a) Staff members and volunteers. Each individual working or volunteering in a facility shall be qualified by temperament, emotional maturity, judg-

ment, and understanding of residents necessary to maintain the health, comfort, safety, and welfare of residents.

(b) Multiple duties. Each staff member performing duties of more than one position shall meet the minimum qualifications for each position held.

(c) Administrator.

(1) Each administrator shall have a bachelor's degree in social work, human development, psychology, education, nursing, counseling, or family studies or in a related field. The degree shall be from an accredited college or university with accreditation standards equivalent to those met by Kansas colleges and universities.

(2) Each administrator shall demonstrate knowledge of the principles and practices of administration and management.

(3) Each administrator shall have at least three years of supervisory experience within a child care facility providing treatment to children or youth.

(d) Clinical director. Each clinical director shall be licensed or approved by the Kansas behavioral sciences regulatory board, the Kansas board of nursing, or the Kansas board of healing arts to diagnose and treat mental and behavioral disorders.

(e) Substance abuse counselor. Each substance abuse counselor shall be responsible for the evaluation, assessment, and treatment of residents for substance abuse. The substance abuse counselor shall be licensed by the Kansas behavioral sciences regulatory board or the Kansas board of healing arts to evaluate, assess, and treat addictions or substance abuse.

(f) Case manager. Each case manager shall be licensed by the Kansas behavioral sciences regulatory board.

(g) Professional staff members. Each professional staff member shall maintain current licensure, certification, or registration for that staff member's profession.

(h) Direct care staff members. Each direct care staff member shall meet all of the following requirements:

(1) Be 21 years of age or older;

(2) have a high school diploma or equivalent; and

(3) have completed one of the following:

(A) A bachelor's degree from an accredited college or university and one year of experience supervising children or youth in a child care facility;

(B) 60 semester hours from an accredited college or university and two years of experience supervising children or youth in a child care facility; or

(C) four years of experience supervising children or youth in a child care facility.

(i) Auxiliary staff members. Each permittee and each licensee shall ensure that the following requirements are met for auxiliary staff members:

(1) Auxiliary staff members shall be available as needed for the operation of the facility and the provision of services to residents.

(2) No auxiliary staff member shall be included in meeting the minimum ratio of direct care staff members to residents. Direct care staff members shall maintain direct supervision of the residents.

(3) Each auxiliary staff member working at the facility for the purpose of observing facility entrances and exits shall meet the requirements of K.S.A. 2013 Supp. 65-535, and amendments thereto.

(4) Each auxiliary staff member working in food service shall demonstrate compliance with all of the following requirements through ongoing job performance:

(A) Knowledge of the nutritional needs of residents;

(B) understanding of quantity food preparation and service;

(C) sanitary food handling and storage methods;

(D) understanding of individual, cultural, and religious food preferences; and

(E) ability to work with the case manager in planning learning experiences for residents about nutrition.

(j) Volunteers. Each permittee and each licensee shall ensure that the following requirements are met for any volunteer who has direct contact with residents:

(1) There shall be a written plan for orientation, training, supervision, and tasks for each volunteer.

(2) Each volunteer shall submit to the administrator an application for volunteering at the facility.

(3) Each volunteer whose job description includes the provision of program services to residents shall meet the same requirements as those of a staff member in that position. No volunteer shall perform tasks for which the volunteer is not qualified or licensed.

(4) No volunteer shall be counted in the minimum ratio of direct care staff members to residents. Each volunteer shall be supervised at all times by a staff member.

(k) Staff member and volunteer training. Each permittee and each licensee shall assess the training needs of each staff member and each volunteer and shall provide orientation and in-service training. Documentation of the training shall be

kept in each staff member's and each volunteer's record and shall be accessible for review by the secretary or secretary's designee.

(1) Each staff member and each volunteer shall complete at least 10 clock-hours of orientation training within seven calendar days after the initial date of employment or volunteering. The orientation training shall include the following topics:

(A) Facility policies and procedures, including emergency procedures, behavior management, and discipline;

(B) individual job duties and responsibilities;

(C) confidentiality;

(D) security procedures;

(E) recognition of the signs and symptoms and the reporting of suspected child abuse and neglect;

(F) the signs and symptoms of infectious disease, infection control, and universal precautions;

(G) statutes and regulations governing facilities;

(H) the schedule of daily activities;

(I) principles of trauma-informed care;

(J) indicators of self-harming behaviors or suicidal tendencies; and

(K) care and supervision of residents.

(2) Each direct care staff member shall complete an additional 40 clock-hours of orientation training before assuming direct supervision and before being counted in the ratio of direct care staff members to residents. Each volunteer who has direct contact with residents shall complete the additional 40 clock-hours of training before providing services to residents. The additional training shall include the following topics:

(A) Crisis management;

(B) human trafficking and exploitation;

(C) indicators of self-harming behaviors or suicidal tendencies and knowledge of appropriate intervention measures;

(D) indicators of gang involvement;

(E) intervention techniques for problem or conflict resolution, diffusion of anger, and de-escalation methods;

(F) principles of trauma-informed care and trauma-specific intervention; and

(G) report writing and documentation methods.

(3) Each staff member shall complete at least 20 clock-hours of in-service training each year. In-service training topics shall be based on individual job duties and responsibilities, meet individual learning needs, and be designed to maintain the knowledge and skills needed to comply with facility policies and procedures and the regulations governing facilities.

(4) At least one staff member who is counted in the ratio of direct care staff members to residents and who has current certification in first aid and current certification in cardiopulmonary resuscitation shall be at the facility at all times.

(5) If nonprescription or prescription medication is administered to residents, each permittee and each licensee shall designate professional staff members or direct care staff members to administer the medication. Before administering any medication, each designated staff member shall receive training in medication administration approved by the secretary. (Authorized by and implementing K.S.A. 2013 Supp. 65-508 and 65-535; effective, T-28-12-17-13, Dec. 17, 2013; effective March 28, 2014.)

28-4-1256. Records. (a) Recordkeeping system. Each applicant, each permittee, and each licensee shall ensure that there is an organized recordkeeping system for the facility, which shall include the following:

(1) Provisions shall be made for the identification, security, confidentiality, control, retrieval, preservation, and retirement of all resident, staff member, volunteer, and facility records.

(2) All records shall be available at the facility for review by the department.

(b) Resident records.

(1) Each permittee and each licensee shall maintain an individual record for each resident, which shall include the following information:

(A) Documentation of the preadmission screening;

(B) the admissions form;

(C) verification of custody status of the resident;

(D) a record of the resident's personal possessions as specified in K.A.R. 28-4-1258;

(E) a health record that meets the requirements in K.A.R. 28-4-1259;

(F) a copy of each written report of any incidents involving the resident and specified in K.A.R. 28-4-1257 and K.A.R. 28-4-1264;

(G) documentation of the resident's receipt of the facility rule book; and

(H) the individualized plan of care.

(2) Provisions shall be made for the transfer of a resident's record upon release of the resident to another child care facility. The record shall precede the resident or accompany the resident to that child care facility. All information that cannot be transferred at the time of the release of the resident shall be transferred within 72 hours of the release of the resident.

(3) Information from a resident's record shall not be released without written permission from the court, the Kansas department for children and families, or the resident's parent or legal guardian.

(c) Staff member records. Each permittee and each licensee shall maintain an individual record for each staff member, which shall include the following information:

(1) The application for employment, including the staff member's qualifications, references, and dates of previous employment;

(2) a copy of each applicable current professional license, certificate, or registration;

(3) the staff member's current job responsibilities;

(4) a health record that meets the requirements in K.A.R. 28-4-1259(f), including a record of the results of each health examination and each tuberculosis test;

(5) a copy of a valid driver's license of a type appropriate for the vehicle being used, for each staff member who transports any resident;

(6) documentation of all orientation and inservice training required in K.A.R. 28-4-1255(k);

(7) documentation of training in medication administration if medication administration is included in the staff member's job duties;

(8) a copy of each grievance or incident report concerning the staff member, including documentation of the resolution of each report; and

(9) documentation that the staff member has read, understands, and agrees to all of the following:

(A) The requirements for mandatory reporting of suspected child abuse, neglect, and exploitation;

(B) all regulations governing facilities;

(C) the facility's policies and procedures that are applicable to the job responsibilities of the staff member; and

(D) the confidentiality of resident information.

(d) Volunteer records. Each permittee and each licensee shall maintain an individual record for each volunteer at the facility, which shall include the following information:

(1) The application for volunteering at the facility;

(2) the volunteer's responsibilities at the facility;

(3) a health record that meets the requirements in K.A.R. 28-4-1259(f), including a record of the results of each health examination and each tuberculosis test, for each volunteer in contact with residents;

(4) documentation of all orientation and inservice training required for volunteers in K.A.R. 28-4-1255(k);

(5) a copy of each grievance or incident report concerning the volunteer, including documentation of the resolution of each report; and

(6) documentation that the volunteer has read, understands, and agrees to all of the following:

(A) The requirements for mandatory reporting of suspected child abuse, neglect, and exploitation;

(B) all regulations governing facilities;

(C) the facility's policies and procedures that are applicable to the responsibilities of the volunteer; and

(D) the confidentiality of resident information.

(e) Facility records. Each applicant, each permittee, and each licensee shall ensure that the facility records are completed and maintained. These records shall include the following information:

(1) Documentation of the requests submitted to the department for background checks in order to meet the requirements of K.A.R. 28-4-1253;

(2) documentation of notification to the school district as specified in K.A.R. 28-4-1251(f);

(3) documentation of each approval granted by the secretary for each change, exception, or amendment;

(4) the facility's policies and procedures;

(5) all documentation specified in K.A.R. 28-4-1264 for emergency plans, fire and tornado drills, and written policies and procedures on the security and control of the residents;

(6) all documentation specified in K.A.R. 28-4-1264 for the inspection and the maintenance of security devices, including locking mechanisms and any delayed-exit mechanisms on doors;

(7) documentation of approval of any private water or sewage systems as specified in K.A.R. 28-4-1265;

(8) documentation of compliance with all applicable building codes, fire safety requirements, and zoning codes;

(9) all documentation specified in K.A.R. 28-4-1268 for transportation;

(10) documentation of vaccinations for any animal kept on the premises, as required by K.A.R. 28-4-1269(c); and

(11) a copy of each contract and each agreement. (Authorized by K.S.A. 2013 Supp. 65-508 and 65-535; implementing K.S.A. 65-507 and K.S.A. 2013 Supp. 65-508, 65-516, and 65-535; effective, T-28-12-17-13, Dec. 17, 2013; effective March 28, 2014.)

28-4-1257. Notification and reporting requirements. (a) Each permittee and each licensee shall ensure that notification of each of the following is submitted verbally or in writing upon discovery of the incident or event, but no later than 24 hours after the discovery:

(1) Each instance of suspected abuse or neglect of a resident shall be reported to the Kansas department for children and families and to law enforcement.

(2) Each incident resulting in the death of any resident shall be reported to the following:

(A) Law enforcement;

(B) the resident's parent or legal guardian;

(C) the resident's placing agent;

(D) the Kansas department for children and families; and

(E) the department.

(3) Each incident resulting in the death of a staff member or a volunteer while on duty at the facility shall be reported to the department and to any other entities in accord with the facility's policies.

(4) Each incident resulting in a serious injury to any resident, including burns, lacerations, bone fractures, substantial hematomas, and injuries to internal organs, shall be reported to the following:

(A) The parent or legal guardian of any resident involved in the incident;

(B) the placing agent of any resident involved in the incident;

(C) the Kansas department for children and families; and

(D) the department.

(5) Each incident of suspected sexual assault involving a resident as a victim or as a perpetrator shall be reported to the following:

(A) Law enforcement;

(B) the Kansas department for children and families;

(C) the resident's parent or legal guardian;

(D) the resident's placing agent; and

(E) the department.

(6) Each suicide attempt by a resident shall be reported to the following:

(A) The resident's parent or legal guardian;

(B) the resident's placing agent;

(C) the Kansas department for children and families; and

(D) the department.

(7) Each natural disaster shall be reported to the department.

(8) Each instance of work stoppage shall be reported to the department.

(9) Each incident that involves a riot or the taking of hostages shall be reported to the department.

(10) Each fire shall be reported to the department and to the state fire marshal.

(11) Each incident that involves any suspected illegal act committed by a resident while in the facility or by a staff member or a volunteer while on duty at the facility shall be reported to law enforcement and the department in accord with the facility's policies.

(12) If any resident, staff member, or volunteer contracts a reportable infectious or contagious disease specified in K.A.R. 28-1-2, the permittee or licensee shall ensure that a report is submitted to the local county health department within 24 hours, excluding weekends and holidays.

(b) Each permittee and each licensee shall complete a written report within five calendar days after the discovery of any incident or event identified in subsection (a). A copy of each written report shall be kept on file at the facility. (Authorized by and implementing K.S.A. 2013 Supp. 65-508 and 65-535; effective, T-28-12-17-13, Dec. 17, 2013; effective March 28, 2014.)

28-4-1258. Admission and release of residents. (a) Policies and procedures. Each permittee and each licensee shall implement policies and procedures for the admission and release of residents. These policies and procedures shall ensure that each individual is admitted unless at least one of the following conditions is met:

(1) The individual's placement is not authorized by the revised Kansas code for the care of children, K.S.A. 2013 Supp. 38-2201 et seq., or K.S.A. 2013 Supp. 65-535, and amendments thereto.

(2) The individual needs immediate medical care.

(3) Admission of the individual would cause the permittee or licensee to exceed the terms of the temporary permit or license.

(b) Authorization of admission. Each permittee and each licensee shall ensure that no individual is admitted to the facility unless the placement is authorized by the revised Kansas code for the care of children, K.S.A. 2013 Supp. 38-2201 et seq., and K.S.A. 2013 Supp. 65-535, and amendments thereto.

(c) Preadmission health screening. Each individual who shows evidence of being physically ill, injured, or under the influence of alcohol or drugs shall be assessed in accordance with the facility's policies and procedures to determine whether the individual needs immediate medical care.

(d) Admission procedures. Each permittee and each licensee shall ensure that the admission procedures include the following:

(1) Informing each resident, or the resident's legal guardian if the resident is unable to understand, of the purposes for which information is obtained and the manner in which the information will be used;

(2) completing an admission form, including verification of custody status and a life history of each resident;

(3) completing a health history checklist on a form approved by the department;

(4) completing an inventory that documents each resident's clothing and personal possessions;

(5) distributing personal hygiene items;

(6) providing for a shower and hair care;

(7) issuing clean, laundered clothing, if necessary; and

(8) assigning each resident to a sleeping room.

(e) Guardianship. No permittee, licensee, staff member, or volunteer shall accept permanent legal guardianship of a resident.

(f) Release procedures. Each permittee and each licensee shall ensure that the following procedures are followed when a resident is released from a facility:

(1) Procedures for the release of a resident shall include the following:

(A) Verification of the identification and the authority of the individual to whom the resident is being released;

(B) verification of the identity of the resident;

(C) transportation arrangements;

(D) instructions for forwarding mail; and

(E) return of personal property to the resident, including a receipt for all personal property, signed by the resident.

(2) Facility release forms shall be signed and dated by the individual to whom the resident is released and by the staff member releasing the resident. (Authorized by and implementing K.S.A. 2013 Supp. 65-508 and 65-535; effective, T-28-12-17-13, Dec. 17, 2013; effective March 28, 2014.)

28-4-1259. Health care. (a) Policies and procedures for resident health care. Each permittee and each licensee, in consultation with a physician, shall implement written policies and procedures that include provisions for the following:

(1) Completion of a health checklist and review for each resident upon admission, including the following:

(A) Current physical health status, including oral health;

(B) all allergies, including medication, food, and plant;

(C) all current pain, including cause, onset, duration, and location;

(D) preexisting medical conditions;

(E) current mood and affect;

(F) history and indicators of self-harming behaviors or suicidal tendencies;

(G) all infectious or contagious diseases;

(H) documentation of current immunizations specified in K.A.R. 28-1-20 or documentation of an exemption for medical or religious reasons pursuant to K.S.A. 65-508, and amendments thereto;

(I) all drug or alcohol use;

(J) all current medications;

(K) all physical disabilities;

(L) all sexually transmitted diseases; and

(M) if a female resident, menstrual history and any history of pregnancy;

(2) follow-up health care, including a health assessment and referrals for any concerns identified in the health checklist and review;

(3) if medically indicated, all required chronic care, convalescent care, and preventive care, including immunizations;

(4) care for minor illness, including the use and administration of prescription and nonprescription drugs;

(5) care for residents under the influence of alcohol or other drugs;

(6) infection-control measures and universal precautions to prevent the spread of blood-borne infectious diseases, including medically indicated isolation; and

(7) maternity care as required by K.A.R. 28-4-279.

(b) Physical health of residents. Each permittee and each licensee shall ensure that emergency and ongoing medical and dental care is obtained for each resident by providing timely access to basic, emergency, and specialized medical, mental health, and dental care and treatment services provided by qualified providers.

(1) Each permittee and each licensee shall ensure that a health checklist is completed for each resident at the time of admission by the staff member who admits the resident. The health checklist shall serve as a guide to determine if a resident is in need of medical or dental care and to determine if the resident is using any prescribed medications.

(2) Each permittee and each licensee shall ensure that a licensed physician, a physician's assistant operating under a written protocol as authorized by a responsible physician, or an APRN operating under a written protocol as authorized by a responsible physician and operating under the APRN's scope of practice is contacted for any resident who is taking a prescribed medication at the time of admission, to assess the need for continuation of the medication.

(3) Each change of prescription or directions for administering a prescription medication shall be ordered by the authorized medical practitioner with documentation placed in the resident's record. Prescription medications shall be administered only to the designated resident as ordered by the authorized medical practitioner.

(4) Nonprescription and prescription medication shall be administered only by a designated staff member who has received training on medication administration approved by the secretary. Each administration of medication shall be documented in the resident's record with the following information:

(A) The name of the staff member who administered the medication;

(B) the date and time the medication was given;

(C) each change in the resident's behavior, response to the medication, or adverse reaction;

(D) each alteration in the administration of the medication from the instructions on the medication label and documentation of the alteration; and

(E) each missed dose of medication and documentation of the reason the dose was missed.

(5) Within 72 hours of each resident's admission, a licensed physician, a physician's assistant operating under a written protocol as authorized by a responsible physician, an APRN, or a nurse approved to conduct health assessments shall review the health checklist. Based upon health indicators derived from the checklist, the reviewing physician, physician's assistant, APRN, or nurse shall conduct a health assessment.

(6) Each permittee and each licensee shall ensure that a licensed physician, a physician's assistant operating under a written protocol as authorized by the responsible physician, or an APRN operating under a written protocol as authorized by a responsible physician and operating within the APRN's scope of practice is contacted for each resident who has acute symptoms of illness or who has a chronic illness.

(7) Each permittee and each licensee shall ensure that the following procedures are followed for providing tuberculosis tests for residents:

(A) Each resident shall receive a tuberculosis test unless the resident has had a tuberculosis test within the last 12 months.

(B) A chest X-ray shall be taken of each resident who has a positive tuberculosis test or a history of a positive tuberculosis test, unless a chest X-ray was completed within the 12 months before the current admission to the facility.

(C) The results of the tuberculosis test, X-rays, and treatment shall be recorded in the resident's record, and the county health department shall be kept informed of the results.

(D) Compliance with the department's tuberculosis prevention and control program shall be followed for the following:

(i) Tuberculosis tests;

(ii) treatment; and

(iii) a resident's exposure to active tuberculosis disease.

(8) Each permittee and each licensee shall ensure that the use of tobacco in any form by any resident while in care is prohibited.

(c) Emergency medical treatment. Each permittee and each licensee shall ensure that the following requirements are met for the emergency medical treatment of residents:

(1) The resident's medical record and health assessment forms shall be taken to the emergency room with the resident.

(2) A staff member shall accompany the resident to emergency care and shall remain with the resident while the emergency care is being provided or until the resident is admitted. This arrangement shall not compromise the direct supervision of the other residents in the facility.

(d) Oral health of residents. Each permittee and each licensee shall ensure that the following requirements are met for the oral health of residents:

(1) Dental care shall be available for all residents.

(2) Each resident who has not had a dental examination within the 12 months before admission to the facility shall have a dental examination no later than 60 calendar days after admission.

(3) Each resident shall receive emergency dental care as needed.

(4) A plan shall be developed and implemented for oral health education and staff supervision of residents in the practice of good oral hygiene.

(e) Personal health and hygiene of residents.

Each permittee and each licensee shall ensure that the following requirements are met for the personal health and hygiene of the residents:

(1) Each resident shall have access to drinking water, a lavatory, and a toilet.

(2) Each resident shall be given the opportunity to bathe upon admission and daily.

(3) Each resident shall be provided with toothpaste and an individual toothbrush.

(4) Each resident shall be given the opportunity to brush that resident's teeth after each meal.

(5) Opportunities shall be available to each resident for daily shaving and haircuts as needed.

(6) Each resident's washable clothing shall be changed and laundered at least twice a week. Clean underwear and socks shall be available to each resident on a daily basis.

(7) Each female resident shall be provided personal hygiene supplies for use during that resident's menstrual cycle.

(8) Clean, individual washcloths and bath towels shall be issued to each resident at least twice each week.

(9) Each resident shall be allowed to have at least eight hours of sleep each night.

(f) Personal health of staff members and volunteers.

(1) Each staff member and each volunteer shall meet the following requirements:

(A) Be free from all infectious or contagious disease requiring isolation or quarantine as specified in K.A.R. 28-1-6;

(B) Be free of any physical, mental, or emotional health condition that adversely affects the individual's ability to fulfill the responsibilities listed in the individual's job description and to protect the health, safety, and welfare of the residents; and

(C) be free from impaired ability due to the use of alcohol, prescription or nonprescription drugs, or other chemicals.

(2) Each staff member and each volunteer who has contact with any resident or who is involved in food preparation or service shall have received a health assessment within one year before employment. This assessment shall be conducted by a licensed physician, a physician's assistant operating under a written protocol as authorized by a responsible physician, or a nurse authorized to conduct these assessments.

(3) The results of each health assessment shall be recorded on forms provided by the department and shall be kept in the staff member's or volunteer's record.

(4) A health assessment record may be transferred from a previous place of employment if the assessment occurred within one year before the staff member's employment at the facility and if the assessment was recorded on the form provided by the department.

(5) The initial health examination of each staff member and each volunteer shall include a tuberculosis test. If there is a positive tuberculosis test or a history of a previous positive tuberculosis test, a chest X-ray shall be required unless there is documentation of a normal chest X-ray within the last 12 months. Proof of proper treatment, according to the department's tuberculosis prevention and control program's direction, shall be required. Documentation of each tuberculosis test, X-ray, and treatment results shall be kept on file in the individual's health record.

(A) Compliance with the department's tuberculosis prevention and control program shall be required following each exposure to active tuberculosis disease. The results of tuberculosis tests, X-rays, and treatment shall be recorded in the individual's health record.

(B) Each volunteer shall present documentation showing no active tuberculosis before serving in the facility.

(6) If a staff member experiences a significant change in physical, mental, or emotional health, including showing any indication of substance abuse, an assessment of the staff member's current health status may be required by the permittee, the licensee, or the secretary. A licensed health care provider who is qualified to diagnose and treat the condition shall conduct the health assessment. A written report of the assessment shall be kept in the staff member's record and shall be submitted to the secretary on request.

(g) Each permittee and each licensee shall ensure that tobacco products are not used inside the facility. Tobacco products shall not be used by staff members or volunteers in the presence of residents. (Authorized by K.S.A. 2013 Supp. 65-508 and 65-535; implementing K.S.A. 65-507, K.S.A. 2013 Supp. 65-508, and K.S.A. 2013 Supp. 65-535; effective, T-28-12-17-13, Dec. 17, 2013; effective March 28, 2014.)

28-4-1260. Case management. Each permittee and each licensee shall ensure that case management services are provided for each resident.

(a) Each permittee and each licensee shall ensure that a case manager is assigned to provide or

coordinate the case management services for each resident.

(b) Each permittee and each licensee shall ensure that a plan of care is developed and implemented for each resident with input, as appropriate, of the resident, the placing agent, the resident's parent or legal guardian, and staff members. The plan shall list goals for the resident while at the facility and upon release and shall identify the services needed by the resident to meet the goals. (Authorized by and implementing K.S.A. 2013 Supp. 65-508 and 65-535; effective, T-28-12-17-13, Dec. 17, 2013; effective March 28, 2014.)

28-4-1261. Program. (a) Policies and procedures. Each permittee and each licensee shall implement policies and procedures for the program.

(b) Daily routine. Each permittee and each licensee shall maintain a written schedule and daily routine for all residents during all waking hours, which shall include the following:

- (1) Meals;
- (2) personal hygiene;
- (3) physical exercise;
- (4) recreation;
- (5) mental health services; and
- (6) education.

(c) Rest and sleep. Each permittee and each licensee shall ensure that the daily routine includes time for rest and sleep adequate for each resident.

(d) Classroom instruction. Each permittee and each licensee shall ensure that classroom instruction is provided to each resident on-site by teachers holding appropriate licensure from the Kansas department of education.

(1) The staff members shall coordinate education services with the local school district.

(2) The staff members shall provide a regular schedule of instruction and related educational services for each resident.

(3) Direct care staff members shall be stationed in proximity to the classroom, with frequent, direct, physical observation of the classroom activity at least every 15 minutes, to provide immediate support to the teacher.

(e) Library services.

(1) Reading and other library materials shall be provided to each resident.

(2) Library materials shall be appropriate for various levels of competency.

(3) Reading material shall reflect a variety of interests.

(f) Recreation.

(1) Each facility shall have indoor and outdoor equipment and recreational areas where security and visual supervision can be easily maintained. Unless restricted for health reasons, each resident shall be allowed to engage in supervised indoor or outdoor recreation on a daily basis.

(2) Art and craft supplies, books, current magazines, games, and other indoor recreational materials shall be provided for leisure time activities.

(g) Work. Each permittee and each licensee shall ensure that the following requirements are met when residents participate in work activities:

(1) Work assignments shall not be used as a substitute for recreation.

(2) Residents shall be prohibited from performing any of the following duties:

(A) Providing personal services for the staff members;

(B) cleaning or maintaining areas away from the facility;

(C) replacing staff members; or

(D) engaging in any work classified as hazardous by the Kansas department of labor's regulations governing child labor.

(h) Plan of care. Each permittee and each licensee shall ensure that the individualized plan of care for each resident is reviewed and updated based on the needs of the resident. In addition to the services required in subsections (b) through (g), the plan of care shall include the following:

(1) Mental health, substance abuse, and life skills training based on individual needs of the resident; and

(2) any restrictions on visitation, communication with others, or the resident's movement or activities that are required to ensure the health and safety of the resident or other residents or the security of the facility.

(i) Mental health services. Each permittee and each licensee shall ensure that mental health services are provided as needed to each resident, by a clinical director and appropriate staff members.

(j) Substance abuse screening and treatment. Each permittee and each licensee shall ensure that substance abuse screening and treatment services are provided as needed to each resident, by a substance abuse counselor and appropriate staff members.

(k) Life skills training. Each permittee and each licensee shall ensure that life skills training is provided as needed to each resident, by designated

staff members. The resident's plan of care shall include the following:

(1) Life skills training appropriate to the age and developmental level of the resident, including daily living tasks, money management, and self-care;

(2) direct services, including assistance with career planning and housing; and

(3) referrals for community resources, including educational opportunities.

(l) Visitation and communication. Each permittee and each licensee shall implement policies and procedures for visitation and communication by residents with individuals outside of the facility. The policies and procedures shall include the following:

(1) Private telephone conversations and visitations shall be allowed, except when a need to protect the resident is indicated as documented in the resident's individual plan of care or as specified by court order.

(2) No resident shall be denied the right to contact an attorney or court counselor. No court counselor or attorney shall be refused visitation with a resident to whom the counselor or attorney is assigned.

(3) No staff member shall open or censor mail or written communication, unless there is reason to believe that one of the following conditions exists:

(A) The mail or communication contains items or goods that are not permitted in the facility.

(B) The security of the facility is at risk.

(C) The safety or security of the resident is at risk.

(4) The conditions under which mail or communication shall be opened by staff in the presence of the resident shall be specified.

(5) If mail or communication is to be censored, the resident shall be informed in advance.

(6) The censorship of mail or written communication shall be included in the resident's plan of care.

(7) The reason for each occasion of censorship shall be documented and kept in the resident's record.

(8) Writing materials and postage for the purposes of correspondence shall be available to each resident. Materials and postage for at least two letters each week shall be provided for each resident.

(9) First-class letters and packages shall be forwarded after the transfer or release of each resident. (Authorized by and implementing K.S.A. 2013 Supp. 65-508 and 65-535; effective, T-28-12-17-13, Dec. 17, 2013; effective March 28, 2014.)

28-4-1262. Behavior management. (a) Policies and procedures. Each permittee and each licensee shall implement policies and procedures for the behavior management of residents.

(1) Written policies shall provide for a behavior management system that assists residents to develop inner control and manage their own behavior in a socially acceptable manner. Procedures and practice shall include expectations that are age-appropriate and allow for special abilities and limitations.

(2) Written rules of conduct shall define expected behaviors.

(A) A rule book describing the expected behaviors shall be given to each resident and each direct care staff member.

(B) An acknowledgment of receipt of the rule book shall be signed by each resident and kept in each resident's file.

(C) If a literacy or language problem prevents a resident from understanding the rule book, a staff member or translator shall assist the resident in understanding the rules.

(3) Each staff member and each volunteer who has direct contact with residents shall be informed of the rules of resident conduct, the rationale for the rules, and the intervention options available for problem or conflict resolution, diffusion of anger, and de-escalation methods.

(b) Prohibited punishment. Each permittee and each licensee shall ensure that each resident is protected against all forms of neglect, exploitation, and degrading forms of discipline.

(1) No staff member or volunteer shall use any of the following means or methods of punishment of a resident:

(A) Punishment that is humiliating, frightening, or physically harmful to the resident;

(B) corporal punishment, including hitting with the hand or any object, yanking arms or pulling hair, excessive exercise, exposure to extreme temperatures, and any other measure that produces physical pain or threatens the resident's health or safety;

(C) restricting movement by tying or binding;

(D) confining a resident in a closet, box, or locked area;

(E) forcing or withholding food, rest, or toilet use;

(F) mental and emotional cruelty, including verbal abuse, derogatory remarks about a resident or the resident's family, statements intended to shame, threaten, humiliate, or frighten the

resident, and threats to expel a resident from the facility; or

(G) placing soap, or any other substance that stings, burns, or has a bitter taste, in the resident's mouth or on the tongue or any other part of the resident's body.

(2) No staff member or volunteer shall make sexual remarks or advances toward, or engage in physical intimacies or sexual activities with, any resident.

(3) No staff member or volunteer shall exercise undue influence or duress over any resident, including promoting sales of services or goods, in a manner that would exploit the resident for the purpose of financial gain, personal gratification, or advantage of the staff member, volunteer, or a third party.

(c) Medications, remedies, and drugs. Each staff member and each volunteer shall be prohibited from using medications, herbal or folk remedies, or drugs to control or manage any resident's behavior, except as prescribed by a licensed physician, a physician's assistant operating under a written protocol as authorized by a responsible physician, or an APRN operating under a written protocol as authorized by a responsible physician and operating under the APRN's scope of practice.

(d) Publicity or promotional activities. No resident shall be forced to participate in publicity or promotional activities. (Authorized by and implementing K.S.A. 2013 Supp. 65-508 and 65-535; effective, T-28-12-17-13, Dec. 17, 2013; effective March 28, 2014.)

28-4-1263. Staff member schedule; supervision of residents. (a) Staff member schedule.

(1) Each permittee and each licensee shall develop and implement a written daily staff member schedule. The schedule shall meet the requirements for the staffing ratios of direct care staff members to residents at all times.

(A) The schedule shall provide for sufficient staff members on the living unit to provide direct supervision to the residents at all times and to provide for each resident's physical, social, emotional, and educational needs.

(B) The schedule shall provide for a minimum staffing ratio of one direct care staff member on active duty to four residents during waking hours and one direct care staff member on active duty to seven residents during sleeping hours.

(C) At least one direct care staff member of the same sex as the residents shall be present, awake,

and available to the residents at all times. If both male and female residents are present in the facility, at least one male and one female direct care staff member shall be present, awake, and available.

(2) At no time shall there be fewer than two direct care staff members present on the living unit when one or more residents are in care.

(3) Alternate qualified direct care staff members shall be provided for the relief of the scheduled direct care staff members on a one-to-one basis and in compliance with the staffing ratios of direct care staff members to residents.

(4) Only direct care staff members shall be counted in the required staffing ratio of direct care staff members to residents.

(b) Supervision of residents.

(1) No resident shall be left unsupervised.

(2) Electronic supervision shall not replace the ratio requirements.

(3) Staff members shall know the location of each resident at all times.

(c) Movements and activities of residents. Each permittee and each licensee shall implement policies and procedures for determining when the movements and activities of a resident could, for treatment purposes, be restricted or subject to control through increased direct supervision. (Authorized by and implementing K.S.A. 2013 Supp. 65-508 and 65-535; effective, T-28-12-17-13, Dec. 17, 2013; effective March 28, 2014.)

28-4-1264. Emergency plan; safety, security, and control. (a) Emergency plan. Each permittee and each licensee shall implement an emergency plan to provide for the safety of residents, staff members, volunteers, and visitors in emergencies.

(1) The emergency plan shall include the following information:

(A) Input from local emergency response entities, including the fire departments and law enforcement;

(B) the types of emergencies likely to occur in the facility or near the facility, including fire, weather-related events, missing or runaway residents, chemical releases, utility failure, intruders, and an unscheduled closing;

(C) the types of emergencies that could require evacuating the facility and the types that could require the residents, staff members, volunteers, and visitors to shelter in place;

(D) participation in community practice drills for emergencies;

(E) procedures to be followed by staff members in each type of emergency;

(F) designation of a staff member to be responsible for each of the following:

(i) Communicating with emergency response resources, including the fire department and law enforcement;

(ii) ensuring that all residents, staff members, volunteers, and visitors are accounted for;

(iii) taking the emergency contact numbers and a cell phone; and

(iv) contacting the parent, legal guardian, or placing agent of each resident;

(G) the location and means of reaching a shelter-in-place area in the facility, including safe movement of any resident, staff member, volunteer, or visitor with special health care or mobility needs; and

(H) the location and means of reaching an emergency site if evacuating the facility, including the following:

(i) Safely transporting the residents, including residents with special health care or mobility needs;

(ii) transporting emergency supplies, including water, food, clothing, blankets, and health care supplies; and

(iii) obtaining emergency medical care.

(2) The emergency plan shall be kept on file in the facility.

(3) Each staff member shall be informed of and shall follow the emergency plan.

(4) The emergency plan shall be reviewed annually and updated as needed.

(5) The location and means of reaching the shelter-in-place area or an emergency site if evacuating the facility shall be posted in a conspicuous place in the facility.

(b) Fire drills. Each permittee and each licensee shall ensure that a fire drill is conducted at least quarterly and is scheduled to allow participation by each resident. The date and time of each drill shall be recorded and kept on file at the facility for one calendar year.

(c) Tornado drills. Each permittee and each licensee shall ensure that a tornado drill is conducted at least quarterly and is scheduled to allow participation by each resident. The date and time of each drill shall be recorded and kept on file at the facility for one calendar year.

(d) Facility security and control of residents. Each permittee and each licensee shall implement policies and procedures that include the use of a combination of direct supervision, inspection, and

accountability to promote safe and orderly operations. The policies and procedures shall be developed with input from local law enforcement and shall include all of the following requirements:

(1) Written operational shift assignments shall state the duties and responsibilities for each assigned staff member.

(2) Supervisory staff shall maintain a permanent log and prepare shift reports that record routine and emergency situations.

(3) All security devices, including locking mechanisms on doors and any delayed-exit mechanisms on doors, shall have current written approval from the state fire marshal and shall be regularly inspected and maintained, with any corrective action completed as necessary and recorded.

(4) The use of mace, pepper spray, and other chemical agents shall be prohibited.

(5) No resident shall have access to any weapons.

(6) Provisions shall be made for the control and use of keys, tools, medical supplies, and culinary equipment.

(7) No resident or group of residents shall exercise control or authority over another resident, have access to the records of another resident, or have access to or the use of keys that control security.

(8) Provisions shall be made for handling run-aways and unauthorized absences of residents.

(9) Provisions shall be made for safety and security precautions pertaining to any vehicles used to transport residents.

(10) Provisions shall be made for the prosecution of any illegal act committed while the resident is in care.

(11) Provisions shall be made for documentation of all incidents, including riots and the taking of hostages.

(A) A written report of each incident shall be submitted to the administrator no later than the end of the shift during which the incident occurred. A copy of each report shall be kept in the record of each resident involved in the incident.

(B) A report of each incident shall be made as required in K.A.R. 28-4-1257.

(12) Provisions shall be made for the control of prohibited items and goods, including the screening and searches of residents and visitors and searches of rooms, spaces, and belongings.

(13) Requirements shall be included for 24-hour-a-day observation of all facility entrances and exits by an auxiliary staff member.

(e) Storage and use of hazardous substances and unsafe items. Each permittee and each licensee

shall ensure that the following requirements are met for storage and use of hazardous substances and unsafe items:

(1) No resident shall have unsupervised access to poisons, hazardous substances, or flammable materials. These items shall be kept in locked storage when not in use.

(2) Provisions shall be made for the safe and sanitary storage and distribution of personal care and hygiene items. The following items shall be stored in an area that is either locked or under the control of staff members:

(A) Aerosols;

(B) alcohol-based products;

(C) any products in glass containers; and

(D) razors, blades, and any other sharp items.

(3) Policies and procedures shall be developed and implemented for the safe storage and disposal of prescription and nonprescription medications.

(A) All prescription and nonprescription medications shall be stored in a locked cabinet located in a designated area accessible to and supervised by only staff members.

(B) All refrigerated medications shall be stored under all food items in a locked refrigerator, in a refrigerator in a locked room, or in a locked medicine box in a refrigerator.

(C) Medications taken internally shall be kept separate from other medications.

(D) All unused medications shall be accounted for and disposed of in a safe manner, including being returned to the pharmacy, transferred with the resident, or safely discarded.

(4) Each facility shall have first-aid supplies, which shall be stored in a locked cabinet located in a designated area accessible to and supervised by only staff members. First-aid supplies shall include the following supplies:

(A) Assorted adhesive strip bandages;

(B) adhesive tape;

(C) a roll of gauze;

(D) scissors;

(E) a package of gauze squares;

(F) liquid soap;

(G) an elastic bandage;

(H) tweezers;

(I) rubbing alcohol; and

(J) disposable nonporous gloves in assorted sizes. (Authorized by and implementing K.S.A. 2013 Supp. 65-508 and 65-535; effective, T-28-12-17-13, Dec. 17, 2013; effective March 28, 2014.)

28-4-1265. Environmental requirements.**(a) General building requirements.**

(1) Each applicant, each permittee, and each licensee shall ensure that the facility is connected to public water and sewage systems, where available. If public water and sewage systems are not available, each applicant shall obtain approval for any private water and sewage systems by the health authorities having jurisdiction over private water and sewage systems where the facility is located.

(2) A licensed architect shall be responsible for the plans for any newly constructed building or for any major addition or major alteration to an existing building.

(A) For a new building, preliminary plans and outline specifications, including plot plans, shall be submitted to the department for review before beginning the final working drawings and specifications. Each applicant, each permittee, and each licensee shall submit the final working drawings, construction specifications, and plot plans to the department for review and written approval before the letting of contracts.

(B) For an addition or alteration to an existing building, each applicant, each permittee, and each licensee shall submit a written statement defining the proposed use of the construction and detailing the plans and specifications to the department for review and written approval before beginning construction.

(C) If construction is not begun within one year of submitting a proposal for a new building or an addition or alteration to an existing building, each licensee shall resubmit the plans and proposal to the department before proposed construction begins.

(b) Location and grounds requirements. Each permittee and each licensee shall ensure that the following requirements are met for the location and grounds of the facility:

(1) Community resources, including health services, police protection, and fire protection from an organized fire department, shall be available.

(2) There shall be at least 100 square feet of outside activity space available for each resident allowed to utilize each outdoor area at any one time.

(3) The outside activity area shall be free of physical hazards.

(4) Residents of the facility shall not share space with another child care facility for any indoor or outdoor activities.

(c) Swimming pools. Each permittee and each licensee shall ensure that the following requirements are met if a swimming pool is located on the premises:

(1) The pool shall be constructed, maintained, and used in a manner that safeguards the lives and health of the residents.

(2) Legible safety rules shall be posted for the use of a swimming pool in a conspicuous location. If the pool is available for use, each permittee and each licensee shall read and review the safety rules weekly with each resident.

(3) An individual with a lifesaving certificate shall be in attendance when residents are using a swimming pool.

(4) Each inground swimming pool shall be enclosed by a fence at least five feet high. Each gate in the fence shall be kept closed and shall be self-locking. The wall of a building containing a window designed to open or a door shall not be used in place of any side of the fence.

(5) Each aboveground swimming pool shall be at least four feet high or shall be enclosed by a fence at least five feet high with a gate that is kept closed and is self-locking. Steps shall be removed and stored away from the pool when the pool is not in use. Each aboveground pool with a deck or berm that provides a ground-level entry on any side shall be treated as an in-ground pool.

(6) Sensors shall not be used in place of a fence.

(7) The water shall be maintained between pH 7.2 and pH 7.8. The water shall be disinfected by free available chlorine between 1.0 parts per million and 3.0 parts per million, by bromine between 1.0 parts per million and 6.0 parts per million, or by an equivalent agent approved by the local health department.

(8) If a stabilized chlorine compound is used, the pH shall be maintained between 7.2 and 7.7 and the free available chlorine residual shall be at least 1.50 parts per million.

(9) The pool shall be cleaned and the chlorine or equivalent disinfectant level and pH level shall be tested every two hours during periods of use.

(10) The water temperatures shall be maintained at no less than 82 degrees Fahrenheit and no more than 88 degrees Fahrenheit while the pool is in use.

(11) Each swimming pool more than six feet in width, length, or diameter shall be equipped with either a ring buoy and rope or a shepherd's hook. The equipment shall be of sufficient length to reach the center of the pool from each edge of the pool.

(d) Structural requirements and use of space. Each permittee and each licensee shall ensure that the facility design, structure, interior and exterior environment, and furnishings promote a safe, comfortable, and therapeutic environment for the residents.

(1) Each facility shall be accessible to and usable by individuals with disabilities.

(2) Each facility's structural design shall facilitate personal contact and interaction between staff members and residents.

(3) Each sleeping room shall meet the following requirements:

(A) Each room shall be assigned to and occupied by only one resident.

(B) No resident's room shall be in a basement.

(C) The minimum square footage of floor space shall be 80 square feet. At least one dimension of the usable floor space unencumbered by furnishings or fixtures shall be at least seven feet.

(D) The minimum ceiling height shall be seven feet eight inches over at least 90 percent of the room area.

(E) An even temperature of between 68 degrees Fahrenheit and 78 degrees Fahrenheit shall be maintained, with an air exchange of at least four times each hour.

(F) Each sleeping room shall have a source of natural light.

(G) Access to a drinking water source and toilet facilities shall be available 24 hours a day.

(H) A separate bed with a level, flat mattress in good condition shall be provided for each resident. All beds shall be above the floor level.

(I) Clean bedding, adequate for the season, shall be provided for each resident. Bed linen shall be changed at least once a week or, if soiled, more frequently.

(4) Adequate space for study and recreation shall be provided.

(5) Each living unit shall contain the following:

(A) Furnishings that provide sufficient seating for the maximum number of residents expected to use the area at any one time;

(B) writing surfaces that provide sufficient space for the maximum number of residents expected to use the area at any one time; and

(C) furnishings that are consistent with the needs of the residents.

(6) Each facility shall have adequate central storage for household supplies, bedding, linen, and recreational equipment.

(7) If a facility has one or more dayrooms, each

dayroom shall provide space for a variety of resident activities. Dayrooms shall be situated immediately adjacent to the residents' sleeping rooms, but separated from the sleeping rooms by a floor-to-ceiling wall. Each dayroom shall provide at least 35 square feet for each resident, exclusive of lavatories, showers, and toilets, for the maximum number of residents expected to use the dayroom area at any one time.

(8) Each room used for sports and other physical activities shall provide floor space equivalent to at least 100 square feet for each resident utilizing the room for those purposes at any one time.

(9) Sufficient space shall be provided for visitation between residents and visitors. The facility shall have space for the screening and search of residents and visitors, if screening and search are included in the facility's policies and procedures. Private space shall be available for searches as needed. Storage space shall be provided for the secure storage of visitors' coats, handbags, and other personal items not allowed into the visitation area.

(10) A working telephone shall be accessible to staff members in all areas of the building. Emergency numbers, including those for the fire department, the police, a hospital, a physician, the poison control center, and an ambulance, shall be posted by each telephone.

(11) A service sink and a locked storage area for cleaning supplies shall be provided in a room or closet that is well ventilated and separate from kitchen and living areas.

(e) Bathrooms and drinking water. Each permittee and each licensee shall ensure that the following requirements are met for bathrooms and drinking water at the facility:

(1) For each eight or fewer residents of each sex, at least one toilet, one lavatory, and either a bathtub or a shower shall be provided. All toilets shall be above floor level.

(2) Each bathroom shall be ventilated to the outdoors by means of either a window or a mechanical ventilating system.

(3) Toilet and bathing accommodations and drinking water shall be in a location accessible to sleeping rooms and living and recreation rooms.

(4) Drinking water and at least one bathroom shall be accessible to the reception and admission areas.

(5) Cold water and hot water not exceeding 120 degrees Fahrenheit shall be supplied to lavatories, bathtubs, and showers.

(6) Liquid soap, toilet paper, and paper towels shall be available in all bathrooms.

(f) Building maintenance standards. Each permittee and each licensee shall ensure that the following requirements are met for building maintenance of the facility:

(1) Each building shall be clean at all times and free from vermin infestation.

(2) The walls shall be smooth, easily cleanable, and sound. Lead-free paint shall be used on all painted surfaces.

(3) The floors and walking surfaces shall be kept free of hazardous substances at all times.

(4) The floors shall not be slippery or cracked.

(5) Each rug or carpet used as a floor covering shall be slip-resistant and free from tripping hazards. A floor covering, paint, or sealant shall be required over concrete floors for all buildings used by the residents.

(6) All bare floors shall be swept and mopped daily.

(7) A schedule for cleaning each building shall be established and maintained.

(8) Washing aids, including brushes, dish mops, and other hand aids used in dishwashing activities, shall be clean and used for no other purpose.

(9) Mops and other cleaning tools shall be cleaned and dried after each use and shall be hung on racks in a well-ventilated place.

(10) Pesticides and any other poisons shall be used in accordance with the product instructions. These substances shall be stored in a locked area.

(11) Toilets, lavatories, sinks, and other such accommodations in the living areas shall be cleaned each day. (Authorized by and implementing K.S.A. 2013 Supp. 65-508 and 65-535; effective, T-28-12-17-13, Dec. 17, 2013; effective March 28, 2014.)

28-4-1266. Food services. Each permittee and each licensee shall ensure that food preparation, service, safety, and nutrition meet the requirements of this regulation. For purposes of this regulation, "food" shall include beverages.

(a) Sanitary practices. Each individual engaged in food preparation and food service shall use sanitary methods of food handling, food service, and storage.

(1) Only authorized individuals shall be in the food preparation area.

(2) Each individual who has any symptoms of an illness, including fever, vomiting, and diarrhea, shall be excluded from the food preparation area and shall remain excluded from the food

preparation area until the individual has been asymptomatic for at least 24 hours or provides the administrator with written documentation from a health care provider stating that the symptoms are from a noninfectious condition.

(3) Each individual who contracts any infectious or contagious disease specified in K.A.R. 28-1-6 shall be excluded from the food preparation area and shall remain excluded from the food preparation area until the isolation period required for that disease is over or until the individual provides the administrator with written documentation from a health care provider that the individual is no longer a threat to the health and safety of others when preparing or handling food.

(4) Each individual with an open cut or abrasion on the hand or forearm or with a skin sore shall cover the sore, cut, or abrasion with a bandage before handling or serving food.

(5) The hair of each individual shall be restrained when the individual is handling food.

(6) Each individual handling or serving food shall comply with both of the following requirements for handwashing:

(A) Each individual shall wash that individual's hands and exposed portions of the individual's arms before working with food, after using the toilet, and as often as necessary to keep the individual's hands clean and to minimize the risk of contamination.

(B) Each individual shall use an individual towel, disposable paper towels, or an air dryer to dry that individual's hands.

(7) Each individual preparing or handling food shall minimize bare hand and bare arm contact with exposed food that is not in a ready-to-eat form.

(8) Except when washing fruits and vegetables, no individual handling or serving food may contact exposed, ready-to-eat food with the individual's bare hands.

(9) Each individual shall use single-use gloves, food-grade tissue paper, dispensing equipment, or utensils, including spatulas and tongs, when handling or serving exposed, ready-to-eat food.

(b) Nutrition.

(1) The meals and snacks shall meet the nutritional needs of the residents. The meals and snacks shall include a variety of healthful foods, including fresh fruits, fresh vegetables, whole grains, lean meats, and low-fat dairy products. A sufficient quantity of food shall be prepared for each meal to allow each resident second portions of bread and milk and either vegetables or fruit.

(2) Special diets shall be provided for residents for either of the following reasons:

- (A) Medical indication; or
- (B) accommodation of religious practice.

(3) Each meal shall be planned and the menu shall be posted at least one week in advance. A copy of the menu of each meal served for the preceding month shall be kept on file and available for inspection.

(c) Food service and preparation areas. If food is prepared on the facility premises, the food preparation area shall be separate from the eating area, activity area, laundry area, and bathrooms and shall not be used as a passageway during the hours of food preparation and cleanup.

(1) All surfaces used for food preparation and tables used for eating shall be made of smooth, nonporous material.

(2) Before and after each use, all food preparation surfaces shall be cleaned with soapy water and sanitized by use of a solution of one ounce of bleach to one gallon of water or a sanitizing solution used in accordance with the manufacturer's instructions.

(3) Before and after each use, the tables used for eating shall be cleaned by washing with soapy water.

(4) All floors shall be swept daily and mopped when spills occur.

(5) Garbage shall be disposed of in a garbage disposal or in a covered container. If a container is used, the garbage shall be removed at the end of each day or more often as needed to prevent overflow or to control odor.

(6) Each food preparation area shall have handwashing fixtures equipped with soap and hot and cold running water and with individual towels, paper towels, or air dryers. Each sink used for handwashing shall be equipped to provide water at a temperature of at least 100 degrees Fahrenheit. The water temperature shall not exceed 120 degrees Fahrenheit.

(A) If the food preparation sink is used for handwashing, the sink shall be sanitized before using it for food preparation by use of a solution of $\frac{1}{4}$ cup of bleach to one gallon of water.

(B) Each facility with 25 or more residents shall be equipped with handwashing fixtures that are separate from the food preparation sink.

(7) Clean linen used for food preparation or service shall be stored separately from soiled linen.

(d) Food storage and refrigeration. All food shall be stored and served in a way that protects the food from cross-contamination.

(1) Nonrefrigerated food.

(A) All food not requiring refrigeration shall be stored at least six inches above the floor in a clean, dry, well-ventilated storeroom or cabinet in an area with no overhead drain or sewer lines and no vermin infestation.

(B) Dry bulk food that has been opened shall be stored in metal, glass, or food-grade plastic containers with tightly fitting covers and shall be labeled with the contents and the date opened.

(C) Food shall not be stored with poisonous or toxic materials. If cleaning agents cannot be stored in a room separate from food storage areas, the cleaning agents shall be clearly labeled and kept in locked cabinets not used for the storage of food.

(2) Refrigerated and frozen food.

(A) All perishables and potentially hazardous foods requiring refrigeration shall be continuously maintained at 41 degrees Fahrenheit or lower in the refrigerator or 0 degrees Fahrenheit in the freezer.

(B) Each refrigerator and each freezer shall be equipped with a visible, accurate thermometer.

(C) Each refrigerator and each freezer shall be kept clean inside and out.

(D) All food stored in the refrigerator shall be covered, wrapped, or otherwise protected from contamination. Unserved, leftover perishable foods shall be dated, refrigerated immediately after service, and eaten within three days.

(E) Raw meat shall be stored in the refrigerator in a manner that prevents meat fluids from dripping on other foods.

(F) Ready-to-eat, commercially processed foods, including luncheon meats, cream cheese, and cottage cheese, shall be eaten within five days after opening the package.

(3) Hot foods.

(A) Hot foods that are to be refrigerated shall be transferred to shallow containers in layers less than three inches deep and shall not be covered until cool.

(B) Potentially hazardous cooked foods shall be cooled in a manner to allow the food to cool within two hours from 135 degrees Fahrenheit to 70 degrees Fahrenheit or within six hours from 135 degrees Fahrenheit to 41 degrees Fahrenheit.

(e) Meals or snacks prepared on the premises.

(1) All of the following requirements shall be met when meals or snacks are prepared on the facility premises:

(A) All dairy products shall be pasteurized. Powdered milk shall be used for cooking only.

(B) Meat shall be obtained from government-inspected sources.

(C) Raw fruits and vegetables shall be washed thoroughly before being eaten or used for cooking.

(D) Frozen foods shall be defrosted in the refrigerator, under cold running water, in a microwave oven using the defrost setting, or during the cooking process. Frozen foods shall not be defrosted by leaving them at room temperature or in standing water.

(E) Cold foods shall be maintained and served at temperatures of 41 degrees Fahrenheit or less.

(F) Hot foods shall be maintained and served at temperatures of at least 140 degrees Fahrenheit.

(2) The following foods shall not be served or kept:

(A) Home-canned food;

(B) food from dented, rusted, bulging, or leaking cans; and

(C) food from cans without labels.

(f) Meals or snacks catered. The following requirements shall be met for each meal or snack that is not prepared on the facility premises:

(1) The snack or meal shall be obtained from a child care facility licensed by the department or from a food service establishment or a catering service licensed by the secretary of the Kansas department of agriculture.

(2) If food is transported to the facility, only food that has been transported promptly in clean, covered containers shall be served to the residents.

(g) Table service and cooking utensils.

(1) All of the table service, serving utensils, and food cooking or serving equipment shall be stored in a clean, dry location at least six inches above the floor. None of these items shall be stored under an exposed sewer line or a dripping water line or in a bathroom.

(2) Clean table service shall be provided to each resident, including dishes, cups or glasses, and forks, spoons, and knives, as appropriate for the food being served.

(A) Clean cups, glasses, and dishes designed for repeat use shall be made of smooth, durable, and nonabsorbent material and shall be free from cracks or chips.

(B) Disposable, single-use table service shall be of food grade and medium weight and shall be disposed of after each use.

(3) If nondisposable table service and cooking utensils are used, the table service and cooking utensils shall be sanitized using either a manual washing method or a mechanical dishwasher.

(A) If using a manual washing method, all of the following requirements shall be met:

(i) A three-compartment sink with hot and cold running water to each compartment and a drainboard shall be used for washing, rinsing, sanitizing, and air-drying.

(ii) An appropriate chemical test kit, a thermometer, or another device shall be used for testing the sanitizing solution and the water temperature.

(B) If using a mechanical dishwasher, the dishwasher shall be installed and operated in accordance with the manufacturer's instructions and shall be maintained in good repair. (Authorized by and implementing K.S.A. 2013 Supp. 65-508; effective, T-28-12-17-13, Dec. 17, 2013; effective March 28, 2014.)

28-4-1267. Laundry. (a) If laundry is done at the facility, each permittee and each licensee shall ensure that the laundry sinks, the appliances, and the countertops or tables used for laundry are located in an area separate from food preparation areas and are installed and used in a manner that safeguards the health and safety of the residents. Adequate space shall be allocated for the laundry room and the storage of laundry supplies, including locked storage for all chemical agents used in the laundry area.

(b) Each permittee and each licensee shall ensure that adequate space is allocated for the storage of clean and dirty linen and clothing. Soiled linen shall be stored separately from clean linen.

(c) Each permittee and each licensee shall ensure that blankets are laundered at least once each month or, if soiled, more frequently. Blankets shall be laundered or sanitized before reissue.

(d) Each permittee and each licensee shall ensure that each mattress is water-repellent and washed down and sprayed with disinfectant before reissue. The mattress materials and treatments shall meet the applicable requirements of the state fire marshal's regulations. (Authorized by and implementing K.S.A. 2013 Supp. 65-508; effective, T-28-12-17-13, Dec. 17, 2013; effective March 28, 2014.)

28-4-1268. Transportation. Each permittee and each licensee shall ensure that all of the following requirements are met when providing transportation for residents:

(a) Each permittee and each licensee shall implement policies and procedures for transportation of residents, including the following:

(1) Procedures to be followed in case of an accident, injury, or other incident as specified in K.A.R. 28-4-1257;

(2) a list of all staff members authorized to transport residents; and

(3) for each staff member authorized to transport residents, documentation of a valid driver's license that meets the requirements of the Kansas motor vehicle drivers' license act, K.S.A. 8-234a et seq. and amendments thereto.

(b) Each permittee and each licensee shall ensure that a safety check is performed on each transporting vehicle before being placed in service and annually. A record of each safety check and all repairs and improvements made shall be kept on file at the facility. When any resident is transported in a privately owned vehicle, the vehicle shall be in safe working condition.

(c) Each vehicle used to transport any resident shall be covered by accident and liability insurance as required by the state of Kansas.

(d) Each transporting vehicle owned or leased by the facility shall have a first-aid kit, which shall include disposable nonporous gloves, a cleansing agent, scissors, bandages of assorted sizes, adhesive tape, a roll of gauze, one package of gauze squares at least four inches by four inches in size, and one elastic bandage.

(e) Each vehicle used to transport any resident shall be equipped with an individual seat belt for the driver and an individual seat belt for each passenger. The driver and each passenger shall be secured by a seat belt when the vehicle is in motion.

(f) The health and safety of the residents riding in any vehicle shall be protected.

(1) All passenger doors shall be locked while the vehicle is in motion.

(2) Order shall be maintained at all times. The driver shall be responsible for ensuring that the vehicle is not in motion if the behavior of the occupants prevents the safe operation of the vehicle.

(3) All parts of each resident's body shall remain inside the vehicle at all times.

(4) Residents shall neither enter nor exit the vehicle from or into a lane of traffic.

(5) When the vehicle is vacated, the driver shall make certain that no resident is left in the vehicle.

(6) Smoking in the vehicle shall be prohibited.

(7) Medical and surgical consent forms and health assessment records shall be in the vehicle if a resident is transported 60 miles or more from the facility.

(g) Each resident shall be transported directly to the location designated by the permittee or the licensee. No unauthorized stops shall be made along the way, except in an emergency. (Authorized by and implementing K.S.A. 2013 Supp. 65-508; effective, T-28-12-17-13, Dec. 17, 2013; effective March 28, 2014.)

28-4-1269. Animals. Each permittee and each licensee shall ensure that the following requirements are met for any animals on the facility premises:

(a) If any animals are kept on the facility premises, the pet area shall be maintained in a sanitary manner, with no evidence of flea, tick, or worm infestation.

(b) No animal shall be in the food preparation area.

(c) Each domesticated dog and each domesticated cat shall have a current rabies vaccination given by a veterinarian. A record of all vaccinations shall be kept on file in the facility.

(d) Each permittee and each licensee shall ensure that each animal that is in contact with any resident meets the following conditions:

(1) Is in good health, with no evidence of disease; and

(2) is friendly and poses no threat to the health, safety, and welfare of residents. (Authorized by and implementing K.S.A. 2013 Supp. 65-508; effective, T-28-12-17-13, Dec. 17, 2013; effective March 28, 2014.)

BIRTH CENTERS

28-4-1300. Definitions. For the purposes of K.A.R. 28-4-1300 through K.A.R. 28-4-1318, the following terms shall have the meanings specified in this regulation:

(a) "Apgar scores" means a measure of a newborn's physical condition at one, five, and 10 minutes after birth.

(b) "Applicant" means a person who has applied for a license but who has not yet been granted a license to operate a birth center. This term shall include an applicant who has been granted a temporary permit to operate a birth center.

(c) "Birthing room" means a room designed, equipped, and arranged to provide for the care of a patient, a newborn, and the patient's support person or persons during and following childbirth.

(d) "Certified midwife" means an individual who is educated in the discipline of midwifery and who is currently certified by the American college

of nurse-midwives or the American midwifery certification board, inc.

(e) “Certified nurse-midwife” means an individual who meets the following requirements:

(1) Is educated in the two disciplines of nursing and midwifery;

(2) is currently certified by the American college of nurse-midwives or the American midwifery certification board, inc; and

(3) has a current nursing license in Kansas.

(f) “Certified professional midwife” means an individual who is educated in the discipline of midwifery and who is currently certified by the North American registry of midwives.

(g) “Clinical director” means an individual who is appointed by the licensee and is responsible for the direction and oversight of clinical services at a birth center as specified in K.A.R. 28-4-1305.

(h) “Clinical staff member” means an individual employed by or serving as a consultant to the birth center who is one of the following:

(1) The clinical director or acting clinical director;

(2) a licensed physician;

(3) a certified nurse-midwife;

(4) a certified professional midwife;

(5) a certified midwife; or

(6) a registered professional nurse.

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

(j) “Exception” means a waiver of an applicant’s or a licensee’s compliance with a specific birth center regulation or any portion of a specific birth center regulation, granted by the secretary to the applicant or licensee.

(k) “License capacity” means the maximum number of patients that can be cared for in a birth center during labor, delivery, and recovery.

(l) “Licensee” means a person who has been granted a license to operate a birth center.

(m) “Maternity center” has the meaning specified in K.S.A. 65-502, and amendments thereto, and may also be referred to as a “birth center.”

(n) “Normal, uncomplicated delivery” means a delivery that results in a vaginal birth and that does not require the use of general, spinal, or epidural anesthesia.

(o) “Normal, uncomplicated pregnancy” means a pregnancy that is initially determined to be at a low risk for a poor pregnancy outcome and that remains at a low risk throughout the pregnancy.

(p) “Patient” means a woman who has been accepted for services at a birth center during pregnancy, labor, delivery, and recovery.

(q) “Poor pregnancy outcome” means any outcome other than a live, healthy patient and newborn.

(r) “Premises” means the location, including each building and any adjoining grounds, of a birth center.

(s) “Secretary” means secretary of the Kansas department of health and environment. (Authorized by K.S.A. 65-508 and 65-510; implementing K.S.A. 65-502 and 65-508; effective July 9, 2010.)

28-4-1301. Applicant and licensee requirements. (a) Each applicant, if an individual, shall be at least 21 years of age at the time of application.

(b) Each applicant and each licensee, if a corporation, shall be in good standing with the Kansas secretary of state. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-504 and 65-508; effective July 9, 2010.)

28-4-1302. Application procedures. (a) Each person, in order to obtain a license, shall submit a complete application on the form provided by the department. The application shall be submitted at least 90 calendar days before the planned opening date of the birth center and shall include all of the following:

(1) A detailed description of the services to be provided;

(2) a detailed floor plan and site plan for the premises to be licensed; and

(3) the nonrefundable license fee specified in K.A.R. 28-4-92.

(b) At the time of the initial inspection, each applicant shall have the following information on file:

(1) Written verification from the applicable local authorities showing that the premises are in compliance with all local codes and ordinances, including all building, fire, and zoning requirements;

(2) written verification from the state fire marshal showing that the premises are in compliance with all applicable fire codes and regulations;

(3) written verification from local or state authorities showing that the private water supply and sewerage systems conform to all state and local laws; and

(4) documentation of the specific arrangements that have been made for the removal of biomedical waste and human tissue from the premises.

(c) The granting of a license to any applicant may be refused by the secretary if the applicant

is not in compliance with the requirements of the following:

- (1) K.S.A. 65-504 through 65-508, and amendments thereto;
- (2) K.S.A. 65-512 and 65-513, and amendments thereto;
- (3) K.S.A. 65-531, and amendments thereto; and
- (4) all regulations governing birth centers. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, 65-504, 65-505, and 65-508; effective July 9, 2010.)

28-4-1303. Terms of a temporary permit or a license. (a) License capacity. The maximum number of patients authorized by a temporary permit or a license shall not be exceeded.

(b) Posting temporary permit or license. The current temporary permit or the current license shall be posted conspicuously within the birth center.

(c) Validity of temporary permit or a license. Each temporary permit or license shall be valid for the applicant or licensee and the address specified on the temporary permit or the license. When an initial or amended license becomes effective, all temporary permits or licenses previously granted to the applicant or licensee at the same address shall become invalid.

(d) Advertising. The advertising for each birth center shall conform to the statement of services included with the application. A claim for specialized services, even if specified on the application for a birth center, shall not be made unless the birth center is staffed and equipped to offer those services. No general claim of being "state-approved" shall be made until the applicant has been issued a temporary permit or a license by the secretary.

(e) Withdrawal of application or request to close. Any applicant may withdraw the application for a license. Any licensee may, at any time, request to close a birth center. If an application is withdrawn or a birth center is closed, each temporary permit or license granted for that birth center shall become invalid. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-504 and 65-508; effective July 9, 2010.)

28-4-1304. Temporary permit or license; amended license; exceptions; notification; renewal. (a) Temporary permit or license required. Each person shall obtain a temporary permit or a

license from the secretary to operate a birth center before providing any birth center services.

(b) New temporary permit or license required. Each applicant or licensee shall submit a new application, the required verifications and documentation, and license fee and shall obtain a temporary permit or a license from the secretary under any of the following circumstances:

(1) Before a birth center that has been closed is reopened;

(2) if there is a change in the location of the birth center; or

(3) if there is a change of ownership of the birth center.

(c) Amended license.

(1) Any licensee may submit a request for an amended license. Each licensee who intends to change the terms of the license, including the maximum number of patients to be served, shall submit a request for an amended license on a form provided by the department and a nonrefundable amendment fee of \$35. An amendment fee shall not be required if the request to change the terms of the license is made at the time of the renewal.

(2) The licensee shall make no change to the terms of the license unless permission is granted, in writing, by the secretary. If granted, the licensee shall post the amended license, and the previous license shall no longer be in effect.

(d) Exceptions.

(1) Any applicant or licensee may request an exception from the secretary. Any request for an exception may be granted if the secretary determines that the exception is in the best interest of one or more patients or newborns and the exception does not violate statutory requirements.

(2) Written notice from the secretary stating the nature of the exception and the duration of the exception shall be kept on file at the birth center and shall be readily accessible to the department.

(e) Notification. Each applicant and each licensee shall notify the secretary, in writing, before changing any of the following:

(1) The clinical services or activities offered by the birth center;

(2) the physical structure of the birth center due to new construction or substantial remodeling; or

(3) the use of any part of the premises that affects the use of the space or affects the license capacity.

(f) Renewal. No earlier than 90 days before but no later than the renewal date, each licens-

ee wishing to renew the license shall submit the following:

(1) The nonrefundable license fee specified in K.A.R. 28-4-92; and

(2) an application to renew the license on the form provided by the department.

(g) Late renewal. Failure to submit the renewal application and fee as required by subsection (f) shall result in an assessment of a late renewal fee specified in K.S.A. 65-505, and amendments thereto, and may result in closure of the birth center.

(h) Copy of current regulations. A copy of the current Kansas administrative regulations governing birth centers shall be kept on the premises and shall be available to all employees. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-504, 65-505, and 65-508; effective July 9, 2010.)

28-4-1305. Administration. (a) Each licensee shall be responsible for the operation of the birth center, including the following:

(1) Establishing and maintaining a written organizational plan, including an organizational chart designating the lines of authority;

(2) providing employees, facilities, equipment, supplies, and services to patients, newborns, and families;

(3) developing and implementing administrative policies and procedures for the operation of the birth center;

(4) developing and implementing policies and procedures for quality assurance;

(5) appointing an administrator to oversee the operation of the birth center;

(6) appointing a clinical director and hiring employees;

(7) appointing an acting clinical director to provide direction and oversight of clinical services in the absence of the clinical director; and

(8) documenting all of the information specified in this subsection.

(b) Each licensee shall ensure that all birth center contracts, agreements, policies, and procedures are reviewed annually and updated as needed.

(c) Each licensee shall ensure the development and implementation of written policies that set out the necessary qualifications for each position and govern employee selection. A job description for each position shall be available at the birth center.

(d) Each licensee shall ensure that all employees are informed of and follow all written policies,

procedures, and clinical protocols necessary to carry out their job duties.

(e) Each administrator shall oversee the daily operation and maintenance of the birth center and implement the policies and procedures in compliance with licensing requirements for birth centers.

(f) Each clinical director shall provide direction and oversight of clinical services, including the development and implementation of policies, procedures, and signed protocols regarding all matters related to the medical management of pregnancy, birth, postpartum care, newborn care, and gynecologic health care.

(g) Each licensee shall develop and implement written policies and procedures regarding a patient's options for the disposition or taking of fetal remains if a fetal death occurs. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-508 and K.S.A. 2009 Supp. 65-67a10; effective July 9, 2010.)

28-4-1306. Clinical staff member qualifications; employee schedules; training. (a)

Clinical staff member qualifications. Each licensee shall ensure that the following requirements for the clinical staff members are met:

(1) The clinical director and the acting clinical director shall be one of the following:

(A) A physician with a current license to practice in Kansas; or

(B) a certified nurse-midwife.

(2) Each clinical staff member attending labor and delivery shall meet the following qualifications:

(A) Practice within the scope of the clinical staff member's training and experience; and

(B) hold, at a minimum, current certification in adult CPR equivalent to American heart association class C basic life support and current certification in neonatal CPR equivalent to that of the American academy of pediatrics or the American heart association.

(b) Employee schedules.

(1) Each licensee shall ensure that there are sufficient qualified employees on duty and on call for the safe maintenance and operation of the birth center and for the provision of clinical services.

(2) Each licensee shall ensure that a written work schedule is readily accessible to all employees.

(c) Training.

(1) Each licensee shall develop and provide an orientation for all new employees and ongoing in-

service training for all employees that shall meet the following requirements:

(A) Is based on individual job duties and responsibilities;

(B) is designed to meet individual employee training needs; and

(C) is designed to maintain the knowledge and skills necessary to ensure compliance with policies, procedures, and clinical protocols of the birth center.

(2) Orientation and in-service training shall include the following:

(A) Emergency clinical procedures;

(B) recognition of the signs and symptoms of infectious diseases, infection control, and universal precautions;

(C) recognition of signs and symptoms of domestic violence; and

(D) recognition of the signs and symptoms and the reporting of child abuse and neglect.

(3) The documentation of the orientation and the in-service training shall be maintained in each employee's individual record. (Authorized by and implementing K.S.A. 65-508; effective July 9, 2010.)

28-4-1307. Records. (a) Policies and procedures. Each licensee shall ensure that there is an organized recordkeeping system, with policies and procedures that provide for identification, security, confidentiality, control, retrieval, and preservation of all employee records, patient records, and birth center information. All records shall be available at the birth center for review by the secretary.

(b) Employee records. Each licensee shall ensure that an individual record is maintained at the birth center for each employee that includes the following information:

(1) A description of the terms of employment or the volunteer agreement and a copy of the job description;

(2) a copy of the job application detailing the employee's qualifications and employment dates;

(3) copies of current professional licenses, certifications, or registrations;

(4) documentation of the results of any health assessments and tuberculin tests specified in K.A.R. 28-4-1312;

(5) documentation of the orientation and the in-service training specified in K.A.R. 28-4-1306; and

(6) documentation that each employee has access to the following:

(A) The current regulations governing birth centers; and

(B) the birth center policies, procedures, and clinical protocols.

(c) Patient records.

(1) Each licensee shall ensure that a current and complete clinical record for each patient accepted for care in the birth center includes the following:

(A) Identifying information, including the patient's name, address, and telephone number;

(B) documentation of the initial history and physical examination, including laboratory findings and dates;

(C) a signed and dated informed consent form;

(D) all obstetrical risk assessments, including the dates of the assessments;

(E) documentation of instruction and education related to the childbearing process;

(F) the date and time of the onset of labor;

(G) the course of labor, including all pertinent examinations and findings;

(H) the exact date and time of birth, the presenting part of the newborn's body, the sex of the newborn, the numerical order of birth in the event of more than one newborn, and the Apgar scores;

(I) the time of expulsion and the condition of the placenta;

(J) all treatments rendered to the patient and newborn, including prescribing medications and the time, type, and dose of eye prophylaxis;

(K) documentation of metabolic and any other screening tests completed by a clinical staff member;

(L) the condition of the patient and newborn, including any complications and action taken at the birth center;

(M) all medical consultations concerning the patient and the newborn;

(N) all referrals for medical care and transfers to medical care facilities, including the reasons for each referral or transfer;

(O) the results of all examinations of the newborn and of the postpartum patient; and

(P) the written instructions given to the patient regarding postpartum care, family planning, care of the newborn, arrangements for metabolic testing, immunizations, and follow-up pediatric care.

(2) Each entry in each patient's record shall be dated and signed by the attending clinical staff member.

(3) The patient record shall be confidential and shall not be released without the written consent of the patient. Nothing in this regulation shall preclude the review of patient records by the secretary.

(4) All patient records shall be retained for at least 25 years from the date of discharge.

(d) Quality assurance documentation. Each licensee shall maintain on file for at least three calendar years all documentation required for the quality assurance findings specified in K.A.R. 28-4-1309.

(e) Inventory. Each licensee shall maintain on file an inventory of the birth center furnishings, equipment, and supplies.

(f) Drills. Each licensee shall maintain on file for at least one calendar year a record of all disaster and evacuation drills.

(g) Changes. Each applicant and each licensee shall maintain on file at the birth center the documentation of any changes specified in K.A.R. 28-4-1304 and approved by the secretary. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-507 and 65-508; effective July 9, 2010.)

28-4-1308. Reporting requirements. (a) Each licensee shall ensure that the following incidents are reported to the department by the next working day, on a form provided by the department, and to any other authorities in accordance with state statute:

(1) A stillbirth or the death of a patient or a newborn;

(2) the death of an employee while on duty;

(3) any intentional or unintentional injuries sustained by any patient, newborn, or employee while on duty;

(4) any fire damage or other damage to the premises that affects the safety of any patient, newborn, or employee; and

(5) any other incident that, in the judgment of the clinical director or the acting clinical director, compromises the ability of the birth center to provide appropriate and safe care to patients and newborns.

(b) If a licensee, employee, patient, or newborn contracts a reportable infectious or contagious disease specified in K.A.R. 28-1-2, the licensee shall ensure that the disease is reported to the county health department as specified in K.A.R. 28-1-2. (Authorized by and implementing K.S.A. 65-508; effective July 9, 2010.)

28-4-1309. Quality assurance. (a) Each licensee shall develop and implement a quality assurance program to evaluate, at least annually, the quality of patient care and the appropriateness of clinical services.

(b) The quality assurance program shall include a system for the assessment of patient and newborn outcomes, clinical protocols, recordkeeping, and infection control.

(c) The quality assurance findings shall be documented and used for the ongoing assessment of clinical services, problem resolution, and plans for service improvement.

(d) All quality assurance findings shall be available at the birth center for review by the secretary. Nothing in this regulation shall preclude the review of patient records by the secretary. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-507, 65-508, and 65-512; effective July 9, 2010.)

28-4-1310. Clinical services and patient care. (a) Each licensee shall ensure that the clinical services provided at the birth center are limited to those services associated with a normal, uncomplicated pregnancy and a normal, uncomplicated delivery.

(b) Each licensee shall ensure that only the clinical services approved by the clinical director are performed at the birth center.

(c) Each clinical staff member providing services shall work under the direction of and in consultation with the clinical director or the acting clinical director.

(d) Each clinical staff member shall have access to patient diagnostic facilities and services, including a clinical laboratory, sonography, radiology, and electronic monitoring.

(e) Each licensee shall make available to each patient, in writing, information concerning the following:

(1) The clinical services provided by the birth center;

(2) the rights and responsibilities of the patient and the patient's family, including confidentiality, privacy, and consent;

(3) information on the qualifications of the clinical staff members;

(4) the risks and benefits of childbirth at the birth center;

(5) the possibility of patient or newborn transfer if complications arise during pregnancy, labor, or delivery and the procedures for transfer; and

(6) if a fetal death occurs, the patient's options for the taking or disposition of the fetal remains.

(f) Each licensee shall limit patients to those women who are initially determined to be at low maternity risk by a clinical staff member and who

are evaluated regularly throughout the pregnancy to ensure that each patient continues to be at low risk for a poor pregnancy outcome. Each clinical director shall establish a written maternity risk assessment, including screening criteria, which shall be a part of the approved policies.

(g) When conducting the maternity risk assessment, each clinical staff member shall assess the health status and maternity risk factors of each patient after obtaining a detailed medical history, performing a physical examination, and taking into account family circumstances and psychological factors.

(h) The screening criteria of the maternity risk assessment shall be used as a baseline on which the risk status of each potential patient or patient is determined. The screening criteria shall apply to each potential patient before acceptance for birth center services and throughout the pregnancy for continuation of services. The screening criteria shall include the specific qualifications of the clinical staff members and the availability of supplies and equipment needed to provide clinical services safely.

(i) The factors to be considered in the development of the maternity risk assessment shall include the following:

(1) Age of the patient as a possible factor in determining the potential additional risk of poor pregnancy outcome;

(2) major medical problems including any of the following:

(A) Chronic hypertension, heart disease, or pulmonary embolus;

(B) any congenital heart defect assessed as pathological by a cardiologist that places the patient or fetus at risk;

(C) a renal disease;

(D) a drug addiction or required use of anticonvulsant drugs;

(E) diabetes mellitus;

(F) thyroid disease; or

(G) a bleeding disorder or hemolytic disease;

(3) previous history of significant obstetrical complications, including any of the following:

(A) RH sensitization;

(B) a previous uterine wall surgery, including caesarean section;

(C) seven or more term pregnancies;

(D) a previous placental abruption; or

(E) a previous preterm birth; and

(4) medical indication of any of the following:

(A) Pregnancy-induced hypertension;

(B) polyhydramnios or oligohydramnios;

(C) a placental abruption;

(D) chorioamnionitis;

(E) a known fetal anomaly;

(F) multiple gestations;

(G) an intrauterine growth restriction;

(H) fetal distress;

(I) alcoholism or drug addiction;

(J) thrombophlebitis; or

(K) pyelonephritis.

(j) Each patient found to be at high obstetrical risk based on the maternity risk assessment shall be referred to a qualified physician.

(k) Each licensee shall ensure that the policies and procedures include a program of education that prepares patients and their families for childbirth, including the following:

(1) Anticipated changes during pregnancy;

(2) the need for prenatal care;

(3) nutritional requirements during pregnancy;

(4) the effects of smoking, alcohol, and substance use;

(5) the signs of preterm labor;

(6) preparation for labor and delivery, including pain management and obstetrical complications and procedures;

(7) breast-feeding and care of the newborn;

(8) signs of depression during pregnancy and after childbirth and instructions for treatment;

(9) instruction on understanding the patient and newborn health record information;

(10) sibling preparation; and

(11) preparation needed for discharge of the patient and the newborn following delivery.

(l) Each licensee shall ensure that the policies, procedures, and clinical protocols are followed for each patient during labor, delivery, and postpartum care.

(m) Each patient shall be admitted for labor and delivery by a physician, a certified nurse-midwife, a certified professional midwife, or a certified midwife.

(n) At least one clinical staff member shall be available for each patient in labor.

(o) At least two employees shall be available for each patient during delivery. One shall be a clinical staff member. The other shall be another clinical staff member or a licensed practical nurse (LPN) practicing within the scope of the LPN's training and experience and working under the direct supervision of a licensed physician, a certified nurse-midwife, or a registered professional nurse.

(p) A clinical staff member shall monitor the progress of the labor and the condition of each patient and fetus as clinically indicated to identify abnormalities or complications at the earliest possible time.

(q) The patient or newborn shall be transferred to a medical care facility if a clinical staff member determines that medical or surgical intervention is needed.

(r) The patient's family or support persons shall be instructed as needed to assist the patient during labor and delivery.

(s) The surgical procedures performed at the birth center shall be limited to the following:

- (1) Episiotomy;
- (2) repair of episiotomy or laceration; and
- (3) circumcision.

(t) Each clinical director shall develop and implement policies and procedures for the discharge of postpartum patients and their newborns, which shall be followed by all clinical staff members.

(1) An individual, written discharge plan shall be developed for each patient and newborn, including follow-up visits and needed referrals. Each patient shall receive a copy of the plan at the time of discharge.

(2) Each patient and each newborn shall be discharged no later than 24 hours after birth and in accordance with policies, procedures, and clinical protocols.

(3) Each birth or death certificate shall be completed and filed as required by state law.

(4) A follow-up visit shall be conducted by a designated clinical staff member between 24 hours and 72 hours after discharge of the patient to perform the following:

- (A) A health assessment of the patient;
- (B) a health assessment of the newborn; and
- (C) the required newborn screening tests.

(5) The policies and procedures shall include a program of postpartum education and care, including the following:

- (A) Newborn care;
- (B) postpartum examinations;
- (C) family planning; and
- (D) a plan for well-woman routine gynecologic health care. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-507, K.S.A. 65-508, and K.S.A. 2009 Supp. 65-67a10; effective July 9, 2010.)

28-4-1311. Transfers. (a) Each licensee shall develop and implement policies, procedures, and clinical protocols for the transfer of patients

and newborns. Each licensee shall ensure that these policies, procedures, and clinical protocols are readily accessible and followed.

(b) The policies, procedures, and clinical protocols shall include a written plan on file designating who will be responsible for the transfer of a patient or newborn. The plan shall include the following:

(1)(A) A written agreement with an obstetrician and a pediatrician or with a group of practitioners that includes at least one obstetrician and at least one pediatrician; or

(B) a written agreement with a medical care facility providing obstetrical and neonatal services; and

(2) a plan for transporting a patient or a newborn by an emergency medical services (EMS) entity.

(c) Each licensee shall ensure that all employees attending labor and delivery have immediate access to a working telephone or another communication device and to contact information for transferring a patient or a newborn in case of an emergency. (Authorized by and implementing K.S.A. 65-508; effective July 9, 2010.)

28-4-1312. Health-related requirements.

(a) Tobacco use prohibited. Each licensee shall ensure that tobacco products are not used at any time in the birth center.

(b) Health of licensee and employees working in the birth center.

(1) Each licensee, if an individual, and each individual working at the birth center shall meet the following requirements:

(A) Be free from physical, mental, and emotional conditions to the extent necessary to protect the health, safety, and welfare of the patients and newborns;

(B) be free from the influence of alcohol or illegal substances, or impairment due to the use of prescription or nonprescription drugs; and

(C) be free from all infectious or contagious diseases, as specified in K.A.R. 28-1-6.

(2) Each licensee, if an individual, and each individual working in the birth center shall have a health assessment conducted within six months before employment or upon employment. Subsequent health assessments shall be given periodically in accordance with the policies of the birth center.

(3) The results of each health assessment shall be recorded on forms provided by the department, and a copy shall be kept in each licensee's or employee's record at the birth center.

(4) If an individual who works in the birth center experiences a significant change in physical, mental, or emotional health, including any indication of substance abuse, an assessment of the individual's current health status may be required by the secretary or the licensee. A licensed health care provider qualified to diagnose and treat the condition shall conduct the health assessment. A written report of the assessment shall be kept in the individual's employee record and shall be submitted to the secretary on request.

(c) Tuberculin testing of licensee and employees working in the birth center.

(1) Each licensee, if an individual, and each individual working in the birth center shall have a record of a tuberculin test or chest X-ray obtained not more than six months before employment or upon employment. The results of the tuberculin test or chest X-ray shall be recorded on the health assessment form.

(2) Additional tuberculin testing shall be required if any individual working in the birth center is exposed to an active case of tuberculosis or if the birth center serves an area identified by the local health department or the secretary as a high-risk area for tuberculosis exposure.

(d) Hepatitis B. Each licensee, if an individual, and each individual working in the birth center whose job duties include exposure to or the handling of blood shall be immunized against hepatitis B or shall provide written documentation of refusal of the immunization. (Authorized by and implementing K.S.A. 65-508; effective July 9, 2010.)

28-4-1313. Environmental standards. (a) Premises.

(1) Each licensee shall ensure that the birth center is connected to public water and sewerage systems where available.

(2) If a center uses a nonpublic source for the water supply, the water shall be safe for drinking and shall be tested annually by a department-certified laboratory. If a well is used, the well shall be approved by an agent of the local environmental protection program (LEPP).

(A) A copy of the test results and the approval shall be kept on file at the birth center.

(B) Each private sewerage system shall be maintained in compliance with all applicable state and local laws.

(3) Outdoor areas on the premises shall be well drained and kept free of hazards, litter, and trash.

(b) General building requirements.

(1) Each licensee shall ensure that the birth center is located in a building that meets the following criteria:

(A) Meets the requirements specified in K.S.A. 65-508 and amendments thereto, all applicable building codes, and local ordinances;

(B) is a permanent structure; and

(C) is free from known environmental hazards.

(2) Each birth center shall be accessible to and usable by individuals with disabilities.

(c) Structural requirements. Each licensee shall ensure that the following requirements are met:

(1) Space shall be provided for the services to be offered, including the following:

(A) A secure space for the storage of medical records;

(B) waiting or reception area;

(C) family area, including play space for children;

(D) designated toilet and lavatory facilities for employees, families of patients, or the public separate from designated toilet, lavatory, and bathing facilities for each patient;

(E) a birthing room or rooms;

(F) employee area;

(G) utility and work room;

(H) a designated storage area;

(I) space for the provision of laboratory services; and

(J) space for food preparation and storage.

(2) The birth center shall be heated, cooled, and ventilated for the comfort of the patients and newborns and shall be designed to maintain a minimum temperature of 68 degrees Fahrenheit and a maximum temperature of 90 degrees Fahrenheit. If natural ventilation is used, all opened windows or doors shall be screened. If mechanical ventilation or cooling systems are employed, the system shall be maintained in working order and kept clean. Intake air ducts shall be designed and installed so that dust and filters can be readily removed.

(3) Each interior door that can be locked shall be designed to permit the door to be opened from each side in case of an emergency.

(4) All floors shall be smooth and free from cracks, easily cleanable, and not slippery. All floor coverings shall be kept clean and maintained in good repair.

(5) All walls shall be smooth, easily cleanable, and sound. Lead-free paint shall be used on all painted surfaces.

(6) All areas of the birth center shall have light fixtures capable of providing at least 20 foot-candles of illumination. Additional illumination shall be available to permit observation of the patient and the newborn, cleaning, and maintenance. The light fixtures shall be maintained in working order and kept clean.

(7) Each birthing room shall have emergency lighting for use during a power outage.

(8) Each birth center shall be equipped with a scrub sink equipped with an elbow, knee, or foot control.

(9) Each birthing room shall be located on the ground level and shall provide unimpeded, rapid access to an exit of the building that will accommodate patients, newborns, emergency personnel, emergency transportation vehicles, and equipment.

(10) Each birthing room shall meet the following requirements:

(A) Have at least 180 square feet of floor space; and

(B) provide enough space for the equipment, employees, supplies, and emergency procedures necessary for the physical and emotional care of the patient and the newborn. (Authorized by and implementing K.S.A. 65-508; effective July 9, 2010.)

28-4-1314. Birth center and birthing room furnishings, equipment, and supplies.

(a) Each licensee shall provide furnishings, equipment, and other supplies in the quantity necessary to meet the needs of patients, newborns, and employees and to provide a safe, home-like environment.

(b) Each licensee shall provide the specialized furnishings, equipment, and supplies necessary for the clinical staff members to perform the clinical services offered by the birth center. No specialized clinical services shall be provided unless the birth center is equipped to allow the clinical staff members to safely perform those services.

(c) All furnishings, equipment, and supplies shall be kept clean and free from safety hazards.

(d) The furnishings shall include, at a minimum, the following:

- (1) A bed or table for delivery;
- (2) at least one chair; and
- (3) a wall clock with a second hand.

(e) The equipment and supplies shall include, at a minimum, the following:

- (1) An examination light;

- (2) a sphygmomanometer;

- (3) a stethoscope;

- (4) a doppler unit or fetoscope;

- (5) a clinical thermometer;

- (6) disposable nonporous gloves in assorted sizes;

- (7) an infant scale;

- (8) a mechanical suction device or a bulb suction device;

- (9) a tank of oxygen with a flowmeter and a mask, a cannula, or an equivalent;

- (10) all necessary emergency medications and intravenous fluids with supplies and equipment for administration;

- (11) resuscitation equipment for patients and newborns, which shall include resuscitation bags and oral airways;

- (12) a laryngoscope and a supply of endotracheal tubes of assorted sizes appropriate for a newborn;

- (13) a firm surface suitable for resuscitation;

- (14) sterilized instruments for delivery, episiotomy, and repair of an episiotomy or a laceration;

- (15) an infant warmer that provides radiant heat;

- (16) a readily accessible emergency cart or tray for the patient and for the newborn that meets the following requirements:

- (A) Is equipped for the clinical staff members to carry out the written emergency procedures of the birth center;

- (B) is securely placed; and

- (C) has a written log of routine maintenance;

- (17) clean bed linens and towels; and

- (18) emergency lighting.

- (f) All equipment, furnishings, and supplies shall be used as intended and shall be securely stored when not in use to prevent injury or misuse. (Authorized by and implementing K.S.A. 65-508; effective July 9, 2010.)

28-4-1315. Maintenance. (a) Each licensee shall ensure that the building is kept clean at all times and free from accumulated dirt and from vermin infestation.

(b) Each licensee shall develop and implement a maintenance plan to ensure that all of the following conditions are met:

- (1) A schedule for cleaning the birth center is established.

- (2) All floors and walking surfaces are kept free of hazards, maintained in good repair, and kept clean at all times.

(3) Housekeeping services are provided to maintain a sanitary environment.

(4) Each birthing room, including equipment, is cleaned after each delivery and before reuse.

(5) The toilets, lavatories, sinks, and other facilities are clean at all times.

(6) The mops and other cleaning tools are cleaned after each use and stored in a well-ventilated place on racks.

(7) All pesticides and other poisons are used in accordance with product instructions and stored in a locked area.

(8) Safe storage for cleaning and laundry supplies is provided.

(9) Each indoor trash container is emptied, as needed, to control odor and to prevent the overflowing of contents.

(10) The methods used to dispose of trash, including biomedical waste, human tissue, and sharp instruments, are safe and sanitary.

(11) Hot and cold running water is supplied to each sink and all bathing facilities.

(12) The hot water temperature does not exceed 120 degrees Fahrenheit.

(13) Toilet paper, soap, and either paper towels or hand dryers are available in each restroom and each bathroom in the birth center. (Authorized by and implementing K.S.A. 65-508; effective July 9, 2010.)

28-4-1316. Safety. (a) Each licensee shall ensure the safety of all patients, newborns, employees, and visitors according to the following requirements:

(1) Each birth center shall have a working telephone on the premises and available for use at all times. Emergency telephone numbers shall be posted by each telephone or shall be readily accessible. These telephone numbers shall include telephone numbers for the fire department, hospital, ambulance, and police.

(2) Each exit shall be marked. No exit shall be blocked at any time.

(3) All drugs, chemicals, and medications shall be kept in locked storage and secured in specifically designated and labeled cabinets, drawers, closets, storerooms, or refrigerators and shall be made accessible only to authorized employees.

(b) Each licensee shall ensure the development and implementation of a disaster plan to provide for the evacuation and safety of patients, newborns, employees, and visitors in case of fire, tornadoes, storms, floods, power outages, and other

types of emergencies specific to the geographic area in which the birth center is located.

(1) The disaster plan shall be posted in a conspicuous place in each indoor room.

(2) Each employee shall be informed of and shall follow the disaster plan.

(3) A review of the disaster plan, including fire and tornado drills, shall be conducted with the employees at least once every six months, and the date of each review shall be recorded.

(4) Fire and tornado drills shall be conducted with the employees at least quarterly, and the date of each drill shall be recorded.

(c) Heating appliances, when used, shall be used as intended, safely located, equipped with a protective barrier as needed to prevent injury, and maintained in operating condition. If combustible fuel is used, the appliance shall be vented to the outside.

(d) Each licensee shall develop and implement policies and procedures regarding the storage and handling of firearms and other weapons on the premises.

(e) Pets and any other animals shall be prohibited in the birth center, with the exception of service animals. (Authorized by and implementing K.S.A. 65-508; effective July 9, 2010.)

28-4-1317. Food service. (a) Each licensee shall ensure that the birth center has arrangements to provide patients with nutritious liquids and foods. Foods may be provided by means of any of the following:

(1) Obtained from a food service establishment or a catering service licensed by the secretary of the Kansas department of agriculture;

(2) prepared on-site by employees; or

(3) provided by any patient's family for the sole use of that patient and the patient's family.

(b) All food that is designed to be served hot and is prepared on-site by employees shall be heated, maintained, and served at a temperature of at least 140 degrees Fahrenheit. A tip-sensitive thermometer shall be used to determine whether food is cooked and held at the proper temperature.

(c) Each licensee shall ensure that the food is handled and stored in a sanitary manner, which shall include meeting all of the following requirements:

(1) All perishable foods and liquids shall be continuously maintained at 41 degrees Fahrenheit or lower in the refrigerator or 0 degrees Fahrenheit

or lower in a freezer. A clearly visible, accurate thermometer shall be provided in each refrigerator and in each freezer.

(2) At least one refrigerator shall be designated for only food storage.

(3) All food stored in the refrigerator shall be covered, wrapped, or otherwise protected from cross-contamination. Raw meat shall be stored in the refrigerator in a manner that prevents meat fluids from dripping on other foods. Unused, leftover perishable foods shall be dated, refrigerated immediately after service, and eaten within three days.

(4) Surfaces used for food preparation or eating shall be made of smooth, nonporous material.

(5) All table service designed for repeat use shall be made of smooth, durable, and nonabsorbent material and shall be free from cracks or chips.

(6) All nondisposable table service shall be sanitized using either a manual method or a mechanical dishwasher.

(A) If using a manual washing method, each licensee shall meet both of the following requirements:

(i) A three-compartment sink with hot and cold running water to each compartment and a drainboard shall be used for washing, rinsing, sanitizing, and air-drying.

(ii) An appropriate chemical test kit, a thermometer, or another device shall be used for testing the sanitizing solution and the water temperature.

(B) If using a mechanical dishwashing machine, each licensee shall ensure that the machine is installed and operated in accordance with the manufacturer's instructions and shall be maintained in good repair.

(d) Prepackaged, disposable formula units shall be used when newborns are not breast-fed. (Authorized by and implementing K.S.A. 65-508; effective July 9, 2010.)

28-4-1318. Laundry. Each licensee shall ensure that all of the following requirements are met: (a) If laundry is done at the birth center, the laundry sinks, appliances, and countertops or tables used for laundry shall be located in an area separate from food preparation areas and shall be installed and used in a manner that safeguards the health and safety of the patients, newborns, employees, and visitors.

(b) Space shall be provided and areas shall be designated for the separation of clean and soiled clothing, linen, and towels.

(c) If laundry facilities are not available at the birth center, all laundry shall be cleaned by a commercial laundry. (Authorized by and implementing K.S.A. 65-508; effective July 9, 2010.)

SENATOR STAN CLARK PREGNANCY MAINTENANCE INITIATIVE GRANT PROGRAM

28-4-1400. Grant program application and procedures. The following portions of the document titled "Senator Stan Clark pregnancy maintenance initiative grant program application and program procedures," published by the Kansas department of health and environment and dated May 26, 2005, are hereby adopted by reference:

(a) Section one, paragraph (D), "funding, match and grant period";

(b) subparagraphs (1), (2), and (3) of section one, paragraph (E), "eligible applicants";

(c) section two, "program requirements"; and

(d) section five, "competitive application and review process." (Authorized by and implementing 2005 HB 2301, Sec. 1; effective, T-28-7-1-05, July 1, 2005; effective Oct. 14, 2005.)

Article 5.—SEWAGE AND EXCRETA DISPOSAL

28-5-1. (Authorized by K.S.A. 65-171d; effective Jan. 1, 1966; revoked, E-72-11, March 17, 1972; revoked Jan. 1, 1973.)

28-5-2. Location of wastewater disposal systems. No person, company, corporation, association, or institution shall construct, maintain, use, or permit to be constructed or maintained any wastewater disposal system into which domestic wastewater is drained, within 50 feet of any water well or spring; nor shall any such wastewater disposal system be drained or permitted to drain into any stream, ditch, or the ground surface. (Authorized by and implementing K.S.A. 1996 Supp. 65-171d; effective Jan. 1, 1966; amended, E-72-11, March 17, 1972; amended Jan. 1, 1973; amended Sept. 5, 1997.)

28-5-3. Drains. All drains carrying domestic sewage, human or animal excreta located within 50 feet of a source of water supply shall be watertight. (Authorized by K.S.A. 65-171d; effective Jan. 1, 1966.)

28-5-4. Public health nuisances. The following conditions and practices are declared to be public nuisances hazardous to public health

and local boards of health are directed to order their abatement whenever they are called to their attention by the state department of health and environment or any citizen of the state.

(1) Any privy, privy vault, or other place used for the deposit of human excreta which permits animals or insects access to the excreta, which produces foul or objectionable odors, or is located so as to make pollution of a domestic water supply probable.

(2) The collection or accumulation of any organic materials such as swill, meat scraps, dead fish, shells, bones, decaying vegetables, dead carcasses, human or animal excrement, or any kind of offal that may decompose and create an attraction or breeding place for flies, mosquitoes or rodents.

(3) Any domestic animal pen that pollutes a domestic water supply, underground waterbearing formation; or stream in a manner that is hazardous to human health; or is maintained in a manner that creates a fly attraction or breeding place for flies or mosquitoes; or is a rodent harborage or breeding place. (Authorized by K.S.A. 1975 Supp. 65-101, 65-171d, 65-202; effective Jan. 1, 1966; amended, E-72-11, March 17, 1972; amended Jan. 1, 1973; amended May 1, 1976.)

28-5-5. Discharge of domestic sewage into wells, pits, or subsurface excavations prohibited. No person, company, corporation or institution shall excavate, drill, construct or use or permit to be constructed or used any well, pit, mine shaft, or subsurface excavation for the disposal of untreated or inadequately treated domestic sewage. (Authorized by K.S.A. 65-171d; effective, E-72-11, March 17, 1972; effective Jan. 1, 1973.)

28-5-6. Discharge of domestic wastes. All domestic wastes from sanitary fixtures located in any dwelling, shop, school, or other building used as a home or meeting place for humans shall be discharged into a public sewer system approved by the Kansas department of health and environment, or into a private sewer system approved by the Kansas department of health and environment or the appropriate local authority. (Authorized by and implementing K.S.A. 1996 Supp. 65-171d; effective, E-72-11, March 17, 1972; effective Jan. 1, 1973; amended Sept. 5, 1997.)

28-5-7. Private sewer systems. All private sewer systems shall be located, designed, and operated in accordance with standards set forth in

county sanitary codes approved by the Kansas department of health and environment before July 1, 1997, or in the absence of such codes, with standards set forth in the Kansas department of health and environment bulletin 4-2, "Minimum Design Standards for Onsite Wastewater Systems," revised March, 1997. (Authorized by and implementing K.S.A. 1996 Supp. 65-171d; effective, E-72-11, March 17, 1972; effective Jan. 1, 1973; amended Sept. 5, 1997.)

28-5-8. (Authorized by K.S.A. 65-171d; effective, E-72-11, March 17, 1972; effective Jan. 1, 1973; revoked May 10, 1996.)

28-5-9. Variance. (a)(1) In counties with no locally adopted sanitary code, a variance from requirements of K.A.R. 28-5-2 through K.A.R. 28-5-7 may be granted by the Kansas department of health and environment, if the following conditions are met.

(A) The features of the site for which the variance is requested are not compatible with requirements of the regulations.

(B) Alternate methods are available that will attain the objectives of the regulations.

(C) The variation from the regulations will not adversely affect public health or the environment.

(2) Any person requesting a variance from these regulations shall provide the Kansas department of health and environment with a written request for a variance. This request shall include a description of the proposed wastewater treatment system, information on the treatment effectiveness of the proposed system, and any other information that the Kansas department of health and environment deems necessary to determine the effectiveness and reliability of the proposed system. No such proposed system shall be constructed without the written approval of the Kansas department of health and environment.

(b) In counties with adopted sanitary codes containing a variance clause, the local administrative agency has the authority to grant variances from requirements of the local code.

(c) Before construction of any facility for receipt of sewage, an application for variance shall be filed with and approved by either the Kansas department of health and environment or the appropriate local authority in accordance with provisions of this regulation. (Authorized by and implementing K.S.A. 1996 Supp. 65-171d; effective Jan. 1, 1973; amended Sept. 5, 1997.)

Article 6.—COMMON DRINKING CUP; COMMON TOWEL

28-6-1 to 28-6-2. (Authorized by K.S.A. 65-101, 65-104, K.S.A. 1965 Supp. 65-128; effective Jan. 1, 1966; revoked May 10, 1996.)

Article 7.—STERILIZATION OF PUBLIC FOOD AND DRINKING UTENSILS

28-7-1 to 28-7-9. (Authorized by K.S.A. 65-101, 65-104, K.S.A. 1965 Supp. 65-128; effective Jan. 1, 1966; revoked May 10, 1996.)

Article 8.—HOME HEALTH FEE SCHEDULE

28-8-1. (Authorized by K.S.A. 1969 Supp. 65-222; effective, E-69-4, Dec. 11, 1968; effective Jan. 1, 1970; revoked May 10, 1996.)

Article 9.—CONSTRUCTION, MAINTENANCE AND USE OF MAUSOLEUMS

28-9-1. Burial structure above ground. Any person, firm or corporation desirous of constructing any burial structure which shall be wholly or in part above ground shall apply to the Kansas state department of health for a permit for such construction. (Authorized by K.S.A. 17-1324; effective Jan. 1, 1966.)

28-9-2. Application for permits. Application for permits for such construction shall be made on forms furnished by the state department of health and shall be accompanied by detailed plans and specifications in triplicate. (Authorized by K.S.A. 17-1324; effective Jan. 1, 1966.)

28-9-3. Secretary issue permit in triplicate. On approval of said plans and specifications for the proposed burial structure by the engineer of the department, the secretary shall issue a permit in triplicate for the construction, and shall send two copies of the permit, approved plans and specifications to the party who makes application, and retain one copy for the files of the department. (Authorized by K.S.A. 17-1324; effective Jan. 1, 1966.)

28-9-4. Embalming of dead bodies. No dead body shall be interred or deposited in any public mausoleum or private mausoleum of more than two crypts unless the body has first been em-

balmed in compliance with recognized embalming practice. (Authorized by K.S.A. 17-1324; effective Jan. 1, 1966.)

28-9-5. Details of burial structures. In the design of burial structures the following details must be included:

(a) The structure must be so designed that each cell or crypt shall be readily accessible for inspection by persons authorized to make such inspection before final interment.

(b) Each crypt shall be so designed that it can be sealed to prevent odors from reaching the public space or corridor of the mausoleum.

(c) In case a ventilation and drainage system is provided, the system must be one acceptable to the department. The minimum size of pipes for either ventilation or drainage shall be 1½ inches and the ventilation or drainage from one crypt shall not pass through another.

(d) In case a sealed crypt is used without pipes for drainage or ventilation the inner surface of the crypt and crypt sealing slab shall be made air and moisture proof by a protective coating of an approved paint. A paint having a bituminous base is recommended and if necessary to proper drying and bonding to the concrete surface, it shall be applied hot.

(e) No live air spaces smaller in size than will allow for thorough inspection and repairing of joints from the inside of said air spaces will be allowed, except the pipes for ventilation and drainage of crypts.

(f) Hollow walls shall be sealed so as to make the air space "dead."

(g) Any burial structure intended for public or community use shall be provided with some type of heating system acceptable to the department.

(h) In the case of public mausoleums, or those with a corridor or chapel, suitable ventilation, independent of the above, and directly connected to the outside air, shall be provided.

(i) Special attention will be given to such details as: Depth and width of foundations; size and spacing of reinforcing steel; materials and methods used in construction of roof; permanence of material used for exterior of walls as determined by these for absorption of moisture; materials used for window and door sash, grills, gates, etc.; materials and method used in anchoring or tying walls together where they are made up of two or more independent walls, materials for concrete plaster, mortar, etc. (Authorized by K.S.A. 17-1324; effective Jan. 1, 1966.)

28-9-6. Individual mausoleums; approval of plans, specifications and testing of materials. In the case of individual mausoleums, the permits issued by the department shall be a license to manufacture. Any deviations from the approved plans and specifications must be approved in writing by the engineer for the department. Inspections will be made of the manufacturing processes and of field installations with special attention being given to all factors which affect the permanence of the structures. When necessary to determine the permanence, all or any part of one or more mausoleums, or test specimens from the mixes used, shall be delivered to a laboratory for testing. The transportation and testing shall be an expense of the manufacturer and shall be done as directed by the engineer for the department. Permanent identification of the manufacturer shall be stamped in an accessible place on the cover and the vault along with the date of manufacture. Such other records shall be kept as are found necessary by the department. (Authorized by K.S.A. 17-1324; effective Jan. 1, 1966.)

28-9-7. Individual mausoleums; replacement of structure or parts thereof. Whenever the failure of one of these mausoleums causes offensive odors or effluvia to arise therefrom, and such failure comes to the attention of the department, the manufacturer shall be required to replace or repair the structure or the defective portion. (Authorized by K.S.A. 17-1324; effective Jan. 1, 1966.)

28-9-8. Individual mausoleums; revocation of permit. The permit may be revoked for cause upon notice to the manufacturer by the secretary of the board. (Authorized by K.S.A. 17-1324; effective Jan. 1, 1966.)

Article 10.—SANITARY CONDITIONS AROUND RESERVOIRS

28-10-1 to 28-10-13. (Authorized by K.S.A. 1965 Supp. 65-187; effective Jan. 1, 1966; revoked Jan. 1, 1969.)

A. SANITATION ZONE BOUNDARIES

28-10-15 through 28-10-33. (Authorized by K.S.A. 1969 Supp. 65-187; effective, E-68-23, Aug. 9, 1968; effective Jan. 1, 1969; amended Jan. 1, 1970; revoked March 23, 2001.)

28-10-34 through 28-10-35. (Autho-

rized by K.S.A. 1969 Supp. 65-187; effective Jan. 1, 1969; amended Jan. 1, 1970; revoked March 23, 2001.)

28-10-36. (Authorized by K.S.A. 1969 Supp. 65-187; effective Jan. 1, 1970; revoked May 10, 1996.)

28-10-37. (Authorized by K.S.A. 1969 Supp. 65-187; effective Jan. 1, 1970; revoked March 23, 2001.)

28-10-38. (Authorized by and implementing K.S.A. 65-187; effective Jan. 1, 1973; amended, T-84-40, Dec. 21, 1983; amended May 1, 1984; revoked March 23, 2001.)

28-10-39. (Authorized by K.S.A. 1972 Supp. 65-187; effective Jan. 1, 1973; revoked March 23, 2001.)

28-10-40 to 28-10-41. (Authorized by K.S.A. 1972 Supp. 65-187; effective Jan. 1, 1973; revoked May 10, 1996.)

B. GENERAL

28-10-75. (Authorized by K.S.A. 1969 Supp. 65-187; effective, E-68-23, Aug. 9, 1968; effective, E-69-6, Jan. 8, 1969; effective Jan. 1, 1970; revoked March 23, 2001.)

28-10-76. (Authorized by K.S.A. 1969 Supp. 65-185, 65-187, 65-189e; effective, E-68-23, Aug. 9, 1968; effective, E-69-6, Jan. 8, 1969; effective Jan. 1, 1970; revoked March 23, 2001.)

28-10-77. (Authorized by K.S.A. 1969 Supp. 65-187, 65-189f; effective Jan. 1, 1970; revoked March 23, 2001.)

28-10-78. (Authorized by K.S.A. 1969 Supp. 65-187; effective Jan. 1, 1970; revoked March 23, 2001.)

28-10-79. (Authorized by K.S.A. 1969 Supp. 65-187, 65-189c; effective Jan. 1, 1970; revoked March 23, 2001.)

28-10-80. (Authorized by K.S.A. 1969 Supp. 65-187, 65-189c, 65-189d; effective Jan. 1, 1970; revoked March 23, 2001.)

28-10-81 through 28-10-83. (Authorized by K.S.A. 1969 Supp. 65-187, 65-189c; effective Jan. 1, 1970; revoked March 23, 2001.)

28-10-84. (Authorized by K.S.A. 1969 Supp.

65-187; effective Jan. 1, 1970; revoked March 23, 2001.)

28-10-85. (Authorized by K.S.A. 1969 Supp. 65-187, 65-189; effective Jan. 1, 1970; revoked March 23, 2001.)

28-10-86 through 28-10-88. (Authorized by K.S.A. 1969 Supp. 65-187; effective Jan. 1, 1970; revoked March 23, 2001.)

C. STANDARDS

28-10-100 through 28-10-108. (Authorized by K.S.A. 1969 Supp. 65-187; effective, E-68-23, Aug. 9, 1968; effective, E-69-6, Jan. 8, 1969; effective Jan. 1, 1970; revoked March 23, 2001.)

Article 11.—APPROVAL OF LABORATORIES PERFORMING EXAMINATION OF MILK

28-11-1 to 28-11-6. (Authorized by K.S.A. 65-737 (g); effective Jan. 1, 1966; revoked May 10, 1996.)

Article 12.—PATHOGENIC MICROORGANISMS

28-12-1. Distribution and use of live pathogenic microorganisms. No pathogenic microorganisms and/or vectors shall be purchased or obtained either interstate or intrastate by persons for use at the high school level (no exceptions). For this purpose the terms pathogenic microorganisms and vectors are defined as, “all cultures or collection or [of] microorganisms or their derivatives, which may introduce or disseminate any contagious or infectious disease of man or animals,” and “all animals (including poultry) such as mice, pigeons, guinea pigs, rats, ferrets, rabbits, chickens, dogs, and the like which have been inoculated with infectious organisms, or which are diseased or infected with any contagious, infectious, or communicable disease of humans, animals or poultry, or which have been exposed to any such diseases.” (Authorized by K.S.A. 65-101; effective Jan. 1, 1966.)

Article 13.—UNDERGROUND STORAGE, DISPOSAL WELLS AND SURFACE PONDS

28-13-1. Scope. This article regulates the construction and use of underground storage res-

ervoirs and the construction and use of disposal wells and surface ponds for the confinement, storage and disposal of industrial fluids including but not limited to brines, but does not include regulations pertaining to oil field activities described in L. 1965, ch. 506, section 1 (4) (p). (Authorized by K.S.A. 65-164, 65-165, 65-171d; effective Jan. 1, 1966.)

28-13-2. Definitions. (A) Underground storage reservoir. An underground storage reservoir is hereby defined as any naturally occurring or artificially produced subsurface cavity in which petroleum products, acids, radioactive materials, or fluid or gaseous products are stored.

(B) Surface pond. The term surface pond as used herein is defined as any constructed, excavated or naturally occurring area used for the storage, confinement or treatment of industrial waste waters, salt water or other highly mineralized waters.

(C) Disposal well. The term disposal well as used herein is defined as any well which receives industrial waste waters, both organic and inorganic, salt water or other highly mineralized waters for disposal into underground formations. (Authorized by K.S.A. 65-164, 65-165, 65-171d; effective Jan. 1, 1966.)

28-13-3. Plans and specifications for underground reservoirs. Plans and specifications for the storage of petroleum products, acids, radioactive materials, or other fluid or gaseous products in underground reservoirs shall be submitted to the chief engineer for the board and approved prior to construction or development of the reservoir. (Authorized by K.S.A. 65-171d; effective Jan. 1, 1966.)

28-13-4. Maintenance of certain records and reports of malfunctions required for underground reservoirs. Operators of underground reservoirs shall maintain a permanent record of the type and quantity of all products stored therein, and a continuous record of the injection pressures, and shall report immediately to the chief engineer for the board any failures or defects in the underground reservoir. (Authorized by K.S.A. 65-171d; effective Jan. 1, 1966.)

28-13-5. Permits required for all surface ponds. The storage, confinement or disposal of industrial waste waters, salt water or other highly mineralized waters in surface ponds shall be

prohibited unless a permit for such storage or disposal shall first be obtained from the state department of health. (Authorized by K.S.A. 65-171d; effective Jan. 1, 1966.)

28-13-6. Applications for pond permits. Applications for permits for surface ponds shall be submitted in duplicate to the chief engineer for the board on forms obtainable from his office. (Authorized by K.S.A. 65-171d; effective Jan. 1, 1966.)

28-13-7. Approval or denial of applications. Applications for permits to use surface ponds will be approved or denied within ten days from date of receipt of the application, information and supporting plans, specifications and other required documents, by the state department of health. Failure by the department to act upon an application within ten days subsequent to such receipt shall serve as an automatic issuance of a permit. (Authorized by K.S.A. 65-171d; effective Jan. 1, 1966.)

28-13-8. Authorized signatures. All permits and orders of revocation shall be signed by the chief engineer for the board. (Authorized by K.S.A. 65-171d; effective Jan. 1, 1966.)

28-13-9. Removal of material from surface ponds upon abandonment or revocation of pond permit. Upon abandonment of a surface pond or the revocation of a pond permit, the operator shall dispose of the industrial waste water, salt water or other highly mineralized waters in a manner acceptable to the Kansas state department of health. (Authorized by K.S.A. 65-171d; effective Jan. 1, 1966.)

28-13-10 to 28-13-11. (Authorized by K.S.A. 65-164, 65-165, 65-171d; effective Jan. 1, 1966; revoked May 10, 1996.)

Article 14.—COLLECTION AND ANALYSIS OF WATER AND PUBLIC WATER SUPPLIES

28-14-1. Fees for analysis of samples from public water supply systems. All laboratory analyses conducted in the office of laboratory services of the Kansas department of health and environment shall require payment as specified in K.A.R. 28-14-2, except for analyses requested by department staff. The fee for any analysis not specified in K.A.R. 28-14-2 shall be based on the cost of the analysis as determined by the secretary. (Authorized by and implementing K.S.A. 65-156

and K.S.A. 2013 Supp. 75-5608; effective Jan. 1, 1966; amended, E-79-13, June 15, 1978; amended May 1, 1979; amended Nov. 1, 2002; amended June 6, 2014.)

28-14-2. Schedule of fees. Each public water supply system submitting any samples for analysis to the office of laboratory services of the Kansas department of health and environment shall receive a quarterly statement reflecting the cost of services rendered during the previous calendar quarter. Fees shall be paid to the Kansas department of health and environment within 30 days of the date on the statement. Failure to pay fees may result in denial of future analytical services until the public water supply system pays all outstanding fees.

The fee for each sample analysis shall be the following:

(a) Inorganic chemical analyses:	
(1) Alkalinity	\$10.00
(2) Ammonia nitrogen	\$15.00
(3) Bromate	\$10.00
(4) Bromide	\$10.00
(5) Chlorate	\$10.00
(6) Chloride	\$10.00
(7) Chlorite	\$10.00
(8) Fluoride	\$10.00
(9) Mercury	\$18.00
(10) Metals	\$9.00
(11) Nitrate	\$10.00
(12) Nitrite	\$10.00
(13) Ortho-phosphate	\$10.00
(14) pH	\$6.00
(15) Silica	\$9.00
(16) Specific conductivity	\$8.00
(17) Sulfate	\$10.00
(18) Total dissolved solids (180°C)	\$15.00
(19) Total organic carbon (TOC)	\$20.00
(20) Total phosphate	\$10.00
(21) Total suspended solids	\$15.00
(22) Turbidity	\$10.00
(b) Organic chemical analyses:	
(1) Atrazine and Alachlor	\$100.00
(2) Organochlorine pesticides and polychlorinated biphenyls screen	\$150.00
(3) Triazine pesticide screen	\$40.00
(4) Chlorinated acid pesticide screen	\$125.00
(5) Semi-volatile acid organic compound screen	\$250.00
(6) Carbamate pesticide screen	\$150.00
(7) Volatile organic compound screen including dibromochloropropane and ethylene dibromide	\$100.00

- (8) Total trihalomethanes, consisting of the sum of the concentrations of trichloromethane, bromodichloromethane, dibromochloromethane, and bromoform \$50.00
- (9) Total haloacetic acids, consisting of the sum of the concentrations of monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid \$125.00
- (c) Microbiological analyses: Coliform determination \$12.00
- (d) Radiochemical analyses:
- (1) Gamma isotopic \$60.00
- (2) Gross alpha \$35.00
- (3) Gross beta \$35.00
- (4) Radium-226 \$75.00
- (5) Radium-228 \$75.00
- (6) Radon \$35.00
- (7) Tritium \$60.00
- (8) Uranium \$70.00

(Authorized by and implementing K.S.A. 65-156 and K.S.A. 2013 Supp. 75-5608; effective Jan. 1, 1966; amended, E-79-13, June 15, 1978; amended May 1, 1979; amended May 1, 1982; amended, T-88-13, May 18, 1987; amended May 1, 1988; amended Jan. 4, 1993; amended Nov. 1, 2002; amended June 6, 2014.)

28-14-3 and 28-14-4. (Authorized by K.S.A. 1978 Supp. 65-156; effective Jan. 1, 1966; revoked, E-79-13, June 15, 1978; revoked May 1, 1979.)

Article 15.—APPLICATION FOR PERMITS; DOMESTIC WATER SUPPLY

28-15-1 to 28-15-10. (Authorized by K.S.A. 65-162, 65-163; effective Jan. 1, 1966; revoked May 1, 1982.)

28-15-11. (Authorized by and implementing K.S.A. 65-171m; effective May 1, 1982; amended Sept. 21, 1992; amended June 21, 1993; amended Sept. 26, 1994; amended Jan. 9, 1995; revoked Oct. 1, 2004.)

28-15-12. Public water supply fee fund. On and after January 1, 1993, each public water supply shall pay a fee of \$0.002 per 1,000 gallons of water sold at retail and delivered through mains, lines or pipes.

(a) The fee shall be paid to the Kansas department of revenue on forms supplied by the direc-

tor of taxation in the same manner as the water protection fee authorized by K.S.A. 82a-954 and amendments thereto.

(b) The public water supplier may collect the fee directly from each customer to which water is sold at retail or may pay the amount owed from moneys in its operating fund or other fund available for that purpose. (Authorized by and implementing K.S.A. 1991 Supp. 65-163, as amended by L. 1992, Ch. 188, sec. 1; effective, T-28-12-31-92, Dec. 31, 1992; effective Feb. 15, 1993.)

28-15-13. (Authorized by and implementing K.S.A. 65-171m; effective May 1, 1982; amended Sept. 21, 1992; amended June 21, 1993; amended Sept. 26, 1994; amended Jan. 9, 1995; revoked Oct. 1, 2004.)

28-15-14. (Authorized by and implementing K.S.A. 65-171m; effective May 1, 1982; amended Sept. 21, 1992; amended Jan. 9, 1995; revoked Oct. 1, 2004.)

28-15-15. (Authorized by and implementing K.S.A. 65-171m; effective May 1, 1982; revoked Sept. 21, 1992.)

28-15-15a. (Authorized by and implementing K.S.A. 65-171m; effective Sept. 21, 1992; amended Sept. 26, 1994; amended Jan. 9, 1995; revoked Oct. 1, 2004.)

28-15-16. Permit requirements for public water supply systems. (a) Each person who operates a public water supply system shall be required to have a permit issued by the secretary.

(b) Each application for a public water supply permit shall be submitted for review and consideration for approval and shall be required to be approved before the use of a source of water supply or the construction of any of the following:

- (1) New sources;
- (2) pumping facilities;
- (3) finished water storage facilities;
- (4) water treatment plants, facilities, or systems;
- (5) distribution systems and extensions to existing distribution systems; or
- (6) chemical storage, handling, and application facilities.

(c) Each application approved for construction purposes shall be valid for a period of two years, and if construction has not been commenced by that time, a new application shall be required.

(d) In addition to meeting the requirements specified in K.S.A. 65-163(a)(1) and amendments

thereto, each person operating a public water supply system shall submit as part of the application the results of an analysis performed by a state-certified laboratory regarding the physical, bacteriological, chemical, and radiological constituents of the raw water to ensure that the proposed treatment facilities will produce potable water meeting the primary drinking water regulations established in article 15a. (Authorized by K.S.A. 65-171m; implementing K.S.A. 65-163; effective May 1, 1982; amended Jan. 9, 1995; amended Oct. 1, 2004.)

28-15-17. Siting requirements. A new or expanded facility shall not be initiated or constructed at a site which the department determines: (a) Is subject to a significant risk from earthquakes, floods, fires or other disasters which could cause a breakdown of the public water supply system or a portion of it;

(b) Except for intake structures, is within the floodplain of a one-hundred (100) year flood; and is lower than the recorded high water level where appropriate records exist; or

(c) Is adjacent to a major source of pollution, which the department determines has a potentially adverse influence on the water supply. (Authorized by and implementing K.S.A. 65-171m; effective May 1, 1982.)

28-15-18. Operation and maintenance requirements. (a) Each person that operates a public water supply system shall ensure that the system is operated, maintained, and supervised by certified personnel pursuant to K.S.A. 65-4501 through 65-4517, and amendments thereto.

(b) Each person that operates a public water supply system shall immediately notify the department and responsible local officials of any situation with the water system, including a major breakdown or serious loss of water service, that presents or could present an imminent and substantial endangerment to health.

(c) Each person that operates a community water supply system shall prepare an emergency operations plan to safeguard the water supply for the protection of the public if natural or man-made disasters occur. Each emergency operations plan shall be submitted to the secretary for review and consideration for approval to ensure that the plan is protective of public health, safety, and the environment.

(d) Newly constructed or repaired water distribution mains and finished water storage facilities shall be flushed and disinfected before use.

(e) Each community water supply system shall be operated and maintained to provide a minimum positive pressure of 20 psi (140 kN/m²) throughout the entire distribution system except under extraordinary conditions including unusual peak fire flow demand and major distribution system breaks.

(f) Each person that operates a community water supply system and each person that operates a high-risk non-community system designated by the department shall have a regular program for the detection and elimination of cross-connections and prevention of backflow and backsiphonage.

(g) Each finished water reservoir shall be covered by a permanent protective material and shall be vented and screened.

(h) Public water supply system components and protective coatings in contact with water intended for public consumption, and chemicals used in the treatment of water, shall be used to ensure the protection of public health and the environment.

(i) Each person that operates a public water supply system shall respond in writing no later than 30 days after receipt of a sanitary survey report describing how and on what schedule the system will address significant deficiencies identified in the survey. (Authorized by K.S.A. 65-171m; implementing K.S.A. 65-171h; effective May 1, 1982; amended Oct. 1, 2004; amended June 7, 2018.)

28-15-19. Disinfection of drinking water.

(a) All drinking water supplied to the public from a public water supply system shall be disinfected.

(b) A sufficient amount of chlorine shall be added to the water to maintain a chlorine residual of at least 0.2 mg/l of free chlorine or 1.0 mg/l of total chlorine throughout the entire distribution system.

(1) Failure to maintain a residual as specified in this subsection in more than five percent of measurements taken each month, in any two consecutive months, shall be a violation of this regulation.

(2) Each day the public water supply system serves water to customers, the operator shall make a determination of the chlorine residual as follows:

(A) The operator shall make a daily determination to ensure that the residual levels required by this subsection are maintained. The operator shall vary sampling locations throughout the distribution system.

(B) The operator shall record and maintain data to demonstrate to the department that the public

water supply system is in compliance with the requirements of this regulation.

(3) If the chlorine residual is less than the minimum level required by this subsection, the operator shall take appropriate action to increase the chlorine residual to the level specified in this subsection. (Authorized by and implementing K.S.A. 65-171m; effective May 1, 1982; amended Sept. 26, 1994; amended June 7, 2018.)

28-15-20. (Authorized by and implementing K.S.A. 65-171m; effective May 1, 1982; amended Sept. 21, 1992; amended Sept. 26, 1994; revoked Oct. 1, 2004.)

28-15-21. (Authorized by and implementing K.S.A. 65-171m; effective June 21, 1993; revoked Oct. 1, 2004.)

28-15-22. (Authorized by and implementing K.S.A. 65-171m; effective Sept. 26, 1994; revoked Oct. 1, 2004.)

28-15-25. (Authorized by K.S.A. 1977 Supp. 65-171m; effective, E-78-33, Dec. 7, 1977; effective May 1, 1978; revoked, L. 1982, ch. 471.)

ENVIRONMENTAL LABORATORY ACCREDITATION

28-15-35. Conditions of accreditation. (a) Definitions. For the purposes of this article, the following definitions shall be used:

(1) "Accreditation" means the issuance of a document by the secretary attesting to the fact that a laboratory meets the minimum requirements specified in K.A.R. 28-15-35, 28-15-36, 28-15-36a, and 28-15-37. For the purposes of this article, the terms "accreditation" and "certification" are equivalent.

(A) "Primary accreditation" means the accreditation granted to a laboratory based on a review of the laboratory by the department for conformance with accreditation requirements.

(B) "Secondary accreditation" means the accreditation granted by reciprocity, which is based on primary accreditation granted by another state.

(2) "Accredited," when used to describe a laboratory, means that the laboratory meets all of the requirements for accreditation as specified in K.A.R. 28-15-35, 28-15-36, 28-15-36a, and 28-15-37.

(3) "Accrediting authority" means a territorial, state, federal, or international governmental agency that has responsibility and accountability for

environmental laboratory accreditation and that grants accreditation.

(4) "Analyst" means a person who performs the analytical methods and associated techniques and who is responsible for applying required laboratory practices and other pertinent quality controls to meet the required level of quality.

(5) "Clean water act" and "CWA" mean U.S. public law 92-500, as amended by public law 92-217, public law 95-576, public law 96-483, and public law 97-117, and 33 U.S.C. 1251 et seq., as in effect on February 4, 1987, which governs water pollution control programs.

(6) "Denial" means the department's refusal to accredit a laboratory after submission of an application.

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

(8) "EPA" means the U.S. environmental protection agency.

(9)(A) "Field of accreditation" means the following:

- (i) The matrix;
- (ii) the technology or method, or both; and
- (iii) the analyte or analyte group, or both.

(B) The matrices shall include the following:

- (i) Drinking water;
- (ii) nonpotable water, including all aqueous samples that are not public drinking water;
- (iii) solid and chemical materials, including soils, sediments, other solids, and nonaqueous liquids; and
- (iv) air and emissions, including ambient air and stack emissions.

(10) "Field of proficiency testing" means studies of proficiency testing by the following:

- (A) The matrix;
- (B) the technology; and
- (C) the analyte or analyte group, or both.

(11) "Field laboratory" means any Kansas environmental laboratory performing compliance analyses limited to one or more of the following fields of accreditation:

- (A) Chlorine;
- (B) dissolved oxygen;
- (C) hydrogen ion (pH);
- (D) sulfite;
- (E) temperature; or
- (F) turbidity.

(12) "Interim accreditation" means accreditation issued for either of the following:

(A) An additional field of accreditation utilizing a technology previously inspected by the labora-

tory accreditation officer and for which the laboratory meets all other accreditation requirements including acceptable proficiency testing studies, if available; or

(B) a field laboratory before inspection.

(13) "Laboratory" means a legally identifiable facility performing environmental analyses in a controlled and scientific manner.

(14) "Laboratory accreditation officer" means any person determined by the secretary to have adequate credentials to evaluate laboratories supplemented by successful completion of the EPA drinking water laboratory accreditation officers' training course, nationally approved assessor training courses, and refresher training courses.

(15) "Laboratory technical director" means a person whose functions are to direct technical personnel and evaluate the quality of test procedures performed in the laboratory.

(16) "Proficiency testing sample" and "PT" mean a sample the composition of which is unknown to the analyst. The PT samples are used to test whether or not the laboratory can produce analytical results within specific performance limits.

(17) "Reciprocity" means the secretary's recognition of the validity of the accreditation granted by another accrediting authority, in order to issue Kansas accreditation based upon the evaluation conducted by that accrediting authority.

(18) "Resource conservation and recovery act" and "RCRA" mean 42 U.S.C. 6921, as amended by the solid waste disposal act of 1980, public law 94-482, as in effect on October 21, 1980, and as amended by the hazardous and solid waste act of 1984, public law 96-616, as in effect on November 8, 1984, which governs solid and hazardous waste programs.

(19) "Revocation" means the withdrawal of a laboratory's accreditation.

(20) "Safe drinking water act" and "SDWA" mean 42 U.S.C. §300f et seq., as in effect on August 8, 2005, formerly public law 104-182 et seq., which governs drinking water programs.

(21) "Secretary" means the secretary of the Kansas department of health and environment.

(22) "Supplemental accreditation" means accreditation based upon state-of-the-art technology for which the EPA has not given method approval and for which monitoring is required by the department.

(23) "Suspension" means the temporary removal of a laboratory's accreditation for a period of time that shall not exceed six months.

(24) "Technology" means a specific arrangement of analytical instruments, detection systems, or preparation techniques, or any combination of these.

(b) Application for accreditation. The requirements for applying for and maintaining accreditation shall be as follows:

(1) A complete application shall be submitted on forms provided by the department.

(2) Each laboratory, to maintain uninterrupted accreditation, shall file an application for renewal at least 60 calendar days before the current accreditation expires.

(3) Each applicant shall be subject to the payment of fees as specified in K.A.R. 28-15-37.

(4) When applications are submitted by accredited laboratories requesting accreditation for an additional field of accreditation, the expiration date for the additional accreditation shall be the same date indicated on the certificate currently in effect for that laboratory. Additional fees shall be assessed for each additional method for each scope of accreditation as specified in K.A.R. 28-15-37.

(c) Scope of accreditation. Laboratories may be accredited for any of the following:

(1) Drinking water (SDWA);

(2) wastewater (CWA);

(3) solid and hazardous waste (RCRA); or

(4) field laboratory. Accreditation of field laboratories shall be limited to the fields of accreditation specified in paragraph (a)(11) of this regulation.

(d) On-site assessment.

(1) Each on-site assessment of a laboratory shall be conducted by a laboratory accreditation officer at least once every two years. Each on-site assessment shall be conducted to determine whether the laboratory meets the minimum requirements for accreditation as specified in K.A.R. 28-15-35 and 28-15-36.

(2) Each on-site assessment of a field laboratory shall be conducted by a laboratory accreditation officer at least once every three years. On-site assessments shall be conducted to determine whether the laboratory meets the minimum requirements for accreditation as specified in K.A.R. 28-15-35 and 28-15-36a.

(3) Additional on-site assessments may be performed to resolve problems indicated by deficiencies from proficiency testing, deficiencies from prior on-site assessments, or changes that an accredited laboratory makes in location, personnel, or methodology. Other on-site assessments may be conducted to resolve complaints.

(4) If deficiencies are identified during the on-site assessment, a deficiency report shall be submitted to the laboratory by the department. The laboratory shall respond to the deficiency report with corrective action within 30 days of receiving the deficiency report. If corrective action is considered not acceptable by the laboratory accreditation officer, the laboratory shall have an additional 30 days after notification of nonacceptance to submit a revised plan for corrective action. Failure to comply with this requirement shall result in denial, suspension or revocation of accreditation as established in paragraphs (g)(1), (g)(3), and (g)(5) of this regulation.

(e) Proficiency testing. For initial and continuing accreditation, each laboratory, excluding field laboratories, shall participate in proficiency testing studies obtained from a nationally accredited proficiency test provider. Each laboratory shall demonstrate the successful performance of each test method for each proficiency testing field of accreditation for which the laboratory seeks or maintains accreditation. Laboratories shall be permitted to report multiple results for the same field of proficiency testing from one PT sample by using more than one method and type of technology.

(1) For initial accreditation, the laboratory shall meet the following requirements:

(A) Successfully complete two proficiency testing studies out of the three most recent rounds attempted; and

(B) schedule proficiency testing studies at least 15 days after the closing date of the previous study analyzed by the laboratory. The most recent three rounds attempted shall have occurred within 18 months of the date the laboratory submitted an application for accreditation. A result shall be considered unacceptable if the laboratory reports values for a field of proficiency testing outside of the acceptance limits.

(2)(A) For continuing accreditation, the laboratory shall meet the following requirements:

(i) Participate in a proficiency testing study twice per year. The completion dates of successive PT studies shall be approximately six months apart; and

(ii) maintain a performance history of at least two acceptable proficiency testing studies out of the three most recent studies. A result shall be considered unacceptable when either the laboratory reports values outside of the acceptance limits or the laboratory fails to participate in a study.

(B) Failure to maintain the acceptable performance history as specified in paragraph (e)(2)(A)(ii) shall result in suspension of the method related to the affected field of accreditation.

(C) A laboratory may elect to analyze a remedial proficiency testing sample after obtaining unacceptable results. The remedial sample shall be scheduled at least 15 days after the closing date of the previous study analyzed by the laboratory. The remedial sample shall be considered part of the laboratory's corrective action. The result shall count as part of the historical two-out-of-three performance criteria. If the result from the remedial sample is unacceptable, the laboratory shall be subject to suspension of the affected field of accreditation.

(3) After loss of accreditation of a field of accreditation due to nonacceptable performance, the laboratory shall complete two acceptable proficiency testing studies out of the three most recent studies attempted for the failed field of accreditation before accreditation may be reinstated. Each study shall be scheduled at least 15 days after the closing date of the previous study analyzed by the laboratory.

(4) Proficiency test providers shall report the laboratory results for proficiency test samples in the format listed in "proficiency testing electronic data formats," published April 2003 by the department and hereby adopted by reference.

(5) During participation in a proficiency testing study and before the release of the results of the study, all of the following requirements shall be met:

(A) The laboratory's management and all analysts shall ensure that all PT samples are handled, managed, analyzed, and reported utilizing the staff, methods, procedures, equipment, quality controls, facilities, and frequency of analysis that are used for routine analysis of real environmental samples.

(B) The laboratory shall not send proficiency testing samples to another laboratory for any analysis for which the laboratory seeks accreditation.

(C) The laboratory shall not knowingly accept proficiency testing samples from another laboratory for any analysis for which the sender is seeking accreditation.

(D) The laboratory personnel shall not exchange or offer information about proficiency testing sample results with personnel from another laboratory.

(E) The laboratory personnel shall not attempt to obtain the true values of any proficiency testing samples from the provider.

(f) Notification of accreditation. A certificate shall be issued by the secretary to each laboratory satisfactorily meeting all requirements of K.A.R. 28-15-35, 28-15-36, 28-15-36a, and 28-15-37. The fields of accreditation for which the laboratory is accredited shall be noted. An accreditation number shall be assigned to each accredited laboratory and shall be included on the certificate. The certificate shall be issued for a 12-month period.

(g) Denial, suspension, or revocation of accreditation.

(1) Denial of accreditation. Laboratory accreditation shall be denied in part or in total for any of the following reasons:

(A) Failure to submit a complete application;

(B) failure to meet the requirements specified in this regulation and in K.A.R. 28-15-36 and K.A.R. 28-15-36a;

(C) failure to successfully analyze and report proficiency testing samples as required in subsection (e) of this regulation;

(D) failure to demonstrate to the laboratory accreditation officer that the laboratory meets the required standards for accreditation, based upon an on-site assessment;

(E) failure to respond to the deficiency report with acceptable corrective action after an on-site assessment within the time period established in paragraph (d)(4) of this regulation;

(F) failure to implement corrective action;

(G) misrepresentation or omission of material facts;

(H) denial of entry during normal business hours for an on-site assessment;

(I) failure to pay the required fees as established in K.A.R. 28-15-37;

(J) failure to ensure that essential laboratory personnel are available for participation, as needed, for the satisfactory completion of an on-site assessment;

(K) any prior sustained charges of administrative violations of state or federal laws and regulations related to the provision of environmental laboratory services or reimbursement for these services, against the owner or owners or laboratory technical director or directors, individually or jointly, or against any laboratory owned or directed by these individuals; or

(L) conviction for a crime that is related to environmental laboratory services and involves theft or fraud.

(2) Accreditation after denial.

(A) Accreditation shall not be granted until a laboratory has demonstrated to the laboratory accreditation officer that the deficiencies that caused the denial have been corrected.

(B) If the laboratory is not successful in correcting the deficiencies that caused the denial, the laboratory shall wait six months before submitting a new application.

(C) After denial of accreditation in part, the laboratory shall reapply for accreditation of the affected fields of accreditation. After denial of accreditation in total, the laboratory shall submit a complete application to the department.

(3) Suspension of accreditation. Any accredited laboratory's accreditation may be suspended in part or in total for any of the following reasons:

(A) Failure to notify the laboratory accreditation officer in writing within 30 days of changes in ownership, laboratory personnel, laboratory location, or methods that involve a change in technology or instrumentation;

(B) failure to successfully analyze and report proficiency testing samples as required in subsection (e);

(C) failure to respond to the deficiency report with acceptable corrective action after an on-site assessment;

(D) failure to respond to the deficiency report after an on-site assessment within the time period established in paragraph (d)(4);

(E) failure to implement corrective action after an on-site assessment; or

(F) failure to maintain compliance with this regulation and with K.A.R. 28-15-36, 28-15-36a, and 28-15-37.

(4) Accreditation after suspension.

(A) Accreditation after suspension shall not be granted until a laboratory has demonstrated to the laboratory accreditation officer that the deficiencies that caused suspension have been corrected.

(B) After suspension of accreditation in part, the laboratory shall reapply for accreditation of the affected fields of accreditation. After suspension of accreditation in total, the laboratory shall submit a complete application to the department.

(C) If the laboratory does not correct the deficiencies that caused the suspension within six months, the laboratory accreditation shall be revoked in part or in total.

(5) Revocation of accreditation.

(A) An accreditation may be revoked in part or in total if it is determined that there has been any of the following:

(i) Failure to maintain compliance with K.A.R. 28-15-35, 28-15-36, 28-15-36a, and 28-15-37;

(ii) reporting, as official compliance data, any field of accreditation or analytical result for which accreditation has not been obtained;

(iii) failure to respond to the deficiency report with acceptable corrective action after an on-site assessment;

(iv) failure to respond to the deficiency report after an on-site assessment within the time period established in paragraph (d)(4); or

(v) failure to implement corrective action after an on-site assessment.

(B) An accreditation may be revoked in total if it is determined that there has been any of the following:

(i) Misrepresentation or omission of material facts;

(ii) failure to participate in proficiency testing studies as required in subsection (e);

(iii) denying entry to a laboratory accreditation officer during the laboratory's working hours;

(iv) failure to ensure that essential laboratory personnel are available for participation, as needed, for the satisfactory completion of an on-site assessment;

(v) any prior sustained charges of administrative violations of state or federal laws and regulations related to the provision of environmental laboratory services or reimbursement for such services, against the owner or owners or laboratory technical director or directors, individually or jointly, or against any laboratory owned or directed by these individuals; or

(vi) conviction for a crime that is related to environmental laboratory services and involves theft or fraud.

(6) Accreditation after revocation.

(A) After revocation, accreditation shall not be granted until a laboratory has corrected the reason for revocation and has met all the requirements of the revocation order.

(B) After revocation of accreditation in part, the laboratory shall reapply for accreditation of the affected fields of accreditation. After revocation of accreditation in total, the laboratory shall submit a complete application to the department.

(h) Analytical results obtained after an accreditation has been suspended or revoked shall not be submitted to the department as official compliance data.

(i) Reciprocity.

(1) Establishment of reciprocity for the accred-

itation of laboratories located outside of the state of Kansas. Laboratories located outside of the state of Kansas that perform laboratory services as specified in K.S.A. 65-163 through K.S.A. 65-171t and amendments thereto, this regulation, and K.A.R. 28-16-28b, K.A.R. 28-16-63, and K.A.R. 28-31-4 may be accredited by the department, if the laboratory is accredited by a national environmental laboratory accrediting authority that the secretary recognizes as having standards equivalent to those standards established in this regulation and K.A.R. 28-15-36.

(2) Each out-of-state laboratory shall submit an application to the department with a copy of the current certificate issued by the primary accrediting authority or authorities, and the accreditation fees specified in K.A.R. 28-15-37.

(3) Laboratories located outside of Kansas shall not be approved as field laboratories.

(4) The laboratory shall be accredited only for the requested fields of accreditation for which it holds accreditation from its primary accrediting authority or authorities. The laboratory shall be accredited by the department for only fields of accreditation included in the Kansas scope of accreditation.

(5) In lieu of reciprocity, any out-of-state laboratory may apply for primary accreditation from the department if all of the following criteria are met:

(A) The on-site assessment of the laboratory is conducted by a third-party assessor contracted by the department.

(B) All fees and expenses for the on-site assessment of the laboratory are paid by the laboratory directly to the third-party assessor.

(C) The laboratory meets all other requirements for accreditation as specified in this regulation and in K.A.R. 28-15-36 and 28-15-37.

(j) Laboratory withdrawal of accreditation. Any laboratory may withdraw its application for accreditation at any time during the accreditation process. Any laboratory may withdraw from accreditation at any time during the accreditation period. In both cases, each laboratory shall notify the department in writing. The fees submitted to the department up to the time of the notification shall not be refunded, as specified in K.A.R. 28-15-37.

(k) The change in legal status, ownership, or location of an accredited laboratory.

(1) Each accredited laboratory shall notify the department, in writing, of any change in legal sta-

tus, ownership or location, or any combination of these, within 30 calendar days of the change.

(2) Accreditation shall be transferred if the change in legal status or ownership of the accredited laboratory does not affect the laboratory's staff, equipment, and organization.

(3) Accreditation shall not be transferred if the change in legal status or ownership of the accredited laboratory affects the laboratory's staff, equipment, and organization. The laboratory shall be required to apply for accreditation as specified in subsection (b).

(4) Any change in the legal status, ownership, or location, or any combination of these, may require an on-site assessment of the laboratory by a laboratory accreditation officer.

(5) If a change in ownership occurs, all records and analyses that have been performed and that pertain to accreditation shall be retained for a minimum of five years and shall be subject to inspection by the department during this period without prior notification to the laboratory. (Authorized by K.S.A. 65-1,109a; implementing K.S.A. 65-171f and 65-1,109a; effective, E-79-14, June 23, 1978; effective May 1, 1979; amended May 1, 1983; amended May 1, 1986; amended May 1, 1988; amended Jan. 24, 1994; amended May 25, 2001; amended March 26, 2004; amended June 1, 2007.)

28-15-36. Requirements for accreditation of environmental laboratories other than field laboratories. (a) For the purposes of this regulation, the definitions in the "environmental laboratory accreditation glossary," published August 2006 by the department and hereby adopted by reference, shall apply.

(b) The requirements for the approval of environmental laboratories shall be those requirements listed in sections 2.1.3, 2.2.3, 4.1.1, 4.1.8, 5.4, and 5.5 and appendices C, D.1, D.2, D.3, and D.4 of chapter 5 of "2003 NELAC standard," EPA/600/R-04/003, approved at the ninth NELAC annual meeting on June 5, 2003. The sections and appendices specified in this subsection are hereby adopted by reference.

(c) Each environmental laboratory shall meet all of the following requirements for the use of NELAC accreditation:

(1) Not misrepresent its fields of accreditation, methods, or analytes or its accreditation status on any document. These documents shall include laboratory reports, catalogs, advertising,

business solicitations, proposals, quotations, and other materials;

(2) post or display its most recent accreditation certificate or its fields of accreditation in a prominent place in the laboratory facility;

(3) make accurate statements concerning its fields of accreditation and accreditation status;

(4) include at least the phrase "NELAP accredited" and the laboratory's accreditation number or other identifier if the accrediting authority's name is used on general literature, including catalogs, advertising, business solicitations, proposals, quotations, laboratory analytical reports, and any other materials; and

(5) not use its certificate, its accreditation status, the NELAC or NELAP logo, or both logos to imply endorsement by the department. (Authorized by K.S.A. 65-1,109a; implementing K.S.A. 65-171f and 65-1,109a; effective, E-79-14, June 23, 1978; effective May 1, 1979; amended May 1, 1983; amended May 1, 1986; amended May 1, 1988; amended Jan. 24, 1994; amended May 25, 2001; amended March 26, 2004; amended June 1, 2007.)

28-15-36a. Requirements for accreditation of field laboratories. (a) Accreditation of a field laboratory shall be granted only to those laboratories performing environmental analyses limited to one or more of the following fields of accreditation:

- (1) Chlorine;
- (2) dissolved oxygen;
- (3) hydrogen ion (pH);
- (4) sulfite;
- (5) temperature; or
- (6) turbidity.

(b) Personnel. Each staff member performing analytical procedures shall meet the following minimum qualifications:

- (1) A high school diploma or equivalent;
- (2) knowledge of the use of analytical equipment and support equipment used for the analysis of the fields of accreditation listed in subsection (a); and
- (3) one month's experience in performing the analyses being considered for approval.

(c) Supplies, reagents, standards, and equipment.

(1) All items necessary for the performance of the analyses shall be available.

(2) Reagents and standards shall not exceed their expiration date.

(3) Equipment shall be properly maintained and in working order.

(4) Automated on-line equipment shall be maintained and calibrated according to manufacturer's instructions. The calibration and maintenance of automated equipment shall be documented.

(d) Analytical methods. Drinking water samples shall be analyzed in accordance with methods approved by the laboratory accreditation officer as required by the safe drinking water act. Environmental water samples analyzed under the clean water act shall be analyzed in accordance with methods approved by the laboratory accreditation officer as required by the clean water act. Environmental samples analyzed under the resource conservation and recovery act shall be analyzed in accordance with methods approved by the laboratory accreditation officer as required by the resource conservation and recovery act.

(e) Sample collection and handling. All samples collected for field laboratory analysis shall be analyzed immediately after collection or on-site. The temperature of each sample shall be read and recorded at the sample site.

(f) Quality assurance.

(1) Each field laboratory shall implement and maintain a detailed, written standard operating procedure for collection, analysis, reporting, and data handling.

(2) Each instrument shall be calibrated on each day of use.

(3) Each calibration shall be verified with a quality control standard.

(4) Each aliquot of a solution used for calibration and quality control shall be used only once.

(g) Data handling.

(1) All records relating to data reported for regulatory compliance purposes shall be retained by the laboratory for at least five years. This requirement shall include the following if applicable:

(A) Calibration or standardization information, or both;

(B) quality controls, including standards and duplicates;

(C) calculations;

(D) sampling and analytical information; and

(E) reports.

(2) The sampling and analytical data to be retained shall include the following:

(A) The date, time, and location of sampling and analysis;

(B) the name of the person collecting the sample;

(C) the name of the analyst; and

(D) the type of analysis, method utilized, and results.

(h) The person in charge of each accredited field laboratory shall notify the accreditation officer, in writing, within 30 days of any changes in analytical equipment, personnel, facility location, facility name, or facility ownership. If any changes in personnel take place, the person in charge of the accredited field laboratory shall be responsible for the placement and training of individuals meeting the qualifications requirements specified in subsection (b). (Authorized by K.S.A. 65-1,109a; implementing K.S.A. 65-1711 and 65-1,109a; effective Jan. 24, 1994; amended May 25, 2001; amended June 1, 2007.)

28-15-37. Fees. (a)(1) The accreditation fees for primary accreditation for laboratories located in the state of Kansas shall be as follows:

(A)(i) \$1,000.00 for aquatic toxicity;

(ii) \$300.00 for microbiology field of accreditation for one scope of accreditation and \$500.00 for more than one scope of accreditation;

(iii) \$500.00 for metal field of accreditation for each scope of accreditation;

(iv) \$1,000.00 for organic chemistry field of accreditation for each scope of accreditation;

(v) \$500.00 for inorganic chemistry field of accreditation for each scope of accreditation; and

(vi) \$1,000.00 for radiochemistry field of accreditation for each scope of accreditation;

(B) \$200.00 for each supplemental accreditation; and

(C) \$200.00 for each laboratory operating more than one facility in different physical locations and accredited under the same certificate, in addition to any of the accreditation fees.

(2) The accreditation fee for primary accreditation for each laboratory located out of the state of Kansas shall be \$1,750.00 for each scope of accreditation. The laboratory shall be responsible for all fees and expenses for the assessment of the laboratory that are paid by the laboratory directly to a third-party assessor contracted by the department.

(3) The accreditation fee for each laboratory accredited by reciprocity shall be \$1,250.00 for each scope of accreditation.

(4) The accreditation fees for each field laboratory shall be \$200.00 for one field of accreditation and \$350.00 for more than one field of accreditation.

(b) The person in charge of each laboratory shall submit the applicable fees specified in sub-

section (a) with the application forms provided by the department.

(c) For each scope of accreditation, each laboratory shall be assessed a \$75.00 fee for each field of accreditation added within that scope of accreditation during the accreditation period.

(d) All fees shall be remitted in full before the issuance of the certificate. Fees shall not be refunded except in the case of overpayment. Payment of fees shall be made to the Kansas division of health and environmental laboratories. (Authorized by and implementing K.S.A. 65-1,109a; effective, E-79-14, June 23, 1978; effective May 1, 1979; amended May 1, 1986; amended Jan. 24, 1994; amended May 25, 2001; amended June 1, 2007.)

28-15-50. Definitions. For the purposes of these regulations, the following words and phrases are defined as follows:

(a) "Capacity" means the technical, managerial, and financial ability to comply with applicable national primary drinking water standards.

(b) "Conservation plans and practices" means conservation plans and practices approved by either the Kansas water office or the division of water resources, Kansas department of agriculture, as consistent with guidelines developed and maintained by the Kansas water office pursuant to K.S.A. 74-2608 and amendments.

(c) "Debt service coverage ratio" means the sum of net income plus interest expense plus depreciation, divided by the sum of principal and interest payments for debt service.

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

(e) "Disadvantaged community" means a loan applicant or the service area of a loan applicant that meets affordability criteria established by the secretary.

(f) "Equivalency" means that portion of the Kansas water supply loan fund that is equal to the amount of capitalization grants provided by the federal government.

(g) "Equivalency project" means a project that is funded from the equivalency portion of the Kansas water supply loan fund.

(h) "Fund" means the Kansas water supply fund established by K.S.A. 1996 Supp. 65-163e et seq., and amendments, and may consist of more than one pool of money.

(i) "Intended use plan" means the plan prepared according to K.S.A. 1996 Supp. 65-163h and amendments.

(j) "Loan agreement" means an executed contract between a loan applicant and the secretary confirming the purpose of the loan, the amount and terms of the loan, the schedule of the loan payments and requirements, and any other agreed upon conditions set forth by the secretary.

(k) "Loan applicant" means one of the following:

(1) any political or taxing subdivision authorized by law to construct, operate, and maintain a public water supply system, including water districts;

(2) two or more such subdivisions jointly constructing, operating, or maintaining a public water supply system; or

(3) the Kansas rural water finance authority.

(l) "National primary drinking water standards" means a regulation that specifies either a maximum contaminant level or a treatment technique along with associated monitoring and reporting requirements for contaminants with adverse health effects on persons.

(m) "Project completion" means the initiation of operation or the ability to initiate operation.

(n) "Project" means acquisition, construction, reconstruction, improving, equipping, rehabilitation, or extension of all or any part of a public water supply system.

(o) "Public water supply system" has the meaning provided by K.S.A. 65-162a and amendments.

(p) "Secretary" means the secretary of health and environment.

(q) "Significant noncompliance" means failure to comply with any national primary drinking water standard according to criteria established by the administrator of the federal environmental protection agency.

(r) "Water transfer" has the meaning provided by K.S.A. 1996 Supp. 82a-1501 and amendments. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

28-15-51. Fund use eligibility. (a) The fund shall be used only to provide loans to loan applicants for all or any part of the following:

(1) The acquisition, construction, reconstruction, improvement, equipping, rehabilitation, or extension of all or any part of a public water supply system;

(2) costs for project planning, design, and construction inspection, if included in the loan application; and

(3) if a construction contract has been awarded on or after August 6, 1996, refinancing the acquisition, construction, improvement, equipping, rehabilitation, or extension of all or any part of a public water supply system, including costs for project planning, design, and construction inspection. Refinancing shall be allowed only from funds provided directly or indirectly, by federal appropriations for federal fiscal year 1997.

(b) Each project eligible to receive loans shall appear on the project priority list prepared by the department. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

28-15-52. Interest rate. (a) Each loan shall accrue interest for the entire life of the loan at a fixed rate set by the secretary. This fixed rate shall be calculated as specified in subsection (b). Fees for servicing the loans may also be set by the secretary.

(b) The interest rate shall be calculated as a percentage, as specified in the intended use plan, of three months' average of the bond buyer's weekly 20-bond GO (general obligation) index. The loan interest rate as calculated shall include any loan servicing fee.

(c) The interest rate and loan servicing fee may vary depending on the loan repayment period. (Authorized by K.S.A. 65-163f; implementing K.S.A. 65-163f and K.S.A. 2019 Supp. 65-163i; effective Oct. 10, 1997; amended Feb. 28, 2020.)

28-15-53. Repayment of loans. (a) All principal and interest shall be repaid in accordance with the terms of the loan agreement. Repayments shall begin no later than one year following project completion. Repayment of the loan shall not exceed a 30-year repayment period, except for a loan to a disadvantaged community. Any loan to a disadvantaged community may exceed a 30-year repayment period if both of the following conditions are met:

(1) Repayment of the loan does not exceed a 40-year repayment period.

(2) The repayment period does not exceed the expected design life of the project.

(b) Prepayment of the principal in whole or part may be made, in accordance with the terms of the loan agreement. (Authorized by K.S.A. 65-163f; implementing K.S.A. 65-163f and K.S.A. 2019

Supp. 65-163i; effective Oct. 10, 1997; amended Feb. 28, 2020.)

28-15-54. Dedicated loan repayment source. (a) Each loan recipient shall adopt one or more dedicated sources for repayment of the loan, including principal and interest. The dedicated sources of revenue may be in the form of revenue from water sales, service charges, connection fees, special assessments, property taxes, grants, or some combination of these sources. Each dedicated source of revenue shall be legally available to the loan recipient over the life of the loan and pledged to the repayment of the loan. Each dedicated source of revenue shall be approved by the secretary.

(1) Each loan recipient with general taxing authority shall commit to using that authority, if necessary, as a condition of receiving a loan. As an alternative to pledging general tax authority, any such loan recipient may purchase bond insurance.

(2) Each loan recipient without general taxing authority shall purchase bond insurance as a condition of receiving a loan. As an alternative to purchasing bond insurance, any such loan recipient shall pledge to maintain either of the following:

(A) A debt service coverage ratio of 140%; or

(B) A debt service coverage ratio of 125% combined with a 10% loan reserve account.

(b) Each loan recipient shall conduct an annual revenue source review during the entire life of the loan repayment obligation and, if necessary, shall implement new revenue rates as approved by the secretary. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

28-15-55. Failure to repay loan on schedule. (a) Upon failure of a loan recipient to pay one or more installments of the loan repayment on schedule, the governing body of the loan recipient shall be consulted by the secretary and may be required to undergo a financial and management operations review.

(b) The governing body shall correct any deficiencies noted during the review and adopt charges as set by the secretary, to be levied against users of the project. These charges shall remain in effect until the full amount of the loan, including principal and interest, has been repaid, unless

otherwise approved by the secretary. The governing body of each loan recipient shall collect any such charges and shall forward all receipts from such charges on a schedule established by the secretary. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

28-15-56. Project eligibility. (a) No assistance from the fund shall be provided for any water transfer project, or for any portion of a project involving a water transfer. No assistance from the fund shall be provided to any loan applicant who has not adopted and implemented water conservation plans and practices.

(b) No assistance shall be provided to any loan applicant in significant noncompliance with any applicable primary drinking water regulation, unless the project will return the loan applicant to compliance.

(c) No assistance shall be provided to any loan applicant lacking capacity, unless the loan applicant agrees to undertake feasible and appropriate changes in operations, including ownership, management, accounting, rates, maintenance, consolidation, alternative sources of supply, or other procedures if the secretary determines that such changes are required to demonstrate capacity.

(d) No assistance shall be provided for projects and activities deemed ineligible for participation by the U.S. environmental protection agency. Any such projects and activities shall be listed in the intended use plan. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

28-15-57. Equivalency projects. Equivalency projects shall be required to comply with federal laws and executive orders that apply to all activities receiving federal assistance. In any given year, more projects than are necessary to equal the equivalency portion of the fund may be required to comply with equivalency project requirements, for the purpose of building an equivalency credit for future federal funds. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

28-15-58. User charge system. Each loan applicant shall develop and, after the secretary's review and approval, adopt a rate system that shall produce adequate revenue for repayment of the loan principal and interest, and for operation and maintenance of the entire public water supply system, including depreciation. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

28-15-59. Project certification. Each loan recipient shall certify to the secretary whether or not the project meets its design requirements on the date one year after the initiation of operation of the project. The loan recipient shall be responsible for assuring timely correction and compliance, including recertification if the initial certification concluded that the project did not meet its design requirements. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

28-15-60. Procurement. Each loan recipient shall follow state procurement laws and regulations applicable to the recipient and procedures established by the secretary. The secretary's approval is required before awarding any contract for construction. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

28-15-61. Project documents. (a) Each loan applicant shall submit the following documents for the secretary's review and approval:

(1) A completed loan application on application forms furnished by the department;

(2) an engineering report describing the need for the project, project design parameters, and an estimate of cost; and

(3) financial statements for the previous three years.

(b) Each loan recipient shall submit the following documents for the secretary's review and approval:

(1) Complete design plans, specifications, and construction bidding documents, including detailed cost estimates for competitive bidding, and projected construction and payment schedules;

(2) a plan for providing construction inspection services;

(3) a plan of operation, including an overall project completion schedule, annual operating cost projections for a minimum of five years, a description of the financial management system, and projected revenues to operate and maintain the public water supply system. Revenue projections shall also include the loan repayment obligations; and

(4) an operations manual, which shall be submitted before 90% of the project is completed. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

28-15-62. Financial capability. As part of the loan application, the loan applicant shall demonstrate and certify to the secretary that the applicant has the financial capability to repay the loan and to cover the costs of operation and maintenance of the entire public water supply system of which the proposed project is an integral part. This financial assessment shall cover the life of the loan obligation and consider, at a minimum, changes in economic and population growth, depreciation, existing debt obligations, revenues, project costs, and effects on user charge rates. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

28-15-63. Public participation. (a) Each loan applicant shall conduct a minimum of one public hearing before execution of the loan agreement, to discuss the proposed project and receive input on alternatives. Notice of the public hearing shall be provided to the department and shall be published in one or more newspapers, as needed to cover the project service area, at least 30 calendar days before the public hearing.

(b) A record of the public hearing and proof of publication shall be submitted prior to execution of the loan agreement.

(c) The 30-day public notice requirement may be waived by the secretary for any project deemed an emergency. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

28-15-64. Environmental review. (a) The “Environmental review procedure for Kansas public water supply loan fund,” dated July 1997, is adopted by reference as the required environmental review procedure for an equivalency project.

(b) For an equivalency project, 40 CFR 6.508(a), 6.511(b), and 6.512, as in effect on July 1, 1996, are hereby adopted by reference.

(c) Those members of the public who participated in the environmental review process shall have the right to appeal the decisions made within that process. All such appeals shall be conducted pursuant to the Kansas administrative procedure act and the act for judicial review set forth in K.S.A. 77-501 et seq. and 77-601 et seq., respectively.

(d) When used in any provision adopted from 40 CFR Part 6, references to “EPA” shall be replaced with the “Kansas department of health and environment”; “grant” shall be replaced with “loan agreement”; “grantee” shall be replaced with “applicant.” (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 65-163e through 65-163u; effective Oct. 10, 1997.)

28-15-65. Project accounts. Each loan recipient shall maintain project accounts in accordance with generally accepted government accounting standards as defined in the 1994 edition of the “governmental accounting, auditing, and financial reporting” manual issued by the government finance officers association. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

Article 15a.—PRIMARY DRINKING WATER

28-15a-2. Definitions; replaced terms.

(a) For the purposes of this article and article 15 of the department’s regulations, the definitions in 40 C.F.R. 141.2, as in effect on July 1, 2015, are hereby adopted by reference with the following alterations:

(1)(A) The definition of “Public water system” shall be replaced with the following:

“ ‘Public water supply system’ means a system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if the system has at least 10 service connections or regular-

ly serves an average of at least 25 individuals daily at least 60 days out of the year. This term shall include the following:

“(1) Any collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system; and

“(2) any collection or pretreatment storage facilities not under this control that are used primarily in connection with the system.

“This term shall not include any ‘special irrigation district.’

“Each public water supply system shall be deemed either a ‘community water supply system’ or a ‘non-community water supply system.’”

(B) The term “public water supply system” shall replace the term “public water system” wherever the latter term appears in any of the text adopted in this article.

(2) The definition of “Community water system” shall be replaced with the following: “‘Community water supply system’ means a public water supply system which has at least 10 service connections used by year-round residents or regularly serves at least 25 year-round residents.”

The term “community water supply system” shall replace the term “community water system” wherever the latter term appears in any of the text adopted in this article.

(3) The definition of “Person” shall be replaced by the following: “‘Person’ means an individual, corporation, company, institution, association, partnership, township, municipality, county, state, or federal agency that owns, administers, operates, or maintains a public water supply system that includes a community water supply system or a non-community water supply system.”

(4) The following definitions shall be added to 40 C.F.R. 141.2:

(A) “Administrator” means administrator of the environmental protection agency.

(B) “Approved laboratory” means a laboratory certified and approved by the department to analyze water samples to determine compliance with maximum contaminant levels or to perform other required analyses.

(C) “Department” and “primacy agency” mean Kansas department of health and environment.

(D) “Distribution system” means the system of conduits and appurtenances by which a water supply is distributed to customers.

(E) “Laboratory tests” means all bacteriological, chemical, physical, or radiological tests made by

either the departmental laboratory or an approved laboratory on water samples that were submitted by the operator of a public water supply system to confirm the quality of water.

(F) “Operating records and reports” means the daily record and the monthly report of data connected with the operation of the public water supply system’s facilities.

(G) “Secretary” means secretary of the Kansas department of health and environment.

(H) “Significant deficiency” means any defect in a public water supply system’s design, operation, maintenance, or administration, as well as any failure or malfunction of any system component that causes, or has the potential to cause, an unacceptable risk to health or that could affect the reliable delivery of safe drinking water.

(I) “Turbidity” means the cloudy condition of water caused by the presence of finely suspended matter, including clay, silt, plankton, and microscopic organisms, resulting in the scattering and absorption of light rays. Turbidity is measured in nephelometric turbidity units (NTU).

(b) For the purposes of this article and article 15 of the department’s regulations, the following terms and phrases appearing in the federal regulations adopted by reference in this article and article 15 of the department’s regulations shall be defined or replaced as specified in this subsection:

(1) “Must” shall be replaced by “shall.”

(2) “SDWA” means the safe drinking water act, 42 U.S.C. Sec. 300f et seq., and amendments thereto.

(3) “This part” and “part” shall be replaced by “this article” and “article.”

(4) “This subpart” and “subpart” mean that specific, named group of primary drinking water regulations in which the regulation is placed within this article. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-3. Coverage; conditions for exclusion. The provisions of 40 C.F.R. 141.3, as in effect on July 1, 2015, are hereby adopted by reference. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-4. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-6. Effective dates. For each requirement in any portion of a C.F.R. adopted by

reference in this article of the department's regulations with an expired effective date, completion date, or beginning compliance date, that expired date shall be replaced with the effective date of this regulation. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-11. Maximum contaminant levels for inorganic chemicals. The provisions of 40 C.F.R. 141.11(d), as in effect on July 1, 2015, are hereby adopted by reference. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-21. Coliform sampling. Each person that operates a public water supply system shall comply with the following monitoring and analytical requirements for coliforms:

(a) The sampling period for microbiological compliance shall be one calendar month for all public water supply systems.

(b) If a person that operates a public water supply system collecting fewer than five routine samples per month has at least one total coliform-positive sample and the department does not invalidate any of the samples, the person shall collect at least five routine samples during the next month the person provides water to the public, unless directed otherwise by the department.

(c)(1) Each person that operates a public water supply system that uses surface water as its source of supply and serves a population of 4,100 or less shall take at least four water samples during each sampling period.

(2) Each person that operates a public water supply system that uses surface water as its source of supply and serves a population greater than 4,100 shall take water samples according to the table in subsection (d).

(3) Each person that operates a public water supply system that uses groundwater, not including groundwater under direct influence of surface water, as its source of supply and each person that operates a public water supply system that purchases water from another public water supply system shall take water samples according to the table in subsection (d).

(d) Each person that operates a public water supply system shall ensure that routine samples are collected at regular time intervals and analyzed for total coliform bacteria as specified in the following table:

Population Served	Minimum number of samples per sampling period
25 to 2,500.....	2
2,501 to 3,300.....	3
3,301 to 4,100.....	4
4,101 to 4,900.....	5
4,901 to 5,800.....	6
5,801 to 6,700.....	7
6,701 to 7,600.....	8
7,601 to 8,500.....	9
8,501 to 12,900.....	10
12,901 to 17,200.....	15
17,201 to 21,500.....	20
21,501 to 25,000.....	25
25,001 to 33,000.....	30
33,001 to 41,000.....	40
41,001 to 50,000.....	50
50,001 to 59,000.....	60
59,001 to 70,000.....	70
70,001 to 83,000.....	80
83,001 to 96,000.....	90
96,001 to 130,000.....	100
130,001 to 220,000.....	120
220,001 to 320,000.....	150
320,001 to 450,000.....	180

For each additional 150,000 in population, an additional 30 water samples shall be analyzed for each sampling period. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-23. Inorganic chemical sampling and analytical requirements. Each person that operates a public water supply system shall comply with the sampling and analytical requirements specified in 40 C.F.R. 141.23, as in effect on July 1, 2015 and hereby adopted by reference, with the addition of the following text, which shall be added at the beginning of 40 C.F.R. 141.23(c):

“Inorganic analysis for calcium, chloride, iron, magnesium, manganese, pH, potassium, silica, sodium, specific conductance, sulfate, total alkalinity, total dissolved solids, total hardness, and total phosphorus shall be required from each community water supply system with its own source of supply and from each non-transient, non-community water supply system with its own source of supply. Each person operating a groundwater system shall take one sample at each sampling point during each compliance period. Each person operating a surface water system (or combined surface water and ground-

water system) shall take one sample annually at each sampling point.” (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-24. Requirements for sampling and analyzing organic chemicals. The provisions of 40 C.F.R. 141.24, as in effect on July 1, 2015, are hereby adopted by reference. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-25. Analytical methods for measuring radioactivity. The provisions of 40 C.F.R. 141.25, as in effect on July 1, 2015, are hereby adopted by reference. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-26. Frequency of monitoring for radioactivity. The provisions of 40 C.F.R. 141.26, as in effect on July 1, 2015, are hereby adopted by reference. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-27. Alternate analytical techniques and testing methods. (a) The following documents are hereby adopted by reference:

(1) 40 C.F.R. 141.27, as in effect on July 1, 2015; and

(2) 40 C.F.R. part 141, subpart C, appendix A, as in effect on July 1, 2017 and as amended by 82 fed. reg. 34867-34870 (2017).

(b) In addition to the requirements of 40 C.F.R. 141.27 and appendix A to subpart C of part 141 as adopted in subsection (a), each person that operates a public water supply system shall ensure that the analyses of drinking water samples required by this article of the department’s regulations are performed in accordance with the approved methods listed in appendix A for contaminants, disinfectant residuals, and parameters.

(c) If drinking water samples are required by this article of the department’s regulations to be analyzed, each person that operates a public water supply system shall ensure that the analysis is conducted by an accredited laboratory as specified in K.A.R. 28-15-35. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-28. Approved laboratories. The provisions of 40 C.F.R. 141.28, as in effect on July 1, 2015, are hereby adopted by reference. (Autho-

rized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-29. Monitoring of consecutive public water supply systems. The provisions of 40 C.F.R. 141.29, as in effect on July 1, 2015, are hereby adopted by reference. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-31. General reporting requirements. The provisions of 40 C.F.R. 141.31, as in effect on July 1, 2015, are hereby adopted by reference, except that “subpart Q of this part” shall be replaced by “K.A.R. 28-15a-201.” (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-32. Electronic reporting requirements. (a) No later than six months after written notification from the department, each person that operates a public water supply system shall meet the following requirements:

(1) Submit to the department a written acknowledgment of compliance with the electronic submission requirement; and

(2) commence the submission of all required documents, including surveys, assessments, reports, monitoring, and compliance data, by only electronic means.

(b) Each electronic submission shall be made according to the department’s designated procedures. (Authorized by and implementing K.S.A. 65-171m; effective June 7, 2018.)

28-15a-33. General record maintenance. The provisions of 40 C.F.R. 141.33, as in effect on July 1, 2015, are hereby adopted by reference, except that “subpart Q of this part” shall be replaced by “K.A.R. 28-15a-201.” (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-41. Special monitoring for sodium. The provisions of 40 C.F.R. 141.41, as in effect on July 1, 2015, are hereby adopted by reference, except that the last sentence of 141.41(b) shall not be adopted. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-42. Special monitoring for corrosivity characteristics. The provisions of 40 C.F.R. 141.42, as in effect on July 1, 2015, are hereby adopted by reference, except that in para-

graph (d), the text “In addition, States may require identification and reporting of other materials of construction present in distribution systems that may contribute contaminants to the drinking water, such as:” shall be replaced by the following text: “Community water supply systems shall identify whether the following construction materials are present in their distribution system and shall report to the department:”. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-43. Prohibition on use of lead pipes, solder, and flux. The provisions of 40 C.F.R. 141.43(a) and (d) as in effect on July 1, 2015, are hereby adopted by reference, except that 40 C.F.R. 141.43(d)(2) shall be replaced with the following text:

“(d)(2) When used with respect to pipes and pipe fitting refers to pipes and pipe fittings containing not more than 0.25% lead calculated across the wetted surfaces of a pipe, pipe fitting, plumbing fitting, and fixture.” (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-60. Effective dates for maximum contaminant levels and maximum residual disinfectant levels. The provisions of 40 C.F.R. 141.60, as in effect on July 1, 2015, are hereby adopted by reference. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-61. Maximum contaminant levels for organic contaminants. The provisions of 40 C.F.R. 141.61, as in effect on July 1, 2015, are hereby adopted by reference. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-62. Maximum contaminant levels for inorganic contaminants. The provisions of 40 C.F.R. 141.62, as in effect on July 1, 2015, are hereby adopted by reference. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-63. Maximum contaminant levels for microbiological contaminants. The provisions of 40 C.F.R. 141.63(c), (e), and (f), as in effect on July 1, 2015, are hereby adopted by reference, except that “subpart Q of this part” shall be replaced by “K.A.R. 28-15a-201” and “subpart Y of this part” shall be replaced by

“K.A.R. 28-15a-851.” (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-64. Maximum contaminant levels for disinfection by-products. The provisions of 40 C.F.R. 141.64, as in effect on July 1, 2015, are hereby adopted by reference. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-65. Maximum residual disinfectant levels. The provisions of 40 C.F.R. 141.65, as in effect on July 1, 2015, are hereby adopted by reference. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-66. Maximum contaminant levels for radionuclides. The provisions of 40 C.F.R. 141.66, as in effect on July 1, 2015, are hereby adopted by reference. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-70. Requirements for filtration and disinfection. The provisions of 40 C.F.R. 141.70 and 40 C.F.R. 141.72 through 40 C.F.R. 141.76, as in effect on July 1, 2015, are hereby adopted by reference with the following alterations:

(a) 40 C.F.R. 141.72(a) shall be deleted.

(b) 40 C.F.R. 141.72(b)(3)(i) shall be replaced with the following text:

“A sufficient amount of chlorine shall be added to the water to maintain a chlorine residual of at least 0.2 mg/L of free chlorine or 1.0 mg/L of total chlorine throughout the entire distribution system.

“Failure to maintain a residual as specified in 141.72(b)(3)(i) in more than five percent of measurements taken each month, in any two consecutive months, shall be a violation of this regulation and shall be reported to the department by the tenth day following the month in which the violation occurred.

“Each day the public water supply system serves water to customers, the operator shall make a measurement of the chlorine residual. The operator shall record and maintain data to demonstrate to the department that the public water supply system is in compliance with the requirements of 141.72(b)(3)(i).”

(c) 40 C.F.R. 141.74(b) and 141.75(a)(1) and (a)(2) shall be deleted.

(d) The first sentence of 40 C.F.R. 141.74(c)(3)(i) shall be deleted. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-72. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-73. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-74. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-75. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-76. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-80. Requirements for the control of lead and copper. The provisions of 40 C.F.R. 141.80 through 141.91, as in effect on July 1, 2015, are hereby adopted by reference, except that “subpart I” shall be replaced by “K.A.R. 28-15a-80.” (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-81. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-82. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-83. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-84. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-85. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-86. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-87. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-88. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-89. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-90. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-91. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-100. Requirements for public water supply systems using point-of-entry devices or point-of-use devices. The provisions of 40 C.F.R. 141.100, as in effect on July 1, 2015, are hereby adopted by reference with the addition of the following text:

“(f) The public water supply system shall not exceed 100 service connections. Each person that operates a public water supply system exceeding 100 service connections that wishes to install any point-of-entry devices or point-of-use devices, or both, shall submit a formal request to the department. Each person that operates a public water supply system shall not proceed with installation of these devices without written approval from the department.” (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-101. Use of bottled water. Each person operating a public water supply system shall ensure that the system uses bottled water only in accordance with 40 C.F.R. 141.101, as in effect on July 1, 2015 and hereby adopted by reference. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-110. General requirements for treatment techniques. The provisions of 40 C.F.R. 141.110, as in effect on July 1, 2015, are hereby adopted by reference, except that “subpart K of this part” shall be replaced by “K.A.R. 28-15a-110 and K.A.R. 28-15a-111.” (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-111. Treatment techniques for acrylamide and epichlorohydrin. The provisions of 40 C.F.R. 141.111, as in effect on July 1, 2015, are hereby adopted by reference. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-130. Disinfectant residuals, disinfection by-products, and disinfection by-product precursors. The provisions of 40 C.F.R. 141.130 through 141.135, as in effect on July 1, 2015, are hereby adopted by reference with the following alterations:

(a) "Appendix A to subpart C of this part" shall be replaced by "K.A.R. 28-15a-27."

(b) "Subpart Q of this part" shall be replaced by "K.A.R. 28-15a-201."

(c) "Subparts U and V of this part" shall be replaced by "K.A.R. 28-15a-600 and K.A.R. 28-15a-620." (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-131. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-132. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-133. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-134. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-135. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-151. Requirements for consumer confidence reports. The provisions of 40 C.F.R. 141.151 through 141.155 and appendix A to subpart O of part 141, as in effect on July 1, 2015, are hereby adopted by reference with the following alterations:

(a) 40 C.F.R. 141.151(f) shall be deleted.

(b) The text in 40 C.F.R. 141.153(d)(1)(i) shall be replaced with the following: "Contaminants subject to an MCL, action level, maximum residual disinfectant level, treatment technique for regulated contaminants, and those contaminants

listed in K.A.R. 28-15a-23 which are not subject to an MCL but are required to be monitored."

(c) The text in 40 C.F.R. 141.155(c) shall be replaced with the following: "No later than the date a community water supply system is required to distribute the report to its customers, that system shall submit a copy of the report to the department, including a certification of delivery that the report has been distributed to customers and that the information is correct and consistent with the compliance monitoring data contained in the report." (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-152. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-153. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-154. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-155. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-170. Enhanced filtration and disinfection requirements for subpart H systems serving 10,000 or more people. The provisions of 40 C.F.R. 141.170 and 40 C.F.R. 141.172 through 141.175, as in effect on July 1, 2015, are hereby adopted by reference, except that "this subpart P" shall be replaced by "K.A.R. 28-15a-170." (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-172. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-173. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-174. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-175. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-201. Requirements for public notification. Each person that operates a public water supply system shall comply with 40 C.F.R. 141.201 through 141.211 and appendices A, B, and C to subpart Q of part 141, as in effect on July 1, 2015 and hereby adopted by reference, except that in 40 C.F.R. 141.201, the last sentence of the introduction shall be deleted. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-202. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-203. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-204. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-205. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-206. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-207. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-208. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-209. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-210. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-400. Requirements for the groundwater rule. The provisions of 40 C.F.R. 141.400 through 141.405, as in effect on July 1, 2015, are hereby adopted by reference, except that “this subpart S” shall be replaced by “K.A.R. 28-15a-400.” (Authorized by and implementing K.S.A. 65-171m; effective June 7, 2018.)

28-15a-500. Requirements for enhanced filtration and disinfection for subpart H sys-

tems serving fewer than 10,000 people. (a) The following sections in 40 C.F.R. part 141, as in effect on July 1, 2015, are hereby adopted by reference, except as specified in this regulation:

- (1) 141.500 through 141.502;
- (2) 141.503(a) and 141.503(c) through (g);
- (3) 141.510 and 141.511;
- (4) 141.530;

(5) 141.531, except that the last sentence shall be deleted and replaced with the following text: “An alternative TTHM and HAA5 data set may be approved by the secretary if a system demonstrates that the alternative data set is more representative of TTHM and HAA5 levels”;

- (6) 141.532 through 141.536;
- (7) 141.540 through 141.544;
- (8) 141.550 through 141.553;
- (9) 141.560 through 141.564;
- (10) 141.570; and
- (11) 141.571.

(b) In the portions of 40 C.F.R. part 141 adopted by reference in subsection (a), the phrase “subpart T” shall be replaced by “K.A.R. 28-15a-500.” (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; amended June 7, 2018.)

28-15a-501. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-502. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-503. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-530. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-531. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-532. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-533. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-534. (Authorized by and imple-

menting K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-535. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-536. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-540. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-541. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-542. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-543. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-544. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-550. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-551. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-552. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-553. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-560. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-561. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-562. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-563. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-564. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-570. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-571. (Authorized by and implementing K.S.A. 65-171m; effective Oct. 1, 2004; revoked June 7, 2018.)

28-15a-600. Initial distribution system evaluations of the stage 2 disinfection by-products rule. The provisions of 40 C.F.R. 141.600 through 141.605, as in effect on July 1, 2015, are hereby adopted by reference, with the following alterations:

(a) "Subpart U of this part" shall be replaced by "K.A.R. 28-15a-600."

(b) "Subpart V of this part" shall be replaced by "K.A.R. 28-15a-620."

(c) "Subpart L of this part" shall be replaced by "K.A.R. 28-15a-130." (Authorized by and implementing K.S.A. 65-171m; effective June 7, 2018.)

28-15a-620. Disinfection by-products requirements of the stage 2 disinfection by-products rule. The provisions of 40 C.F.R. 141.620 through 141.629, as in effect on July 1, 2015, are hereby adopted by reference, except that "subpart V of this part" shall be replaced by "K.A.R. 28-15a-620" and "subpart L of this part" shall be replaced by "K.A.R. 28-15a-130." (Authorized by and implementing K.S.A. 65-171m; effective June 7, 2018.)

28-15a-700. Enhanced treatment for *Cryptosporidium*. The provisions of 40 C.F.R. 141.700 through 141.711 and 40 C.F.R. 141.713 through 141.722, as in effect on July 1, 2015, are hereby adopted by reference, with the following alterations:

(a) "This subpart W" shall be replaced by "K.A.R. 28-15a-700."

(b) "Subparts H, P and T of this part" shall be replaced by "K.A.R. 28-15a-70, K.A.R. 28-15-170, and K.A.R. 28-15-500." (Authorized by and implementing K.S.A. 65-171m; effective June 7, 2018.)

28-15a-851. Requirements for the revised total coliform rule. The provisions of 40 C.F.R. 141.851 through 141.861, as in effect on July 1, 2015, are hereby adopted by reference with the alterations specified in this regulation.

(a) Exclusions. The following portions of 40 C.F.R. 141.851 through 141.861 shall be excluded from adoption:

(1) 40 C.F.R. 141.854(a)(4), (b), (c), (d), (e), (f), (g), and (h);

(2) 40 C.F.R. 141.855(b), (c), (d), and (e);

(3) 40 C.F.R. 141.856(b) and (c);

(4) 40 C.F.R. 141.857(b), (c), and (d); and

(5) 40 C.F.R. 141.859(a)(2)(iii).

(b) Modifications.

(1)(A) In 40 C.F.R. 141.854(i)(2), the following text shall be deleted: “unless it meets the criteria in paragraphs (i)(2)(i) through (iii) of this section to be eligible for monitoring less frequently than monthly beginning April 1, 2016, except as provided under paragraph (c) of this section.”

(B) In 40 C.F.R. 141.854(i)(3), the following text shall be deleted: “except that systems that monitor less frequently than monthly must still monitor during the vulnerable period designated by the State.”

(C) In 40 C.F.R. 141.854(j), the following text shall be deleted from the first sentence: “collecting samples on a quarterly or annual frequency.”

(D) In 40 C.F.R. 141.855(f), the following text shall be deleted from the first sentence: “collecting samples on a quarterly frequency.”

(2)(A) “Appendix A to subpart C of part 141” shall be replaced by “K.A.R. 28-15a-27.”

(B) “Subpart H” shall be replaced by “K.A.R. 28-15a-70.” “Subparts H, P, T and W” shall be replaced by “K.A.R. 28-15a-70, K.A.R. 28-15a-170, K.A.R. 28-15a-500, and K.A.R. 28-15a-700.”

(C) “Subpart Q of this part” shall be replaced by “K.A.R. 28-15a-201.”

(D) “Subpart S” shall be replaced by “K.A.R. 28-15a-400.”

(E) “Subpart Y” shall be replaced by “K.A.R. 28-15a-851.” (Authorized by and implementing K.S.A. 65-171m; effective June 7, 2018.)

Article 16.—WATER POLLUTION CONTROL

SEWAGE DISCHARGE PERMITS

28-16-1. Information required. (A) Application on form furnished by the department.

(B) Plans.

(C) Specifications.

(D) Engineer’s report. (Authorized by K.S.A. 65-164, 65-165, 65-171d; effective Jan. 1, 1966.)

28-16-2. Submission of information.

Plans, specifications, report and application must be submitted to the chief engineer for the board at least three weeks prior to the date on which action is desired. It is not to be inferred, however, that action will always be taken within the time mentioned. (Authorized by K.S.A. 65-164, 65-165, 65-171d; effective Jan. 1, 1966.)

28-16-3. Plans. Plans for sewerage systems, sewer extensions and sewage treatment plants shall include:

(A) A general map of the municipality or sewer district, showing all proposed and existing streets and alleys, drawn to a scale not smaller than 300 feet to one inch, with all sewer lines, with sizes indicated, and the location of all manholes, clean-outs, and other appurtenances.

(B) The profiles of all sewers, with sizes of sewers, elevations of the sewer inverts of all manholes, and the grade of the sewers between each two adjacent manholes plainly stated. At the sewer outlet shall be shown the approximate elevation of the bottom of the stream, or ordinary low water, and of annual and extraordinary high water. Elevation of extraordinary high water shall be shown on profiles of sewers subject to flooding. Scales of profiles must be clearly stated. The following scale is suggested: vertical, 10 feet to 1 inch; horizontal, 100 feet to 1 inch.

(C) Detail drawings of manholes, clean-outs, inlets, catch basins, overflows, outlets, and all other appurtenances must accompany the application. Unless sewers are other than vitrified clay, detail drawing must be submitted.

(D) The plans for the treatment plant shall include:

(1) a general layout, showing areas for future extension, embankments, various parts of plant, course of outfall sewer, outlet, stream with direction of flow, and any branches in immediate neighborhood, etc.;

(2) details of longitudinal and transverse sections sufficient to make clear the construction of each unit. Details of each feature, inlet and outlet devices, baffles, valves, overflows, arrangement of automatic devices, etc., the depth and sizes of filtering media, the method of distribution and

collection of sewage on the beds, and such other information as is necessary for a complete understanding of the plans.

Each drawing shall have a legible title showing the name of the town or person for whom the drawing is made, name of engineer, scale, date, and substance of drawing. (Authorized by K.S.A. 65-164, 65-165, 65-171d; effective Jan. 1, 1966.)

28-16-4. Specifications. Specifications for the construction of the work shall accompany all plans for new or original systems. Where plans are for extensions to systems, the specifications may be omitted, provided it is stated that work is to be constructed under specifications already on file. It is desired that the estimate of cost be included, but this is not compulsory. (Authorized by K.S.A. 65-164, 65-165, 65-171d; effective Jan. 1, 1966.)

28-16-5. Engineer's report. A comprehensive report of the proposed work, written or approved by the consulting or designing engineer, must accompany all plans for a complete system or treatment plant, and must give all data upon which the design is based, such as information concerning sewer systems:

(A) The nature and extent of the area included with the present system of sewerage, and of the area which it is planned shall drain into this system ultimately.

(B) Population to be served, present and future, estimated for twenty-five years.

(C) The estimated daily per capita flow of sewage, and the total and per capita water consumption of the town at the present time.

(D) The allowance made for infiltration.

(E) The estimated daily flow of sewage.

(F) The character of the sewage. If domestic and trade wastes, estimate nature, and approximate quantity of each.

(G) Method of flushing or cleaning sewers.

(H) Portion to be built at present time.

(I) Minimum and maximum grade of sewers of each size.

(J) If there are sections which cannot grade into this system, the extent of such sections and the probable future disposition of sewage from these sections.

(K) Distance of houses or buildings from proposed outlet or treatment plant.

(L) Approximate maximum and minimum flow of water in stream receiving flow of sewage.

(M) Drainage area above outlet or treatment plant.

(N) Nearest water supplies taken from stream below plant or outlet; above plant or outlet. Dams in vicinity of plant or outlet. (Authorized by K.S.A. 65-164, 65-165, 65-171d; effective Jan. 1, 1966.)

28-16-6. Information concerning treatment plant. In addition to that concerning sewer systems: Engineer's report should cover the following points: method of treatment and description of units; rate of loading; nature of body of water; disposal of sludge; special devices; special methods of maintenance or operation; results expected from treatment plant. Explain any reserve units in pipelines, filters, tanks, etc. Describe pumping unit if sewage is pumped, and any automatic arrangements. (Authorized by K.S.A. 65-164, 65-165, 65-171d; effective Jan. 1, 1966.)

28-16-7. Deviation from plans. There shall be no deviation from plans submitted to and approved by the department, unless amended plans showing proposed changes have been submitted to and approved by the department. Copies of approved plans, specifications, application and report must be filed with the department and permit obtained before the contract for the work is let. (Authorized by K.S.A. 65-164, 65-165, 65-171d; effective Jan. 1, 1966.)

28-16-8 to 28-16-10. (Authorized by K.S.A. 65-170, 65-171d; effective Jan. 1, 1966; revoked Jan. 1, 1972.)

RIVER BASIN WATER QUALITY CRITERIA

28-16-11 to 28-16-26. (Authorized by K.S.A. 1971 Supp. 65-165 through 65-171d; effective, E-67-6, May 31, 1967; effective Jan. 1, 1968; amended, E-71-12, Feb. 1, 1971; amended Jan. 1, 1972; revoked, E-73-16, May 18, 1973; revoked Jan. 1, 1974.)

28-16-27. Emergency or accidental discharge of sewage or other detrimental material into waters; report to department of health. The owner or person responsible for the discharge of sewage or other materials detrimental to the quality of waters of the state, under conditions other than provided for by a valid permit issued by the secretary of the state board of health, shall report such discharge to the state department of health, environmental health services.

When sewage treatment facilities or portions thereof are programmed for bypassing for cause, which results in reduced treatment efficiency below acceptable levels, the owner or his representative shall notify and receive approval from the state department of health at least seven (7) days prior to such discharge.

Emergency or accidental discharge of sewage or other materials detrimental to the quality of waters of the state shall be immediately reported to the state department of health by the owner of the treatment plant or his representative. In the event the water pollution-causing material is in transit or in storage within the state, it shall be the responsibility of the owner, the carrier, or person responsible for storage, to immediately notify the state department of health that the pollutant has gained admittance or there is the potential the pollutant will gain admittance to waters of the state. (Authorized by K.S.A. 65-164, 65-169, 65-171a, 65-171f and K.S.A. 1967 Supp. 65-165, 65-166, 65-167, 65-171d and 65-171h; effective Jan. 1, 1969.)

28-16-28. (Authorized by K.S.A. 1977 Supp. 65-165 through 65-171d; effective, E-73-16, May 18, 1973; effective Jan. 1, 1974; amended, E-76-3, Jan. 1, 1975; amended May 1, 1975; amended May 1, 1978; revoked May 1, 1986.)

28-16-28a. (Authorized by K.S.A. 1977 Supp. 65-165, 65-166, 65-166a, 65-167, 65-169, 65-170, 65-171a through 65-171d; effective, E-76-15, Feb. 28, 1975; effective May 1, 1976; amended May 1, 1978; revoked May 1, 1986.)

SURFACE WATER QUALITY STANDARDS

28-16-28b. Definitions. As used in K.A.R. 28-16-28b through 28-16-28h, each of the following terms shall have the meaning specified in this regulation: (a) "Alluvial aquifer" means the sediment that is associated with and deposited by a stream and that contains water capable of being produced from a well.

(b) "Alternate low flow" means a low flow value, which is an alternate to the 7Q10 flow, that is based seasonally, hydrologically, or biologically, or a low flow determined through a water assurance district. Wherever used in this regulation in the context of mixing zones, the term shall refer to a minimum amount of streamflow occurring immediately upstream of a wastewater discharge and available, in whole or in part, for dilution and assimilation of wastewater discharges.

(c) "Antidegradation" means the regulatory actions and measures taken to prevent or minimize the lowering of water quality in surface waters of the state, including those streams, lakes, and wetlands in which existing water quality exceeds the level required for maintenance and protection of the existing uses.

(d) "Artificial sources" means sources of pollution that result from human activities and that can be abated by construction of control structures, modification of operating practices, complete restraint of activities, or any combination of these methods.

(e) "Background concentration" means the concentration of any elemental parameter listed in tables 1a, 1b, 1c, and 1d of the "Kansas surface water quality standards: tables of numeric criteria," which is adopted by reference in K.A.R. 28-16-28e, or any elemental substance meeting the definition of pollutant in this regulation, that occurs in a surface water immediately upstream of a point source or nonpoint source under consideration and is from natural sources. The list of background concentration determinations for classified waterbodies of the state is contained in table 1h of the "Kansas surface water quality standards: tables of numeric criteria."

(f) "Base flow" means that portion of a stream's flow contributed by sources of water other than precipitation runoff. Wherever used in this regulation in the context of stream classification, the term shall refer to a fair weather flow sustained primarily by springs or groundwater seepage, wastewater discharges, irrigation return flows, releases from reservoirs, or any combination of these factors.

(g) "Bioaccumulation" means the accumulation of toxic substances in plant or animal tissue through either bioconcentration or biomagnification.

(h) "Bioassessment methods and procedures" means the use of biological methods of assessing surface water quality, including field investigations of aquatic organisms and laboratory or field aquatic toxicity tests.

(i) "Bioconcentration" means the concentration and incorporation of toxic substances into body tissues from ambient sources.

(j) "Biomagnification" means the transport of toxic substances through the food chain through successive cycles of eating and being eaten and through the subsequent accumulation and concentration of these substances in higher-order consumers and predators.

(k) “Biota” means the animal and plant life and other organisms of a given geographical region.

(l) “Carcinogenic” means having the property of inducing the production of cancerous cells in organisms.

(m) “Classified surface water” means any surface water or surface water segment that supports or, in the absence of artificial sources of pollution, would support one or more of the designated uses of surface water defined in K.A.R. 28-16-28d or K.S.A. 2017 Supp. 82a-2001, and amendments thereto, and that meets the criteria for classification given in K.A.R. 28-16-28d.

(n) “Compliance schedule” means any provision in a discharge permit, license, or enforceable order issued by the department pursuant to the federal clean water act or K.S.A. 65-165 et seq., and amendments thereto, that, for the purposes of meeting water quality-based effluent limitations, technology-based limits, and effluent limitations determined by the secretary or specified in Kansas statutes and regulations, provides a specified period of time for the construction or renovation of a wastewater treatment facility and the completion of any related scientific or engineering studies, reports, plans, design specifications, or other submittals required by the department.

(o) “Condition of acute toxicity” means any concentration of a toxic substance that exceeds the applicable acute criterion for aquatic life support specified in K.A.R. 28-16-28e or, for substances not listed in K.A.R. 28-16-28e or for mixtures of toxic substances, any concentration that exceeds 0.3 acute toxic units (TU_a), where one TU_a is equal to 100 divided by the median lethal concentration (LC₅₀). The concentration at which acute toxicity exists shall be determined through laboratory toxicity tests conducted in accordance with the EPA’s “methods for measuring the acute toxicity of effluents and receiving waters to freshwater and marine organisms.”

(p) “Condition of chronic toxicity” means any concentration of a toxic substance that exceeds the applicable chronic criterion for aquatic life support specified in K.A.R. 28-16-28e or, for substances not listed in K.A.R. 28-16-28e or for mixtures of toxic substances, any concentration that exceeds 1.0 chronic toxic unit (TU_c), where one TU_c is equal to 100 divided by inhibition concentration 25 (IC₂₅). The concentration at which chronic toxicity exists shall be determined through laboratory toxicity tests conducted in accordance with the EPA’s “short-term methods for estimat-

ing the chronic toxicity of effluents and receiving waters to freshwater organisms.”

(q) “Criterion” means any numerical element or narrative provision that represents an enforceable water quality condition specified in K.A.R. 28-16-28b through 28-16-28h.

(r) “Critical low flow” means the minimum amount of streamflow immediately upstream of a point source discharge that will be used to calculate the quantity of pollutants that the point source discharge may be permitted to discharge without exceeding water quality criteria specified in K.A.R. 28-16-28b through 28-16-28h. The critical low flow may be the 7Q10 flow or the alternate low flow as defined in this regulation.

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

(t) “Designated use” means any of the uses specifically attributed to surface waters of the state in K.A.R. 28-16-28d or K.S.A. 2017 Supp. 82a-2001, and amendments thereto.

(u) “Digression” means an actual ambient concentration of a pollutant that does not meet the numeric criteria value for that pollutant.

(v) “Discharge” means the release of effluent, either directly or indirectly, into surface waters of the state.

(w) “Discharge design flow” means either of the following:

(1) The anticipated wastewater flow for the next permit cycle determined by the department for an industrial wastewater treatment facility, as defined in K.A.R. 28-16-56c; or

(2) the wastewater treatment capacity of a facility approved by the secretary for other wastewater treatment facilities or systems.

(x) “Discharger” means a person or facility that is responsible for the release of effluent into surface waters of the state.

(y) “Duration of digression” means the period of time over which pollutant concentrations can be averaged, including the time span during which aquatic life can be exposed to elevated levels of pollutants without harm.

(z) “Ecological integrity” means the natural or unimpaired structure and functioning of an aquatic or terrestrial ecosystem.

(aa) “Effluent” means the sewage or other wastewater discharged from an artificial source.

(bb) “EPA” means United States environmental protection agency.

(cc) “*Escherichia coli*” means a subset of the coliform group that is part of the normal intestinal

flora in humans and animals and is a direct indicator of fecal contamination in water.

(dd) “Exceptional state waters” means any of the surface waters or surface water segments that are of remarkable quality or of significant recreational or ecological value, are listed in the surface water register as defined in this regulation, and are afforded the level of water quality protection under the antidegradation provisions of K.A.R. 28-16-28c and the mixing zone provisions of K.A.R. 28-16-28c.

(ee) “Excursion from numeric criteria value” means the digression of a pollutant exceeding its numeric criteria value beyond the designated duration of digression.

(ff) “Existing use” means any of the designated uses described in K.A.R. 28-16-28d or K.S.A. 82a-2001, and amendments thereto, known to have occurred in, or to have been made of, a surface water or surface water segment on or after November 28, 1975.

(gg) “Federal clean water act” means the federal water pollution prevention and control act, 33 U.S.C. Section 1251 et seq., as in effect on January 1, 1998.

(hh) “Frequency of digression” means the number of times that an excursion from numeric criteria value can occur over time without impairing the designated uses of the water.

(ii) “General purpose waters” means any classified surface water that is not classified as an outstanding national resource water or an exceptional state water.

(jj) “Groundwater” means water located under the surface of the land that is or can be the source of supply for wells, springs, or seeps or that is held in aquifers or the soil profile.

(kk) “Highest attainable condition” and “HAC” mean the achievable goal of a variance, according to K.A.R. 28-16-28f(d)(5), that reflects the modified designated use and criterion, designated use, or criterion that is applicable throughout the term of a variance.

(ll) “Inhibition concentration 25” and “IC₂₅” mean a point estimate of the toxicant concentration that would cause a 25 percent reduction in a nonlethal biological measurement of the test organisms, including reproduction and growth.

(mm) “Interim criterion” means a temporary criterion.

(nn) “Interim designated use” means a temporary designated use.

(oo) “Kansas antidegradation policy,” dated August 6, 2001 and hereby adopted by reference,

means the department’s written policy used to prevent or minimize the lowering of water quality in surface waters of the state.

(pp) “Kansas implementation procedures: surface water quality standards,” including appendix A, dated November 29, 2017 and hereby adopted by reference, means the department’s written procedures used for carrying out specific provisions of surface water quality standards, available upon request from the department’s division of environment.

(qq) “Maximum contaminant level” means any of the enforceable standards for finished drinking water quality specified in 40 C.F.R. 141.11, 141.13, and 141.61 through 141.66, dated July 1, 2012.

(rr) “Median lethal concentration” means the concentration of a toxic substance or a mixture of toxic substances calculated to be lethal to 50 percent of the population of test organisms in an acute toxicity test.

(ss) “Microfibers per liter” and “µfibers/L” mean the number of microscopic particles with a length-to-width ratio of 3:1 or greater present in a volume of one liter.

(tt) “Microgram per liter” and “µg/L” mean the concentration of a substance at which one one-millionth of a gram (10^{-6} g) of the substance is present in a volume of one liter.

(uu) “Milligram per liter” and “mg/L” mean the concentration of a substance at which one one-thousandth of a gram (10^{-3} g) of the substance is present in a volume of one liter.

(vv) “Mixing zone” means the designated portion of a stream or lake where a discharge is incompletely mixed with the receiving surface water and where, in accordance with K.A.R. 28-16-28e, concentrations of certain pollutants may legally exceed chronic water quality criteria associated with the established designated uses that are applied in most other portions of the receiving surface water.

(ww) “Mutagenic” means having the property of directly or indirectly causing a mutation.

(xx) “Multiple-discharger variance” and “MDV” mean a term-limited variance for more than one discharger that is issued for a specified criterion or pollutant to achieve the highest attainable condition.

(yy) “Nonpoint source” means any activity that is not required to have a national pollutant discharge elimination system permit and that results in the release of pollutants to waters of the state.

This release may result from precipitation runoff, aerial drift and deposition from the air, or the release of subsurface brine or other contaminated groundwaters to surface waters of the state.

(zz) “Numeric criteria value” means any of the values listed in tables 1a, 1b, 1c, 1d, 1g, 1h, 1i, 1j, and 1k of the “Kansas surface water quality standards: tables of numeric criteria.”

(aaa) “Outstanding national resource water” means any of the surface waters or surface water segments of extraordinary recreational or ecological significance identified in the surface water register, as defined this regulation, and afforded the highest level of water quality protection under the antidegradation provisions and the mixing zone provisions of K.A.R. 28-16-28c.

(bbb) “pH” means the common logarithm of the reciprocal of the hydrogen ion concentration measured in moles per liter, expressed on a scale that ranges from zero to 14, with values less than seven being more acidic and values greater than seven being more alkaline.

(ccc) “Picocurie per liter” and “pCi/L” mean a volumetric unit of radioactivity equal to 2.22 nuclear transformations per minute per liter.

(ddd) “Point source” means any discernible, confined, and discrete conveyance from which pollutants are or could be discharged.

(eee) “Pollutant” means any physical, biological, or chemical conditions, substances, or combination of substances released into surface waters of the state that results in surface water pollution, as defined in this regulation.

(fff) “Pollutant minimization plan” and “PMP” mean a structured set of activities to improve processes and pollutant controls that prevent and reduce pollutant levels, including any cost-effective process for reducing pollutant levels, pollution prevention, treatment, best management practices, and other control mechanisms.

(ggg) “Potable water” means water that is suitable for drinking and cooking purposes in terms of both human health and aesthetic considerations.

(hhh) “Precipitation runoff” means the rainwater or the meltwater derived from snow, hail, sleet, or other forms of atmospheric precipitation that flows by gravity over the surface of the land and into streams, lakes, or wetlands.

(iii) “Presedimentation sludge” means a slurry or suspension of residual solid materials derived from an initial step in the production of potable water. This term shall include residual solids originating from the raw water supply used for industrial or

other nonpotable water purposes, before the addition of any artificial materials not typically used in the production of potable water. The solid materials shall include sand, silt, and other easily settleable particles originating from the raw water supply.

(jjj) “Private surface water” means any freshwater reservoir or pond that is both located on and completely bordered by land under common private ownership.

(kkk) “Public swimming area” means either of the following:

(1) Any classified surface water that is posted for swimming by a federal, state, or local government that has jurisdiction over the land adjacent to that particular body of water; or

(2) any privately owned or leased body of water that is open and accessible to the public and is intended for swimming.

(lll) “Reconfiguration activities” means actions that beneficially reshape, remodel, or otherwise restructure the physical setting and characteristics of a surface water of the state.

(mmm) “Seven-day, ten-year low flow” and “7Q10 flow” mean the seven-day average low flow having a recurrence frequency of once in 10 years, as statistically determined from historical flow data. Where used in this regulation in the context of mixing zones, these terms shall refer to the minimum amount of streamflow occurring immediately upstream of a wastewater discharge and available, in whole or in part, for dilution or assimilation of wastewater discharges.

(nnn) “Site-specific criterion” means any criterion applicable to a given classified surface water segment and developed for the protection of the designated uses of that segment alone.

(ooo) “Streamflow” means the volume of water moving past a stream cross-sectional plane per unit of time.

(ppp) “Surface water pollution” and “pollution” mean any of the following:

(1) Contamination or other alteration of the physical, chemical, or biological properties of the surface waters of the state, including changes in temperature, taste, odor, turbidity, or color of the waters;

(2) discharges of gaseous, liquid, solid, radioactive, microbiological, or other substances into surface waters in a manner that could create a nuisance or render these waters harmful, detrimental, or injurious to any of the following:

(A) Public health, safety, or welfare;

(B) domestic, industrial, agricultural, recreational, or other designated uses; or

(C) livestock, domestic animals, or native or naturalized plant or animal life; or

(3) any discharge that will or is likely to exceed state effluent limitations predicated upon technology-based effluent standards or water quality-based standards.

(qqq) “Surface water register” means a list of the state’s major classified surface waters, including a listing of waters recognized as outstanding national resource waters or exceptional state waters, and the surface water use designations for each classified surface water, periodically updated and published by the department pursuant to K.A.R. 28-16-28d and K.A.R. 28-16-28f. The surface water register, published as the “Kansas surface water register,” is adopted by reference in K.A.R. 28-16-28g.

(rrr) “Surface water segment” means a delineated portion of a stream, lake, or wetland.

(sss) “Surface waters” means the following:

(1) Streams, including rivers, creeks, brooks, sloughs, draws, arroyos, canals, springs, seeps, and cavern streams, and any alluvial aquifers associated with these surface waters;

(2) lakes, including oxbow lakes and other natural lakes and man-made reservoirs, lakes, and ponds; and

(3) wetlands, including swamps, marshes, bogs, and similar areas that are inundated or saturated by surface water or groundwater at a frequency and a duration that are sufficient to support, and under normal circumstances that do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

(ttt) “Surface waters of the state” means all surface waters occurring within the borders of the state of Kansas or forming a part of the border between Kansas and one of the adjoining states.

(uuu) “Teratogenic” means having the property of causing abnormalities that originate from impairment of an event that is typical in embryonic or fetal development.

(vvv) “Thirty-day, ten-year low flow” and “30Q10 flow” mean the 30-day average low flow having a recurrence frequency of once in 10 years, as statistically determined from historical flow data. Where used in this regulation in the context of mixing zones, these terms shall refer to the minimum amount of streamflow occurring immediately upstream of a wastewater discharge and available, in whole or in part, for dilution or assimilation of wastewater discharges.

(www) “Toxic substance” means any substance

that produces deleterious physiological effects in humans, animals, or plants.

(xxx) “Turbidity” means the cloudiness of water as measured by optical methods of nephelometry and expressed in standard nephelometric units.

(yyy) “Use attainability analysis” means a study conducted or accepted by the department that is designed to determine whether or not a surface water or surface water segment supports, or is capable of supporting in the absence of artificial sources of pollution, one or more of the designated uses defined in K.S.A. 2017 Supp. 82a-2001, and amendments thereto.

(zzz) “Variance” means a time-limited designated use and criterion that reflects the highest attainable condition as an alternative to one or more of the criteria specified in K.A.R. 28-16-28e, as implemented by the department in accordance with K.A.R. 28-16-28f.

(aaaa) “Water-effect ratio” and “WER” mean the numerical toxicity, including median lethal concentration and inhibition concentration 25, of a chemical pollutant diluted in water from a given stream, lake, or wetland divided by the numerical toxicity of the same pollutant diluted in laboratory water.

(bbbb) “Water quality certification” means the department’s written finding that a proposed action that impacts water quality will comply with the terms and conditions of the Kansas surface water quality standards.

(cccc) “Whole-effluent toxicity limitation” means any restriction imposed by the department on the overall acute or chronic toxicity of an effluent discharged to a surface water.

(dddd) “Zone of initial dilution” means the region of a surface water in the immediate vicinity of a discharge where acute and chronic criteria may be exceeded. (Authorized by K.S.A. 2017 Supp. 65-171d and K.S.A. 65-171m; implementing K.S.A. 65-165, K.S.A. 2017 Supp. 65-171d, K.S.A. 65-171m, and K.S.A. 2017 Supp. 82a-2001; effective May 1, 1986; amended Aug. 29, 1994; amended July 30, 1999; amended Nov. 3, 2000; amended Aug. 31, 2001; amended Jan. 3, 2003; amended Oct. 24, 2003; amended Jan. 28, 2005; amended March 20, 2015; amended Feb. 23, 2018).

28-16-28c. General provisions. (a) Antidegradation.

(1) General purpose waters.

(A) Levels of water quality in surface waters of the state shall be maintained to protect the existing uses of those surface waters.

(B) For all surface waters of the state, if existing water quality is better than applicable water quality criteria established in K.A.R. 28-16-28b through 28-16-28g, that existing water quality shall be fully maintained and protected.

Water quality may be lowered only if the secretary finds, after full satisfaction of the intergovernmental coordination and public participation requirements on antidegradation contained in the "Kansas antidegradation policy," as adopted by reference in K.A.R. 28-16-28b, that a lowering of water quality is needed to allow for important social or economic development in the geographical area in which the waters are located.

In allowing the lowering of water quality, the maintenance and protection of existing uses shall be ensured, and the highest statutory and regulatory requirements for all new and existing point sources of pollution and all cost-effective and reasonable best management practices for nonpoint sources of pollution shall be achieved.

(2) Exceptional state waters. Wherever surface waters of the state constitute exceptional state waters, discharges shall be allowed only if existing uses and existing water quality are maintained and protected.

(3) Outstanding national resource waters. Wherever surface waters of the state constitute an outstanding national resource water, existing uses and existing water quality shall be maintained and protected. New or expanded discharges shall not be allowed into outstanding national resource waters.

(4) Threatened or endangered species. No degradation of surface water quality by artificial sources of pollution shall be allowed if the degradation will result in harmful effects on populations of any threatened or endangered species of aquatic or semiaquatic life or terrestrial wildlife or its critical habitat as determined by the secretary of the department of wildlife, parks, and tourism pursuant to K.S.A. 32-960, and amendments thereto, K.A.R. 115-15-3, or the federal endangered species act, 16 U.S.C. Section 1532 et seq., as in effect on July 1, 2012.

(5) Temporary discharges. Temporary sources of pollution meeting the requirements of subsection (d) of this regulation and K.A.R. 28-16-28e, producing only ephemeral surface water quality degradation not harmful to existing uses, may be allowed by the department.

(6) Thermal discharges. Implementation of these antidegradation provisions for thermal dis-

charges shall be consistent with the requirements of 33 U.S.C. Section 1326, as in effect on July 1, 2012.

(7) Implementation. Implementation of these antidegradation provisions shall be consistent with the "Kansas antidegradation policy," available upon request from the department.

(b) Mixing zones.

(1) General limitations. Mixing zones shall not extend across public drinking water intakes, stream tributary mouths, or swimming or boat ramp areas, nor shall mixing zones exist in locations that preclude the normal upstream or downstream movement or migration of aquatic organisms. Mixing zones associated with separate discharges shall not overlap unless a department-approved demonstration indicates that the overlapping will not result in a violation of the general water quality criteria specified in K.A.R. 28-16-28e or in an impairment of the existing uses of the receiving surface water. The zone of initial dilution for a mixing zone shall comprise, in terms of volume, not more than 10 percent of the mixing zone.

(2) Discharges into classified stream segments. No mixing zone within a classified stream segment, as defined in K.S.A. 2013 Supp. 82a-2001 and amendments thereto, shall extend beyond the middle of the nearest downstream current crossover point, where the main current flows from one bank to the opposite bank, or more than 300 meters downstream from the point of effluent discharge.

(3) Effluent-dominated streams. If the ratio of the receiving stream critical low flow to the discharge design flow is less than 3:1, then the mixing zone shall be the cross-sectional area or the volumetric flow of the stream during critical low flow conditions, as measured immediately upstream of the discharge during the critical low flow.

(4) Applications. Mixing zones shall be applied in accordance with paragraphs (b)(7) and (b)(8), based on the classification and designated uses of a stream segment for individual pollutants. For surface waters classified as outstanding national resource waters or exceptional state waters, or designated as special aquatic life use waters, mixing zones for specific discharges may be allowed by the secretary in accordance with paragraphs (b)(6), (b)(7), and (b)(8)(A). Mixing zones also may be allowed if there are no aquatic life criteria for an individual pollutant.

(5) Restrictions. The right to prohibit the use of mixing zones or to place more stringent lim-

itations on mixing zones than those stipulated in paragraphs (b)(2), (3), and (13) shall be reserved by the secretary wherever site conditions preclude the rapid dispersion and dilution of effluent within the receiving surface water or if, in the judgment of the secretary, the presence of a mixing zone would unduly jeopardize human health or any of the existing uses of the receiving surface water.

(6) Outstanding national resource waters. Mixing zones may be allowed by the secretary for existing permitted discharges in surface waters re-designated as outstanding national resource waters in the "Kansas surface water register" pursuant to K.A.R. 28-16-28g but shall be evaluated on an individual permit basis to prevent the degradation of the outstanding national resource waters.

(7) Exceptional state waters. If the ratio of the receiving stream critical low flow to the discharge design flow is equal to or greater than 3:1, the mixing zone shall not exceed 25 percent of the cross-sectional area or volumetric flow of the receiving stream during critical low flow conditions, measured immediately upstream of the discharge during the critical low flow.

(8) General purpose waters.

(A) Special aquatic life use waters. If the ratio of the receiving stream critical low flow to the discharge design flow is equal to or greater than 3:1, the mixing zone shall not exceed 25 percent of the cross-sectional area or volumetric flow of the receiving stream during critical low flow conditions, measured immediately upstream of the discharge during the critical low flow.

(B) Expected aquatic life use waters. If the ratio of the receiving stream critical low flow to the discharge design flow is equal to or greater than 3:1, the mixing zone shall not exceed 50 percent of the cross-sectional area or volumetric flow of the receiving stream during critical low flow conditions, measured immediately upstream of the discharge during the critical low flow.

(C) Restricted aquatic life use waters. If the ratio of the receiving stream critical low flow to the discharge design flow is equal to or greater than 3:1, the mixing zone shall not exceed 100 percent of the cross-sectional area or volumetric flow of the receiving stream during critical low flow conditions, measured immediately upstream of the discharge during the critical low flow.

(D) Recreational uses. Mixing zones for classified surface waters designated for recreational

uses may be allowed by the secretary on an individual permit basis in accordance with paragraph (b)(10).

(9) Alternate low flows. Alternate low flows may be utilized by the department as the critical low flow in the calculation of the mixing zone cross-sectional area or volumetric flow for specific water quality criteria.

(A) The 30Q10 flow for ammonia or the guaranteed minimum flow provided by a water assurance district, if applicable, shall be used by the department in the calculation of the mixing zone cross-sectional area or volumetric flow.

(B) Other alternate low flows, with a specific recurrence frequency and averaging period, shall be considered by the department if those flows will not result in excursions above aquatic life criteria more frequently than once every three years.

(C) Each proposed alternate low flow shall be subject to approval by the secretary.

(10) Alternate or site-specific mixing zones. Alternate mixing zones employing specific linear distances for mixing zones or alternate stream dilution volumes or cross-sectional areas, or both, may be allowed by the secretary. Site-specific mixing zones may be allowed if data generated from a site-specific study supports the use of an alternate mixing zone, but maintains a zone of passage for aquatic life.

(11) Discharges into classified lakes. Mixing zones shall not extend into any lake classified as an outstanding national resource water or exceptional state water, or designated as a special aquatic life use water according to K.A.R. 28-16-28d. Mixing zones in lakes designated as expected aquatic life use water or restricted aquatic life use waters may be allowed by the department if the mixing zones do not extend farther than 50 meters from the point of effluent discharge or do not comprise more than one percent of the total volume of the receiving lake as measured at the conservation pool.

(12) Discharges into classified ponds. Mixing zones shall not extend into any classified pond.

(13) Discharges into classified wetlands. Mixing zones shall not extend into any classified wetland.

(c) Special conditions. The following special conditions shall not remove the obligation to design, build, or use pollution control structures or methods to control point sources and nonpoint sources:

(1) Low flow. Any classified stream segment may be exempted by the secretary from the application of some or all of the numeric surface water

criteria specified in K.A.R. 28-16-28e if stream-flow is less than the critical low flow.

(2) Effluent-created flow.

(A) For any current classified stream segment in which continuous flow is sustained primarily through the discharge of treated effluent and the segment does not otherwise meet the requirements of a classified stream in K.A.R. 28-16-28d, the discharger shall provide treatment in accordance with the federal secondary treatment regulation, 40 C.F.R. 133.102, dated July 1, 2012.

(B) This discharge shall not violate the general surface water quality criteria listed in K.A.R. 28-16-28e or impair any of the existing or attained designated uses of a downstream classified stream segment.

(C) If a use attainability analysis demonstrates that the designated uses of a surface water segment are not attainable, then the new use designations for effluent-created flow shall be adopted as specified in K.A.R. 28-16-28d and approved by the EPA before serving as a basis for limitations in any new, reissued, or modified permit.

(d) Treatment requirements.

(1) All effluent shall receive appropriate minimum levels of treatment in accordance with 40 C.F.R. 122.44, dated July 1, 2012.

(2) Effluent shall receive a higher level of treatment than that stipulated in paragraph (d)(1) of this regulation, if the department determines that this higher level of treatment is needed to fully comply with the terms and conditions of subsection (a) of this regulation or K.A.R. 28-16-28e.

(e) Analytical testing. All methods of sample collection, preservation, and analysis used in applying K.A.R. 28-16-28b through 28-16-28g shall be in accordance with those methods prescribed by the department.

(f) Application of standards to privately owned reservoirs or ponds. The application of water quality standards to privately owned reservoirs or ponds shall be subject to the provisions of K.S.A. 65-171d, and amendments thereto. (Authorized by K.S.A. 2014 Supp. 65-171d, K.S.A. 2014 Supp. 82a-2010, and K.S.A. 65-171m; implementing K.S.A. 2014 Supp. 82a-2002, 82a-2003, 82a-2004, and 82a-2005; effective May 1, 1986; amended, T-87-8, May 1, 1986; amended May 1, 1987; amended Aug. 29, 1994; amended July 30, 1999; amended Aug. 31, 2001; amended Jan. 3, 2003; amended Jan. 28, 2005; amended March 20, 2015.)

28-16-28d. Surface water classification and use designation.

(a) Surface water classification. Surface waters shall be classified as follows:

(1) Classified stream segments shall be those stream segments defined in K.S.A. 2017 Supp. 82a-2001, and amendments thereto.

(2) Classified surface waters other than classified stream segments shall be defined as follows:

(A) Classified lakes shall be all lakes owned by federal, state, county, or municipal authorities and all privately owned lakes that serve as public drinking water supplies or that are open to the general public for primary or secondary contact recreation.

(B) Classified wetlands shall be the following:

(i) All wetlands owned by federal, state, county, or municipal authorities;

(ii) all privately owned wetlands open to the general public for hunting, trapping, or other forms of secondary contact recreation; and

(iii) all wetlands classified as outstanding national resource waters or exceptional state waters, or designated as special aquatic life use waters according to subsection (d).

Wetlands created for the purpose of wastewater treatment shall not be considered classified wetlands.

(C) Classified ponds shall be all ponds owned by federal, state, county, or municipal authorities and all privately owned ponds that impound water from a classified stream segment as defined in paragraph (a)(1).

(b) Designated uses of classified surface waters other than classified stream segments. The designated uses of classified surface waters other than classified stream segments shall be defined as follows:

(1) "Agricultural water supply use" means the use of classified surface waters other than classified stream segments for agricultural purposes, including the following:

(A) "Irrigation," which means the withdrawal of classified surface waters other than classified stream segments for application onto land; and

(B) "livestock watering," which means the provision of classified surface waters other than classified stream segments to livestock for consumption.

(2) "Aquatic life support use" means the use of classified surface waters other than classified stream segments for the maintenance of the ecological integrity of lakes, wetlands, and ponds, including the sustained growth and propagation of

native aquatic life; naturalized, important, recreational aquatic life; and indigenous or migratory semiaquatic or terrestrial wildlife directly or indirectly dependent on classified surface waters other than classified stream segments for survival.

(A) "Special aquatic life use waters" means either classified surface waters other than classified stream segments that contain combinations of habitat types and indigenous biota not found commonly in the state or classified surface waters other than classified stream segments that contain representative populations of threatened or endangered species.

(B) "Expected aquatic life use waters" means classified surface waters other than classified stream segments containing habitat types and indigenous biota commonly found or expected in the state.

(C) "Restricted aquatic life use waters" means classified surface waters other than classified stream segments containing indigenous biota limited in abundance or diversity by the physical quality or availability of habitat, due to natural deficiencies or artificial modifications, compared to more suitable habitats in adjacent waters.

(3) "Domestic water supply use" means the use of classified surface waters other than classified stream segments, after appropriate treatment, for the production of potable water.

(4) "Food procurement use" means the use of classified surface waters other than classified stream segments for obtaining edible forms of aquatic or semiaquatic life for human consumption.

(5) "Groundwater recharge use" means the use of classified surface waters other than classified stream segments for replenishing fresh or usable groundwater resources. This use may involve the infiltration and percolation of classified surface waters other than classified stream segments through sediments and soils or the direct injection of classified surface waters other than classified stream segments into underground aquifers.

(6) "Industrial water supply use" means the use of classified surface waters other than classified stream segments for nonpotable purposes by industry, including withdrawals for cooling or process water.

(7) "Recreational use" means the use of classified surface waters other than classified stream segments for primary contact recreation or secondary contact recreation.

(A) "Primary contact recreational use for classified surface waters other than classified stream

segments" means the use of classified surface waters other than classified stream segments for recreation on and after April 1 through October 31 of each year, during which a person is immersed to the extent that some inadvertent ingestion of water is probable. This use shall include boating, mussel harvesting, swimming, skin diving, water-skiing, and windsurfing.

(i) "Primary contact recreational use: swimming beach" shall apply to those classified surface waters other than classified stream segments that have posted public swimming areas. These waters shall present a risk of human illness that is no greater than 0.8 percent.

(ii) "Primary contact recreational use: public access" shall apply to those classified surface waters other than classified stream segments where full body contact can occur and that are, by law or written permission of the landowner, open to and accessible by the public. These waters shall present a risk of human illness that is no greater than 1.0 percent.

(iii) "Primary contact recreational use: restricted access" shall apply to those classified surface waters other than classified stream segments where full body contact can occur and that are not open to and accessible by the public under Kansas law. These waters shall present a risk of human illness that is no greater than 1.2 percent.

(B) "Secondary contact recreational use for classified surface waters other than classified stream segments" means recreation during which the ingestion of classified surface waters other than classified stream segments is not probable. This use shall include wading, fishing, trapping, and hunting.

(i) "Secondary contact recreational use: public access" shall apply to classified surface waters other than classified stream segments where the surface water is, by law or written permission of the landowner, open to and accessible by the public.

(ii) "Secondary contact recreational use: restricted access" shall apply to classified surface waters other than classified stream segments where the surface water is not open to and accessible by the public under Kansas law.

(c) Designated uses of classified stream segments. The designated uses of classified stream segments shall be those defined in K.S.A. 2017 Supp. 82a-2001, and amendments thereto.

(d) Assignment of uses to surface waters.

(1) (A) Classified surface waters shall be designated for uses based upon the results of use at-

tainability analyses conducted in accordance with K.S.A. 2017 Supp. 82a-2005, and amendments thereto. The provisions of the federal water quality standards regulation, 40 C.F.R. 131.10(g), as adopted by reference in paragraph (d)(1)(B), shall be followed.

(B) 40 C.F.R. 131.10(g), dated July 1, 2016, is hereby adopted by reference, except that the phrase “federal clean water” shall be inserted before the word “act.”

(2) Classified surface waters and their designated uses shall be identified and listed in the “Kansas surface water register,” as adopted by reference in K.A.R. 28-16-28g.

(3) The use designations for classified streams, lakes, wetlands, and ponds not listed in the surface water register shall be determined by the secretary on a case-by-case basis in accordance with paragraph (d)(1). (Authorized by K.S.A. 2017 Supp. 65-171d, 82a-2005, and 82a-2010; implementing K.S.A. 2017 Supp. 65-171d, 82a-2002, 82a-2003, 82a-2004, and 82a-2005; effective May 1, 1986; amended, T-87-8, May 1, 1986; amended May 1, 1987; amended Aug. 29, 1994; amended July 30, 1999; amended Aug. 31, 2001; amended Jan. 3, 2003; amended Jan. 23, 2004; amended Jan. 28, 2005; amended March 20, 2015; amended Feb. 23, 2018.)

28-16-28e. Surface water quality criteria.

(a) Criteria development guidance. The development of surface water quality criteria for substances not listed in these standards shall be guided by water quality criteria published by the EPA. If the department finds that the criteria listed in this regulation are underprotective or overprotective for a given surface water segment, appropriate site-specific criteria may be developed and applied by the department, in accordance with K.A.R. 28-16-28f, using bioassessment methods or other related scientific procedures, including those procedures consistent with the EPA’s “water quality standards handbook,” second edition, as published in August 1994, or other department-approved methods.

(b) General criteria for surface waters. The following criteria shall apply to all surface waters, regardless of classification:

(1) Surface waters shall be free, at all times, from the harmful effects of substances that originate from artificial sources of pollution and that produce any public health hazard, nuisance condition, or impairment of a designated use.

(2) Hazardous materials derived from artificial sources, including toxic substances, radioactive isotopes, and infectious microorganisms derived from point sources or nonpoint sources, shall not occur in surface waters at concentrations or in combinations that jeopardize the public health or the survival or well-being of livestock, domestic animals, terrestrial wildlife, or aquatic or semi-aquatic life.

(3) Surface waters shall be free of all discarded solid materials, including trash, garbage, rubbish, offal, grass clippings, discarded building or construction materials, car bodies, tires, wire, and other unwanted or discarded materials. The placement of stone and concrete rubble for bank stabilization shall be acceptable to the department if all other required permits are obtained before placement.

(4) Surface waters shall be free of floating debris, scum, foam, froth, and other floating materials directly or indirectly attributable to artificial sources of pollution.

(5) Oil and grease from artificial sources shall not cause any visible film or sheen to form upon the surface of the water or upon submerged substrate or adjoining shorelines, nor shall these materials cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

(6) Surface waters shall be free of deposits of sludge or fine solids attributable to artificial sources of pollution.

(7) Taste-producing and odor-producing substances of artificial origin shall not occur in surface waters at concentrations that interfere with the production of potable water by conventional water treatment processes, that impart an unpalatable flavor to edible aquatic or semiaquatic life or terrestrial wildlife, or that result in noticeable odors in the vicinity of surface waters.

(8) The natural appearance of surface waters shall not be altered by the addition of color-producing or turbidity-producing substances of artificial origin.

(9) In stream segments where background concentrations of naturally occurring substances, including chlorides and sulfates, exceed the water quality criteria listed in table 1a of the “Kansas surface water quality standards: tables of numeric criteria,” as adopted by reference in subsection (e), the existing water quality shall be maintained, and the newly established numeric criteria shall be the background concentration. Background

concentrations shall be established using the methods outlined in the “Kansas implementation procedures: surface water quality standards,” as adopted by reference in K.A.R. 28-16-28b, and available upon request from the department.

(c) Application of criteria for designated uses of surface waters.

(1) The numeric criteria in tables 1a, 1b, 1c, and 1d of the “Kansas surface water quality standards: tables of numeric criteria” shall not apply if the critical low flow is less than 0.03 cubic meter per second (1.0 cubic foot per second) for waters designated as expected aquatic life use waters and restricted aquatic life use waters, unless studies conducted or approved by the department show that water present during periods of no flow, or flow below critical low flow, provides important refuges for aquatic life and permits biological recolonization of intermittently flowing segments.

(2) The numeric criteria in tables 1a, 1b, 1c, and 1d of the “Kansas surface water quality standards: tables of numeric criteria” shall not apply if the critical low flow is less than 0.003 cubic meter per second (0.1 cubic foot per second) for waters designated as special aquatic life use waters, unless studies conducted or approved by the department show that water present during periods of no flow, or flow below critical low flow, provides important refuges for aquatic life and permits biological recolonization of intermittently flowing segments.

(3) Each digression shall be assessed by the secretary for the purposes of section 303(d) of the federal clean water act, with consideration of acceptable duration and frequency of the digression and representation of actual ambient conditions by environmental monitoring data, as specified in the “Kansas implementation procedures: surface water quality standards.”

(d) Criteria for designated uses of surface waters. The following criteria shall apply to all classified surface waters for the indicated designated uses:

(1) Agricultural water supply use. The water quality criteria for irrigation and livestock watering specified in table 1a of the “Kansas surface water quality standards: tables of numeric criteria” shall not be exceeded outside of mixing zones due to artificial sources of pollution.

(2) Aquatic life support use.

(A) Nutrients. The introduction of plant nutrients into streams, lakes, or wetlands from artificial sources shall be controlled to prevent the accelerated succession or replacement of aquatic biota or

the production of undesirable quantities or kinds of aquatic life.

(B) Suspended solids. Suspended solids added to surface waters by artificial sources shall not interfere with the behavior, reproduction, physical habitat, or other factors related to the survival and propagation of aquatic or semiaquatic life or terrestrial wildlife. In the application of this provision, suspended solids associated with discharges of presedimentation sludge from water treatment facilities shall be deemed noninjurious to aquatic and semiaquatic life and terrestrial wildlife if these discharges fully meet the requirements of paragraphs (b)(6) and (8) and paragraph (d)(2)(D).

(C) Temperature.

(i) Heat of artificial origin shall not be added to a surface water in excess of the amount that will raise the temperature of the water beyond the mixing zone more than 3° C above natural conditions. Additionally, a discharge to a receiving water shall not lower the temperature of the water beyond the mixing zone more than 3° C below natural conditions. The normal daily and seasonal temperature variations occurring within a surface water before the addition of heated or cooled water of artificial origin shall be maintained.

(ii) Temperature criteria applicable to industrial cooling water recycling reservoirs that meet the requirements for classification specified in K.A.R. 28-16-28d shall be established by the secretary on a case-by-case basis to protect the public health, safety, or the environment.

(D) Toxic substances.

(i) Conditions of acute toxicity shall not occur in classified surface waters outside of zones of initial dilution, nor shall conditions of chronic toxicity occur in classified surface waters outside of mixing zones.

(ii) Acute criteria for the aquatic life support use specified in tables 1a, 1b, and 1c of the “Kansas surface water quality standards: tables of numeric criteria” shall apply beyond the zone of initial dilution. Chronic criteria for the aquatic life support use specified in tables 1a, 1b, and 1d of the “Kansas surface water quality standards: tables of numeric criteria” shall apply beyond the mixing zone.

(iii) If a discharge contains a toxic substance that lacks any published criteria for the aquatic life support use, or if a discharge contains a mixture of toxic substances capable of additive or synergistic interactions, bioassessment methods and

procedures shall be specified by the department to establish whole-effluent toxicity limitations that are consistent with paragraph (d)(2)(D)(i).

(3) Domestic water supply use.

(A) Except as provided in paragraph (d)(3)(B), the criteria listed in table 1a of the “Kansas surface water quality standards: tables of numeric criteria” for domestic water supply use shall not be exceeded at any point of domestic water supply diversion.

(B) In stream segments where background concentrations of naturally occurring substances, including chlorides and sulfates, exceed the domestic water supply criteria listed in table 1a of the “Kansas surface water quality standards: tables of numeric criteria,” due to intrusion of mineralized groundwater, the existing water quality shall be maintained, and the newly established numeric criteria for domestic water supply shall be the background concentration. Background concentrations shall be established using the methods outlined in the “Kansas implementation procedures: surface water quality standards,” available upon request from the department.

(C) Any substance derived from an artificial source that, alone or in combination with other synthetic or naturally occurring substances, causes toxic, carcinogenic, teratogenic, or mutagenic effects in humans shall be limited to nonharmful concentrations in surface waters. Unless site-specific water quality conditions warrant the promulgation of more protective criteria under the provisions of subsection (a) of this regulation and K.A.R. 28-16-28f, maximum contaminant levels for toxic, carcinogenic, teratogenic, or mutagenic substances specified in 40 C.F.R. 141.11, 141.13, and 141.61 through 141.66, dated July 1, 2012, shall be deemed nonharmful.

(D) The introduction of plant nutrients into surface waters designated for domestic water supply use shall be controlled to prevent interference with the production of drinking water.

(4) Food procurement use.

(A) Criteria listed in table 1a of the “Kansas surface water quality standards: tables of numeric criteria” for food procurement use shall not be exceeded outside of a mixing zone due to any artificial source of pollution.

(B) Substances that can bioaccumulate in the tissues of edible aquatic or semiaquatic life or wildlife through bioconcentration or biomagnification shall be limited in surface waters to concentrations that result in no harm to human

consumers of these tissues. For bioaccumulative carcinogens, surface water concentrations corresponding to a cancer risk level of less than 0.000001 (10^{-6}) in human consumers of aquatic or semiaquatic life or wildlife shall be deemed nonharmful by the department and adopted as food procurement criteria. Average rates of tissue consumption and lifetime exposure shall be assumed by the department in the estimation of the cancer risk level.

(5) Groundwater recharge use. In surface waters designated for the groundwater recharge use, water quality shall be such that, at a minimum, degradation of groundwater quality does not occur. Degradation shall include any statistically significant increase in the concentration of any chemical or radiological contaminant or infectious microorganism in groundwater resulting from surface water infiltration or injection.

(6) Industrial water supply use. Surface water quality criteria for industrial water supplies shall be determined by the secretary on a case-by-case basis to protect the public health, safety, or the environment.

(7) Recreational use.

(A) General. The introduction of plant nutrients into surface waters designated for primary or secondary contact recreational use shall be controlled to prevent the development of objectionable concentrations of algae or algal by-products or nuisance growths of submersed, floating, or emergent aquatic vegetation.

(B) Primary contact recreation for classified surface waters other than classified stream segments. A single sample maximum or a geometric mean of at least five samples collected during separate 24-hour periods within a 30-day period shall not exceed the criteria in table 1j of the “Kansas surface water quality standards: tables of numeric criteria” beyond the mixing zone.

(C) Secondary contact recreational use for classified surface waters other than classified stream segments. A single sample maximum or a geometric mean of at least five samples collected during separate 24-hour periods within a 30-day period shall not exceed the criteria in table 1j of the “Kansas surface water quality standards: tables of numeric criteria” beyond the mixing zone.

(D) Primary contact recreation for classified stream segments. At least five samples shall be collected during separate 24-hour periods within a 30-day period. A geometric mean analysis of these samples shall not exceed the criteria

in table 1i of the “Kansas surface water quality standards: tables of numeric criteria” beyond the mixing zone.

(E) Secondary contact recreation for classified stream segments. The following criteria shall be in effect from January 1 through December 31 of each year:

(i) At least five samples shall be collected during separate 24-hour periods within a 30-day period.

(ii) A geometric mean analysis of the samples specified in paragraph (d)(7)(E)(i) shall not exceed the criteria in table 1i of the “Kansas surface water quality standards: tables of numeric criteria” beyond the mixing zone.

(F) Wastewater disinfection. Wastewater effluent shall be disinfected if the department determines that the discharge of nondisinfected wastewater constitutes an actual or potential threat to public health. Situations that constitute an actual or potential threat to public health shall include instances in which there is a reasonable potential for the discharge to exceed the applicable criteria supporting the assigned recreational use designation or if a water body is known or likely to be used for either of the following:

(i) Primary or secondary contact recreation; or

(ii) any domestic water supply.

(8) Multiple uses. If a classified stream segment or classified surface water other than a classified stream segment is designated for more than one designated use according to K.A.R. 28-16-28d, the water quality of the classified stream segment or classified surface water other than a classified stream segment shall meet the most stringent of the applicable water quality criteria.

(e) Tables. The numeric criteria for the designated uses of classified surface waters shall be the numeric criteria specified in the department’s “Kansas surface water quality standards: tables of numeric criteria,” dated December 15, 2017, which is hereby adopted by reference. (Authorized by K.S.A. 2017 Supp. 65-171d, K.S.A. 65-171m, and K.S.A. 2017 Supp. 82a-2010; implementing K.S.A. 2017 Supp. 65-171d, K.S.A. 65-171m, and K.S.A. 2017 Supp. 82a-2002, 82a-2003, 82a-2004, and 82a-2010; effective May 1, 1986; amended, T-87-8, May 1, 1986; amended May 1, 1987; amended Aug. 29, 1994; amended July 30, 1999; amended Nov. 3, 2000; amended Aug. 31, 2001; amended Jan. 3, 2003; amended Oct. 24, 2003; amended Jan. 28, 2005; amended March 20, 2015; amended Feb. 23, 2018.)

28-16-28f. Administration of surface water quality standards. (a) Application of modified surface water quality standards. A modification to the surface water quality standards, the surface water register, or both, shall have no effect on the requirements of any existing enforceable discharge permit issued under K.S.A. 65-165, and amendments thereto, unless the discharge fails to meet the requirements of the permit or the secretary determines that continuation of the discharge will result in a potential or actual public health hazard or in irreversible water use impairments.

(b) Water quality certification. No action identified in this subsection shall be taken unless the department has issued a water quality certification for the following:

(1) Any action requiring a federal license or permit pursuant to the federal clean water act;

(2) any action subject to the permitting provisions of K.S.A. 65-165, and amendments thereto;

(3) any water development project subject to the provisions of K.S.A. 82a-325 et seq., and amendments thereto; and

(4) any action undertaken by any Kansas state agency that has a potential water quality impact.

(c) Compliance schedules.

(1) Except as provided in paragraph (c)(2), compliance schedules contained in any discharge permit or license issued by the department pursuant to the federal clean water act or K.S.A. 65-165, and amendments thereto, shall not extend more than three years beyond the date of permit issuance.

(2) Compliance schedules of up to five years in total duration may be granted if it is demonstrated that the strict application of paragraph (c)(1) is not feasible due to construction scheduling constraints or other technical limitations.

(d) Variances.

(1) A variance establishing an interim designated use and interim criterion may be permitted and adopted into the regulations at the next systematic review or subsequent triennial review and after a public hearing consistent with 40 C.F.R. 131.20(b), dated July 1, 2016, if upon written request by any person, as defined in K.S.A. 65-170a and amendments thereto, the secretary finds that the attainment of the designated use and criterion is not feasible because one of the following conditions is met:

(A) One of the factors listed in 40 C.F.R. 131.10(g), as adopted by reference in K.A.R. 28-16-28d(d)(1)(B), exists.

(B) Actions necessary to facilitate lake, wetland, or stream restoration through dam removal or other significant reconfiguration activities preclude attainment of the designated use and criterion while the actions are being implemented.

(2) Each variance shall be issued and evaluated using methods outlined in the “Kansas implementation procedures: surface water quality standards,” as adopted in K.A.R. 28-16-28b.

(3) Adoption and implementation of each variance shall be in accordance with 40 C.F.R. 131.14, dated July 1, 2016 and hereby adopted by reference, except that 131.14(a)(2), 131.14(a)(4), 131.14(b)(1)(ii), and 131.14(b)(2)(i)(A) shall be replaced by paragraphs (d)(4) through (d)(6) of this regulation, respectively.

(4) Each variance shall have a designated term limit and reflect the highest attainable condition during the specified term. A variance may be applied to individual or multiple dischargers or surface water bodies.

(5) Each variance shall have requirements and a time limitation demonstrating the intent that progress be made toward the attainment of the underlying designated use and criterion.

(A) Each Kansas surface water quality standard not specifically addressed in a variance shall remain applicable.

(B) Each person requesting a variance shall provide evidence that a designated use and criterion, or a designated use or criterion, addressed by the variance cannot be achieved solely by the implementation of technology-based effluent limits.

(C) Each requirement shall represent the highest attainable condition of the surface water segment applicable throughout the term of the variance. A specified requirement shall not result in lowering the currently attained ambient water quality, unless a variance is necessary for physical reconfiguration activities intended for surface water segment restoration. The highest attainable condition of each affected surface water segment as a quantifiable expression shall be specified as one of the following:

- (i) The highest attainable interim criterion;
- (ii) the interim effluent condition that reflects the greatest pollutant reduction achievable; or
- (iii) the interim criterion or effluent condition that reflects the greatest pollutant reduction achievable with the pollutant control technologies installed at the time the variance is adopted.

(D) If the quantifiable expression identified in paragraph (d)(5)(C)(iii) is selected, a pollut-

ant minimization plan consistent with 40 C.F.R. 131.3(p) shall be adopted and implemented if no additional feasible pollutant control technology is identified.

(6) Each variance request shall include supporting documentation that demonstrates all of the following:

(A) Attaining the designated use and criterion is not feasible throughout the term of the variance because of one of the factors cited in paragraphs (d)(1)(A) and (B).

(B) The term of the variance is only as long as necessary to achieve the highest attainable condition.

(C) The highest attainable condition of the affected surface water segment is as defined in paragraph (d)(5)(C).

(7) A discharger that impacts water quality shall not be granted a variance from requirements of K.A.R. 28-16-28c and 28-16-28e.

(8) Specific eligibility requirements may be included in a multiple-discharger variance as an alternative to identifying the specific dischargers at the time of adoption of the variance. Each discharger shall meet the eligibility requirements in the applicable section of the “Kansas surface water quality standards variance register,” as adopted by reference in K.A.R. 28-16-28h, to participate in a multiple-discharger variance.

(e) Site-specific criteria. Site-specific criteria shall be established using the methods outlined in the “Kansas implementation procedures: surface water quality standards,” as adopted by reference in K.A.R. 28-16-28b.

(f) Enforcement. Each person deemed by the department to be responsible for a violation of the Kansas surface water quality standards caused by an artificial source of pollution shall be required by the department to initiate corrective actions that restore the designated uses of the affected surface water or surface water segment impaired by the violation and provide for the return of the original surface water quality conditions. (Authorized by K.S.A. 2017 Supp. 65-171d and K.S.A. 65-171m; implementing K.S.A. 65-164, K.S.A. 2017 Supp. 65-171d, and K.S.A. 65-171m; effective May 1, 1986; amended Aug. 29, 1994; amended July 30, 1999; amended Jan. 28, 2005; amended March 20, 2015; amended Feb. 23, 2018.)

28-16-28g. Surface water register. The classification and use designations of surface waters of the state shall be those identified in the department’s “Kansas surface water register,” dated

December 12, 2013, which is hereby adopted by reference. (Authorized by K.S.A. 2013 Supp. 82a-2005 and 82a-2010; implementing K.S.A. 2013 Supp. 82a-2001, 82a-2002, 82a-2003, 82a-2004, and 82a-2005; effective Jan. 28, 2005; amended May 20, 2005; amended Sept. 15, 2006; amended May 25, 2007; amended June 6, 2008; amended Feb. 26, 2010; amended Aug. 5, 2011; amended July 7, 2014.)

28-16-28h. Surface water variance register. The variances approved by the secretary shall be those identified in the department's "Kansas surface water quality standards variance register," dated October 31, 2017, which is hereby adopted by reference. (Authorized by K.S.A. 2017 Supp. 65-171d; implementing K.S.A. 2017 Supp. 65-171d and K.S.A. 65-171m; effective Feb. 23, 2018.)

28-16-29. (Authorized by K.S.A. 1976 Supp. 65-4512; effective, E-77-43, Sept. 23, 1976; effective Feb. 15, 1977; revoked Sept. 28, 1992.)

WATER AND WASTEWATER OPERATOR CERTIFICATION

28-16-30. Requirements for water and wastewater operator certification. (a) Each operator who desires or is required to obtain a water supply system or wastewater treatment facility operator certificate shall meet the following requirements:

(1) Each applicant shall own or be either employed by or under contract to persons having a water supply system or wastewater treatment facility and shall be engaged in the daily operation, maintenance, or both, of the system or facility.

(2) Each applicant shall submit a completed and approved examination application and the appropriate fee to the department. The application shall be received by the department at least two weeks before the test date. Late applications shall not be accepted for any test date.

(3) Each applicant shall be a high school graduate or shall have a general education development (GED) diploma.

(b) If an applicant provides false information on the application, the applicant shall not be accepted for examination and the fee shall not be returned. The applicant shall be notified of this decision and shall not be allowed to take the examination for two years.

(c) The applicant who previously held a Kansas water supply system or wastewater treatment

facility certificate that was revoked pursuant to K.S.A. 65-4507, and amendments thereto, shall not be eligible to submit an application for examination for a period of one year from the date of the final action revoking the certificate or for the period of time specified in the final action. (Authorized by and implementing K.S.A. 65-4512; effective Sept. 28, 1992; amended Aug. 31, 2001.)

28-16-31. Eligibility for water and wastewater operator certification. (a) Each applicant for certification shall meet eligibility requirements as noted in the following table.

CERTIFICATE CLASS	POINTS	EXPERIENCE
Small System	12.5	6 months
I	13.0	1 year
II	14.0	1 year
III	16.0	2 years
IV	18.0	2 years

(1) Point totals shall be determined using the following table.

EXPERIENCE OR EDUCATION	POINTS
Each year of operating experience	1.0
High school graduation (GED or equivalent).....	12.0
Each full year of college (30 hours credit)	1.0
Each department-approved educational course (10 consecutive contact hours)	0.25
Successful completion of California state university correspondence courses (each volume)	1.0
Department-approved semester courses (60 contact hours).....	1.5
Department-approved two-year environmental technology degree	6.0

(2) Completion of an approved two-year environmental technology degree shall fulfill the one year of experience requirement for taking a Class I examination.

(b) Minimum training requirements. Each operator who holds a certificate of competency shall be required to meet minimum training requirements before certificate renewal. All Class I, II, III, and IV certified operators shall acquire at least 10 hours of approved training every two years. Small system operators shall acquire five hours of approved training every two years.

(c) Each operator who conducts approved training for water supply system operators and wastewater treatment facility operators may receive credit equal to the number of hours of training provided. Credit shall be granted for teaching a department-approved course or seminar only in its initial presentation. (Authorized by and imple-

menting K.S.A. 65-4512; effective Sept. 28, 1992; amended Aug. 31, 2001.)

28-16-32. Operator certification examinations. (a) To be certified, each applicant shall pass the appropriate written examination. A score of 70% or higher shall be considered a passing score.

(b) Examinations shall be given at least twice each year at times and locations set by the department. Notice of examinations shall be sent to certified operators and either communities or districts having a water supply system or wastewater treatment facility, or both, at least 30 days before the date of examination.

(c) The written examinations shall be graded by the department or by a department-approved contractor, and the applicant shall be notified of the results. Examinations shall not be returned to the applicant. Upon receiving a written request, an analysis of the failed examination shall be provided to the applicant. The analysis shall indicate areas in which the applicant needs further study.

(d) Any operator meeting the requirements of K.A.R. 28-16-30 and K.A.R. 28-16-31 may take the same level of examination a maximum of three times per calendar year.

(e) Each operator earning a score of 50% or lower shall provide proof of having attained department-approved training before sitting for a subsequent examination.

(f) An applicant who commits any of the following acts on a written examination shall be deemed guilty of misconduct:

(1) Utilizes text materials, notes, computer-stored materials, or other unauthorized materials while taking an examination; or

(2) without express authorization from examination officials, undertakes any of the following:

(A) Removes or attempts to remove examination materials furnished by the department from the examination room;

(B) aids another applicant, or accepts aid from another applicant in answering examination questions during a written examination; or

(C) makes or attempts to make a manual or electronic copy of the written examination.

(g) If an applicant is guilty of misconduct on a written examination, as determined by the department, both of the following penalties shall apply:

(1) The applicant shall be denied a certificate of competency.

(2) The applicant shall be ineligible to reapply for certification in any operator classification for

a period of one year from the date on which the determination of misconduct becomes final.

(h) A hearing for each denial of a certificate of competency shall be held in accordance with the Kansas administrative procedure act upon written notice of the department's intention to deny any certificate. (Authorized by and implementing K.S.A. 65-4512; effective Sept. 28, 1992; amended Aug. 31, 2001.)

28-16-33. Operator responsible for the operation and management of a water supply system or wastewater treatment facility, or both. (a)(1) Each system or facility shall have an individual or individuals in responsible charge at the system or facility site, or available at all times.

(2) For the purposes of this regulation, "individual or individuals in responsible charge" shall be defined as the person or persons designated by the owner to be the certified operator or operators who make decisions regarding the daily operational activities of a water supply system or wastewater treatment facility that will directly impact the quality or quantity of drinking water for human consumption or the quality of wastewater effluent.

(b) Except as provided in K.A.R. 28-16-33(f), each individual in responsible charge of a system shall be a certified operator for that class or a higher class of system.

(c) When a new operator responsible for the operation or management of a system or facility classified as small system, class I, or class II is hired, the owner of the system or facility shall, on a form provided by the department, notify the department within 30 days. The person named on the form shall be issued an operator-in-training (OIT) certificate subject to both of the following requirements:

(1) Within six months after completing one full year of operation as an OIT, the operator-in-training shall take the appropriate certification examination.

(2) If the OIT fails the initial examination, the OIT shall make additional preparation and take the examination again at the next time that the department offers the examination.

(d) An OIT certificate shall be valid for one year from the date of issuance. The OIT certificate may be renewed for up to an additional year if the operator demonstrates to the department that the operator is attending training sessions, studying correspondence courses, or otherwise preparing to pass the operator certification examination.

(e) The owner of a system or facility shall not be allowed to utilize an OIT for more than two consecutive years.

(f) An operator with an OIT certificate may be the individual in responsible charge of a system subject to the following:

(1) A written request submitted to the department by the system owner and verification by the owner that the system is unable to employ a currently certified operator; and

(2) a finding by the department that the operator has the basic knowledge necessary to operate the system. The following items shall be the basis for the department's decision:

(A) The results of any on-site inspection of the system;

(B) a review of the operational history of the system; and

(C) an examination of other available information. (Authorized by and implementing K.S.A. 65-4512; effective Sept. 28, 1992; amended Aug. 31, 2001.)

28-16-34. Issuance and renewal of certificate of competency. (a) Upon satisfactory fulfillment of the requirements specified in K.A.R. 28-16-30, a certificate of competency shall be issued to the applicant. The certificate shall designate the class or classes of either water supply systems or wastewater treatment facilities for which the applicant has received certification to operate. The certificate shall be valid for two years from date of issuance.

(b) The certificate shall expire unless renewed as specified in this regulation before the expiration date. A renewal notice and application form shall be mailed to the last address of record approximately 45 calendar days before the expiration date of the certificate. Failure to receive the notice shall not relieve the certified operator of the responsibility to renew the certificate.

(c) In order to renew a certificate before it expires, the certified operator shall complete the following requirements before the expiration date of the certificate:

(1) Meet the training requirements specified in K.A.R. 28-16-31(b);

(2) submit an application for renewal on a form provided by the department; and

(3) submit the nonrefundable two-year renewal fee specified in K.A.R. 28-16-35 to the department.

(d) An expired certificate may be reinstated within two years of the expiration date, subject

to K.A.R. 28-16-34(c)(1) through (3) and the reinstatement fee specified in K.A.R. 28-16-35. In each case of reinstatement, the expiration date of the reinstated operator certificate shall be the same as if the renewal requirements had been met on or before the date of expiration.

(e) Each operator certificate that is expired and is not reinstated within two years after the expiration date shall not be reinstated. Each operator failing to reinstate an expired certificate within two years after the date of expiration shall meet the requirements of K.A.R. 28-16-30, apply for examination, pay all required fees, and pass the examination in order to obtain certification. (Authorized by and implementing K.S.A. 65-4512; effective Sept. 28, 1992; amended Aug. 31, 2001.)

28-16-35. Operator certification fees. (a) Fees for certification shall be the following:

OIT (one-year certificate)	No charge
OIT (renewal for one year)	\$5.00
Examination fee	\$25.00
Two-year renewal for all classes except OIT	\$20.00
Reinstatement of lapsed certificate	
up to and including one year after renewal date..	\$15.00
between one and two years after renewal date	\$25.00
One-year reciprocity fee	\$25.00

(b) Fees from applicants who are ineligible to take the certification examination shall be returned. No other fees shall be returned. Fees for department-sponsored training sessions shall be established by the department. (Authorized by and implementing K.S.A. 65-4512 and 65-4513; effective Sept. 28, 1992; amended Aug. 31, 2001.)

28-16-36. Classification of water supply systems and wastewater treatment facilities.

(a) The owner of each water supply system and wastewater treatment facility shall designate an operator in responsible charge of the system or facility, or both, whose qualifications are commensurate with the following:

SYSTEM OR FACILITY CLASS	OPERATOR CLASS
Small System	Small System, I, II, III, or IV
I	I, II, III, or IV
II	II, III, or IV
III	III or IV
IV	IV

(b) Classification of water supply systems shall be as follows:

CLASS	POPULATION SERVED
Small System	
Distribution system only	All, no limit
or	
Chlorination of groundwater only	less than 501
Class I	
Chlorination of groundwater only	501-1,500
or	
Treatment of groundwater	less than 501
Class II	
Chlorination of groundwater only	1,501-5,000
or	
Treatment of groundwater	501-2,500
or	
Treatment of surface water	less than 2,501
Class III	
Chlorination of groundwater only	5,001-20,000
or	
Treatment of groundwater or surface water....	2,501-10,000
Class IV	
Chlorination of groundwater only	over 20,000
or	
Treatment of groundwater or surface water....	over 10,000

(c) Classification of commercial, industrial, and municipal wastewater treatment facilities shall be as follows:

CLASS	POPULATION SERVED
Small Systems	
Nonoverflowing municipal wastewater ponds.....	All, no limit
Class I	
Any secondary treatment facility	less than 1,000
or	
Overflowing wastewater ponds.....	All, no limit
Class II	
Any secondary treatment facility	1,001-5,000
Class III	
Any secondary treatment facility	5,001-25,000
or	
	less than or equal to 5,000
Advanced or specialized treatment facility.....	
Class IV	
Any secondary treatment facility	over 25,000
or	
Advanced or specialized treatment facility.....	over 5,000

(d) For purposes of this regulation, "treatment," as it applies to water supply systems, shall include the following processes:

- (1) Iron and manganese removal;
- (2) membrane filtration;
- (3) softening;
- (4) coagulation, sedimentation, and filtration;
- (5) recarbonation; and
- (6) addition of chemicals other than chlorine for improved water quality.

(e) For purposes of this regulation, "secondary treatment facility" shall be any department-permitted biological treatment facility, including the following:

- (1) Waste stabilization ponds;
- (2) trickling filter plants;
- (3) rotating biological contactor plants; and
- (4) activated sludge plants.

A secondary treatment facility may include biological, physical, or chemical disinfection.

(f) For purposes of this regulation "advanced or specialized treatment facility" shall include facilities utilizing selected biological, physical, and chemical separation processes to remove organic and inorganic substances that resist conventional treatment practices. Biological, physical, and chemical disinfection shall not be considered advanced or specialized treatment. (Authorized by K.S.A. 65-4512; implementing K.S.A. 65-4505 and 65-4512; effective Sept. 28, 1992; amended Aug. 31, 2001.)

**STATE GRANTS TO MUNICIPALITIES
FOR THE CONSTRUCTION OF WATER
POLLUTION CONTROL PROJECTS
BENEFITING FROM FEDERAL GRANTS**

28-16-50 to 28-16-54. (Authorized by K.S.A. 1971 Supp. 65-3305; effective, E-71-16, April 1, 1971; effective Jan. 1, 1972; revoked May 10, 1996.)

28-16-55. Inspection of sewerage systems during construction and prohibited connections. This regulation pertains to the inspection of all components of a sewerage system during construction including, but not limited to, treatment facilities, lift stations and force mains, outfall sewers, interceptor sewers, main and lateral sewers and their extensions, manholes, cleanouts, and building sewers.

I. *Definitions.* Where used in these regulations the following terms shall be understood to have the meaning as given below in their corresponding definitions regardless of any other meaning which may be implied by common or local usage.

(A) *Areaways.* An areaway is a sunken yard, patio, court, driveway or window well leading into a basement or crawlspace for entrance, light or ventilation.

(B) *Building.* A building is a structure built, erected, or framed of component structural parts designed for the housing, shelter, enclosure, or support of persons, animals, equipment or property of any kind.

(C) *Building drain*. The building drain is that part of the lowest piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer beginning three (3) feet outside the building wall.

(D) *Building sewer*. The building sewer is that part of the piping of a drainage system which extends from the end of the building drain and which receives the discharge of the building drain and conveys it to a public sanitary sewer, private sanitary sewer, individual sewage disposal system, or other point of disposal.

(E) *Crawlspace drain*. A crawlspace drain is a drain installed to collect drainage from the surface of any area that is entirely enclosed by foundation walls and beneath a building which area is not covered by a concrete or other form of permanent surfacing.

(F) *Garage drain*. A garage drain is a drain located in a garage or, in case of a basement garage, within ten (10) feet of garage area.

(G) *Inspector*. An inspector shall be a consulting engineer, municipal engineer, sewer district engineer, county engineer, or his authorized representative.

(H) *Roof drain*. A roof drain is a drain which is installed to collect stormwater from building roofs.

(I) *Saddle*. A saddle is a fitting attached to an existing sanitary sewer to receive a building sewer connection.

(J) *Sanitary sewer (sewer)*. A sanitary sewer (sewer) shall mean a pipe which carries sewage and insofar as practical, excludes infiltration of storm, surface and ground water.

(K) *Sewage*. Sewage is any substance that contains any of the waste products or excrementitious or other discharges from the bodies of human beings or animals, or chemical or other wastes from domestic, manufacturing or other forms of industry.

(L) *Shall*. The word "shall" is a mandatory term.

(M) *Foundation drains*. A foundation drain is a pipe with open joints and/or porous material installed either outside exterior foundation walls or inside and beneath a basement floor for the purpose of preventing the build-up of water pressure and water capillarity beneath the floor.

II. Inspection of sewerage system construction.

(A) *Treatment facilities, mains and laterals*. All sewerage construction projects shall have continuous inspections by a qualified inspector during active phases of sewerage construction to insure that they comply with plans and specifications ap-

proved by the Kansas state department of health and to insure elimination of extraneous surface and ground water. This shall include inspection of all sewers and manholes before they are covered but after the sewers are bedded.

(B) *Building sewers*. All building sewers shall be constructed of materials which are approved by the state department of health for the construction of lateral sewers. Building sewers shall be left uncovered until inspected. In the case of saddle connections, after the saddle hole has been made in the receiving pipe, the pipe thoroughly cleaned and all excavation and bracing has been completed for the encasement, the inspector shall see the saddle installed and properly anchored.

(C) *Prohibited connections*. No roof, areaway, garage, or foundation drain shall be connected with or flow into any building or sanitary sewer.

III. *Municipal regulations and fees*. These regulations do not affect the right of the municipality to adopt stricter regulations, connection fees, connection and use permits, and sewer service charges. (Authorized by K.S.A. 65-171d; effective, E-74-7, Nov. 26, 1973; effective May 1, 1975.)

28-16-56. (Authorized by K.S.A. 1975 Supp. 65-166a; effective, E-74-7, Nov. 26, 1973; effective, E-76-3, Jan. 1, 1975; effective May 1, 1975; amended, E-76-39, Aug. 1, 1975; amended May 1, 1976; revoked, T-85-30, Nov. 14, 1984; revoked May 1, 1985.)

28-16-56a. (Authorized by and implementing K.S.A. 65-166a; effective, T-85-30, Nov. 14, 1984; effective May 1, 1985; amended May 1, 1986; amended May 1, 1988; revoked Sept. 27, 1996.)

28-16-56b. (Authorized by and implementing K.S.A. 1984 65-166a; effective, T-85-30, Nov. 14, 1984; effective May 1, 1985; revoked Sept. 27, 1996.)

28-16-56c. Sewage permit fees; definitions. For the purposes of K.A.R. 28-16-56d, the following terms shall be defined as specified in this regulation:

(a) "Animal unit," for the purpose of determining permit fees, has the meaning specified in K.S.A. 65-171d, and amendments thereto.

(b) "Animal unit capacity" means the maximum number of animal units that a confined feeding facility is designed to accommodate at any one time.

(c) "Commercial wastewater treatment facility" means a facility serving a commercial enterprise or

group or a combination of commercial enterprises, for the purpose of treating primarily domestic sewage by physical, chemical, or biological means or by a combination of these methods. This term shall include any slaughterhouse with an average slaughter rate of 50 animals or less per week.

(d) "Confined feeding facility" has the meaning specified in K.S.A. 65-171d, and amendments thereto.

(e) "Cooling water discharge" means cooling water discharged from any system in which there is no contact with process pollutants and there is no measured chemical buildup.

(f) "Dewatering discharge" means a discharge resulting from the drainage or removal of water from a lagoon, quarry, pit, or any other holding device. This term shall not include any discharge in which there is a measured chemical buildup or to which chemicals have been added for any purpose.

(g) "Domestic sewage" means sewage originating primarily from kitchen, bathroom, and laundry sources, including waste from food preparation, dishwashing, garbage grinding, toilets, baths, showers, and sinks.

(h) "General permit" has the meaning specified in 40 CFR 122.2 and adopted by reference in K.A.R. 28-16-151.

(i) "Industrial wastewater treatment facility" means a facility treating primarily sewage or process-generated wastewater, other than domestic sewage, by physical, chemical, or biological means or by a combination of these methods.

This term shall not include any private truck-washing or trailer-washing facility for washing animal waste from not more than two trucks or trailers, or a combination of both, owned by the private truck-washing or trailer-washing facility.

(j) "Municipal wastewater treatment facility" means a facility serving a city, county, township, sewer district, or other local governmental unit, or a facility serving a state or federal agency, establishment, or institution, for the purpose of treating primarily domestic sewage by physical, chemical, or biological means or by a combination of these methods.

(k) "Point source" means any discernible, confined, and discrete conveyance from which pollutants are or can be discharged, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, confined animal feeding facility, landfill leachate collection system, and any vessel or other floating craft. This term

shall not include the return flows from irrigated agriculture or agricultural storm water runoff.

(l) "Pretreatment permit" means a permit that is issued to a source subject to pretreatment standards and that discharges to a municipal wastewater treatment facility not having an approved pretreatment program.

(m) "Private truck-washing facility for animal wastes" means a truck-washing facility for animal wastes that exists primarily for the purpose of washing animal wastes from trucks or trailers owned by the facility.

(n) "Sewage" has the meaning specified in K.S.A. 65-164, and amendments thereto.

(o) "Storm water discharge" means any discharge of storm water runoff from a point source. This term may include any of the following:

(1) Storm water runoff from a municipal, industrial, or commercial facility or from a construction site;

(2) a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff; or

(3) a system of discharges from municipal storm sewers that are separate from sanitary sewers.

(p) "Treated cooling water discharge" means cooling water discharged from any system in which there is no contact with process pollutants and there is no measured chemical buildup other than chemicals added for biological or corrosion control, or from evaporative losses.

(q) "Truck-washing facility for animal wastes" means a truck-washing facility that exists primarily for the purpose of washing animal wastes from trucks or trailers. (Authorized by and implementing K.S.A. 2003 Supp. 65-171d; effective Sept. 27, 1996; amended March 16, 2007.)

28-16-56d. Sewage permit fees; schedules. (a) Each person applying for a permit pursuant to K.S.A. 65-165, and amendments thereto, and each holder of a permit issued pursuant to K.S.A. 65-165, and amendments thereto, shall submit the appropriate fee in accordance with the following schedule:

Schedule of Fees at Annual Rate

<i>Classification</i>	<i>Unit Rates and Minimum Rates</i>
(1) Municipal or commercial wastewater treatment facility.	\$185/year/million gallons per day permitted capacity and for any portion thereof. \$185 minimum fee per year.

<i>Classification</i>	<i>Unit Rates and Minimum Rates</i>
(2) Municipal storm water system.	
(A) population less than 100,000 persons.	None
(B) population of 100,000 persons or greater.	\$2,000 per year.
(3) Industrial wastewater treatment facility.	\$320/year/million gallons per day permitted capacity and for any portion thereof. \$320 minimum fee per year.
(4) Cooling water discharge. Surface disposal:	
(A) Non-contact cooling water.	\$60 per year.
(B) treated cooling water.	\$120/year/million gallons per day permitted capacity and for any portion thereof. \$120 minimum fee per year.
(5) Dewatering discharge.	\$60 per year.
(6) Pretreatment permit.	\$320 per year.
(7) General permit.	\$60 per year.
(8) Industrial storm water discharge.	
(A) General permit.	\$60 per year.
(B) individual permit.	\$320 per year.
(9) Confined feeding facility or public livestock market required to register or obtain a permit:	
(A) Initial registration fee, regardless of animal unit capacity	\$25 one-time fee.
(B) permit fee:	
(i) Animal unit capacity of 999 or less	\$25 per year.
(ii) animal unit capacity of 1,000-4,999	\$100 per year.
(iii) animal unit capacity of 5,000-9,999	\$200 per year.
(iv) animal unit capacity of 10,000 or more.	\$400 per year.
(10) Truck-washing facility for animal wastes.	
(A) Private truck-washing facility for animal wastes with any combination of owned trailers or trucks totaling no more than two	\$25 per year.
(B) Private truck-washing facility for animal wastes with any combination of owned trailers or trucks totaling more than two	\$200 per year.
(C) all other truck-washing facilities for animal wastes.	\$320 per year.

(b)(1) Plans and specifications shall not be reviewed and processing and issuance of a permit shall not take place until the required fee is paid.

Fees shall be made payable to the “Kansas department of health and environment—water pollution control permit.”

(2) Fees paid in accordance with the schedule in subsection (a), including fees paid for facilities that are never built or that are abandoned, shall not be refunded.

(3) Each operator who is operating a facility in which two or more of the wastewaters identified in subsection (a) are discharged shall pay the appropriate fee for each type of wastewater discharged, even if only one permit has been issued for the facility.

(4) Permit fees shall be based on the minimum rate or unit rate, whichever is greater. The full unit rate shall be applied to any portion of a unit. The fee per unit shall not be prorated.

(5) A permit fee shall be paid annually in accordance with subsection (a).

(6) If ownership of the permitted facility changes during the term of a valid permit, no additional fee shall be required unless a change occurs that results in a new or expanded facility or operation.

(7) If a change occurs during the term of a valid permit that results in an expanded capacity of the facility or operation, a new application shall be required. Upon approval, the existing permit shall be amended and shall continue in effect for the remainder of the original term, unless revoked. The additional fee shall be based only on the difference between the original permitted capacity and the expanded capacity. The new annual fee for the expanded facility shall be based on the unit rate at the expanded capacity or the minimum rate, whichever is greater, for the remainder of the term of the permit. (Authorized by and implementing K.S.A. 2003 Supp. 65-166a and 65-171d; effective Sept. 27, 1996; amended March 16, 2007.)

28-16-57. (Authorized by K.S.A. 65-171d, as amended by L. 1986, Ch. 204, Sec. 3, Sec. 6 and L. 1986, Ch. 201, Sec. 22; implementing K.S.A. 65-165, 65-166; effective, E-74-32, June 14, 1974; effective May 1, 1975; amended May 1, 1987; revoked March 23, 2001.)

28-16-57a. Effluent standards. (a) Incorporation. 40 C.F.R. Parts 133, 405 through 436, 439, 440, 443, 446, 447, 454, 455, 457 through 461, 463, 465, and 469, as in effect on July 1, 1985, are adopted by reference.

(b) To the extent that the above effluent limitations are inapplicable, the limitations shall be

set on a case-by-case basis using the methodology described in 40 CFR Sections 122.44(a) and 125.3(c)(2) as in effect on July 1, 1985. (Authorized by K.S.A. 65-171d, as amended by L. 1986, Ch. 204, Sec. 3, Sec. 6 and L. 1986, Ch. 201, Sec. 22; implementing K.S.A. 65-171d as amended by L. 1986, Ch. 204, Sec. 3, Sec. 6 and L. 1986, Ch. 201, Sec. 22, effective May 1, 1987.)

28-16-58. Definitions. As used in K.A.R. 28-16-57a through 28-16-63, each of the following terms shall have the meaning specified in this regulation: (a)(1) "Administrator" means administrator of the United States environmental protection agency (EPA).

(2) "Application" means all documents required by the division of environment in the Kansas department of health and environment that are necessary for obtaining a permit.

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

(4) "Director" means director of the division of environment, KDHE.

(5) "Division" means division of environment, KDHE.

(6) "Draft permit" means a permit that has not been issued as a final action of the secretary.

(7) "EPA" means United States environmental protection agency.

(8) "Kansas implementation procedures: wastewater permitting" means the procedures dated July 1, 2014 and written and used by the department for the development of national pollutant discharge elimination system permit limitations, available upon request from the division.

(9) "Minimum standards of design, construction, and maintenance" means effluent standards, effluent limitations, pretreatment standards, other performance standards, and other standards of design, construction, and maintenance for wastewater control facilities published by the department in 1978 as "minimum standards of design for water pollution control facilities."

(10) "Municipal system" means a system under the jurisdiction of a city, county, township, district, or other governmental unit.

(11) "National pollutant discharge elimination system" and "NPDES" mean the national system for the issuance of permits under 33 U.S.C. Section 1342 and shall include any state or interstate program that has been approved by the administrator, in whole or in part, pursuant to 33 U.S.C. Section 1342.

(12) "Refuse act application" means an application for a permit under 33 U.S.C. Section 407, commonly known as the refuse act, of 33 U.S.C. Chapter 9, "protection of navigable waters and of harbor and river improvements generally."

(13) "Regional administrator" means the regional administrator for region VII of the EPA.

(14) "Secretary" means secretary of KDHE.

(15) "Water quality standards" means all water quality standards, as specified in K.A.R. 28-16-28b through K.A.R. 28-16-28g, to which a discharge is subject.

(16) "Waters of the state" means all surface and subsurface waters occurring within the borders of the state or forming part of the border between Kansas and one of the adjoining states.

(b) The definitions of the following terms contained in 33 U.S.C. Section 1362, as amended July 29, 2008 and hereby adopted by reference, shall be applicable to the following terms as used in K.A.R. 28-16-57a through K.A.R. 28-16-63, unless the context requires otherwise:

(1) "Biological monitoring";

(2) "effluent limitations";

(3) "municipality";

(4) "person";

(5) "state"; and

(6) "toxic pollutant." (Authorized by K.S.A. 2014 Supp. 65-171d; implementing K.S.A. 65-165, K.S.A. 65-166, and K.S.A. 2014 Supp. 65-171d; effective, E-74-32, June 14, 1974; effective May 1, 1975; amended May 1, 1987; amended Aug. 31, 2001; amended Jan. 28, 2005; amended March 20, 2015.)

28-16-59. Filing of applications. (a) Each person presently discharging or having a potential to discharge pollutants into any "waters of the state" shall file one copy of the appropriate application within 30 days of a written notification by the division.

(b) Each person proposing commencement of a discharge of pollutants after enactment of these regulations shall file a complete application:

(1) no less than 180 days in advance of the date on which the person desires to commence the discharge of pollutants; or

(2) in sufficient time prior to commencement of the discharge of pollutants to insure compliance with the requirements of state or federal law.

(c) Each application shall be considered to be complete when the appropriate fee has been paid in accordance with K.A.R. 28-16-56c and 28-16-56d and when the applicant has filed:

(1) A refuse act application and any additional information required by the director; or

(2) a complete application form, as prescribed for the type, category, or size of discharge, facility, or activity, and plans, specifications and an engineering report in accordance with K.A.R. 28-16-1 through 28-16-7 and any additional information required by the director.

(d) Notification to and approval by the director is required prior to any of the following:

(1) The connection of an industrial waste discharge to a municipal system or the addition of a new process or product by an existing industrial facility;

(2) A significant change in disposal method, including change from a land disposal to direct discharge to water, or a change in the method of treatment which would significantly alter the characteristics of the waste;

(3) A significant change in the disposal area or point of discharge, including discharging into another drainage area or into a different water body, or to a disposal area different from the existing approved area;

(4) An increase in flow beyond that specified in the issued permit or the application thereto; or

(5) Other circumstances which result in a change in character, amount or location of waste discharge.

(e) The application shall be signed and certified in accordance with the provisions of 40 CFR Section 122.22 as in effect on July 1, 1985.

(f) A permit shall not be issued on the basis of any application which the director has identified as incomplete or otherwise deficient until the director receives sufficient information to correct any deficiency. (Authorized by K.S.A. 1995 Supp. 65-171d; implementing K.S.A. 65-165, 65-166; effective, E-74-32, June 14, 1974; effective May 1, 1975; amended May 1, 1987; amended Sept. 27, 1996.)

28-16-60. Development of draft permit.

(a) Each application and any other relevant facts shall be reviewed by the director to determine one of the following:

(1) A permit shall be issued allowing the discharge.

(2) A permit shall be issued providing for no discharge.

(3) A permit shall not be issued.

(b) If the issuance of a permit is deemed advisable, the proposed permit conditions shall be

formulated by the director, including all of the following:

(1) Effluent limitations developed according to the "Kansas implementation procedures: wastewater permitting";

(2) a schedule of compliance, including any necessary interim dates;

(3) any special conditions; and

(4) a monitoring program, if appropriate. (Authorized by K.S.A. 2000 Supp. 65-171d, as amended by L. 2001, Ch. 160, Sec. 15 and L. 2001, Ch. 191, Sec. 15; implementing K.S.A. 2000 Supp. 65-165 and K.S.A. 65-166; effective, E-74-32, June 14, 1974; effective May 1, 1975; amended May 1, 1987; amended Aug. 31, 2001.)

28-16-61. Public notice of permit actions, public comment period, and public hearings.

(a) Definitions.

(1) "Clean Water Act (CWA)" means the federal water pollution control act, or federal pollution control act amendments of 1972, P.L. 92-500, as amended by P.L. 95-217, P.L. 95-576, P.L. 96-438, and P.L. 97-117; 33 U.S.C. 1251 et seq.

(2) "Draft permit" means a document prepared under K.A.R. 28-16-60 indicating the director's tentative decision to issue, reissue, deny, modify, revoke and reissue, or terminate a permit.

(3) "Facility or activity" means any NPDES point source as defined in K.A.R. 28-16-57a or any other facility or activity, including land or appurtenances thereto, that is subject to regulation under K.A.R. 28-16-57.

(4) "General permit" means a permit authorizing a category of discharges or activities under the CWA within a geographical area. For NPDES, a general permit means a permit issued under K.A.R. 28-16-150 to 154, inclusive.

(5) "Indian tribe" means any indian tribe having a federally recognized governing body carrying out substantial governmental duties and powers over a defined area.

(6) "Major facilities" are those facilities which are on a mutually agreed list as determined by EPA and the department.

(7) "Permit" means an authorization, license, or equivalent control document issued by the director to implement the requirements of K.A.R. 28-16-57. Permit does not include any document which has not yet been the subject of final agency action, such as a draft permit.

(8) "Resource Conservation and Recovery Act (RCRA)" means the solid waste disposal act of

1965, as amended in 1970, as amended by the resource conservation and recovery act of 1976, P.L. 94-580, as amended by P.L. 95-609, P.L. 98-616, and P.L. 99-499; 42 U.S.C. 6901 et seq.

(9) "UIC" means the underground injection control program under part C of the safe drinking water act, 42 U.S.C. 300f et seq.

(b) Public Notice and Comment Period.

(1) Scope and Timing. Public notice shall be given when a draft permit has been prepared under K.A.R. 28-16-60 and when a hearing has been scheduled under subsection (d) of this regulation.

(A) A public notice shall not be required when a request for permit modification, revocation and reissuance, or termination is denied under K.A.R. 28-16-62. Written notification of that denial shall be given both to the person who requests this change and to the permittee.

(B) Public notices may describe more than one permit or permit action.

(C) Public notice of the preparation of a draft permit shall allow at least 30 days for public comment.

(D) Public notice of a public hearing shall be given at least 30 days before the hearing. Public notice of the hearing may be combined with the public notice of the draft permit.

(2) Methods.

(A) Incorporation. 40 CFR sections 124.8 (a), (b)(1), (2), (4), (5), (6), (7), and (8); 124.10 (c)(1) (i), (ii), (iii), (iv), (v), and (x); (c)(2)(i); (c)(3); and (c)(4); and 124.56, as in effect on July 1, 1991, are adopted by reference.

(B) Each person who is on a mailing list maintained by the department shall also be mailed a copy of the notice. The mailing list shall include:

(i) each person who requests in writing to be placed on the list;

(ii) each person solicited for "area lists" from participants in past permit proceedings in that area; and

(iii) each person who responds to a notice, published in the Kansas Register once a year, of the opportunity to be placed on the list. The mailing list may be updated from time to time by a request from the director for a written indication of continued interest from those listed. The name of any person who fails to respond to such a request may be deleted from the list.

(3) Contents.

(A) Public notice. Each public notice issued under this regulation shall contain the following minimum information:

(i) the name and address of the office processing the permit action for which notice is being given;

(ii) the name and address of the permittee or the permit applicant, and if different, the name of the facility or activity regulated by the permit;

(iii) a brief description of the business conducted at the facility or the activity described in the permit application;

(iv) the name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, fact sheet, and the application; and

(v) a brief description of the comment procedures established by subsections (c) and (d) of this regulation and of the time and place of any hearing that will be held. The notice shall also include a statement of procedures to request a hearing, if a hearing has not already been scheduled, and other procedures by which the public may participate in the final permit decision.

(B) Public notices for hearings. In addition to the general public notice described in paragraph (3)(A) of this subsection, each public notice of a hearing shall contain the following:

(i) reference to the date of any previous public notices relating to the permit at issue; and

(ii) a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(C) In addition to the general public notice described in paragraph (3)(A) of this subsection, each person identified in 40 CFR 124.10(c)(1)(i), (ii), (iii), and (iv) shall be mailed a copy of the fact sheet, the permit application, if any, and the draft permit, if any.

(c) Public comments and request for public hearings. During the public comment period provided under subsection (b) of this regulation, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised during the hearing. All comments shall be considered in making the final decision and shall be answered as provided in subsection (e) of this regulation.

(d) Public hearings; incorporation. 40 CFR section 124.12(a)(1) and (2), as in effect on July 1, 1991, are adopted by reference.

(e) Response to comments. A response to comments shall be issued at the time that any final

permit decision is issued. The response to comments shall be available to the public and shall:

(1) specify which provision, if any, of the draft permit has been changed in the final permit decision, and the reasons for the change; and

(2) briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearings. (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-165, and K.S.A. 65-166; effective, E-74-32, June 14, 1974; effective May 1, 1975; amended May 1, 1987; amended Sept. 27, 1993.)

28-16-62. Terms and conditions of permits. (a) Prohibitions. A permit shall not be issued:

(1) By the director when the regional administrator has objected to issuance of the permit under 40 CFR Section 123.44, as in effect on July 1, 1985;

(2) when comments, if any, received from neighboring states, indicate that such discharge will violate the water quality of such states. The neighboring states shall be notified in advance, pursuant to K.A.R. 28-16-61;

(3) when, in the judgment of the secretary of the army, acting through the chief of engineers, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;

(4) for the discharge of any radiological, chemical, or biological warfare agent or high level radioactive waste;

(5) for any discharge inconsistent with a plan or plan amendment approved under 33 U.S.C. Section 1288(b); or

(6) to a new source or new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards.

(b) Minimum standards of design, construction and maintenance for owners and operators of water pollution control facilities. (1) Each owner or operator of a sewage system, industrial facility, commercial establishment, or agricultural activity discharging or having a potential to discharge sewage to waters of the state shall have approved water pollution control facilities. In approving and issuing permits to each existing or proposed facility, the director shall insure that such facility conforms to published minimum standards of design, construction, and maintenance. In approving and publishing minimum standards of design, construction and maintenance, the director shall

insure that such standards are at least as stringent as the requirements of 33 U.S.C. Sections 1311, 1312, 1316, 1317, 1318, and 1343.

(2) Treatment over and above minimum standards shall be required to comply with applicable water quality standards. When minimum standards do not provide compliance with the applicable water quality standards, a waste-loading allocation shall be prepared to insure that the discharge authorized is consistent with the applicable water quality standards.

(3) Each permit shall also include a schedule of compliance for any facility which is not in full compliance with minimum standards of design, construction, and maintenance and other requirements. If the discharger fails or refuses to comply with the specified schedule of compliance, the regional administrator shall be notified by the director within 30 days of such failure or refusal. If a schedule of compliance exceeds nine months, one or more interim reporting dates shall be required. No more than nine months shall elapse between interim dates contained in a schedule of compliance.

(4) Upon request of the applicant or permittee, a schedule of compliance may be modified by the director if good and valid cause exists for such revision, and if within 30 days following receipt of notice, the regional administrator does not object in writing.

(5) No later than 14 days following each interim date, the discharger shall be required to provide the director with a written notice of progress toward compliance with interim or final permit requirements.

(A) On the last day of the months of February, May, August, and November, a list of all instances, as of 30 days prior to the date of the report, of failure or refusal of a permittee to comply with interim or final requirements or to notify the director of compliance or noncompliance with each interim or final requirement shall be transmitted to the regional administrator by the director. The list shall be available to the public for inspection and copying and shall contain at least the following information with respect to each instance of noncompliance:

(i) The name and address of each noncomplying permittee;

(ii) a short description of each instance of non-compliance;

(iii) a short description of any actions or proposed actions by the permittee or the director to

comply or enforce compliance with the interim or final requirements; and

(iv) any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement.

(B) A permit may be revoked for failure to comply with any provision of an applicable schedule of compliance in conformance with K.S.A. 65-165. Nothing in this regulation shall be construed to limit the applicability of civil or criminal penalties as provided by law.

(c) Other terms and conditions of permit.

(1) Each permit for a publicly-owned treatment facility shall contain a requirement that the operating agency must notify the director of:

(A) A sewer extension or other means whereby a new introduction of pollutants is discharged to the treatment works; or

(B) a change in the volume or character or pollutants being introduced into such works by a source introducing pollutants into such works at the time the permit was issued.

(2) Each permit shall contain a requirement that the operator of the publicly-owned treatment works insure that each industrial user:

(A) Pays a charge for the user's fair share of the operating and maintenance cost of treatment and a fair share of the federal grant portion of the cost of construction of the treatment plant in accordance with any applicable provisions of the act and the federal grant agreement; and

(B) complies with applicable toxic and pretreatment guidelines as contained in the minimum standards of design, construction and maintenance.

(3) Each permit shall contain a condition which states that the discharge of any pollutant not identified and authorized by the permit or the discharge of any pollutant in a manner or quantity which differs from that stated in the application is prohibited.

(4) Each permit shall contain a condition that the discharger shall maintain in good working order and operate as efficiently as possible any facility or control system installed by the discharger to achieve compliance with the permit.

(d) Duration of permits. Each permit shall be issued for a fixed term not to exceed five years.

(e) Modification or revocation and reissuance of permits.

When the director receives any information regarding a permittee, receives a request for modification or revocation and reissuance of a permit, or

conducts a review of the permit file, the director may determine whether or not one or more of the causes listed in paragraphs (1) or (2) of this subsection for modification or revocation and reissuance or both exist. If cause exists, the permit may be modified or revoked and reissued accordingly and an updated application may be requested, if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term.

(1) Causes for modification. The following are causes for modification of a permit. However, these causes should not be basis for revocation and reissuance of permits except when the permittee requests or agrees to such an action.

(A) Alterations. Material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance may be the basis for modification of a permit, if those alterations or additions justify application or permit conditions that are different or absent in the existing permit.

(B) Information. If the director has received new information regarding a permittee's facility or activities, the permit may be modified during its term only if the information received was not available at the time of permit issuance and would have justified the application of different permit conditions at the time of issuance.

(C) New regulations. If the standards or regulations upon which a permit was based have been changed by promulgation of amended standards or regulations after the permit was issued, the permit may be modified during its term only when:

(i) The permit condition requested to be modified was based on a promulgated effluent limitations guideline, EPA-approved or promulgated water quality standards, or secondary treatment regulations;

(ii) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based or has approved KDHE action with regard to a water quality standard on which the permit condition was based; and

(iii) a permittee requests modification in accordance with subsection (g) of this regulation within 90 days after notice of action on which the request is based.

(D) Judicial Decisions. Any permit may be modified if:

(i) a court of competent jurisdiction has remanded and stayed EPA-promulgated regulations or effluent limitation guidelines;

(ii) the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based; and

(iii) a request is filed by the permittee in accordance with subsection (g) of this regulation within 90 days of judicial remand.

(E) Compliance Schedules. Any permit may be modified if the director determines good cause exists for modification of a compliance schedule, including such causes as an act of God, a strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonable available remedy. However, in no case may a compliance schedule be modified to extend beyond a statutory deadline.

(F) Any permit may be modified when the permittee has filed a request for a variance under 33 U.S.C. Sections 301(c), 301(g), 301(h), 301(i), 301(k), or 316(a) or for “fundamentally different factors” within the time specified in 40 CFR Section 122.21 or 125.27(a), as in effect on July 1, 1985.

(G) 33 U.S.C. Section 1317(a) toxics. Any permit may be modified when required to incorporate an applicable 33 U.S.C. Section 1317(a) toxic effluent standard or prohibition.

(H) Reopener. Any permit may be modified when required by “reopener” conditions in a permit that are established for toxic effluent limitations or pretreatment programs.

(I) Net Limits. (i) Incorporation. 40 CFR Section 122.45(h), as in effect on July 1, 1985, is adopted by reference.

(ii) Any permit may be modified upon request of a permittee who qualifies for effluent limitations on a net basis under 40 CFR Section 122.45(h), as in effect on July 1, 1985.

(iii) A permit may be modified when a discharge is no longer eligible for net limitations, as provided in 40 CFR Section 122.45(h), as in effect on July 1, 1985.

(J) Pretreatment. Any permit may be modified as necessary under the compliance schedule for development of a publicly-owned treatment works pretreatment program.

(K) Failure to notify. A permit may be modified upon failure of the department to notify another state whose waters may be affected by a discharge from this state.

(L) Non-limited pollutants. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by technology-based treatment requirements appropriate to the permittee, the permit may be modified.

(M) Notification Level.

(i) Incorporation. 40 CFR Section 122.44(f), as in effect on July 1, 1985, is adopted by reference.

(ii) A permit may be modified to establish a “notification level” as provided in 40 CFR Section 122.44(f), as in effect on July 1, 1985.

(N) Compliance Schedule. A permit may be modified to change a schedule of compliance to reflect time lost during construction of an innovative or alternate facility.

(O) When the permittee’s effluent limitations were imposed under 33 U.S.C. Section 1342(a)(1) and the permittee demonstrates operation and maintenance costs that are totally disproportionate from the operation and maintenance costs considered in the development of a subsequently promulgated effluent limitations guideline, the permit may be modified. However, the limitations shall not be less stringent than the subsequent guideline.

(P) Any permit may be modified to correct technical mistakes, including errors in calculation or mistaken interpretations of law made in determining permit conditions.

(Q) When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under 33 U.S.C. Section 1342(a)(1) and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations, the permit may be modified. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved, but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline.

(2) Causes for modification or revocation and reissuance. Any permit may be modified, or alternatively, may be revoked and reissued when:

(A) Cause exists for termination under subsection (f) of this regulation, and the director determines that modification or revocation and reissuance is appropriate; or

(B) the director has received notification of a proposed transfer of the permit.

(f) Termination of permits.

(1) A permit may be terminated during its term or a permit may be denied for:

(A) Noncompliance by the permittee with any condition of the permit;

(B) the permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

(C) a determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

(D) a change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit.

(2) The applicable procedures in subsection (g) of this regulation shall be followed for termination of any permit.

(g) Procedures for modifications, revocation and reissuance, or termination of permits.

(1) Any permit may be modified, revoked and reissued, or terminated either at the request of any interested person, including the permittee, or upon the director's initiative. All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the director decides that the request is not justified, the requester shall be provided with a brief written response giving a reason for the decision. Denial of requests for modification, revocation and reissuance, or termination shall not be subject to public notice, comment, or hearings. Denials by the director may be informally appealed to the secretary by a letter briefly setting forth the relevant facts. The secretary may direct the director to begin modification, revocation and reissuance, or termination proceedings under paragraph (3) of this subsection. The appeal shall be considered denied if the secretary takes no action on the letter within 60 days after receiving it. This informal appeal shall be a prerequisite to seeking judicial review of agency action in denying a request for modification, revocation and reissuance, or termination.

(3)(A) If the director tentatively decides to modify or revoke and reissue a permit under subsection (e) of this regulation, the director shall prepare a draft permit under K.A.R. 28-16-60 incorporating the proposed changes. The director may request additional information, and in the case of a modified permit, may require the submission of an updated application. A new application for a permit shall be submitted for the reissuance of a revoked permit.

(B) In a permit modification under this regulation, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit shall be reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(4) If the director tentatively decides to terminate a permit under subsection (f) of this regulation, the director shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under K.A.R. 28-16-60.

(h) Transmission to regional administrator of permits. Upon issuance of any permit, a copy of the permit shall be forwarded to the regional administrator by the director.

(i) Reissuance of permits.

(1) At least 180 days prior to expiration of a permit, a permit holder wishing to renew the permit shall file an application, as required by the director.

(2) Permits shall not be reissued unless:

(A) The discharger is in compliance with or has substantially complied with all the terms, conditions, requirements and schedules of compliance contained in the existing permit;

(B) The discharger files an application and other necessary data as required by the director; and

(C) The discharge is consistent with applicable minimum standards of design, construction, and maintenance and water quality standards.

(3) The notice and hearing procedure for reissuance shall be the same as for the issuance of new permits. (Authorized by K.S.A. 65-171d, as amended by L. 1986, Ch. 204, Sec. 3, Sec. 6 and L. 1986, Ch. 201, Sec. 22; implementing K.S.A. 65-165, 65-166; effective, E-74-32, June 14, 1974; effective May 1, 1975, amended May 1, 1987.)

28-16-63. Monitoring. I. An appropriate monitoring program shall be included in all permits. The program may require the discharger to install, use and maintain at his expense, adequate monitoring equipment or methods (including, where appropriate, biological monitoring methods).

II. Any discharge which 1) is not a minor discharge, 2) the regional administrator requests in writing to be monitored, or 3) contains a toxic

pollutant for which an effluent standard has been established shall be monitored by the discharger for at least the following:

- (A) Flow (in gallons per day);
- (B) Pollutants which are subject to reduction or elimination under the requirements, pollutants which would have a significant impact on the quality of the receiving waters, and pollutants specified by the regional administrator; and
- (C) Each effluent flow or pollutant shall be monitored at intervals sufficiently frequent to yield data which reasonably characterize the nature of the discharge. Variable effluent flows and constituent levels shall be monitored at more frequent intervals.

III. Recording.

(A) The discharger shall record the results of all monitoring and shall include for all samples:

- (1) The date, exact place, time of sampling, and who took the sample;
- (2) The dates analyses were performed and who performed the analyses;
- (3) Analytical techniques/methods used; and
- (4) The results of such analyses.

(B) The discharger shall be required to retain for a minimum of three years any records of monitoring activities and results, including all original strip chart recording and calibration and maintenance records. The period of retention shall be extended during the course of any unresolved administrative enforcement action or litigation regarding the discharge of pollutants by the discharger or when ordered by the director.

IV. Reporting.

(A) Monitoring results shall be reported on forms required by the director and forwarded to the director at specified time periods of not less than once per year.

(B) The director shall require the use of monitoring, recording, and reporting procedures which at a minimum are at least as stringent as any national monitoring, recording, and reporting requirements specified by the administrator in regulations issued pursuant to the act. (Authorized by K.S.A. 1974 Supp. 65-165, 65-166, 65-171d; effective, E-74-32, June 14, 1974; effective May 1, 1975.)

28-16-65. (Authorized by K.S.A. 12-3710 et seq.; effective, E-74-33, June 21, 1974; effective, E-76-20, May 1, 1975; effective May 1, 1976; revoked May 10, 1996.)

28-16-67. (Authorized by K.S.A. 12-3711; effective, E-78-4, Dec. 1, 1977; effective May 1, 1978; revoked May 10, 1996.)

ESTABLISHMENT AND ADMINISTRATION OF CRITICAL WATER QUALITY MANAGEMENT AREAS

28-16-69. Definitions. (a) Agricultural pollutants means sediments, organic material or microorganisms from cultivated fields, pastures or grazing land; pesticides; runoff from feedlots or other animal holding areas; fertilizers; or minerals contained in irrigation return flow.

(b) Critical water quality management area means a watershed, or a portion of a watershed, in which application of minimum state or national wastewater and water quality management practices and procedures cannot be reasonably expected to result in attainment of water quality goals, attainment of water quality standards, protection of resources of the state, prevention of excessive sediment deposition in stream beds, lakes or reservoirs, or prevention of destruction of fishery habitat; or an area in which additional treatment and control of pollutants can result in additional cost effective benefits.

(c) Critical area water quality management plan means a plan providing for the control of all pollutant sources within the critical area.

(d) Endangered species means those species of wildlife indigenous to the state whose existence is in immediate jeopardy due to a combination of natural or man-made factors.

(e) Kansas water quality management plan means the plan approved by senate concurrent resolution 1640 dated April 2, 1979.

(f) Rural clean water program means a program for the control of wastes from agricultural sources for improved water quality, promulgated in conformity with Section 208(j) (1)-(9) of the federal water pollution control act as amended, 33 U.S.C. 166, *et seq.*

(g) Rural clean water program coordinating committee means the state administrative committee, established pursuant to U.S. department of agriculture regulations, to administer the rural clean water program.

(h) Threatened species means those species of wildlife indigenous to the state whose existence may become endangered by continued deterioration due to natural or man-made forces.

(i) Water quality standards means standards found in K.A.R. 28-16-28 and 28a. (Authorized by K.S.A. 65-171a, 65-171d, 65-3301, 65-3303, 65-3304, 65-3305; effective May 1, 1981.)

28-16-70. Designation of critical water quality management area. (a) Watersheds or portions of watersheds shall be considered by the secretary for designation as critical water quality management areas because of pollutant sources which cause, or may reasonably be expected to cause, damages to resources of the state; public nuisance or health hazards; destruction of fishery habitat; excessive deposition of sediments on river bottoms, lakes or reservoirs; additional risk to threatened or endangered fish or wildlife; or violation of water quality standards.

(b) The secretary shall initiate such action on the secretary's initiative, at the request of other state or federal agencies, local governments, or through public initiative.

(c) The secretary shall give public notice of intent to consider an area for designation as a critical water quality management area. The secretary shall consider all responses to the public notice in determining whether to proceed with the evaluation of the candidate area.

(d) Any person, unit of local government, or state or federal agency proposing that an area be designated as a critical water quality management area shall submit a proposal to the secretary incorporating the following information: a map showing the boundaries of the proposed area; a brief discussion of the nature of the damages that are occurring or which may reasonably be expected to occur; a brief discussion of those pollutant sources believed to be responsible for the observed or potential damages; a brief discussion of the public support for, or likely objection to, a critical water quality management designation; and the name, title, and authority of the individual or agency submitting the proposal.

(e) Prior to the designation of a critical water quality management area the secretary shall:

(1) Evaluate all pollutant sources and the extent to which these pollutant sources are or may be reasonably expected to cause violation of water quality standards, damages to resources of the state, nuisance conditions, hazards to the public health, excessive sedimentation, destruction of fisheries habitat, or additional risk to threatened or endangered fish or wildlife species.

(2) Evaluate all data and consider public comments in determining the technical and economic feasibility of simultaneous control of all pollutant sources. When determining the technical and economic feasibility of agricultural pollutant reduction, the secretary shall consult with the state conservation commission, the affected conserva-

tion district(s), and other knowledgeable sources. In conducting the evaluation, the secretary may invite and give consideration to comments from individuals, interest groups, federal agencies, other state agencies, and affected local government.

(f) If the secretary concludes, as a result of the evaluations, that the establishment of a critical water quality management area is necessary and pollutant control is technically and economically feasible, the secretary shall prepare a proposed management plan setting forth an implementation schedule for control of each pollutant source, an analysis of the costs and benefits of the proposed management plan, and the boundaries of the proposed area.

(g) The secretary shall give public notice of the availability of the proposed management plan, make copies available for review, and hold a public hearing on the proposed designation.

(h) The secretary, on the basis of the evaluation and public hearing, may designate an area as a critical water quality management area, and give public notice of the designation through publication in a newspaper having general distribution in the county or counties in which the designated area is located. (Authorized by K.S.A. 65-171a, 65-171d, 65-3301, 65-3303, 65-3304, 65-3305; effective May 1, 1981.)

28-16-71. Administration of critical water quality management area. (a) The secretary shall establish a local advisory committee to assist in the administration of each designated area. If pollutant reduction in the area involves agricultural pollutant reduction, the area shall be submitted as a candidate project to the state rural clean water program coordinating committee for funding under the rural clean water program.

(b) All permits issued by the secretary for the control of pollutants, the establishment of waste disposal sites, the construction or expansion of water supply or sewerage systems or the establishment of sanitation zones or other measures necessary for the control of pollutants shall be consistent with the adopted plan.

(c) The secretary shall prepare an annual report for each designated area and shall make copies of the report available to residents of the area. The report shall evaluate the effectiveness of control measures, including the approximate costs, effects on water quality and resources of the state, and a brief summary of any public input related to administration of the area.

(d) The secretary may terminate designation of any designated critical water quality management area upon determination that such designation is not needed for protection of water resources, or that the controls are not technically or economically practical, or there is substantial public opposition. The secretary shall give public notice of intent and termination shall not be effective until sixty (60) days after such public notice. (Authorized by K.S.A. 65-171a, 65-171d, 65-3301, 65-3303, 65-3304, 65-3305; effective May 1, 1981.)

**DEVELOPMENT OF COUNTYWIDE
WASTEWATER MANAGEMENT PLANS**

28-16-76. (Authorized by K.S.A. 65-3301, K.S.A. 1979 Supp. 65-3303, 65-3305, 65-3308; effective May 1, 1980; revoked March 23, 2001.)

28-16-77. (Authorized by K.S.A. 65-3301, K.S.A. 1979 Supp. 65-3308, 65-3309; effective May 1, 1980; revoked March 23, 2001.)

28-16-78. (Authorized by K.S.A. 65-3301, K.S.A. 1979 Supp. 65-3308, 65-3309, 65-3310; effective May 1, 1980; revoked March 23, 2001.)

28-16-79. (Authorized by K.S.A. 65-3301, K.S.A. 1979 Supp. 65-3308, 65-3309, 65-3310; effective May 1, 1980; revoked March 23, 2001.)

28-16-80. Elements of plan. (a) Each plan shall incorporate the following elements:

(1) The projected population development of the county for a twenty-five (25) year period beginning June 30, 1980, with subprojections for each five (5) year increment;

(2) Description of each existing sewerage system including treatment plants, major pumping stations, interceptors, and areas of combined sewers, including the age, size and capacity and ownership of each major unit;

(3) An evaluation of the projected ability of existing and projected sewerage systems to meet water quality standards (K.A.R. 28-16-28 and K.A.R. 28-16-28a);

(4) The schedule whereby new sewerage systems will be constructed or existing sewerage systems expanded to provide service for new areas. The schedule shall be such that:

(A) no new permanent treatment facilities will be projected in areas where sewer systems exist unless there is reasonable evidence that the waste to be treated is incompatible or that the existing system would be overloaded;

(B) temporary wastewater treatment facilities may be provided in areas without sewer service, and in which there is a reasonable potential for the construction of new interceptors;

(C) new treatment facilities will be provided in areas where no treatment facilities exist and interceptors are not within a reasonable distance or are not economically feasible;

(D) simplicity, reliability and energy efficiency will be emphasized in the design of treatment systems;

(E) the proliferation of very small waste treatment systems will be discouraged in metropolitan areas; and,

(F) agricultural and municipal waste disposal irrigation systems will be encouraged where practicable and will take into account the maintenance of minimum flow levels in receiving waters and established water rights;

(5) A description of each community water delivery system, including sources of supply, major storage facilities, major lines, pumping stations, and treatment plants;

(6) The schedule whereby new water supply systems will be constructed or existing systems expanded to provide service for those areas in which additional population development is projected;

(7) A description of the mechanisms to be used to coordinate the provision of water delivery and sewerage services in those areas in which further population growth or industrial development is projected;

(8) A land use map indicating those areas in which on-site residential wastewater treatment facilities may be used, a description of the permit and inspection system used to regulate such developments, and the conditions imposed to assure satisfactory operation over a reasonable period of time;

(9) Copies of agreements between units of local government necessary to assure the orderly construction of new or extended sewerage or water delivery facilities;

(10) A land use map showing all significant waterways, flood plains and floodways, parks, lakes and reservoirs, recreational areas, sanitation zones, and critical water quality management areas and clearly establishing the relationship between these land uses and existing and projected water delivery and sewerage systems;

(11) Any predicted community developments which will have a major impact on the demands for water supply or sewerage service;

(12) The location of existing industrial waste treatment facilities, an assessment of potential waste loads and the relationship of these loads to those imposed by municipal discharges;

(13) The estimated costs of projected improvements for sewerage system extensions during the first five (5) year period of the twenty-five (25) year plan;

(14) An evaluation of the extent to which wastewater may be used for municipal or agricultural irrigation and the extent to which municipal wastewater may be reclaimed for industrial use;

(15) An evaluation of the extent to which urban stormwater runoff may contribute to violation of water quality standards, (K.A.R. 28-16-28 and K.A.R. 28-16-28a);

(16) Description and evaluation of current and projected sludge disposal practices and facilities;

(17) Identification of any relationships between the projected sewerage plans and county air quality maintenance plans; and

(18) A plan and schedule for review and updating of the plan at five (5) year intervals.

(b) The plan shall be based, insofar as practicable on available studies or reports and which may be incorporated by reference.

(c) Each plan shall, as appropriate, identify any water delivery or sewerage problems, the solution of which requires coordination with an adjacent county, and the mechanisms to be used to achieve this coordination.

(d) The committee shall hold one (1) or more public hearings on the plan and shall submit to the secretary a report of such hearings at the time it files the plan. (Authorized by K.S.A. 65-3301 and K.S.A. 1979 Supp. 65-3308, 65-3309, 65-3310; effective May 1, 1980.)

28-16-81. Administration of approved plan. (a) Any plan approved by the secretary will become a part of the Kansas water quality management plan. Applicants for effluent permits will be subject to section 208(e) of the federal water pollution control act, 33 U.S.C. 466, *et seq.*, and applicants for municipal construction grants will be subject to section 208(d) of the federal water pollution control act as amended.

(b) Permits issued by the secretary for the operation of sewerage facilities will be consistent with the plan.

(c) Permits issued by the secretary for new or extended sewerage systems will be consistent with the plan.

(d) Comments by the secretary on federally-funded projects pursuant to bureau of budget circular A-95 will be consistent with the plan.

(e) Comments made by the secretary on projects proposed by other state agencies will be consistent with the plan. (Authorized by K.S.A. 65-3301 and K.S.A. 1979 Supp. 65-3303, 65-3304, 65-3308, 65-3310; effective May 1, 1980.)

28-16-82. (Authorized by K.S.A. 65-3301, K.S.A. 1979 Supp. 65-3303, 65-3304, 65-3308, 65-3310, 65-3313; effective May 1, 1980; revoked March 23, 2001.)

PRETREATMENT

28-16-83. Entities regulated. The provisions of K.A.R. 28-16-84 to 28-16-98, inclusive, and any amendments to those regulations, shall apply to:

(a) pollutants from nondomestic sources which are subject to one or more pretreatment standards and which are indirectly discharged, or are otherwise introduced by any means, into any publicly owned treatment works (POTW);

(b) any POTW which receives wastewater from sources subject to one or more pretreatment standards; and

(c) any new or existing source which is subject to one or more pretreatment standards. (Authorized by and implementing K.S.A. 65-171d; effective May 1, 1985; amended May 1, 1987.)

28-16-84. Objectives of general pretreatment regulations. 40 CFR § 403.2, as in effect on July 1, 1986, is adopted by reference. (Authorized by and implementing K.S.A. 65-171d; effective May 1, 1985; amended May 1, 1987.)

28-16-85. Definitions. 40 CFR § 403.3, as in effect on July 1, 1986, is adopted by reference. (Authorized by and implementing K.S.A. 65-171d; effective May 1, 1985; amended May 1, 1987.)

28-16-86. Local laws not superceded. The provisions of K.A.R. 28-16-83 to 28-16-98, inclusive, shall not supercede any pretreatment requirements, including any standards or prohibitions, established by any local law as long as the local requirements are not less stringent than any set forth in the national pretreatment standards or other requirements or prohibitions established by the state or federal government. (Authorized by and implementing K.S.A. 65-171d; effective May 1, 1985; amended May 1, 1987.)

28-16-87. National pretreatment standards; prohibited discharges. Subsections (a) to (e), inclusive, of 40 CFR § 403.5, as in effect on July 1, 1986, are adopted by reference. (Authorized by and implementing K.S.A. 65-171d; effective May 1, 1985; amended May 1, 1987.)

28-16-88. National pretreatment standards; categorical standard. 40 CFR § 403.6, as in effect on July 1, 1986, is adopted by reference. (Authorized by and implementing K.S.A. 65-171d; effective May 1, 1985; amended May 1, 1987.)

28-16-89. Revision of categorical pretreatment standards to reflect POTW removal of pollutants. (a) 40 CFR § 403.7, as in effect on July 1, 1986, is adopted by reference, except that in lieu of § 403.7(b)(3) the following shall apply: “(3) The POTW shall analyze the samples for pollutants in accordance with the analytical techniques prescribed in 40 CFR part 136, as in effect on July 1, 1986. Where 40 CFR part 136 does not contain sampling and analytical techniques for the pollutant in question, or where the secretary determines that the part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed using validated analytical methods or other appropriate sampling and analytical procedures approved by the secretary. Alternate sampling and analytical techniques suggested by the POTW or other persons will be considered by the secretary.”

(b) 40 CFR part 136, as in effect on July 1, 1986, is adopted by reference (see 49 FR 43234, 50 FR 690 and 51 FR 23692). (Authorized by and implementing K.S.A. 65-171d; effective May 1, 1985; amended May 1, 1986; amended May 1, 1987.)

28-16-90. POTW pretreatment programs; developed by POTW. 40 CFR § 403.8, as in effect on July 1, 1986, is adopted by reference, except in lieu of paragraph (f)(1)(vii) the following shall apply: “(vii) Comply with the confidentiality requirements of the Kansas open records act.” (Authorized by and implementing K.S.A. 65-171d; effective May 1, 1985; amended May 1, 1987.)

28-16-91. POTW pretreatment programs. Any municipality (POTW) with a Kansas water pollution control permit may be required to develop a local pretreatment program. (Authorized by and implementing K.S.A. 65-171d; effective May 1, 1985; amended May 1, 1987.)

28-16-92. POTW pretreatment programs or authorization to revise pretreatment standards; submission for approval. 40 CFR § 403.9, as in effect on July 1, 1986, is adopted by reference. (Authorized by and implementing K.S.A. 65-171d; effective May 1, 1985; amended May 1, 1987.)

28-16-93. Approval procedures for POTW pretreatment programs and POTW revision of categorical pretreatment standards. 40 CFR § 403.11, as in effect on July 1, 1986, is adopted by reference. (Authorized by and implementing K.S.A. 65-171d; effective May 1, 1985; amended May 1, 1987.)

28-16-94. Reporting requirements for POTW's and industrial users. (a) 40 CFR § 403.12, as in effect on July 1, 1986, is adopted by reference, except that:

(1) in lieu of § 403.12(b)(5)(vi) the following shall apply: “(vi) Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR part 136, as in effect on July 1, 1986. Where 40 CFR part 136 does not contain sampling and analytical techniques for the pollutant in question, or where the secretary determines that the part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed using validated analytical methods or other appropriate sampling and analytical procedures approved by the secretary. Alternate sampling and analytical techniques suggested by the POTW or other persons will be considered by the secretary.”

(2) in lieu of § 403.12(g) the following shall apply: “(g) Monitoring and analysis to demonstrate continued compliance. The reports required in paragraphs (b)(5), (d), and (e) of this section shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass where requested by the control authority, of pollutants contained therein which are limited by the applicable pretreatment standards. The frequency of monitoring shall be as prescribed in the applicable pretreatment standard. All analyses shall be performed in accordance with 40 CFR part 136, as in effect on July 1, 1986. Where 40 CFR part 136 does not include sampling or analytical techniques for the pollutants in question, or where the secretary determines that the part 136 sampling and analytical techniques are inappropriate for the

pollutant in question, sampling and analyses shall be performed using validated analytical methods or other sampling and analytical procedures approved by the secretary. Alternate sampling and analytical techniques suggested by the POTW or persons will be considered by the secretary.”

(3) in lieu of § 403.12(k) the following shall apply: “(k) Penalties for providing false information. Any person who willfully provides false information on any report required by subsections (b), (d), (e), or (h) of 40 CFR § 403.12 shall be subject to the penalties imposed under K.S.A. 65-170c, K.S.A. 65-170d and K.S.A. 1985 Supp. 21-3805, and any amendments thereto.”

(b) 40 CFR part 136, as in effect on July 1, 1986, is adopted by reference (see 49 FR 43234, 50 FR 690, and 51 FR 23692). (Authorized by and implementing K.S.A. 65-171d; effective May 1, 1985; amended May 1, 1986; amended May 1, 1987.)

28-16-95. Variances from categorical pretreatment standards for fundamentally different factors. 40 CFR § 403.13, as in effect on July 1, 1986, is adopted by reference, except that: (a) in lieu of § 403.13(b), the following shall apply: “(b) A fundamentally different factors variance may be requested under this section by any interested person believing that factors relating to an industrial user are fundamentally different from the factors considered during development of a categorical pretreatment standard applicable to that user and that the existence of those factors justifies a different discharge limit than specified in the applicable categorical pretreatment standard. Such a variance request may be initiated by the secretary. A fundamentally different factors variance is not available for any toxic pollutant controlled in a categorical pretreatment standard; and”

(b) in lieu of § 403.13(c)(1)(ii), the following shall apply: “(ii) Factors relating to the discharge controlled by the categorical pretreatment standard are fundamentally different from the factors considered in establishing the standards; and.” (Authorized by and implementing K.S.A. 65-171d; effective May 1, 1985; amended May 1, 1986; amended May 1, 1987.)

28-16-96. Confidentiality of information. Any information submitted to the department of health and environment shall be subject to disclosure or nondisclosure as provided in the Kansas open records act. (Authorized by and imple-

menting K.S.A. 65-171d; effective May 1, 1985; amended May 1, 1987.)

28-16-97. Net/Gross calculations. 40 CFR § 403.15, as in effect on July 1, 1986, is adopted by reference, except that each reference to the enforcement division director, regional enforcement officer, water management division director or EPA shall be deemed to refer to the secretary. Nothing in this regulation shall relieve any person of the duty to obtain approval from the U.S. environmental protection agency. (Authorized by and implementing K.S.A. 65-171d; effective May 1, 1985; amended May 1, 1986; amended May 1, 1987.)

28-16-98. Upset provisions. 40 CFR § 403.16, as in effect on July 1, 1986, is adopted by reference, except that each reference to the agency shall be deemed to refer to the Kansas department of health and environment. (Authorized by and implementing K.S.A. 65-171d; effective May 1, 1985; amended May 1, 1987.)

28-16-110. Definitions. For the purposes of the regulations in this article, the following words, terms and phrases are defined as follows:

(a) “Best practicable waste treatment technology (BPWTT)” means a cost-effective technology that can treat wastewater, including combined sewer overflows and nonexcessive infiltration and inflow, to meet the applicable provisions of Kansas water supply and sewage statutes, K.S.A. 65-161 to 65-171x; water pollution control statutes, K.S.A. 65-3301 to 65-3313; and the federal clean water act as amended on or before January 1, 1989, 33 USC 1251 *et seq.*

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

(c) “Equivalency” means that portion of the Kansas water pollution control revolving fund which was directly made available by the federal government.

(d) “Equivalency project” means that portion of the project cost which is funded from the equivalency portion of the Kansas water pollution control revolving fund.

(e) “Facilities planning” means the necessary plans and studies directly related to the project financed from the Kansas water pollution control revolving fund. The content of a facilities plan shall be as described in the federal register 40 CFR 35.2030(b), as in effect on January 1, 1989.

(f) “Infiltration” means water other than sewage that enters a sewerage system from the ground

through defective pipes, pipe joints, connections, or manholes.

(g) "Excessive infiltration" means the quantity of flow which is more than 120 gallons per capita per day or the quantity of infiltration which could be economically and effectively eliminated from a sewer system as determined in a cost-effectiveness analysis. Flow rates more than 120 gallons per capita per day when justified by water use records are not considered to be excessive infiltration.

(h) "Inflow" means water other than sewage that enters a sewerage system. Inflow does not include infiltration.

(i) "Excessive inflow" means a rainfall-induced flow rate in excess of 275 gallons per capita per day.

(j) "Loan applicant" means any county, city, sewer district, other public agency, or any combination thereof, created by or pursuant to Kansas statutes, filing an application for a loan pursuant to the Kansas water pollution control fund act of 1988.

(k) "Loan agreement" means an executed contract between a loan recipient and the secretary confirming the purpose of the loan, the amount and terms of the loan, the schedule of loan payments and repayments and any other agreed upon conditions set forth by the secretary.

(l) "Minority business enterprise" means a business certified as a minority business enterprise by a state or federal agency based on the authority of state or federal statutes.

(m) "Project" means the scope of work for which a loan is awarded.

(n) "Secretary" means the secretary of Kansas department of health and environment.

(o) "Sewerage" means the removal and treatment of surface water, sewage and other wastewater by sewers, a system of sewers, wastewater treatment processes or any other means such as recycling and reclamation.

(p) "Value engineering" means a cost control technique which uses a systematic approach to identify unnecessarily high costs in a project without sacrificing the reliability or efficiency of the project.

(q) "Women's business enterprise" means a business certified as a women's business enterprise by a state or federal agency based on the authority of state or federal statutes.

(r) "Wastewater treatment works" means any device, or system for the storage, treatment, recycling, and reclamation of sewage. These include:

(1) intercepting sewers, outfall sewers, sewage collection systems, pumping stations, facilities for

sewage treatment and disposal of residues resulting from treatment, power and other equipment, their appurtenances, extensions, improvements, remodeling, additions and alterations thereof; and

(2) any works, including site acquisition of the land, that will be an integral part of the treatment process or are used for ultimate disposal of residues resulting from treatment. (Authorized by and implementing K.S.A. 1988 Supp. 65-3323; effective May 29, 1989.)

28-16-112. Fund use eligibility. (a) The fund shall be used only to finance all or any part of the following activities:

(1) loans to loan applicants for the planning, design, and construction of publicly-owned wastewater treatment works; and

(2) loans to loan applicants with taxing authority for the implementation of nonpoint source pollution control management programs developed in conformance with section 319 of the federal clean water act as amended on or before January 1, 1989, 33 USC 1251 *et seq.*

(b) Each project eligible to receive loans shall appear on the project priority list prepared by the department. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322; effective May 29, 1989.)

28-16-113. Interest rate. Each loan shall bear interest for the entire life of the loan at a rate set by the secretary. The secretary may also set fees for servicing the loans. The interest rate together with the servicing fee shall be an amount equal to sixty percent of the previous three months' average "bond buyers 20 bond index" as published on the first Monday of each week of the preceding three months. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3326; effective May 29, 1989.)

28-16-114. Repayment of loans. (a) All principal and interest shall be repaid in accordance with the terms and conditions of the executed loan agreement. Principal and interest payments shall begin not later than two years after receipt of the first loan installment and in no case later than one year following the completion of the project. Repayment of the loan shall not exceed a 20-year repayment period as agreed upon in the loan agreement. Project completion is defined as initiation of operation or capability to initiate operation.

(b) Prepayment of principal in whole or part may be made in accordance with the terms and

conditions of the executed loan agreement. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322 and 65-3326; effective May 29, 1989.)

28-16-115. Dedicated loan repayment source. (a) Each loan recipient shall adopt one or more dedicated sources of revenue for repayment of the loan including principal and interest. The dedicated sources of revenue may be in the form of user charges, ad valorem taxes, special tax assessments, another permanent source of revenue or some combination of these sources. Each dedicated source of revenue shall be legally available to the loan recipient over the life of the loan repayment obligation and pledged to the repayment of the loan. Each dedicated source of revenue shall be approved by the secretary.

(b) Each loan recipient shall conduct a revenue source review every fifth year following the date of the loan agreement during the entire life of the loan repayment obligation and shall implement the new revenue rates as approved by the secretary. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3326 and 65-3327; effective May 29, 1989.)

28-16-116. Failure to repay loan on schedule. Upon failure of a loan recipient to pay one or more installments of the loan repayment on schedule, the governing body of the loan recipient shall be consulted by the secretary, and thereafter the governing body shall adopt charges, as set by the secretary, to be levied against users of the project. These charges shall remain in effect until the full amount of the loan, including principal and interest, has been repaid. The governing body of each loan recipient shall collect any charges established by the secretary or required by the secretary and shall expeditiously forward the collected moneys to the secretary. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3327; effective May 29, 1989.)

28-16-117. Double benefits. (a) Projects receiving construction grants under the federal clean water act shall not be eligible to receive loans under the Kansas water pollution control revolving fund act for the nonfederal shares of the projects costs.

(b) Loans shall be made only for the publicly-owned portion of sewerage projects.

(c) If a project receives a loan for planning, preparation of design and construction docu-

ments or both, and subsequently receives a federal grant allowance for the same purposes, the loan recipient shall repay the loan to the extent of the allowance received by not later than 30 days from the receipt of the allowance. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322; effective May 29, 1989.)

28-16-118. Project eligibility. (a) In order to receive a loan, each sewerage facility equivalency project shall comply or be consistent with:

(1) The best practicable waste treatment technology requirements defined in K.A.R. 28-16-110(a);

(2) The facilities planning process defined in K.A.R. 28-16-110(e);

(3) The type of projects described in K.A.R. 28-16-119;

(4) The alternative ultimate waste disposal procedure described in K.A.R. 28-16-120;

(5) The infiltration and inflow requirements described in K.A.R. 28-16-121;

(6) The alternative and innovative treatment provisions described in K.A.R. 28-16-122;

(7) The open space recreation requirement described in K.A.R. 28-16-123;

(8) The capital improvement plan described in K.A.R. 28-16-124; and

(9) The water quality management plan described in K.A.R. 28-16-125.

(b) In order to receive a loan, each nonpoint source pollution control equivalency project shall comply or be consistent with the nonpoint source pollution control management plan described in K.A.R. 28-16-126. (Authorized by and implementing K.S.A. 1988 Supp. 65-3323; effective May 29, 1989.)

28-16-119. Eligible project types. (a) An equivalency loan may be granted for:

(1) Projects providing secondary treatment, any part of secondary treatment or any cost-effective alternative to secondary treatment;

(2) Projects providing a treatment process or any part of a treatment process which is more stringent than secondary treatment or cost-effective alternatives;

(3) Other wastewater treatment works;

(4) New interceptors and their appurtenances;

(5) Excessive infiltration or inflow correction projects; or

(6) Other sewerage facility projects, and nonpoint source pollution control management plan implementation projects, and groundwater qual-

ity protection projects. These types of projects shall not exceed 20% of equivalency funds, and require the specific designation of the governor.

(b) Any sewerage project or nonpoint source pollution control project may receive a loan from the nonequivalency portion of the Kansas water pollution control revolving fund upon approval of the secretary. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322 and K.S.A. 1988 Supp. 65-3324; effective May 29, 1989.)

28-16-120. Alternative ultimate disposal. Each loan applicant for a sewerage facility project shall evaluate alternative methods and technologies for the reuse or ultimate disposal of treated wastewater and residue material resulting from the waste treatment process. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322 and 65-3326; effective May 29, 1989.)

28-16-121. Infiltration and inflow. Each loan applicant for a sewerage facility project shall demonstrate that: (a) the existing sewage collection systems related to the proposed project are not subject to excessive infiltration or inflow; or

(b) the loan applicant has been implementing an effective ongoing infiltration and inflow reduction program for those sewage collection systems. (Authorized by K.S.A. 65-3323; implementing K.S.A. 1988 Supp. 65-3322 and 65-3326; effective May 29, 1989.)

28-16-122. Alternative and innovative treatment. Each loan applicant for a wastewater treatment project shall demonstrate the consideration of cost effective alternative and innovative wastewater treatment processes and techniques during the planning, selection and design of the project. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322; effective May 29, 1989.)

28-16-123. Open space recreation. Each loan applicant shall analyze and document the potential open space and recreation opportunities associated with the project. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322; effective May 29, 1989.)

28-16-124. Capital improvement plan. Each loan applicant for a sewerage facility project shall submit to the secretary, with the loan application, a capital improvement financing plan for

the applicant's projected sewerage facility needs. The plans shall cover not less than a five-year period and shall be approved by the governing body of the entity. The capital improvement financing plan shall be reviewed and kept current by the governing body during the entire life of the loan repayment obligation. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322; effective May 29, 1989.)

28-16-125. Water quality management plan. Each sewerage facility project eligible for a loan shall be consistent with the applicable water quality management plan, the county-wide wastewater management plan or both, and the loan applicant shall be a designated wastewater management agency within the management plan. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322 and 65-3326; effective May 29, 1989.)

28-16-126. Nonpoint source pollution control management plan. Each nonpoint pollution control or groundwater quality protection project shall be consistent with applicable nonpoint pollution source control management planning approved by the secretary. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322; effective May 29, 1989.)

28-16-127. Sewer use ordinance. Each loan applicant for a sewerage facility project shall develop, and subsequent to the secretary's approval, adopt a sewer use ordinance or other legally binding document to protect the integrity of the entire wastewater works system by: (a) requiring the exclusion of excessive infiltration and inflows from the treatment works;

(b) prohibiting toxic concentrations of toxic materials in wastewater introduced into the treatment works; and

(c) prohibiting other pollutants in amounts or concentrations that:

(1) endanger public safety or the physical integrity of the treatment works; or

(2) cause violation of effluent or water quality limitations or cause residue or sludge processing or disposal problems. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322 and 65-3326; effective May 29, 1989.)

28-16-128. User charge system. Each loan applicant for a sewerage facility project shall develop, and subsequent to the secretary's review

and approval, adopt a user charge system which shall produce adequate revenues for operation and maintenance of the entire wastewater works, including minor replacement. The user charge system shall be based on either actual use of the wastewater works, ad valorem taxes or a combination of the two. An ad valorem tax may only be used if that form of dedicated user charge had been in place prior to the initiation of the proposed project. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322 and 65-3326; effective May 29, 1989.)

28-16-129. Value engineering. Each loan recipient for a sewerage project shall conduct value engineering during the design phase of the project if the total estimated project cost exceeds \$10 million. The value engineering recommendations shall be implemented to the maximum extent possible as approved by the secretary. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322; effective May 29, 1989.)

28-16-130. Project certification. Each loan recipient shall certify to the secretary whether the project meets the project's performance standards on the date one year after the initiation of operations of the project. The loan recipient shall be responsible for assuring timely correction and compliance, including recertification in case the initial certification was a negative declaration. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322; effective May 29, 1989.)

28-16-131. Procurement. Each loan recipient shall follow applicable state procurement laws and regulations and procedures established by the secretary. The approval of the secretary is required prior to procurement. (Authorized by and implementing K.S.A. 1988 Supp. 65-3323; effective May 29, 1989.)

28-16-132. Fair labor standards. Bidding documents for each wastewater treatment works equivalency project shall include the prevailing wage rates established for the locality by the U.S. department of labor under the federal Davis-Bacon act. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322; effective May 29, 1989.)

28-16-133. Small minority and women's business enterprises. Each loan recipient for a wastewater treatment works equivalency project

shall assure that affirmative steps were taken to utilize small, minority and women's businesses as sources of supplies, construction and services. Affirmative steps shall be documented and submitted to the department. Project-specific goals may be set by the secretary. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322; effective May 29, 1989.)

28-16-134. Projects documents. (a) Each loan applicant for a sewerage facility projects shall submit, for the secretary's review and approval, the following documents:

(1) A completed loan application on application forms furnished by the department;

(2) A facilities plan that establishes the need for the project;

(3) Complete design plans, specifications, and construction bidding documents, including detailed cost estimates necessary for competitive bidding, and projected construction and payment schedules;

(4) A plan of operation, including an overall project completion schedule, annual operating cost projections for a minimum of five years, a description of the financial management system, and projected revenues to operate and maintain the entire facility. Revenue projections shall also include the loan repayment obligations; and

(5) A facility operations manual, which shall be submitted before 90% of the project is completed.

(b) Each loan applicant for a nonpoint source pollution control management plan implementation or groundwater quality protection project shall submit, for the secretary's review and approval, the following documents:

(1) A completed loan application on application forms furnished by the department;

(2) Planning documents or any assessment which establishes the need for the project;

(3) Documents needed to plan the construction of the project.

(4) A plan of operation and maintenance to assure project performance for the design life of the project; and

(5) A binding assurance that adequate financial resources will be available for operation and maintenance of the project during the life of the project. (Authorized by and implementing K.S.A. 1988 Supp. 65-3323; effective May 29, 1989.)

28-16-135. Financial capability. As part of the loan application, each loan applicant shall

demonstrate and certify to the secretary that the applicant has the financial capability to repay the loan and to cover the costs of operation and maintenance of the entire system of which the proposed project is an integral part. The financial assessment shall cover the life of the loan obligations and consider, as a minimum, changes in economic and population growth, existing in debt obligations, revenues, project costs, and effects on user charge rates. (Authorized by and implementing K.S.A. 1988 Supp. 65-3323; effective May 29, 1989.)

28-16-136. Public participation. Each loan recipient shall conduct a minimum of one public meeting and one public hearing prior to execution of the loan agreement.

(a) A public meeting shall be conducted during the preparation of the facilities plan, nonpoint source pollution control management plan or groundwater quality protection plan to discuss project alternatives. Public notice shall be given not less than 15 days before the public meeting.

(b) Prior to the adoption by the governing body and submission to the secretary for approval of the facilities plan, nonpoint source pollution control management plan or groundwater quality protection plan, a public hearing shall be conducted. Public notice shall be given not less than 30 days before the public hearing. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322; effective May 29, 1989.)

28-16-137. Environmental review. (a) The Kansas environmental review procedure for the Kansas water pollution control revolving loan program, dated February, 1989 is adopted by reference as the required environmental procedure for an equivalency project.

(b) For an equivalency project, 40 CFR, 6.508(a), 6.511(b) and 6.512 as in effect on July 1, 1988, are adopted by reference.

(c) Those members of the public who participate in the environmental review process shall have the right to appeal the decisions made within that process. All such appeals shall be conducted pursuant to the Kansas administrative procedures act and the act for judicial review set forth in K.S.A. 1988 Supp. 77-501 et seq. and K.S.A. 77-601 et seq., respectively.

(d) When used in any provision adopted from 40 CFR Part 6, references to "EPA" shall be replaced with the Kansas department of health and environment; "grant" shall be replaced with loan

agreement; "grantee" shall be replaced with applicant. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322; effective May 29, 1989; amended, T-28-10-17-89, Oct. 17, 1989; amended Dec. 26, 1989.)

28-16-138. Project accounts. Each loan recipient shall maintain project accounts in accordance with or similar to generally accepted government accounting standards defined in the 1988 edition of the Government Accounting, Auditing, and Financial Reporting manual issued by the Government Finance Officers Association. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322; effective May 29, 1989.)

28-16-150. Scope. The provisions of K.A.R. 28-16-150 through 28-16-154, inclusive and any amendments to those regulations, shall apply to the issuance of each general permit for water pollution control. (Authorized by K.S.A. 65-165; implementing K.S.A. 65-165 and K.S.A. 65-171d; effective Sept. 27, 1993.)

28-16-151. Definitions. 40 CFR 122.2 as in effect on July 1, 1991 is adopted by reference. (Authorized by K.S.A. 65-165; implementing K.S.A. 65-165 and K.S.A. 65-171d; effective Sept. 27, 1993.)

28-16-152. Coverage. 40 CFR 122.28(a) as in effect July 1, 1991, as amended at 57 FR 11412, April 2, 1992 is adopted by reference. (Authorized by K.S.A. 65-165; implementing K.S.A. 65-165 and K.S.A. 65-171d; effective Sept. 27, 1993.)

28-16-153. Administration. 40 CFR 122.28(b)(1), (2), and (3)(i), (iii), (iv), and (v), as in effect on July 1, 1991, as amended at 57 FR 11412, April 2, 1992 are adopted by reference, with the following modifications or exceptions. (a) The provisions of 40 CFR 122.28(b)(1) shall be modified as follows: "(1) In general. General permits may be issued, modified, revoked and reissued, or terminated in accordance with K.A.R. 28-16-59 through 28-16-62 inclusive, and K.A.R. 28-16-154."

(b) The provisions of 40 CFR 122.28(b)(2)(i) shall be modified as follows: "(i) Except as provided in paragraphs (b)(2)(v) and (b)(2)(vi) of this section, each discharger or treatment works treating domestic sewage seeking coverage under a general permit shall submit to the director a written notice of intent to be covered by the general permit. Any discharger or treatment works

treating domestic sewage who fails to submit a notice of intent in accordance with the terms of the permit shall not be authorized to discharge, (or in the case of sludge disposal permit, to engage in a sludge use or disposal practice), under the terms of the general permit unless the general permit, in accordance with paragraph (b)(2)(v) of this section, contains a provision that a notice of intent is not required or the director notifies a discharger or treatment works treating domestic sewage that it is covered by a general permit in accordance with paragraph (b)(2)(vi) of this section. A complete and timely notice of intent (NOI) to be covered in accordance with general permit requirements, fulfills the requirements for permit applications for purposes of K.A.R. 28-16-59.”

(c) The provisions of 40 CFR 122.28(b)(2)(ii) shall be modified as follows: “(ii) The contents of each notice of intent shall be specified in each general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner, the legal name and address of the operator if different from the owner, the facility name and address, the type of facility, the type of discharge(s), the number of discharge points, the location using the public land survey system of each discharge point, and the receiving stream(s). A general permit for storm water discharge associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on federal lands where an operator cannot be identified may contain alternative notice of intent requirements. Each notice of intent shall be signed in accordance with K.A.R. 28-16-59(e).”

(d) The provisions of 40 CFR 122.28(b)(3)(iii) shall be modified as follows: “(iii) Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under K.A.R. 28-16-59, with reasons supporting the request, to the director no later than 90 days after the publication of the general permit by a state in accordance with applicable state law. Each request shall be processed under applicable state procedures. The request shall be granted by issuing an individual permit if the reasons cited by the owner or operator are adequate to support the request.” (Authorized by K.S.A. 65-165; implementing K.S.A. 65-165 and K.S.A. 65-171d; effective Sept. 27, 1993.)

28-16-154. Incorporation. 40 CFR 124.10(d)(1)(i) through (v) and (vii) as in effect on July 1, 1991, are adopted by reference except that the provisions of 40 CFR 124.10(d)(1)(v) shall be modified as follows: “(v) A brief description of the comment procedures required by K.A.R. 28-16-61(c) and (d) and the time and place of any hearing that will be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled, and other procedures by which the public may participate in the final permit decision.” (Authorized by K.S.A. 65-165; implementing K.S.A. 65-165 and K.S.A. 65-171d; effective Sept. 27, 1993.)

MUNICIPAL, COMMERCIAL AND INDUSTRIAL WASTEWATER LAGOON REQUIREMENTS

28-16-160. Definitions. The following terms and abbreviations shall be applicable to K.A.R. 28-16-160 through K.A.R. 28-16-174 and shall have the meanings specified in this regulation. Terms and abbreviations not defined in this regulation shall have the meanings specified in K.S.A. 65-101 et seq. and amendments thereto; articles 5, 13, 16, and 30; or the clean water act (CWA). For K.A.R. 28-16-160 through 28-16-174, the definitions prescribed in this regulation shall control over any different definitions in any of the following: articles 5, 13, 16, and 30; federal regulations adopted by reference in articles 5, 13, 16, and 30; or the clean water act (CWA).

(a) “Change in operation” and “modification” mean any of the following:

(1) Any expansion or enlargement of a wastewater treatment system beyond the scope or boundaries established by a permit or KDHE-approved plans and specifications;

(2) any change or increase in production or wastewater-generating activities resulting in a change in the quantity or quality of the sewage or wastewater being generated; or

(3) any modification to the wastewater treatment system or an increase in the wastewater treatment system capacity beyond that addressed by the permit application, authorized by a permit, or authorized by KDHE-approved plans and specifications. As used in these regulations, a “modification” to a wastewater treatment system shall exclude routine cleaning, normal maintenance, and routine minor bank erosion repairs.

(b) “Commercial wastewater treatment system” means a wastewater treatment system serving a commercial enterprise or group of commercial

enterprises for the purpose of treating primarily domestic sewage by physical, chemical, or biological means or by a combination of those methods.

(c) “CWA” and “federal clean water act” mean the federal water pollution control act, 33 U.S.C. 1251 et seq., as in effect on November 27, 2002.

(d) “Department” and “KDHE” have the meaning specified in K.A.R. 28-16-58.

(e) “Director” has the meaning specified in K.A.R. 28-16-58.

(f) “Division” has the meaning specified in K.A.R. 28-16-58.

(g) “Domestic sewage” has the meaning specified in K.A.R. 28-16-56c.

(h) “Environmental protection agency” and “EPA” have the meaning specified in K.A.R. 28-16-58.

(i) “Equus Beds,” for the purpose of these municipal, commercial, and industrial wastewater lagoon regulations, means the aquifer underlying the sections of land listed in the following table:

County	Range	Township	Section
Harvey	01W	22S	06, 07, 18, 19, 30, 31
Harvey	01W	23S	06, 07, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34
Harvey	01W	24S	03, 04, 05, 06, 07, 08, 09, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34
Harvey	02W	22S	All sections
Harvey	02W	23S	All sections
Harvey	02W	24S	All sections
Harvey	03W	22S	All sections
Harvey	03W	23S	All sections
Harvey	03W	24S	All sections
McPherson	01W	19S	31, 32, 33, 34, 35
McPherson	01W	20S	02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33
McPherson	01W	21S	05, 06, 07, 18, 19, 30, 31
McPherson	02W	21S	12, 13, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36
McPherson	03W	18S	28, 29, 30, 31, 32, 33
McPherson	03W	19S	04, 05, 06, 07, 08, 09, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34
McPherson	03W	20S	03, 04, 05, 06, 07, 08, 09, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, 35

County	Range	Township	Section
McPherson	03W	21S	02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36
McPherson	04W	18S	20, 21, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36
McPherson	04W	19S	01, 02, 03, 04, 09, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, 36
McPherson	04W	20S	01, 02, 03, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36
McPherson	04W	21S	01, 02, 03, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, 36
Reno	04W	22S	All sections
Reno	04W	23S	All sections
Reno	04W	24S	All sections
Reno	04W	25S	All sections
Reno	04W	26S	All sections
Reno	05W	22S	All sections
Reno	05W	23S	All sections
Reno	05W	24S	All sections
Reno	05W	25S	All sections
Reno	05W	26S	All sections
Reno	06W	22S	All sections
Reno	06W	23S	All sections
Reno	06W	24S	All sections
Reno	06W	25S	All sections
Reno	06W	26S	All sections
Reno	07W	22S	All sections
Reno	07W	23S	All sections
Reno	07W	24S	All sections
Reno	07W	25S	All sections
Reno	07W	26S	All sections
Sedgwick	01E	26S	06, 07, 08, 17, 18, 19, 20
Sedgwick	01W	25S	03, 04, 05, 06, 07, 08, 09, 10, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36
Sedgwick	01W	26S	01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, 32
Sedgwick	01W	27S	05, 06
Sedgwick	02W	25S	All sections
Sedgwick	02W	26S	01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 34, 35, 36
Sedgwick	02W	27S	01

County	Range	Township	Section
Sedgwick	03W	25S	01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 35, 36
Sedgwick	03W	26S	01, 02, 03, 04, 11, 12

(j) “Groundwater,” for the purpose of these municipal, commercial, and industrial wastewater lagoon liner regulations, means water located under the surface of the land that is or can be the source of supply for wells, springs, seeps, or streams or that is held in aquifers. For the lagoon regulations, this term shall be considered capable of being a source of supply for wells if at least one of the following conditions is met:

(1) The groundwater can be produced at a rate of 10 gallons or more per hour from a borehole with a diameter of nine or fewer inches. In determining the groundwater production rate for an excavation, borehole, or existing water or monitoring well, the quantity of produced water shall be adjusted for comparison purposes to the surface area of a borehole with a diameter of nine inches.

(2) Groundwater is currently being used within ½ mile of the proposed lagoon, regardless of the rate at which the groundwater can be produced.

(3) There is evidence of past groundwater use within ½ mile of the proposed lagoon.

(k) “Groundwater separation distance,” for the purpose of these municipal, commercial, and industrial wastewater lagoon regulations, means the distance measured between the bottom of the lagoon and the top of the groundwater table. The bottom of the lagoon shall be determined by the lowest interior surface elevation, at finished grade, of the lagoon structure. The top of the groundwater shall be determined by the upper surface elevation of groundwater in an aquifer or, if the watertable fluctuates seasonally, the maximum annual surface elevation of the groundwater based on the average of the previous 10 years of groundwater data, if available.

(l) “Impermeable synthetic membrane liner” means a commercially manufactured membrane liner composed of synthetic materials commonly identified as being plastic or plastic polymer materials or other synthetic materials that, when properly installed, would provide for the more stringent of either of the following:

(1) A maximum monitored or calculated seepage rate of 1/64 inch per day; or

(2) the liner manufacturer’s criteria for the material and installation of the membrane liner expressed in units of volume per area per unit of time (gallons per square feet per day).

(m) “Industrial wastewater treatment system” means any of the following:

(1) A wastewater treatment system serving a city, county, township, sewer district, or other governmental unit;

(2) a state or federal agency, establishment, or institution;

(3) an industrial or commercial enterprise; or

(4) a group or combination of any of the entities specified in paragraphs (m)(1) through (3) treating primarily sewage or process-generated wastewater, other than domestic sewage, by physical, chemical, or biological methods or by a combination of these methods.

(n) “In existence,” when used to describe a municipal, commercial, or industrial wastewater treatment system, means that the system meets one of the following conditions:

(1) Is constructed or installed, is capable of providing wastewater treatment, and is currently covered by a valid Kansas water pollution control permit on the effective date of these regulations;

(2) received the secretary’s approval of construction plans and specifications before the effective date of these regulations and is under construction within two years after the date of approval; or

(3) is under construction, with plans and specifications approved by the secretary, on the effective date of these regulations.

(o) “Licensed geologist” means a geologist licensed to practice geology in Kansas by the Kansas board of technical professions.

(p) “Licensed professional engineer” means a professional engineer licensed to practice engineering in Kansas by the Kansas board of technical professions.

(q) “Liner” means any designed barrier in the form of in situ, layered, membrane, or blanket materials utilized or installed to reduce the potential for a significant hydrologic connection between sewage or process-generated wastewaters that are controlled or retained by wastewater treatment systems and waters of the state.

(r) “Maximum soil liner seepage rate” and “specific discharge” mean the flow rate through the soil liner, which is expressed as velocity (distance per unit of time). The maximum soil liner seepage rate shall be calculated as $v = k (h/d)$, in which “k” is the hydraulic conductivity (coefficient of per-

meability) and “(h/d)” is the hydraulic gradient. The hydraulic gradient is the maximum vertical distance “h” measured from the liquid surface to the liner bottom, divided by the thickness of the soil liner “d.” When calculating the maximum soil liner seepage rate, the maximum operating depth, not considering design freeboard, shall be utilized.

(s) “Maximum synthetic membrane liner leakage rate” means a monitored or calculated leakage rate that is the more stringent of either $1/64$ inch per day or the liner manufacturer’s criteria for the material and installation of the membrane liner expressed in units of volume per area per unit of time (gallons per square feet per day).

(t) “Minimum standards of design, construction, and maintenance” means effluent standards, effluent limitations, pretreatment requirements, other performance standards, and other standards of design, construction, and maintenance for wastewater control facilities published by the department as “minimum standards of design for water pollution control facilities” and adopted by reference in K.A.R. 28-16-58.

(u) “Monitoring” means procedures using any of the following methods:

(1) Conducting inspections of industrial process operations or the operation of municipal, commercial, or industrial wastewater treatment systems;

(2) the systematic collection and analysis of data on operational parameters of industrial process operations or the operation of municipal, commercial, or industrial wastewater treatment systems; or

(3) the systematic collection and analysis of data on the quality of the domestic sewage, process wastewater, wastewater sludge, groundwater, surface water, or soils at or in the vicinity of the wastewater lagoon or wastewater pond.

(v) “Monitoring well” and “observation well” mean a well constructed for sampling fluids or groundwater and for observing subsurface phenomena including the presence of fluids, groundwater elevations, the direction of groundwater flow, and the velocity of groundwater flow.

(w) “Municipal wastewater treatment system” means any of the following:

(1) A wastewater treatment system serving a city, county, township, sewer district, or other governmental unit;

(2) a state or federal agency, establishment, or institution treating primarily domestic sewage by physical, chemical, or biological methods or by a combination of these methods; or

(3) a wastewater treatment system operated by an entity listed in paragraph (w)(1) or (2) that receives significant quantities of domestic wastewater, process wastewater comprised primarily of conventional pollutants, non-contact cooling water, boiler blowdown, or process wastewater identified in K.A.R. 28-16-162(f) from industrial facilities if the introduction of these wastes meets the following conditions:

(A) Conforms with the EPA-promulgated pretreatment standards specified in K.A.R. 28-16-88;

(B) does not interfere or upset the operation of the wastewater treatment system;

(C) does not cause these wastes to pass through the treatment system either partially treated or untreated into the environment in unacceptable concentrations or quantities;

(D) does not cause a violation of the water pollution control permit;

(E) does not violate surface water quality standards; and

(F) does not adversely impact use of the wastewater for irrigation or adversely impact use of wastewater sludge for land application.

(x) “Oil or gas well” shall have the meaning assigned to the term “well” in K.S.A. 55-150, and amendments thereto.

(y) “Permit” and “water pollution control permit” mean an authorization, license, or equivalent control document issued by the department. A permit shall not include any document that has not yet been subject to final action by the department, including a draft or proposed permit.

(z) “Permittee” means a person who is authorized by a Kansas water pollution control permit to operate, or a person who is responsible for overseeing the operation of, a wastewater treatment system.

(aa) “Person” has the meaning specified in K.S.A. 65-170a, and amendments thereto.

(bb) “Pollution” has the meaning specified in K.S.A. 65-171d, and amendments thereto.

(cc) “Precipitation runoff” and “stormwater runoff” mean the rainwater or the meltwater that is derived from snow, hail, sleet, or other forms of atmospheric precipitation and that flows by gravity over the surface of the land.

(dd) “Secretary” has the meaning specified in K.A.R. 28-16-58.

(ee) “Sensitive groundwater areas,” for the purpose of these municipal, commercial, and industrial wastewater lagoon regulations, means aquifers generally comprised of alluvial aquifers, the area

within the boundaries of the Equus Beds groundwater management district no. 2 (GMD #2), and the Dune Sand Area located south of the great bend of the Arkansas River. A sensitive groundwater area shall be any section of land listed in "Kansas sensitive groundwater areas for wastewater lagoons," prepared by KDHE and dated January 1, 2005, which is hereby adopted by reference.

(ff) "Sewage" and "wastewater" have the meaning specified in K.S.A. 65-164, and amendments thereto.

(gg) "Variance" means the secretary's written approval authorizing an alternative action to any of the requirements of these municipal, commercial, or industrial wastewater lagoon regulations, the standards adopted by these regulations, or the "minimum standards of design for water pollution control facilities," as adopted by reference in K.A.R. 28-16-58.

(hh) "Wastewater lagoon" and "wastewater pond" mean excavated or diked structures provided or used for retaining or treating municipal, commercial, or industrial sewage, process wastewater, cooling water, or stormwater runoff.

(ii) "Wastewater treatment system" means structures or devices that collect, store, stabilize, treat, or otherwise control pollutants so that after the discharge, disposal, or land application of wastewater treatment sludge or treated wastewater, water pollution will not occur, and the public health and waters of the state will be protected. This term shall not include lagoons and earthen basins that are regulated and permitted as a solid waste processing facility or solid waste landfill pursuant to K.S.A. 65-3401 et seq., and amendments thereto, and article 29. Discharges of wastewater from lagoons or earthen basins that are regulated and permitted as a solid waste processing facility or solid waste landfill shall be prohibited unless authorized by a Kansas water pollution control permit.

(jj) "Waters of the state" has the meaning specified in K.S.A. 65-161, and amendments thereto.

(kk) "Water well" has the meaning specified in K.S.A. 82a-1203, and amendments thereto. (Authorized by K.S.A. 65-165 and K.S.A. 2004 Supp. 65-171d; implementing K.S.A. 65-165, K.S.A. 65-166, K.S.A. 2004 Supp. 65-171d, and K.S.A. 65-171h; effective May 20, 2005.)

28-16-161. Municipal and commercial lagoons: general provisions. The following general provisions shall apply to municipal and commercial wastewater treatment system la-

goons. (a) New or modified municipal or commercial wastewater treatment system lagoons shall be prohibited if the groundwater separation distance between the lagoon bottom and the groundwater table is 10 feet or less.

(b) For each new or modified lagoon, the permittee may employ a constructed soil liner if the maximum soil liner seepage rate is less than $\frac{1}{4}$ inch per day and the lagoon is not constructed over sensitive groundwater areas, including the Equus Beds.

(c) For each new or modified lagoon constructed over sensitive groundwater areas, excluding the Equus Beds, the permittee may employ a constructed soil liner if the maximum soil liner seepage rate is less than $\frac{1}{10}$ inch per day.

(d) For each new or modified lagoon constructed over the Equus Beds, the permittee shall, at a minimum, employ a single impermeable synthetic membrane liner and provide for the installation and sampling of groundwater monitoring wells as specified in K.A.R. 28-16-171. Constructed soil liners may be employed if all of the following conditions are met:

(1) The groundwater separation distance between the lagoon bottom and the groundwater table is greater than 10 feet.

(2) The hydrogeologic information developed for the site indicates that in situ soils exist in sufficient quantity to provide an effective pollution barrier to protect groundwater.

(3) A constructed soil liner will provide a maximum soil liner seepage rate of less than $\frac{1}{10}$ inch per day.

(4) The design provides for the installation and sampling of groundwater monitoring wells as specified in K.A.R. 28-16-171.

(e) For each new or modified lagoon, the permittee may utilize a single impermeable synthetic membrane liner, in lieu of a constructed soil liner.

(f) Municipal and commercial wastewater treatment system lagoons in existence on the effective date of this regulation shall not be required to be modified or retrofitted to comply with the provisions of this regulation, unless either of the following occurs:

(1) The secretary determines that environmental or public health threats result from the operation of the lagoon, or data exists showing the actual or potential soil or water pollution.

(2) The modification, replacement, or expansion of a municipal or commercial wastewater lagoon results in the lagoon being dewatered, and

the secretary orders the implementation of specific lagoon improvements to address conditions that result in noncompliance with statutory, regulatory, or permit requirements or that fail to ensure protection of public health or the environment. The permittee shall implement the specific improvements required by the secretary.

(g) For the purpose of K.A.R. 28-16-160 through K.A.R. 28-16-174, an actual or potential environmental or public health threat may be deemed to exist if physical, chemical, biological, or radiological substances, or a combination of these substances, is released into subsurface waters of the state and results in a concentration or amount of a substance in excess of the numerical criteria designated for aquatic life protection, agricultural use, or public health protection as provided in the "Kansas surface water quality standards: tables of numeric criteria," dated December 6, 2004, which is adopted by reference in K.A.R. 28-16-28e. If the background concentration of a substance is naturally occurring and is greater than the numerical criteria, the background concentration shall be considered the criteria.

(h) No person shall construct, operate, or maintain any municipal or commercial wastewater lagoon without obtaining a permit or permit modification from the department. (Authorized by K.S.A. 65-165, K.S.A. 2004 Supp. 65-171d, and K.S.A. 65-171h; implementing K.S.A. 65-164, K.S.A. 65-165, K.S.A. 65-166, K.S.A. 2004 Supp. 65-171d, and K.S.A. 65-171h; effective May 20, 2005.)

28-16-162. Industrial lagoons: general provisions. The following general provisions shall apply to industrial wastewater treatment system lagoons. (a) New or modified industrial wastewater treatment system lagoons shall be prohibited if the groundwater separation distance between the lagoon bottom and the groundwater table is 10 feet or less.

(b) For each new or modified lagoon utilized solely for the containment or treatment of domestic sewage, the permittee may employ a constructed soil liner if the maximum soil liner seepage rate is less than $\frac{1}{4}$ inch per day and the lagoon is not constructed over sensitive groundwater areas, including the Equus Beds.

(c) For each new or modified lagoon constructed over sensitive groundwater areas, excluding the Equus Beds, and utilized solely for the containment or treatment of domestic sewage, the

permittee may employ a constructed soil liner if the maximum soil liner seepage rate is less than $\frac{1}{10}$ inch per day.

(d) For each new or modified lagoon constructed over the Equus Beds and utilized solely for the containment or treatment of domestic sewage, the permittee shall, at a minimum, employ a single impermeable synthetic membrane liner and provide for the installation and sampling of groundwater monitoring wells as specified in K.A.R. 28-16-171. Constructed soil liners may be employed if all of the following conditions are met:

(1) The groundwater separation distance between the lagoon bottom and the groundwater table is greater than 10 feet.

(2) The hydrogeologic information developed for the site indicates that in situ soils exist in sufficient quantity to provide an effective pollution barrier to protect groundwater.

(3) A constructed soil liner will provide a maximum soil liner seepage rate of less than $\frac{1}{10}$ inch per day.

(4) The design provides for the installation and sampling of groundwater monitoring wells as specified in K.A.R. 28-16-171.

(e) For each new or modified lagoon utilized solely for the containment or treatment of domestic sewage, the permittee may utilize a single impermeable synthetic membrane liner, in lieu of a constructed soil liner.

(f) For each new or modified industrial wastewater lagoon, the permittee may utilize either a single impermeable synthetic membrane liner or a soil liner with a maximum soil liner seepage rate of less than $\frac{1}{4}$ inch per day if the wastewater lagoons or ponds are utilized for the containment or treatment of process-generated wastewater and are limited to the following:

(1) Sediment control and aggregate wash water ponds used at limestone quarries;

(2) sediment control ponds used at clay pit operations;

(3) sediment control ponds used for classification and washing operations associated with sand and gravel dredging;

(4) ponds receiving once-through, non-contact cooling water in which there is no chemical addition to the cooling water and where the concentration of total dissolved solids in the cooling water is not increased over the concentration of total dissolved solids in the groundwater;

(5) ponds receiving recirculated cooling water meeting any of the following conditions:

(A) The cooling water, if treated, is treated only with chlorine or bromine;

(B) the total dissolved solids and salt concentration of the cooling water in the ponds are not increased significantly above the groundwater source concentration;

(C) the total dissolved solids and salt concentration of the cooling water in the ponds do not exceed criteria that would prohibit the cooling water from being discharged in conformance with the Kansas surface water quality standards specified in K.A.R. 28-16-28b, 28-16-28c, 28-16-28d, and 28-16-28e; or

(D) the total dissolved solids and salt concentration of the cooling water in the ponds can be land-applied at agronomic application rates without the use of dilution water or freshwater application for controlling dissolved solids and salts;

(6) erosion-control sediment ponds associated with construction activities;

(7) tailwater control ponds utilized for the irrigation of wastewater from an industrial wastewater treatment system if the tailwater control pond is completely dewatered immediately at the completion of each irrigation application cycle;

(8) lime sludge storage lagoons associated with potable water-softening operations;

(9) lagoons that receive concrete washed off of, and from, concrete delivery trucks; and

(10) lagoons utilized for the containment or treatment of coal pile stormwater runoff, coal ash, and air pollution control scrubber wastes from facilities utilizing low-sulfur coal produced in the powder river basin of Wyoming.

(g) Each new industrial wastewater lagoon utilized for the containment or treatment of industrial process wastewater shall utilize an impermeable synthetic membrane liner system with a maximum synthetic membrane liner leakage rate that is less than the more stringent of either of the following:

(1) A maximum monitored or calculated seepage rate of $\frac{1}{64}$ inch per day; or

(2) the liner manufacturer's criteria for the material and installation of the synthetic membrane liner system expressed in units of volume per area per unit of time (gallons per square feet per day).

(h) Industrial wastewater treatment system lagoons in existence on the effective date of this regulation shall not be required to be modified or retrofitted to comply with the provisions of this regulation, unless either of the following occurs:

(1) The secretary determines that environmental or public health threats result from the op-

eration of the lagoon, or data exists showing the actual or potential soil or water pollution.

(2) The modification, replacement, or expansion of an industrial wastewater lagoon results in the lagoon being dewatered, and the secretary or designee orders the implementation of specific lagoon improvements to address conditions that result in noncompliance with statutory, regulatory, or permit requirements or that fail to ensure protection of public health or the environment. Only those specific improvements required by the secretary or designee shall be required to be implemented by the permittee.

(i) For the purpose of K.A.R. 28-16-160 through K.A.R. 28-16-174, an actual or potential environmental or public health threat may be deemed to exist if physical, chemical, biological, or radiological substances, or a combination of these substances, is released into subsurface waters of the state and results in a concentration or amount of a substance in excess of the numerical criteria designated for aquatic life protection, agricultural use, or public health protection as provided in the "Kansas surface water quality standards: tables of numeric criteria," dated December 6, 2004, which is adopted by reference in K.A.R. 28-16-28e. If the background concentration of a substance is naturally occurring and is greater than the numeric criteria, the background concentration shall be considered the criteria.

(j) Land-based sand and gravel pits shall be exempt from the provisions of K.A.R. 28-16-160 through 28-16-174 if the only water or wastewater directed to the dredge pit consists of the following:

(1) Dredge return flows;

(2) flows generated from aggregate classification; and

(3) flows from washing dredged aggregate if water used in creating these flows originates from and is returned to the dredge pit.

(k) No person shall construct, operate, or maintain any industrial wastewater lagoon without obtaining a permit or permit modification from the department. (Authorized by K.S.A. 2004 Supp. 65-171d and K.S.A. 65-171h; implementing K.S.A. 65-164, K.S.A. 65-165, K.S.A. 65-166, K.S.A. 2004 Supp. 65-171d, and K.S.A. 65-171h; effective May 20, 2005.)

28-16-163. Required hydrogeologic information for new or modified municipal, commercial, or industrial wastewater lagoons. (a) Each hydrogeologic investigation that

is conducted by or on behalf of the permittee for new or modified wastewater lagoons shall consist of borings or excavations to a depth of at least 10 feet below the bottom of the wastewater lagoon or to impenetrable bedrock if impenetrable bedrock is encountered less than 10 feet below the lagoon bottom. The bottom of the lagoon shall be determined by the lowest interior surface elevation, at finished grade, of the lagoon structure.

(b) The permittee shall ensure that a minimum of one boring or excavation is performed for each acre of wastewater lagoon, with the area being calculated based on the interior dike dimensions measured at the top of the dike. If the wastewater lagoon is less than one acre in size, a minimum of one boring or excavation shall be required.

(c) The minimum requirements for a hydrogeologic site investigation shall consist of the following:

(1) The logging of all borings or excavations identifying the soil types encountered;

(2) recording the ground surface elevation and location of each boring or excavation. The elevation may be based upon the project datum;

(3) measuring and recording static groundwater levels after the groundwater level has stabilized following the boring or excavation. If no water is readily evident at the time of the boring or excavation, the boring or excavation shall be left open for a minimum of 24 hours. If, after 24 hours, no water is observed, a determination of "no groundwater" shall be reported. Water wells in the immediate vicinity of the proposed wastewater lagoon may be used to help document the presence or absence of groundwater and establish the groundwater elevation, in addition to the borings or excavations, for the hydrogeologic investigation if the secretary or designee agrees to accept the data as being representative of the proposed site;

(4) the collection of sufficient representative soil samples, if in situ soil materials will be employed in the construction of the compacted soil liner or the lagoon structure, for analysis in determining soil classification, compaction, and permeability for use in designing the lagoon soil liner or embankments, as appropriate; and

(5) a summary, to be submitted with or as a part of the engineering report, evaluating the hydrogeologic information obtained and an analysis of that information regarding the expected impact that the observed hydrogeologic conditions will have on the construction of lagoon embankments and, as appropriate, the expected performance of a constructed soil liner in regard

to complying with the maximum soil liner seepage rate requirement.

(d) Hydrogeologic information shall not be required for erosion-control ponds associated with construction activities.

(e) Each permit applicant or permittee, if directed by the secretary, shall notify the department a minimum of two days before performing any hydrogeologic investigation fieldwork activities to allow the opportunity for department staff to witness the activities.

(f) All hydrogeologic information shall be obtained by or under the direct supervision of either a licensed professional engineer or a licensed geologist. (Authorized by K.S.A. 2003 Supp. 65-171d; implementing K.S.A. 65-170b and K.S.A. 2003 Supp. 65-171d; effective May 20, 2005.)

28-16-164. Municipal, commercial, and industrial wastewater treatment system lagoons: soil liner design.

(a) Each permit applicant shall submit with the construction plans and specifications hydrogeologic information, soil testing data, and design calculations documenting that the proposed use of in situ soils or a constructed soil liner is capable of meeting the required maximum soil liner seepage rate.

(b) Whether in situ soils or a constructed soil liner is utilized for the wastewater lagoon, a minimum of one foot of natural soil or one foot of constructed liner shall be provided. (Authorized by K.S.A. 2003 Supp. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, and K.S.A. 2003 Supp. 65-171d; effective May 20, 2005.)

28-16-165. Municipal, commercial, and industrial soil liners: postconstruction testing.

(a) Each permit applicant or permittee proposing a new municipal, commercial, or industrial wastewater treatment lagoon that will employ a soil liner system shall, when submitting construction plans and specifications to KDHE for review and consideration for approval, also submit information addressing each method to be employed for postconstruction testing of the soil liner for compliance with the required maximum soil liner seepage rate. Each proposed test method shall provide an appropriate degree of monitoring sensitivity and accuracy in addressing the following test variables:

- (1) The maximum soil liner seepage rate;
- (2) the surface area of the lagoon being tested;
- (3) the proposed duration of the test;

(4) the time of year and general weather conditions expected during the test period;

(5) the proposed monitoring equipment;

(6) the expected magnitude of evaporation during the test period;

(7) the degree that wind and wave action will impact measurement accuracy; and

(8) the frequency of data collection during the test period.

(b) Within 45 days following the completion of construction, the permittee or applicant shall submit to the department a certification and, if requested, any supporting documentation, confirming that the wastewater lagoon and the wastewater lagoon liner system were constructed in accordance with the plans and specifications approved by the secretary.

(c) The certification specified in subsection (b) shall be signed by a licensed professional engineer who monitored the construction activities and installation of the soil liner system. The certification shall be based on actual observations by the licensed professional engineer, or designee, during construction and any field or laboratory data developed during or following construction.

The construction activities and any sample collection for field or laboratory data developed during or following construction shall be directly observed by the licensed professional engineer or designee. The monitoring of construction activities or the collection of samples or data shall be conducted by the licensed professional engineer or a designee under the licensed professional engineer's direct supervision.

(d)(1) Within eight months following approval by the secretary to initiate the filling or use of the wastewater lagoon, the permittee or permit applicant shall conduct and report, to KDHE, the results of the postconstruction testing of the soil liner for compliance with the required maximum soil liner seepage rate. This report shall meet the requirements specified in paragraph (d)(2). If the required maximum soil liner seepage rate can not be met, the report submitted to KDHE for review and consideration for approval shall provide a plan and schedule of proposed actions required to achieve compliance.

(2) The postconstruction testing specified in paragraph (d)(1) shall be conducted in conformance with the method or methods approved by the secretary to ensure the protection of public health and the environment. The postconstruction testing of the soil liner shall be conducted

by a licensed professional engineer or a designee under the licensed professional engineer's direct supervision.

The permittee or permit applicant shall provide a certification signed by the licensed professional engineer as to whether or not the soil liner meets the required maximum soil liner seepage rate.

(e) Each permit applicant, when directed by the secretary, shall notify the department a minimum of two days before performing any soil liner seepage testing to allow the opportunity for department staff to witness the test.

(f) Postconstruction testing shall not be required for erosion-control sediment ponds associated with construction activities. (Authorized by K.S.A. 2004 Supp. 65-171d and K.S.A. 65-171h; implementing K.S.A. 65-164, K.S.A. 65-165, K.S.A. 65-166, K.S.A. 65-170b, K.S.A. 2004 Supp. 65-171d, and K.S.A. 65-171h; effective May 20, 2005.)

28-16-166. Requirements for impermeable synthetic membrane liners in municipal or commercial wastewater treatment system lagoons. (a) The following requirements shall apply to municipal or commercial impermeable synthetic membrane liners:

(1) The liner shall be at least 30 mils (0.030 inch) in thickness.

(2) The engineer designing the wastewater lagoon shall obtain a certification from the liner manufacturer that includes the following:

(A) Confirmation that the specified liner is compatible for use with the proposed wastewater to be retained or treated;

(B) confirmation that the specified liner is resistant to UV (ultraviolet) light; and

(C) the manufacturer's estimated leakage, permeability, or transmissivity rate of the specified liner expressed in units of volume per area per time (gallons per square feet per day) for a properly installed liner. The leakage, permeability, or transmissivity rate shall reflect the expected rate of movement of fluids through a synthetic membrane liner when considering the properties of the liner material, liner thickness, normally expected manufacturing defects in the liner material, and normally expected defects associated with the seaming and installation process.

(b) Compaction of the wastewater treatment lagoon embankments and upper six inches of the interior lagoon bottom below the synthetic liner shall be a minimum of 95 percent of the maximum standard proctor density at optimum mois-

ture to optimum moisture plus three percent. The maximum thickness of the layers of material to be compacted shall not exceed six inches. The moisture content range of the soils being compacted shall be optimum moisture to optimum moisture plus three percent. The maximum size of dirt clods in the compacted soil shall be less than one inch in diameter.

(c) The liner shall be anchored at the top of the wastewater lagoon dike. The method of anchoring the liner shall conform to the manufacturer's installation instructions.

(d) The liner shall be installed in accordance with the liner manufacturer's instructions and guidance. Either the liner shall be installed by a contractor experienced in the installation of impermeable synthetic membrane liners, or the contractor shall provide for the on-site supervision of the liner installation by an individual that has experience installing liners.

(e) The construction plans and specifications shall include provisions for the use of a reliable seam-testing method that shall be used to verify the adequacy of the seaming process. The methods for destructive and non-destructive seam testing shall be specified, along with a protocol describing the number of tests per lineal foot of field seam, the size of the destructive test specimen required, and any other quality control provisions recommended by the liner manufacturer. All field seams shall be subjected to non-destructive testing.

(f) The Kansas "minimum standards of design for water pollution control facilities" shall be utilized in the design and the establishment of construction criteria for wastewater lagoons, unless different criteria are specified in K.A.R. 28-16-160 through K.A.R. 28-16-174. If there is any difference between the design and construction criteria specified in K.A.R. 28-16-160 through K.A.R. 28-16-174 and either the Kansas "minimum standards of design for water pollution control facilities" or regulations in articles 5, 13, or 30, the design and construction criteria specified in K.A.R. 28-16-160 through K.A.R. 28-16-174 shall control.

(g) A minimum of two feet of in situ or compacted soil shall be provided beneath the liner or bedding material.

(h) Each applicant or permittee shall develop and submit with the construction plans and specifications a contingency plan, for KDHE review and consideration for approval, that outlines

procedures for pond containment and operation during periods of maintenance and during periods of required dewatering if a liner fails or needs to be repaired.

(i)(1) Each permittee shall immediately cease operations or shall comply with the instructions of the secretary, if the secretary determines that an imminent threat to public health or the environment exists due to any unsafe operating condition. Considerations regarding an imminent threat or the potential for an imminent threat to public health or the environment shall include the following:

- (A) The pollutant or pollutants involved;
- (B) the integrity of the impermeable synthetic membrane liner;
- (C) the depth to groundwater;
- (D) the monitoring well or water supply well data;
- (E) the mobility of the pollutant or pollutants through soil or groundwater;
- (F) the potential exposure to the public; and
- (G) the potential for uncontrolled release into the environment.

(2) The permittee may resume operations if the secretary determines that the wastewater lagoon no longer poses a risk to public health and the environment. (Authorized by K.S.A. 2004 Supp. 65-171d and K.S.A. 65-171h; implementing K.S.A. 65-164, K.S.A. 65-165, K.S.A. 65-166, K.S.A. 2004 Supp. 65-171d, and K.S.A. 65-171h; effective May 20, 2005.)

28-16-167. Requirements for impermeable synthetic membrane liners in industrial wastewater treatment system lagoons. (a) The following requirements shall apply to industrial impermeable synthetic membrane liners:

(1) The impermeable synthetic membrane liner system shall be comprised of primary and secondary impermeable synthetic membrane liners with an intermediate leak detection system provided.

(2) Each primary and secondary liner shall be at least 30 mils (0.030 inch) in thickness.

(3) The licensed professional engineer designing the wastewater lagoon shall obtain a certification from the liner manufacturer that includes the following:

(A) Confirmation that the specified liner is compatible for use with the proposed wastewater to be retained or treated;

(B) confirmation that the specified liner is resistant to UV (ultraviolet) light; and

(C) the manufacturer's estimated leakage, permeability, or transmissivity rate of the specified liners expressed in units of volume per area per time (gallons per square feet per day) for a properly installed liner. The leakage, permeability, or transmissivity rate shall reflect the expected rate of movement of fluids through a synthetic membrane liner when considering the properties of the liner material, liner thickness, normally expected manufacturing defects in the liner material, and normally expected defects associated with the seaming and installation process.

(b) A minimum of two cells shall be provided to allow for flexibility of operation and maintenance of the wastewater lagoon system. This requirement may be waived by the secretary if an approved alternative wastewater disposal option is available and the operator agrees to employ the alternative wastewater disposal option when the wastewater lagoon system is required to be dewatered. Each approved alternative wastewater disposal option shall include a means of disposal for which the required permits, licenses, or authorizations have been obtained.

(c) The primary and secondary liners shall be separated to provide a conduit to allow the movement of any fluid between the liners so that the fluid can be directed to the leak-detection monitoring location for detection and removal. Clean sand, pea gravel, geotextile fabric, and geonet-type materials may be employed to provide the required separation between the primary and secondary liners if a conduit allowing for fluid movement to the leak-detection monitoring location is provided. Alternatives may be recommended by the liner manufacturer or design engineer and shall be submitted to the secretary for review and consideration for approval.

(d) The secondary liner in the pond bottom shall have at least a 2.5 percent slope towards the leak-detection system's monitoring sump, manhole, observation pipe, or other similar leak-detection monitoring mechanism. Any piping used to collect or route fluids to the leak-detection monitoring mechanism shall have at least a one percent slope. The leak-detection system design shall ensure that the maximum travel time required for fluid penetrating the liner to reach the leak-detection monitoring location is 24 hours or less.

(e) The design of the impermeable synthetic membrane liner system shall provide for the capability to perform the following:

(1) Routinely dewater and monitor the volume of fluid removed from the intermediate space between the primary and secondary liners;

(2) pump a volume of fluid generated that is equal to 10 times the maximum synthetic membrane liner leakage rate; and

(3) collect a representative sample of fluid being pumped.

(f) Compaction of the wastewater treatment lagoon embankments and upper six inches of the interior lagoon bottom below the secondary liner shall be a minimum of 95 percent of the maximum standard proctor density at optimum moisture to optimum moisture plus three percent. The maximum thickness of the layers of material to be compacted shall not exceed six inches. The moisture content range of the soils being compacted shall be optimum moisture to optimum moisture plus three percent. The maximum size of dirt clods in the compacted soil shall be less than one inch in diameter.

(g) The primary and secondary liners shall be anchored at the top of the wastewater lagoon dike. The method of anchoring the primary and secondary liners shall conform to the manufacturer's installation instructions.

(h) The liner shall be installed in accordance with the liner manufacturer's instructions. Either the liner shall be installed by a contractor experienced in the installation of impermeable synthetic membrane liners, or the contractor shall provide for the on-site supervision of the liner installation by an individual that has experience installing liners.

(i) The construction plans and specifications shall include provisions for the use of a reliable seam-testing method that shall be used to verify the adequacy of the seaming process. The methods for destructive and non-destructive seam testing shall be specified, along with detailed procedures describing the number of tests per lineal foot of field seam, the size of the destructive test specimen required, and any other pertinent quality control provisions recommended by the liner manufacturer. All field seams shall be subjected to non-destructive testing.

(j) The Kansas "minimum standards of design for water pollution control facilities" shall be utilized in the design and the establishment of construction criteria for wastewater lagoons, unless different criteria are specified in K.A.R. 28-16-160 through K.A.R. 28-16-174. If there is any difference between the design and construction criteria specified in K.A.R. 28-16-160

through K.A.R. 28-16-174 and either the Kansas “minimum standards of design for water pollution control facilities” or regulations in articles 5, 13, or 30, the design and construction criteria specified in K.A.R. 28-16-160 through K.A.R. 28-16-174 shall control.

(k) A minimum of two feet of in situ or compacted soil shall be provided beneath the bottom of the secondary liner or liner bedding material.

(l) Each applicant or permittee shall develop and submit with the construction plans and specifications a contingency plan, for the secretary’s review and consideration for approval, that outlines procedures for pond containment and operation during periods of maintenance and periods of required dewatering if a liner fails or needs to be repaired or replaced.

(m)(1) Each permittee shall immediately cease operations or shall comply with the instructions of the secretary, if the secretary determines that an imminent threat or the potential for an imminent threat to public health or the environment exists due to any unsafe operating condition. Considerations regarding an imminent threat or the potential for an imminent threat to public health or the environment shall include the following:

- (A) The pollutant or pollutants involved;
- (B) the integrity of the impermeable synthetic membrane liner;
- (C) the depth to groundwater;
- (D) the monitoring well or water supply well data;
- (E) the mobility of the pollutant or pollutants through soil or groundwater;
- (F) the potential exposure to the public; and
- (G) the potential for uncontrolled release into the environment.

(2) The permittee may resume operations if the secretary determines that the wastewater lagoon no longer poses a risk to public health and the environment. (Authorized by K.S.A. 2004 Supp. 65-171d and K.S.A. 65-171h; implementing K.S.A. 65-164, K.S.A. 65-165, K.S.A. 65-166, K.S.A. 2004 Supp. 65-171d, and K.S.A. 65-171h; effective May 20, 2005.)

28-16-168. Postconstruction testing of municipal, commercial, and industrial impermeable synthetic membrane liners. (a) Each permit applicant or permittee proposing a new municipal, commercial, or industrial wastewater treatment lagoon that will employ an impermeable synthetic membrane liner shall, when

submitting construction plans and specifications to the secretary for review and consideration for approval, also submit information addressing each method to be employed for postconstruction testing of the impermeable synthetic membrane liner to ensure that it is installed properly and for compliance with the required maximum synthetic membrane liner leakage rate. Each proposed test method shall provide an appropriate degree of monitoring sensitivity and accuracy in addressing the following test variables:

- (1) The maximum synthetic membrane liner leakage rate;
- (2) the surface area of the lagoon being tested;
- (3) the proposed duration of the test;
- (4) the time of year and general weather conditions expected during the test period;
- (5) the proposed monitoring equipment;
- (6) the expected magnitude of evaporation during the test period;
- (7) the degree that wind and wave action will impact measurement accuracy; and
- (8) the frequency of data collection during the test period.

(b) Within 45 days following the completion of construction, the permittee or applicant shall submit to the department a certification and, if requested, any supporting documentation, confirming that the wastewater lagoon and the wastewater lagoon liner system were constructed in accordance with the plans and specifications approved by the secretary.

(c) The certification shall be signed by the licensed professional engineer who monitored the construction activities and installation of the impermeable synthetic membrane liner or liner system. The licensed professional engineer’s certification shall be based on actual observations during construction and installation and any field or laboratory data developed during or following construction or installation.

The construction and installation activities and any testing or sample collection for field or laboratory data developed during or following construction and installation shall be directly observed by the licensed professional engineer or designee. The monitoring of construction and installation activities or the collection of samples or data shall be conducted by a licensed professional engineer or a designee under the licensed professional engineer’s direct supervision.

(d)(1) Within two months, or an alternative time frame proposed by the design engineer and

approved by secretary, and following approval by the secretary to initiate the filling or use of the lagoon, the permittee shall conduct and report, to KDHE, the results of the postconstruction testing of the impermeable synthetic membrane liner or liner system for compliance with the required maximum synthetic membrane liner leakage rate. This report shall meet the requirements specified in paragraph (d)(2). If the required maximum synthetic membrane liner leakage rate can not be met, the report shall provide a plan and schedule of proposed actions required to achieve compliance, for review and consideration for approval by the secretary.

(2) The postconstruction testing specified in paragraph (d)(1) shall be conducted in conformance with the method or methods approved by the secretary, pursuant to subsection (a), to ensure the protection of public health and the environment. The postconstruction monitoring or testing of the synthetic membrane liner or liner system shall be conducted by a licensed professional engineer or a designee, under the engineer's supervision.

The permittee shall provide a certification signed by the licensed professional engineer as to whether or not the synthetic membrane liner or liner system complies with the maximum synthetic membrane liner leakage rate.

(e) Each permit applicant, when directed by the secretary, shall notify the department a minimum of two days before performing any leak-detection testing, on the entire liner, to allow the opportunity for department staff to witness the test. (Authorized by K.S.A. 2004 Supp. 65-171d and K.S.A. 65-171h; implementing K.S.A. 65-164, K.S.A. 65-165, K.S.A. 65-166, K.S.A. 65-170b, K.S.A. 2004 Supp. 65-171d, and K.S.A. 65-171h; effective May 20, 2005.)

28-16-169. Minimum standards of design, construction, and maintenance. (a) The permit applicant or permittee shall design and construct municipal, commercial, and industrial wastewater treatment system lagoons to conform to effluent standards, effluent limitations, pretreatment requirements, other performance standards, and standards of design, construction, and maintenance for wastewater control facilities published by the department as "minimum standards of design for water pollution control facilities" and adopted by reference in K.A.R. 28-16-58, or the provisions of K.A.R. 28-16-160 through 28-16-174.

(b) If there is a discrepancy between K.A.R. 28-16-160 through 28-16-174 and the "minimum standards of design, construction, and maintenance" as defined in K.A.R. 28-16-160, K.A.R. 28-16-160 through 28-16-174 shall control. (Authorized by K.S.A. 2003 Supp. 65-171d and K.S.A. 65-171h; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2003 Supp. 65-171d, and K.S.A. 65-171h; effective May 20, 2005.)

28-16-170. Water, oil, or gas wells. (a) Each permit applicant or permittee submitting construction plans for a municipal, commercial, or industrial wastewater treatment system lagoon shall identify, on the construction plans, the location of any active, abandoned, or plugged water, oil, or gas well within 600 feet of any proposed location for a wastewater lagoon.

(b) If the permit applicant or permittee is unable to confirm the exact location of any well or wells, the permit applicant or permittee shall include in the construction plans a note indicating the potential for the well or wells to be encountered in the vicinity of the proposed wastewater lagoon.

(c) Each active, abandoned, or plugged water, oil, or gas well that is encountered during construction and that was not identified or located on the construction plans shall be reported to the department within 48 hours of discovery. Construction activities that have the potential to impact the well shall be immediately terminated until the secretary or designee authorizes the construction to resume. (Authorized by K.S.A. 2003 Supp. 65-171d; implementing K.S.A. 65-165, 65-166, K.S.A. 2003 Supp. 65-171d, and K.S.A. 65-171h; effective May 20, 2005.)

28-16-171. Monitoring wells. (a) The installation and sampling of groundwater monitoring wells in the vicinity of any municipal, commercial, or industrial wastewater treatment system lagoon may be required by the secretary. Equivalent technology, in lieu of requiring the installation and sampling of groundwater monitoring wells, may be required or authorized by the secretary.

(b) The location, design, and proposed construction of monitoring wells or the use of equivalent technology in lieu of monitoring wells shall be subject to approval by the secretary. Approval of the location, design, and proposed construction of monitoring well or wells or the use of

equivalent technology shall be approved by the secretary before the permit applicant or permittee initiates installation.

(c) Groundwater monitoring wells shall be constructed by KDHE-licensed water well contractors.

(d) When directed by KDHE to install any groundwater monitoring well or wells, the applicant or permittee shall submit a groundwater monitoring plan for review and approval by the secretary. Each plan shall address the following:

(1) The location of each proposed monitoring well;

(2) the monitoring well design and materials proposed for construction;

(3) a quality assurance plan addressing techniques for monitoring the static groundwater elevation, collecting samples, preserving samples, and laboratory analysis by a KDHE-certified laboratory for the parameters being analyzed. (Authorized by K.S.A. 2003 Supp. 65-171d; implementing K.S.A. 65-164, 65-170b, and K.S.A. 2003 Supp. 65-171d; effective May 20, 2005.)

28-16-172. Plan and specification approval; permit issuance. (a) Neither the approval of an engineering report, hydrogeologic report, construction plans, or construction specifications nor the issuance of a permit by the secretary shall prohibit the secretary from taking any enforcement action if the municipal, commercial, or industrial wastewater lagoon fails to protect waters of the state, meet any specified effluent criteria, or comply with state surface water quality standards. In addition, an approval or permit issuance shall not constitute a defense by the permit applicant or permittee regarding the violation of any statute, regulation, permit condition, or requirement.

(b) The permit applicant or permittee shall not deviate from the plans and specifications submitted to and approved by the secretary, unless amended plans and specifications showing the proposed changes are submitted to and approved by the secretary. (Authorized by K.S.A. 2003 Supp. 65-171d; implementing K.S.A. 65-164 and K.S.A. 2003 Supp. 65-171d; effective May 20, 2005.)

28-16-173. Municipal, commercial, and industrial wastewater lagoons: closure requirements. (a) Each wastewater lagoon permittee shall notify the secretary of any plans to cease operation of, close, or abandon a municipal, commercial, or industrial wastewater lagoon or lagoon system.

(b) Each permittee shall maintain and comply with a valid Kansas water pollution control permit until the secretary approves the closure of the wastewater lagoon or lagoon system.

(c) Each permit applicant or permittee shall develop and submit a wastewater lagoon closure plan for review and consideration for approval by the secretary along with the construction plans and specifications for any new, modified, or expanded wastewater lagoon or lagoon system.

(d) Each wastewater lagoon closure plan shall, at a minimum, include all of the following:

(1) The procedure for deactivating the various wastewater collection and treatment units employed at the facility;

(2) the procedures to be employed to remediate, remove, or dispose of wastewater, accumulated sludge in the wastewater lagoon or lagoons, any impermeable synthetic membrane liner, contaminated soils, and contaminated groundwater;

(3) a description regarding the proposed maintenance, deactivation, conversion, or demolition of the wastewater lagoon structure;

(4) procedures addressing the plugging of any water wells or groundwater monitoring wells associated with the facility, wastewater lagoon, or wastewater lagoon system; and

(5) an estimate of the design life of an impermeable synthetic membrane liner if this type of liner is utilized at the wastewater lagoon.

(e) Each permittee of a wastewater lagoon shall prepare or update, when directed by the secretary, a wastewater lagoon closure plan for review and consideration for approval by the secretary and shall retain the plan at the facility in a manner that is accessible for inspection by the department.

(f) The closure of a wastewater lagoon or lagoon system shall be completed within one year of authorization by the secretary to initiate closure.

(g) Each permittee requesting an extension of time for closure of a wastewater lagoon shall submit the request in writing to the secretary, and the request shall detail the reasons for the requested extension. Consideration of weather conditions and the legal change in ownership of the facility may constitute grounds for the secretary's consideration in granting an extension. (Authorized by K.S.A. 2003 Supp. 65-171d and K.S.A. 65-171h; implementing K.S.A. 65-164, K.S.A. 2003 Supp. 65-171d, and K.S.A. 65-171h; effective May 20, 2005.)

28-16-174. Variance from specific requirements. (a) Each person seeking a variance from any of the requirements in K.A.R. 28-16-160 through 28-16-173 shall submit to the secretary, in writing, a request for the variance and shall provide information and data relevant to the variance request, for the secretary's review and consideration for approval.

(b) Each variance request shall specify why the request should be considered and how the requested variance meets the provisions of K.A.R. 28-16-160 through 28-16-173 and provides for protection of public health and the environment.

(c) A variance may be granted by the secretary if the request is in keeping with the provisions of K.A.R. 28-16-160 through 28-16-173 and the secretary determines that the requested variance will protect public health and the environment. In evaluating each variance request, site-specific conditions, which may include the depth to groundwater, the quantity of groundwater present, hydrogeologic factors, alternative technical information, and alternative designs, shall be considered by the secretary. (Authorized by K.S.A. 2003 Supp. 65-171d; implementing K.S.A. 65-164 and K.S.A. 2003 Supp. 65-171d; effective May 20, 2005.)

Article 17.—DIVISION OF VITAL STATISTICS

28-17-1. Definitions. (a) "Birth certificate" means a standard certificate of live birth, a delayed certificate of birth, or a foreign-born certificate.

(b) "Certification" means the action or process that attests to the authenticity of a copy or abstract of any record or certificate pertaining to any birth, adoption, legitimation, death, stillbirth, marriage, divorce, or annulment of marriage within the state of Kansas.

(c) "Delayed certificate of birth" means documentation filed six or more months after a live birth in Kansas that substantiates the birth.

(d) "Foreign-born certificate" means documentation substantiating the birth of either of the following:

(1) An individual who meets the following conditions:

(A) The individual was born outside the United States or trust territories of the United States;

(B) neither parent of the individual was a citizen of the United States; and

(C) the individual was adopted by a Kansas resident or through a Kansas court; or

(2) an individual who was born outside the United States or trust territories of the United States, whose birth has not been registered as that of a United States citizen, and who was adopted by a Kansas resident or through a Kansas court.

(e) "Heirloom certificate" means a personalized keepsake certificate.

(f) "Medical data" means data or information that describes medical and anatomical conditions or characteristics of an individual, or both.

(g) "Personal data" means nonmedical data or information that describes the legal identity or attributes of an individual.

(h) "Registrant" means the individual named on a vital record for whom the vital record was established.

(i) "Registration," as used in the definition of "vital statistics" in K.S.A. 65-2401 and amendments thereto and in these regulations, means the process of filing an original record or certificate.

(j) "Secretary" has the meaning specified in K.S.A. 65-2401, and amendments thereto.

(k) "Standard certificate of live birth" means documentation substantiating a live birth within the state of Kansas that is filed with the state registrar within six months of the date of birth as specified in K.S.A. 65-2409, and amendments thereto.

(l) "Verification" means a search of files and records maintained by the state registrar that authenticates the information on specified vital records. (Authorized by and implementing K.S.A. 65-2401, 65-2402, and K.S.A. 2003 Supp. 65-2418; effective Jan. 1, 1966; amended Oct. 22, 1990; amended, T-28-11-5-04, Nov. 5, 2004; amended Feb. 25, 2005.)

28-17-2. (Authorized by K.S.A. 65-2404; effective Jan. 1, 1966; revoked May 1, 1986.)

28-17-3. (Authorized by K.S.A. 65-2431; effective Jan. 1, 1966; revoked Oct. 22, 1990.)

28-17-4. (Authorized by K.S.A. 65-2430; implementing K.S.A. 65-2430; effective Jan. 1, 1966; amended May 1, 1983; revoked Oct. 22, 1990.)

28-17-5. (Authorized by K.S.A. 65-2402; implementing K.S.A. 65-2409, as amended by L. 1990, Chap. 226; effective Jan. 1, 1966; amended Oct. 22, 1990; revoked May 10, 1996.)

28-17-6. Fees for copies, abstracts, and searches. (a)(1) Subject to the requirements of K.S.A. 65-2417 and K.S.A. 65-2418 (a)(2) and amendments thereto, certified copies or ab-

stracts of certificates or parts of certificates shall be furnished by the state registrar upon request by an authorized applicant and payment of the required fee.

(2)(A) The fees for making and certifying copies or abstracts of birth, stillbirth, marriage, and divorce certificates shall be \$15.00 for the first copy or abstract and \$15.00 for each additional copy or abstract of the same record requested at the same time.

(B) The fees for making and certifying copies or abstracts of death certificates shall be \$15.00 for the first copy or abstract and \$15.00 for each additional copy or abstract of the same record requested at the same time.

(b) For any search or verification of the files and records for birth, death, stillbirth, marriage, or divorce certificates if no certified copy or abstract is made, the fee shall be \$15.00 for each five-year period for which a search is requested, or for each fractional part of a five-year period.

(c) For any search of the files necessary for preparing an amendment to a birth, stillbirth, death, marriage, or divorce certificate or abstract already on file, the fee shall be \$15.00.

(d) For non-certified copies or abstracts of certificates or parts of certificates requested for statistical research purposes, the following fees shall be charged:

(1)(A) \$10.00 for each copy of a birth, marriage, divorce, or stillbirth certificate, if the state certificate number is provided; and

(B) \$15.00 for each copy of a birth, marriage, divorce, or stillbirth certificate, if the state certificate number is not provided; and

(2)(A) \$10.00 for each copy of a death certificate, if the state certificate number is provided; and

(B) \$15.00 for each copy of a death certificate, if the state certificate number is not provided.

(e) For each certified copy of an heirloom certificate, the fee shall not exceed \$40.00. (Authorized by K.S.A. 2008 Supp. 65-2418; implementing K.S.A. 23-110 and 65-2417 and K.S.A. 2008 Supp. 65-2418 and 65-2422d; effective Jan. 1, 1966; amended Jan. 1, 1968; amended, E-78-18, July 7, 1977; amended May 1, 1978; amended May 1, 1983; amended, T-84-13, July 1, 1983; amended May 1, 1984; amended May 1, 1988; amended Oct. 7, 1991; amended, T-28-9-25-92, Sept. 25, 1992; amended Nov. 16, 1992; amended Aug. 16, 1993; amended, T-28-7-2-01, July 2, 2001; amended Oct. 12, 2001; amended, T-28-6-27-02,

July 1, 2002; amended Oct. 18, 2002; amended, T-28-7-1-03, July 1, 2003; amended Oct. 17, 2003; amended, T-28-11-5-04, Nov. 5, 2004; amended Feb. 25, 2005; amended Jan. 15, 2010.)

28-17-7. (Authorized by K.S.A. 65-2402; implementing K.S.A. 65-2422; effective Jan. 1, 1966; amended May 1, 1986; amended May 1, 1987; revoked Oct. 22, 1990.)

28-17-8. (Authorized by K.S.A. 65-2402; implementing 65-2419; effective Jan. 1, 1966; amended May 1, 1986; revoked May 10, 1996.)

28-17-9. Approval of application for delayed birth certificate. Each application for a delayed birth certificate, including completed forms, as required, and documentary evidence, shall be examined, abstracted, and filed or rejected only in the office of vital statistics of the department. (Authorized by K.S.A. 65-2402; implementing 65-2420; effective Jan. 1, 1966; amended May 1, 1986.)

28-17-10. Delayed certificate of birth.

(a) Each request for a delayed certificate of birth shall be registered with the office of vital statistics and shall meet the following requirements:

(1) Be completed with facts known at the time of birth of the registrant; and

(2) if the registrant is at least 18 years of age, be signed before a notary public or other authorized individual. If the registrant is under 18 years of age, the delayed certificate of birth shall be signed by a parent, legal guardian, or attending physician before a notary public or other authorized individual.

(b) Each request for a delayed certificate of birth for a registrant under 10 years of age shall include the following:

(1) Two original documents or certified copies of two original documents dated at least one year before the date of the request or within the first year of the registrant's life, showing the registrant's date of birth or age;

(2) one original document or a certified copy of one original document showing the mother's presence in the state at the time of birth;

(3) one original document or a certified copy of one original document with information of the registrant's birthplace as Kansas; and

(4) one original document or a certified copy of one original document with at least one parent's name.

(c) Each request for a delayed certificate of birth for a registrant 10 years of age or older shall include the following:

(1) Four original documents or a certified copy of each of four original documents dated at least 10 years before the date of the request or within three years of the registrant's date of birth, each showing the registrant's date of birth or age;

(2) one original document or a certified copy of one original document with information of the registrant's birthplace as Kansas; and

(3) one original document or a certified copy of one original document with at least one parent's name. (Authorized by K.S.A. 2015 Supp. 65-2402; implementing K.S.A. 65-2419 and 65-2420; effective Jan. 1, 1966; amended June 24, 2016.)

28-17-11. (Authorized by K.S.A. 65-2419, 65-2420; effective Jan. 1, 1966; revoked June 24, 2016.)

28-17-12. Delayed certificate of birth; filing fee. Each application for a delayed certificate of birth shall be accompanied by a fee of \$20.00 for the filing and registration of the birth certificate. A certified copy may be issued in accordance with K.A.R. 28-17-6. (Authorized by and implementing K.S.A. 65-2420; effective Jan. 1, 1966; amended Jan. 1, 1968; amended May 1, 1983; amended Oct. 22, 1990; amended Oct. 7, 1991; amended, T-28-9-25-92, Sept. 25, 1992; amended Nov. 16, 1992; amended Jan. 15, 2010.)

28-17-13. Maternity home, clinic and hospital reports. Each person in charge of a maternity home, clinic or hospital shall report to the department on or before the fifth day of each month a complete list of births and stillbirths that occurred in the institution during the preceding calendar month. The list shall include the child's name and date of birth, and the name of the attending physician and shall be submitted on a form provided by the department. (Authorized by K.S.A. 65-2402; implementing K.S.A. 65-2425; effective Jan. 1, 1966; amended May 1, 1986.)

28-17-14. Required records of institutions. It shall be the duty of the state registrar, or his duly authorized agents, to inspect the records of all hospitals and other institutions, both public and private, as often as in the judgment of the state registrar it may be necessary to do so.

All hospitals and institutions shall keep a record of personal particulars and data concerning each

person admitted or confined to such hospital or other institution. This record shall include such information as required by the standard certificate of birth, death, and stillbirth forms issued under the provisions of this act. The record shall be made at the time of admission from information provided by such person, but when it cannot be so obtained, the same shall be obtained from relatives or other persons acquainted with the facts. The name and address of the person providing the information shall be a part of the record. (Authorized by K.S.A. 65-2402, 65-2425; effective Jan. 1, 1966.)

28-17-15. State registrar to prescribe forms. All paper or electronic forms used in registering, recording, and preserving the records shall be prescribed by the department. Each local registration officer shall accept and use only forms prescribed by the state registrar and shall issue out-of-state transit permits only when the proper forms are used and completed. (Authorized by K.S.A. 65-2402; implementing K.S.A. 65-2415; effective Jan. 1, 1966; amended May 1, 1986; amended Oct. 22, 1990; amended, T-28-4-25-00, April 25, 2000; amended Aug. 4, 2000.)

28-17-16. Funeral directors reports. Each funeral director shall submit to the department, on or before the fifth day of each month, a report regarding each body prepared for burial by that establishment during the preceding calendar month. The report shall list:

(a) the name of the deceased;

(b) the date of death; and

(c) the place of death. (Authorized by K.S.A. 65-2402; implementing 65-2429; effective Jan. 1, 1966; amended May 1, 1986.)

28-17-17. (Authorized by K.S.A. 65-2402, 65-2426; effective Jan. 1, 1966; revoked May 1, 1983.)

28-17-18. Divorce or annulment become final. For the purpose only of determining on what date a clerk of a district court should submit a report of divorce or annulment of marriage, a divorce or annulment decree is final on the date the judgment is rendered by the district judge, unless appealed within ten (10) days from that date. (Authorized by K.S.A. 65-2402, 65-2433; effective Jan. 1, 1966.)

28-17-19. Unattended births. Additional information for each unattended birth shall be submitted to the office of vital statistics for inclusion on the original birth certificate within 90 days

of the date the birth certificate is filed with the office of vital statistics. If an unattended birth is not registered within six months of the date of birth, a delayed birth certificate shall be filed in accordance with K.S.A. 65-2419 and K.S.A. 65-2420, K.A.R. 28-17-8, K.A.R. 28-17-9, K.A.R. 28-17-10, K.A.R. 28-17-11 and K.A.R. 28-17-12. (Authorized by K.S.A. 65-2402; implementing K.S.A. 65-2410, as amended by L. 1990, Chap. 226; effective Jan. 1, 1966; amended May 1, 1987; amended Oct. 22, 1990.)

28-17-20. Corrections to certificates and records. Corrections to certificates and records may be made within the time limit indicated in each subsection.

(a) Amendments within 90 days.

(1) Within 90 days of receipt of an original vital record in the office of vital statistics, the following records in which an inaccuracy or an incomplete item is apparent on the certificate may be changed to show the accurate and complete facts:

(A) Birth certificates;

(B) any part of a death certificate other than the medical section describing the cause of death;

(C) any part of a stillbirth certificate, other than the medical section describing the cause of death;

(D) marriage certificates; and

(E) divorce certificates.

(2) The changes specified in this subsection shall be made as follows:

(A) Any death or stillbirth certificate may be amended by drawing a single line through the incorrect information in the appropriate space or by inserting the correct information in the appropriate space, if left blank on the original certificate. For each amendment, the date of the amendment and the word "amended" shall be written or typed on the certificate. The process of amendment specified in this paragraph shall not be used more than one time for the same item.

(B) A new certificate shall be created if any item to be corrected is not left blank on the original certificate or if a death or stillbirth certificate item has already been amended. This process of amendment shall not be used more than one time for the same item unless accompanied by a court order, except when amending a death or stillbirth certificate.

(C) If the registrant is a minor, the birth certificate may be amended at the request of a parent by submission of an affidavit and supporting evidence to substantiate each item to be amended,

unless the item to be amended is to add the name of a parent, to correct the name of either parent or of the registrant, or to change the registrant's last name to that of either parent. Any of these amendments may be made pursuant to K.S.A. 23-2223, and amendments thereto.

(D) The process of amendment specified in paragraph (a)(2) shall be used when affidavits and supporting evidence have been furnished to and accepted by the secretary or the secretary's designee. The date of the amendment and the word "amended" shall be placed on the original certificate or the newly created certificate.

(3) An amendment fee, as specified in K.A.R. 28-17-6, shall be required, unless changes are made within the first 90 days after receipt of a death certificate or a stillbirth certificate in the office of vital statistics.

(b) Amendments after 90 days. After 90 days of receipt of the vital record in the office of vital statistics, amendments may be made as follows:

(1) Birth certificates.

(A) Any birth certificate may be amended upon the registrant's submission, or parent's submission if the registrant is a minor, of at least two documents that substantiate each item to be amended and that are executed and dated at least five years before the request for the amendment or before the tenth birthday anniversary of the registrant, except that the following items shall be corrected as specified:

(i) The item recording the registrant's sex may be amended if the amendment is substantiated with the registrant's affidavit, or a parent's affidavit if the registrant is under the age of 18, that the sex was incorrectly recorded and with medical records substantiating the registrant's sex at the time of birth.

(ii) If the registrant is a minor, any request by a parent to change an item or items by adding the name of a parent, correcting the name of either parent or of the registrant, or changing the registrant's last name to that of either parent shall be made pursuant to K.S.A. 23-2223, and amendments thereto.

(iii) Any registrant who is of legal age may amend the order of the registrant's first and middle names if the amendment is substantiated with one of the documents specified in paragraph (b)(1)(A).

(iv) Any registrant who is of legal age may place the registrant's first name or middle name, or both, on the record only if there is no first name

and no middle name on the original certificate and if the amendment is substantiated with one of the documents specified in paragraph (b)(1)(A).

(v) Any registrant who is of legal age may correct the spelling of the registrant's first name, middle name, or last name if the amendment is substantiated with one document established before the tenth birthday anniversary of the registrant. Changing the first name, middle name, or last name of the registrant shall not be considered to be correcting the spelling of the registrant's first name, middle name, or last name.

(vi) A registrant who is of legal age may correct the parents' names, if one of the required documents specified in paragraph (b)(1)(A) is the marriage license or birth certificate of the parent or parents.

(vii) The registrant's birth date on the certificate may be changed if both required documents were executed and dated before the tenth birthday anniversary and if the change is consistent with the recorded filing date.

(B) Any item that has been previously amended may be changed only pursuant to a court order.

(C) The sufficiency of affidavits and supporting evidence shall be determined by the secretary or the secretary's designee.

(D) The original certificate shall remain on file unchanged and shall be placed in a sealed file to be opened only by a court order. The new certificate shall be marked "amended" and shall indicate the date of the amendment.

(E) Each request for an amendment to a birth certificate that does not require a court order shall be submitted by the parent or legal guardian of a registrant not of legal age, or by the registrant if of legal age. The person submitting the request shall execute a notarized affidavit stating the true facts to be recorded.

(2) Death certificates: personal data.

(A) Personal data may be amended without a court order if the request is made within the first 12 months after filing the original certificate.

(B) Requests for amendments to personal data may be made by the funeral director or person who submitted the original certificate.

(C) The original certificate shall remain on file unchanged and shall be placed in a sealed file unless required to be opened only by a court order. The new certificate shall be prepared by the funeral director or person who submitted the original certificate or by the state registrar. The medical section shall again be completed, and the required

signatures shall be secured whenever possible. The signatures may be typed if the required signatures are unattainable and a written statement of the reason the signatures are unattainable is attached to the certificate. The certificate shall not be accepted if the stated reason for the typed signature is inadequate, as determined by the state registrar. Upon acceptance by the state registrar, the new certificate shall be marked "amended" and shall indicate the date of the amendment.

(3) Stillbirth certificates: personal data.

(A) Personal data may be amended upon the request of a parent and the submission of affidavits and supporting evidence to substantiate each item to be amended.

(B) Any item that was previously amended may be changed only pursuant to a court order.

(C) The sufficiency of affidavits and supporting evidence shall be determined by the secretary or the secretary's designee.

(D) The original certificate shall remain on file unchanged and shall be placed in a sealed file to be opened by a court order. The new certificate shall be marked "amended" and shall indicate the date of the amendment.

(4) Marriage certificates: personal data.

(A) Personal data may be amended upon the request of either spouse and the submission of affidavits and supporting evidence to substantiate each item to be amended.

(B) Any item that was previously amended may be changed only pursuant to a court order.

(C) The sufficiency of affidavits and supporting evidence shall be determined by the secretary or the secretary's designee.

(D) The original certificate shall remain on file unchanged and shall be placed in a sealed file to be opened by a court order. The new certificate shall be marked "amended" and shall indicate the date of the amendment.

(5) Divorce certificates: personal data.

(A) Personal data may be amended upon the request of either spouse and the submission of affidavits and supporting evidence to substantiate each item to be amended.

(B) Any item that was previously amended may be changed only pursuant to a court order.

(C) The sufficiency of affidavits and supporting evidence shall be determined by the secretary or the secretary's designee.

(D) The original certificate shall remain on file unchanged and shall be placed in a sealed file to be opened by a court order. The new certificate

shall be marked “amended” and shall indicate the date of the amendment.

(c) Amendments with no time limit.

(1) Death and stillbirth certificates: medical section data.

(A) Requests for amendments to the medical section data may be made only by the physician who signed the medical section on the original certificate or by the coroner in the jurisdiction the death or stillbirth occurred.

(B) Medical section data may be amended in either of the following ways:

(i) The original certificate shall remain on file unchanged, and the written statement or affidavit of the certifying physician or coroner shall be appended to the back of the original certificate. The original certificate shall be marked “amended” and shall indicate the date of the amendment.

(ii) A certifying physician or coroner may request the establishment of a new death certificate or stillbirth certificate. The funeral director or person who submitted the original certificate or the state registrar shall enter the personal data and forward the certificate to the certifying physician or coroner to sign the medical section. When all items have been completed, the new certificate shall be submitted to the office of vital statistics, and upon acceptance of the certificate, the certificate shall be marked “amended” and shall indicate the date of the amendment. The original death or stillbirth certificate shall be placed in a sealed file to be opened by a court order. (Authorized by K.S.A. 2015 Supp. 65-2402 and K.S.A. 65-2422c; implementing K.S.A. 65-2422c; effective Jan. 1, 1966; amended May 1, 1987; amended May 1, 1988; amended Oct. 22, 1990; amended, T-28-9-25-92, Sept. 25, 1992; amended Nov. 16, 1992; amended Aug. 16, 1993; amended, T-28-11-5-04, Nov. 5, 2004; amended Feb. 25, 2005; amended June 24, 2016.)

28-17-21. Dissemination of certain information to state and federal agencies. Certain information extracted from death records may be released to state and federal agencies in the form of a computer data tape to include name of deceased, date of death, date of birth, county of residence, and social security number. This information shall be released on an annual basis upon written request. The written request shall include: a statement as to how the information shall be used; a statement of confidentiality assuring the information shall be used for the agreed upon

purpose only; and assurance that no contact shall be made based upon information obtained. The information shall be disseminated to the requestor in a standard format to be determined by the department. The state registrar shall determine the fee to be charged for the data tape based on costs for providing those services and shall prescribe the manner in which those costs are to be paid. (Authorized by K.S.A. 65-2402; implementing K.S.A. 65-2422, as amended by L. 1987, Ch. 241, Sec. 1; effective May 1, 1988.)

28-17-22. Enforcement of uniform vital statistics act. Each violation of K.S.A. 65-2401 et seq., and amendments thereto, and these regulations shall, upon discovery of the violation, be reported to the state registrar. Each reported case involving any such violation shall then be reported by the state registrar to the county attorney, the district attorney, or the official acting in that capacity for prosecution, as specified in K.S.A. 65-2434 and amendments thereto. (Authorized by and implementing K.S.A. 65-2402, 65-2406, and 65-2434; effective, T-28-11-5-04, Nov. 5, 2004; effective Feb. 25, 2005.)

Article 18.—ANIMAL AND RELATED WASTE CONTROL

28-18-1. Definitions. Each of the following terms, as used in this article of the department’s regulations, shall have the meaning specified in this regulation: (a) “Animal unit” has the meaning specified in K.S.A. 65-171d, and amendments thereto.

(b) “Animal unit capacity” has the meaning specified in K.S.A. 65-171d, and amendments thereto.

(c) “Animal waste management system” means any land, structures, or practices utilized for the collection, containment, storage, distribution, land application, or disposal of animal or other process wastes generated by confined feeding facilities. This term shall include any of the following:

(1) Site grading to divert extraneous, uncontaminated precipitation runoff around the confined feeding facility;

(2) structures designed and constructed to collect, control the flow of, and direct animal or other process wastes;

(3) vegetation cover utilized for controlling erosion or for filtering animal or other process wastes;

(4) tanks, manure pits, or other structures de-

signed and constructed to collect or store animal or other process wastes;

(5) waste-retention lagoons or ponds;

(6) land used for the application, utilization, or disposal of animal or other process wastes; and

(7) waste treatment facilities.

(d) “Authorized representative” means either of the following:

(1) Any person employed by the department; or

(2) an entity contracted by the department to conduct inspections and the review of records required by this article of the department’s regulations.

(e) “Certification” means a document issued by the secretary in lieu of a water pollution control permit, indicating that the confined feeding facility meets the requirements of the applicable animal waste management statutes and regulations and does not represent a significant water pollution potential.

(f) “Change in operation” and “modification” mean any of the following:

(1) Expansion or enlargement of a confined feeding facility beyond the scope or boundaries established by registration, permit, certification, or approved plans and specifications;

(2) any increase in the animal unit capacity beyond that authorized by a permit or certification; or

(3) a change in construction or operation of a confined feeding facility that affects the collecting, storage, handling, treatment, utilization, or disposal of animal or other process wastes.

(g) “Clean water act” and “CWA” mean the federal water pollution control act, 33 U.S.C. 1251 et seq., as in effect on November 27, 2002.

(h) “Closure plan” means a written document that identifies the practices and procedures that the operator plans to use when closing the confined feeding facility or any part of the confined feeding facility.

(i) “Confined feeding facility” has the meaning specified in K.S.A. 65-171d, and amendments thereto.

(j) “Department” and “KDHE” mean Kansas department of health and environment.

(k) “Director” means director of the division of environment of the Kansas department of health and environment.

(l) “Division” means division of environment, Kansas department of health and environment.

(m) “Entity” means a person, individual, association, company, corporation, institution, group of individuals, joint venture, partnership, trust, or federal, state, county, or municipal agency or de-

partment legally capable of conducting business or owning real or personal property in Kansas.

(n) “Environmental protection agency” and “EPA” mean United States environmental protection agency.

(o) “Equus Beds” means an aquifer underlying the sections of land listed in the following table:

County	Range	Township	Section
Harvey	01W	22S	06, 07, 18, 19, 30, 31
Harvey	01W	23S	06, 07, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34
Harvey	01W	24S	03, 04, 05, 06, 07, 08, 09, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34
Harvey	02W	22S	All sections
Harvey	02W	23S	All sections
Harvey	02W	24S	All sections
Harvey	03W	22S	All sections
Harvey	03W	23S	All sections
Harvey	03W	24S	All sections
McPherson	01W	19S	19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35
McPherson	01W	20S	02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33
McPherson	01W	21S	05, 06, 07, 18, 19, 30, 31
McPherson	02W	19S	19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36
McPherson	02W	20S	All sections
McPherson	02W	21S	All sections
McPherson	03W	18S	28, 29, 30, 31, 32, 33
McPherson	03W	19S	04, 05, 06, 07, 08, 09, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36
McPherson	03W	20S	All sections
McPherson	03W	21S	All sections
McPherson	04W	18S	20, 21, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36
McPherson	04W	19S	01, 02, 03, 04, 09, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, 36
McPherson	04W	20S	01, 02, 03, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36
McPherson	04W	21S	01, 02, 03, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, 36

County	Range	Township	Section
Reno	04W	22S	All sections
Reno	04W	23S	All sections
Reno	04W	24S	All sections
Reno	04W	25S	All sections
Reno	04W	26S	All sections
Reno	05W	22S	All sections
Reno	05W	23S	All sections
Reno	05W	24S	All sections
Reno	05W	25S	All sections
Reno	05W	26S	All sections
Reno	06W	22S	All sections
Reno	06W	23S	All sections
Reno	06W	24S	All sections
Reno	06W	25S	All sections
Reno	06W	26S	All sections
Reno	07W	22S	All sections
Reno	07W	23S	All sections
Reno	07W	24S	All sections
Reno	07W	25S	All sections
Reno	07W	26S	All sections
Reno	08W	22S	05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36
Reno	08W	23S	All sections
Reno	08W	24S	All sections
Reno	08W	25S	All sections
Reno	08W	26S	All sections
Sedgwick	01E	25S	05, 06, 07, 08, 17, 18, 19, 20, 29, 30, 31, 32
Sedgwick	01E	26S	05, 06, 07, 08, 17, 18, 19, 20
Sedgwick	01W	25S	All sections
Sedgwick	01W	26S	01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, 32
Sedgwick	01W	27S	05, 06
Sedgwick	02W	25S	All sections
Sedgwick	02W	26S	All sections
Sedgwick	02W	27S	01
Sedgwick	03W	25S	All sections
Sedgwick	03W	26S	All sections

(p) “Federal permit,” “national pollutant discharge elimination system permit,” and “NPDES permit” mean an authorization, license, or equivalent control document issued by the EPA or an approved state to implement the requirements of 40 C.F.R. parts 122, 123, 124, and 412.

(q) “Food animals” means animals, fish, or fowl produced for consumption.

(r) “Fur animals” means animals raised for the skin, pelt, or fur.

(s) “Groundwater” means water located under the surface of the land that is or can be the source of supply for wells, springs, seeps, or streams, or that is held in aquifers. Groundwater shall be considered capable of being a source of supply for wells if at least one of the following conditions is met:

(1) The groundwater can be produced at a rate of 10 gallons or more per hour from a borehole with a diameter of nine or fewer inches. In determining the groundwater production rate for an excavation, borehole, or existing water or monitoring well, the quantity of produced water shall be adjusted for comparison purposes to the surface area of a borehole with a diameter of nine inches.

(2) The groundwater is currently being used within ½ mile of the proposed waste-retention lagoon or pond, regardless of the rate at which the groundwater can be produced.

(3) There is evidence of past groundwater use within ½ mile of the proposed waste-retention lagoon or pond.

(t) “Habitable structure” has the meaning specified in K.S.A. 65-171d, and amendments thereto.

(u) “Impermeable synthetic membrane liner” means a commercially manufactured membrane liner composed of synthetic materials commonly identified as being plastic, plastic polymer, or other synthetic materials that, when installed, provide for the more stringent of either of the following:

(1) A maximum monitored or calculated seepage rate of 1/64 inch per day; or

(2) the liner manufacturer’s criteria for the maximum monitored or calculated seepage rate for the installed membrane liner, expressed in units of volume per unit area per unit of time (gallons per square foot per day).

(v) “Land application” means the distribution of animal or other process wastes onto, or incorporation into, the soil mantle for the purpose of disposal or utilization by crops or vegetation.

(w) “Liner” means any designed barrier in the form of in situ, layer, membrane, or blanket materials utilized or installed to reduce the potential for a significant hydrologic connection between animal or other process wastes that are controlled or retained by animal waste management systems and waters of the state.

(x) “Maximum soil liner seepage rate” and “specific discharge” mean the flow rate of water through the liner of a waste-retention lagoon or pond and shall be expressed as velocity (distance/time). The maximum seepage rate shall be calcu-

lated as $v = k(h/d)$, in which “k” is the hydraulic conductivity (coefficient of permeability) and “(h/d)” is the hydraulic gradient. The hydraulic gradient is the maximum vertical distance “h” measured from the liquid surface to the liner bottom, divided by the thickness of the soil liner “d.” When calculating the maximum seepage rate, the maximum design depth, not including design freeboard, shall be used.

(y) “Minimum standards of design, construction, and maintenance” means the following:

- (1) Effluent standards and limitations;
- (2) other performance standards for treatment or utilization; and
- (3) other standards of design, construction, and maintenance for confined feeding facilities or animal waste management systems, published by KDHE.

(z) “Monitoring” means all procedures using any of the following methods:

- (1) Either systematic inspection or collection and analysis of data on the operational parameters of a confined feeding facility or an animal waste management system; or
- (2) the systematic collection and analysis of data on the quality of the animal or other process wastes, groundwater, surface water, or soils on or in the vicinity of the confined feeding facility or animal waste management system.

(aa) “National pollutant discharge elimination system” and “NPDES” mean the national system for the issuance of permits under 33 U.S.C. section 1342 and shall include any state or interstate program that has been approved by the EPA administrator, in whole or in part, pursuant to 33 U.S.C. section 1342.

(bb) “Nutrient management plan” means a written document that identifies the practices and procedures that an operator required to obtain a federal permit plans to use to operate and maintain the animal waste management system and to manage the handling, storage, utilization, and disposal of wastes generated by the confined feeding facility.

(cc) “Oil or gas well” has the meaning specified for the term “well” in K.S.A. 55-150, and amendments thereto.

(dd) “Operator” means an individual, association, company, corporation, municipality, group of individuals, joint venture, partnership, entity, state or federal agency or department, or any business owning, leasing, or having charge or control of one or more confined feeding facilities.

(ee) “Pleasure animals” means dogs, cats, rabbits, horses, and exotic animals.

(ff) “Point source” has the meaning specified in K.A.R. 28-16-28b.

(gg) “Pollution” has the meaning specified in K.S.A. 65-171d, and amendments thereto.

(hh) “Precipitation runoff” means the rainwater or the meltwater that is derived from snow, hail, sleet, or other forms of atmospheric precipitation and that flows by gravity over the surface of the land.

(ii)(1) “Process wastes” means any of the following:

(A) Excrement from animals, wastewater, and animal carcasses;

(B) precipitation that comes into contact with any manure, litter, bedding, or other raw, intermediate, or final material or product used in or resulting from the production of animals or direct products, including meat, milk, and eggs;

(C) spillage or overflow from animal or poultry watering systems;

(D) wastes from washing, cleaning, or flushing pens, barns, manure pits, equipment, trucks, trailers, milking parlors, milking equipment, and other associated animal facilities;

(E) wastes from washing animals or spraying animals for cooling;

(F) wastes from dust control;

(G) boiler blowdown and water softener regenerate wastes;

(H) precipitation runoff from confinement, loading, and unloading areas;

(I) spillage of feed, molasses, animal wastes, or any other process wastes described in this regulation;

(J) discharges from land application fields that occur during application;

(K) precipitation runoff from land application fields, if liquid or concentrated liquid wastes are applied during frozen, snow-covered, or saturated soil conditions without approval by the department;

(L) raw, intermediate, or finished materials associated with wastes or contaminated storm water runoff from animal waste or dead animal composting operations;

(M) silo liquors; or

(N) flows or runoff from waste storage areas.

(2) Process wastes shall not include animal wastes spilled by trucks transporting livestock on city, township, county, state, or federal streets, roads, or highways.

(jj) “Public livestock market” has the meaning specified in K.S.A. 47-1001, and amendments thereto. This term shall include public livestock markets where federal veterinary inspections are regularly conducted.

(kk) “Registration” means any required fee and the properly completed and executed documents designated by the division and any additional required documents or information necessary for determining the need for a water pollution control permit.

(ll) “Salt solution mining well” has the meaning specified in K.S.A. 55-1,120, and amendments thereto.

(mm) “Secretary” means secretary of the Kansas department of health and environment.

(nn)(1) “Sensitive groundwater areas” means aquifers generally comprised of alluvial aquifers, the area within the boundaries of the Equus Beds groundwater management district no. 2 (GMD #2), and the dune sand area located south of the great bend of the Arkansas River. A sensitive groundwater area shall be any section of land specified in the department’s “Kansas sensitive groundwater areas for wastewater lagoons,” which is adopted by reference in K.A.R. 28-16-160.

(2) Any operator proposing a new animal waste-retention lagoon or expansion of an existing animal waste-retention lagoon may request that the director make a site-specific sensitive groundwater area determination. The request shall be submitted in writing to the director. The request shall contain supporting data and information and an explanation of why the area in question should not be considered a sensitive groundwater area.

(oo) “Sewage” has the meaning specified in K.S.A. 65-164, and amendments thereto.

(pp) “Significant water pollution potential” means any of the following, as determined by the secretary:

(1) A confined feeding facility that utilizes any of the following:

(A) Structures designed and constructed to control the flow of or direct animal or other process wastes;

(B) structures designed and constructed to collect or store animal or other process wastes in tanks, manure pits, or other containment structures;

(C) waste-retention lagoons or ponds; or

(D) a waste treatment facility or facilities;

(2) lots, pens, or concentrated feeding areas with creeks, streams, intermittent waterways, or any other conveying channel or device that has

the potential to carry pollutants to waters of the state running through or proximate to the lots, pens, or concentrated feeding areas;

(3) any confined feeding facility that cannot retain or control animal or other process wastes on the confined feeding facility or property or adjacent property with the permission of the owner of the adjacent property; or

(4) a confined feeding facility that uses methods of improper collection, handling, or disposal of animal or other process wastes that have the potential to degrade or impair the quality of any waters of the state.

(qq) “Surface waters,” for water quality purposes, has the meaning specified in K.A.R. 28-16-28b.

(rr) “Truck-washing facility for animal wastes” means a truck-washing facility that exists solely for the purpose of washing animal wastes from trucks or trailers.

(ss) “Variance” means the secretary’s written approval or permit authorizing a proposed action that knowingly results in a lack of conformity with one or more provisions of the minimum standards of design, construction, and maintenance. Each variance authorized by the secretary shall be deemed to protect public health and the environment and to comply with the federal NPDES permit requirements.

(tt) “Waste management plan” means a written document that identifies the practices and procedures that an operator not required to obtain a federal permit plans to use to operate and maintain the animal waste management system and to manage the handling, storage, utilization, and disposal of wastes generated by the confined feeding facility.

(uu) “Waste-retention lagoon or pond” means excavated or diked structures or natural depressions provided for or used for the purpose of containing or detaining animal or other process wastes. Discharges from waste-retention lagoons or ponds shall not be allowed, except as authorized by a water pollution control permit.

(vv) “Waste treatment facility” means a structure or device that collects, stores, stabilizes, treats, or otherwise controls pollutants, so that after the discharge, disposal, or land application of treated wastes, water pollution is prevented and public health and the waters of the state are protected.

(ww) “Water pollution control permit” and “permit” mean an authorization, license, or equivalent control document issued by the sec-

retary. This term shall not include any document that has not yet been the subject of final action by the secretary.

(xx) "Water quality standards" means the Kansas surface water quality standards specified in K.A.R. 28-16-28b through K.A.R. 28-16-28h.

(yy) "Water well" has the meaning specified in K.S.A. 82a-1203, and amendments thereto.

(zz) "Waters of the state" has the meaning specified in K.S.A. 65-161, and amendments thereto.

(aaa) "Whole pond seepage test" means a measurement of the evaporation from, and the change in water level of, a waste-retention lagoon, pond, or structure or a swine waste-retention lagoon, pond, or structure using either of the following:

(1) Any method that meets the requirements specified in the section titled "conclusion: recommendations for a standard" on pages 9-12 in "standards for measuring seepage from anaerobic lagoons and manure storages," by Jay M. Ham, Ph.D., and Tom M. DeSutter, dated 2003. This section is hereby adopted by reference; or

(2) any equivalent method at least as protective of public health, safety, and the environment approved by the secretary. (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, 65-166a, 65-171a, 65-171d, and 65-171h; effective, E-67-5, May 31, 1967; effective Jan. 1, 1968; amended Jan. 15, 1999; amended March 16, 2007; amended Nov. 19, 2021.)

28-18-2. Registration and application requirements. (a) Each entity proposing the construction, modification, or expansion of an unregistered confined feeding facility, public livestock market, collection center, or transfer station and each operator of an existing, but unregistered, confined feeding facility, public livestock market, collection center, or transfer station shall submit a registration form for the facility to the secretary, if any of the following conditions is met:

(1) The proposed or existing unregistered facility has an animal unit capacity of 300 or more animal units.

(2) The proposed or existing unregistered facility presents a significant water pollution potential, as defined in K.A.R. 28-18-1.

(3) The proposed or existing unregistered facility is required by statute to obtain a permit from the secretary.

(4) The entity proposing the construction, modification, or expansion of an unregistered facility or the operator of an existing unregistered facility

elects to register the facility in order to obtain either a permit or certification, even though there is no requirement to obtain a permit or certification.

(b) Each entity or operator that submits a registration form to the department shall include the required \$25 fee.

(c) Each entity proposing the construction, modification, or expansion of a confined feeding facility, a public livestock market, a collection center, a transfer station, or a truck-washing facility for animal waste and each operator of an unpermitted confined feeding facility, public livestock market, collection center, transfer station, or truck-washing facility for animal waste shall submit to the secretary a permit application for the facility if any of the following conditions is met:

(1) The proposed facility or existing unpermitted facility presents a significant water pollution potential, as defined in K.A.R. 28-18-1.

(2) The proposed facility or existing unpermitted facility is required by statute to obtain a permit.

(3) The entity proposing the construction, modification, or expansion of the facility or the operator of an existing unpermitted facility elects to obtain a permit, even though a permit is not required.

(d) Each entity or operator that submits a permit application to the department shall include the permit fee required by K.A.R. 28-16-56d.

(e) The animal unit capacity of a confined feeding facility using an animal waste management system, for species other than those included in the definition of animal unit, shall be determined by the secretary on a case-by-case basis. The quantity or concentration of animal waste produced by the species in comparison to those species addressed in the animal unit definition shall be the factor used by the secretary in determining the animal unit capacity.

(f) Each entity or operator proposing the construction, modification, or expansion of a confined feeding facility and each operator of an unpermitted confined feeding facility required by statute or regulation to obtain a federal permit shall apply to the secretary for a federal permit.

(g) Each entity or operator that is proposing the construction, modification, or expansion of a confined feeding facility, public livestock market, collection center, transfer station, or truck-washing facility for animal wastes and that is required to obtain a permit or certification shall obtain a permit or certification from the secretary before initiating operation of the facility. (Autho-

rized by K.S.A. 2005 Supp. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2005 Supp. 65-166a, K.S.A. 2005 Supp. 65-171d, and K.S.A. 65-171h; effective, E-67-5, May 31, 1967; effective Jan. 1, 1968; amended Jan. 15, 1999; amended March 16, 2007.)

28-18-3. Separation distance requirements. (a) Separation distances between confined feeding facilities and any habitable structure shall conform to the provisions and requirements of K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and amendments thereto.

(b) The operator shall provide to the department any information required to ascertain the distance to the nearest habitable structure or determine which habitable structure is the nearest to the proposed or existing confined feeding facility.

(c) When the animal unit capacity of a confined feeding facility is comprised of swine, in addition to other animals or fowl, the swine-specific separation distance requirements related to any habitable structure, wildlife refuge, or city, county, state or federal park shall be applied only to the animal unit capacity of the swine facility operation. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective, E-67-5, May 31, 1967; effective Jan. 1, 1968; amended Jan. 15, 1999.)

28-18-4. Filing of applications and payment of fees. (a) Each entity seeking a permit shall submit the application required by K.A.R. 28-16-59.

(b) In order for the department to provide adequate public notice regarding a permit for any proposed new construction or proposed new expansion of a confined feeding facility, a public livestock market, a collection center, a transfer station, or a truck-washing facility for animal wastes, each applicant shall provide to the secretary the name and mailing address of each of the following:

(1) The United States post office or offices serving the immediate area of the confined feeding facility; and

(2) each owner of a habitable structure or any property located within one mile of the confined feeding facility.

(c) In addition to the application requirements of K.A.R. 28-16-59, for any new construction or new expansion of a confined feeding facility, each applicant shall submit the following information:

(1) A map identifying the location and layout of the confined feeding facility or the confined feeding facility perimeter;

(2) a map identifying the location of any habitable structure or city, county, state, or federal park within one mile of the confined feeding facility or the confined feeding facility perimeter;

(3) a map identifying all water wells on the confined feeding facility property;

(4) a map identifying any streams and bodies of surface water within one mile of the confined feeding facility or the confined feeding facility perimeter;

(5) for confined feeding facilities that utilize a waste-retention lagoon or pond, any information that the applicant possesses indicating the presence of any unplugged oil, gas, or salt solution mining wells located at the proposed or existing confined feeding facility;

(6) a waste management plan for any confined feeding facility whose operator is not required to obtain a federal permit;

(7) a nutrient management plan for any confined feeding facility whose operator is required to obtain a federal permit;

(8) a groundwater monitoring plan, if required by the secretary; and

(9) a closure plan for any confined feeding facility whose operator is required to obtain a federal permit and that is located over the Equus Beds.

(d)(1) If adjacent confined feeding facilities use a common animal waste management system or if two or more confined feeding facilities do not adjoin but use a common animal waste management system, the multiple confined feeding facilities shall be considered one confined feeding facility.

(2) If two or more confined feeding facilities do not adjoin and do not have a common waste management system or if two or more confined feeding facilities adjoin but do not use a common animal waste management system, the confined feeding facilities shall be considered separate confined feeding facilities.

(e) Each applicant for a confined feeding facility permit shall submit the application fee required by K.A.R. 28-16-56d.

(f) Each applicant for a confined feeding facility permit shall sign the permit application as required by 40 C.F.R. 122.22, dated July 1, 2019,

which is hereby adopted by reference. (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, 65-166a, 65-171d, and 65-171h; effective, E-67-5, May 31, 1967; effective Jan. 1, 1968; amended Jan. 15, 1999; amended March 16, 2007; amended Aug. 6, 2021.)

28-18-5. Transfer of a permit or certification. (a) The automatic transfer of a permit shall be prohibited. Each operator wanting to transfer a water pollution control permit of a confined feeding facility shall make application consistent with the provisions of the regulations in this article.

(b) The automatic transfer of a certification shall be prohibited. Each operator wanting to transfer a certification for a confined feeding facility shall register with the department, in accordance with this article.

(c) The existing permit or certification shall remain in effect until the department authorizes the transfer by letter or reissues the permit or certification. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective Jan. 15, 1999.)

28-18-6. Development of a draft permit. Development of each draft permit shall be consistent with the requirements of K.A.R. 28-16-60. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective Jan. 15, 1999.)

28-18-7. Public notice of permit actions and public hearings. Public notice of permit actions and public hearings shall be consistent with the requirements of K.A.R. 28-16-61. Public hearings scheduled by the department shall address only those matters for which the secretary has authority. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective Jan. 15, 1999.)

28-18-8. Permit; terms and conditions.

(a) The terms and conditions of all permits shall be consistent with the requirements of K.A.R. 28-16-62, as appropriate.

(b)(1) Animal waste management systems shall be designed, constructed, operated, and maintained in a manner that prevents pollution of waters of the state.

(2) Each operator of an animal waste management system for a confined feeding facility who is required to obtain a federal permit shall ensure that the animal waste management system is designed, constructed, operated, and maintained to prevent the discharge of animal or other process wastes to surface waters of the state. Any operator of an animal waste management system of a confined feeding facility may discharge the following to surface waters of the state, whenever precipitation events, either chronic or catastrophic, cause an overflow from an animal waste management system designed, constructed, operated, and maintained to contain all animal and other process wastes:

(A) Animal or other process wastes; and

(B) the direct precipitation and the runoff from a 25-year, 24-hour precipitation event for the location of the confined feeding facility.

(3)(A) Except as provided in paragraph (b)(3)(B), each animal waste management system for any confined feeding facility whose operator is not required to obtain a federal permit shall be designed, constructed, operated, and maintained to prevent the discharge of animal or other process wastes to surface waters of the state as required in paragraph (b)(2).

(B) Any operator of an animal waste management system for a confined feeding facility who is not required to obtain a federal permit may discharge animal or other process wastes to surface waters of the state, consistent with the requirements of K.A.R. 28-16-28b through K.A.R. 28-16-28g, K.A.R. 28-16-57a, and K.A.R. 28-16-62, as appropriate, when specifically authorized by a permit.

(c) For each emergency or accidental discharge, overflow, or unplanned release of animal or other process wastes, each operator shall report the incident to the department within two hours of discovery. Each operator shall report any emergency, spill, accidental discharge, overflow, or unplanned release associated with animal or other process wastes to the department, using the telephone numbers provided by the director. Each operator shall submit a written report to the department within three days of the incident.

(d) Each operator shall retain a copy of the current permit issued by the secretary at the site office for the facility or at a central records location.

(e) Each operator shall be responsible for advising the department within 60 days of any changes in mailing address or telephone number regarding the facility or designated facility contact.

(f) Each operator shall operate the facility in a manner that minimizes or prevents any discharge that is in violation of the permit or that has a potential to adversely affect human health or the environment.

(g) Each operator shall, at all times, properly operate and maintain the animal waste management system and any related appurtenances that are installed or utilized by the operator to achieve compliance with the conditions of the permit. (Authorized by K.S.A. 2005 Supp. 65-171d; implementing K.S.A. 65-164, K.S.A. 65-165, K.S.A. 65-166, K.S.A. 2005 Supp. 65-166a, K.S.A. 2005 Supp. 65-171d, and K.S.A. 65-171h; effective Jan. 15, 1999; amended March 16, 2007.)

28-18-9. Certification; terms and conditions. (a) Each operator shall comply with all conditions, requirements, limitations, and operating provisions stipulated in the certification.

(b) Operation of a confined feeding facility in violation of any conditions, requirements, limitations, and operating provisions of a certification, or in a manner that represents a significant water pollution potential, shall result in the revocation of the certification and any appropriate enforcement action. If a significant water pollution potential exists as defined in K.A.R. 28-18-1, the operator shall apply for a permit. (Authorized by K.S.A. 2003 Supp. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2003 Supp. 65-166a, K.S.A. 2003 Supp. 65-171d, and K.S.A. 65-171h; effective Jan. 15, 1999; amended March 16, 2007.)

28-18-10. Permits; monitoring and reporting. (a) Any monitoring and reporting required by the department in the terms and conditions of a permit, certification, order, directive, or consent agreement shall be conducted consistent with the provisions of K.A.R. 28-16-63, as appropriate.

(b) The emergency or accidental discharge, overflow, or unplanned release of animal or other process wastes into surface waters of the state shall be reported to the department, pursuant to K.A.R. 28-16-27, within two hours of discovery.

Each operator shall report any emergency, spill, accidental discharge, overflow, or unplanned release associated with animal or other process wastes to the department using telephone numbers as provided by the department. Each operator shall submit a written report to the department within three days of the incident.

(c) Any analysis required by a permit, certification, order, directive, or consent agreement of the department shall be performed in accordance with the provisions of 40 C.F.R. Part 136, as in effect on July 1, 1998, or as approved by the department.

(d) Each analysis shall be performed by a laboratory that has been certified by the department pursuant to K.S.A. 65-1711, and amendments thereto, or as approved by the department.

(e) 40 C.F.R. Part 136, as in effect on July 1, 1998, is adopted by reference. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective Jan. 15, 1999.)

28-18-11. Confined feeding facilities; federal requirements. For the purpose of issuing federal permits and administering NPDES program requirements, the following definitions and provisions, as in effect on July 1, 2006 and as amended by 72 fed. reg. 40250 on July 24, 2007, are hereby adopted by reference:

(a) The concentrated animal feeding operation exclusions specified in 40 C.F.R. 122.3 (e) and 40 C.F.R. 122.3 (f);

(b) the provisions addressing concentrated animal feeding operations specified in 40 C.F.R. 122.23(b), (c), and (e), and 122.42(e);

(c) the provisions addressing concentrated aquatic animal feeding operations specified in 40 C.F.R. 122.24 and appendix C to 40 C.F.R. Part 122; and

(d) except for 40 C.F.R. 412.32, 412.44, and 412.46, the provisions addressing effluent limitations for concentrated animal feeding operations specified in 40 C.F.R. Part 412. (Authorized by K.S.A. 2006 Supp. 65-171d; implementing K.S.A. 65-164, 65-165, K.S.A. 65-166, K.S.A. 2006 Supp. 65-166a, K.S.A. 2006 Supp. 65-171d, and K.S.A. 65-171h; effective Jan. 15, 1999; amended March 16, 2007; amended Jan. 4, 2008.)

28-18-12. Design and construction of animal waste management systems. (a) If a confined feeding facility represents a significant water pollution potential or if the operator of a facility is required by statute or regulation to obtain a permit, as determined by the secretary, the operator shall provide an animal waste management system that is designed in accordance with the minimum standards of design, construction, and maintenance and is constructed and operated in accordance with construction plans, specifications, and either a waste management plan or nutrient management plan approved by the secretary. If site topography, operating procedures, experience, and other available information indicate that more than the minimum standards of design, construction, and maintenance are required to effect adequate water pollution control, additional provisions may be required. Each applicant shall ensure that any new construction or new expansion of a confined feeding facility or animal waste management system meets the requirements of the "minimum standards of design, construction, and maintenance," as defined in K.A.R. 28-18-1.

(b) The operator shall not initiate operation of the new confined feeding facility or animal waste management system or the expanded portions of any existing confined feeding facility or animal waste management system, until after issuance of the new or modified permit by the secretary. Initiation of construction before the issuance of a new or modified permit by the secretary shall be deemed to be solely at the risk of the operator.

(c) For the purpose of these regulations, each reference to a professional engineer or consultant shall be deemed to designate an individual offering a service for a fee for the design of a confined feeding facility or animal waste management system, exclusive of any nutrient utilization plan, soil or cropping consultations, hydrologic work involved in conducting hydrologic or geologic investigations, or in the siting, design, or construction of groundwater monitoring wells. Each reference to a professional engineer shall be deemed to designate an individual licensed to practice engineering in Kansas by the Kansas state board of technical professions.

(d) Consultants that prepare plans and specifications for the new construction or new expansion of confined feeding facilities that are submitted to comply with statutes and regulations shall provide KDHE with documentation that adequate general commercial liability insurance coverage address-

ing errors and omissions in the design plans and specifications has been obtained and is in effect.

(e) (1) Each operator shall initiate any proposed new construction or new expansion of a confined feeding facility that has been approved by the secretary and for which the required permit or permit modification has been issued, within two years after the date on which the permit or permit modification is effective or pursuant to the requirements of the permit issued by the secretary. Each operator shall complete any proposed new construction or new expansion of a confined feeding facility that has been approved by the secretary and for which the required permit or permit modification is issued, within three years after the date on which the permit or permit modification is effective or as required by the permit issued by the secretary.

(2) Failure to initiate the approved construction or expansion within two years and to complete the approved construction or expansion within three years after the effective date of the permit or permit modification shall void the secretary's approval of the construction plans, specifications, and other associated plans. If phased construction is proposed, the initiation and completion of construction shall conform to the schedule stipulated by the secretary.

(3) If the approval becomes void, the permit or permit modification shall remain in effect for the term of the permit, but the operator shall re-submit the construction plans, specifications, and other associated plans to the secretary for review and consideration for approval before initiating the construction or expansion of a confined feeding facility.

(f) Neither the approval of construction plans, specifications, or other required plans, nor the issuance of a permit or certification by the secretary shall prohibit the secretary from taking any enforcement action if the animal waste management system fails to protect the waters of the state, meet any specified effluent criteria, or comply with state surface water quality standards. In addition, the secretary's approval of the plans or the secretary's issuance of a permit or certification shall not constitute a defense by the operator regarding violation of any statute, regulation, permit condition, or requirement.

(g) A new confined feeding facility or animal waste management system shall not be built in any stream, river, lake, reservoir, or water bodies meeting the definition of jurisdictional wetlands

and consistent with the definition of “surface waters” in K.A.R. 28-16-28b.

(h) Each operator, when directed by the secretary, shall notify the department a minimum of two days before performing any soil sample collection activities or liner integrity testing.

(i) There shall be no deviation from plans and specifications submitted to and approved by the secretary, unless amended plans and specifications showing the proposed changes have been submitted to the department and approved by the secretary.

(j) Each construction plan shall indicate the location of any active, abandoned, or plugged water, oil, gas, or salt solution mining well within 600 feet of any planned location for a waste-retention lagoon or pond. If the operator is unable to confirm the exact location of any well or wells, the construction plan shall contain a note indicating the potential for the well or wells to be located in the vicinity of any proposed waste-retention lagoon or pond. Each active, abandoned, or plugged water, oil, gas, or salt solution mining well that is encountered during construction and that was not identified or located on the construction plan shall be reported to the department within 48 hours of discovery. Construction activities that would impact the well or wells or that would be in the immediate vicinity of the well or wells shall be immediately terminated until the secretary determines that the appropriate steps, including plugging the well, have been taken to protect public health and the environment.

(k) Following the completion of the proposed construction or proposed expansion and when requested by the secretary, each operator shall certify that the animal waste management system was constructed in accordance with the plans approved by the secretary. If the operator utilized a professional engineer or consultant to monitor the construction of the animal waste management system, then the certification shall also be signed by the professional engineer or the consultant who monitored the construction or installation of the animal waste management system, including any waste-retention lagoon or pond liner. The certification shall be based on actual observations during construction and any field or laboratory data developed during or following construction. The certification shall be maintained on-site or at a central records location and made available to the department, along with any supporting information, upon request.

(Authorized by K.S.A. 2005 Supp. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2005 Supp. 65-166a, K.S.A. 2005 Supp. 65-171d, and K.S.A. 65-171h; effective Jan. 15, 1999; amended March 16, 2007.)

28-18-13. Operation of animal waste management systems. (a) Each animal waste management system shall be designed, constructed, maintained, and operated to prevent pollution of waters of the state and to protect public health and the environment.

(b) Each animal waste management system shall be operated according to the plans approved by the secretary.

(c) When a liner is installed or constructed, the operator shall maintain the liner to comply with the minimum standards of design, construction, and maintenance. When soil liners are utilized, no trees or other deep-rooted vegetation shall be allowed to grow within 100 feet of the liner. Any mechanical or structural damage to the liner shall be reported to the department within two workdays of identification and shall be repaired in a time frame approved by the secretary and designed to protect public health and the environment.

(d) Each operator shall haul or transport animal or process wastes to land application sites in a manner that prevents loss or spillage during transport.

(e) When land application of animal or other process wastes is practiced, the application shall be conducted considering site-specific conditions to ensure the appropriate agricultural utilization of the nutrients in the animal or process wastes.

(f) Irrigation practices shall be managed to minimize ponding or puddling of animal or other process wastes at the land application site. Irrigation practices shall be managed to ensure that animal or other process wastes are not discharged from the application sites.

(g) Adequate equipment and land application areas shall be available for removal of animal or other process wastes and contaminated storm water runoff from the confined feeding facility to comply with the provisions of the permit and these regulations.

(h) (1) Unless approved in advance by the secretary, liquid waste, concentrated liquid animal waste, or other liquid process waste shall not be land-applied when the ground is frozen, snow-covered, or saturated, or during a precipitation event. Land application of animal or other process wastes

during these periods may be authorized by the secretary for use in filtering animal or other process wastes from retention structures that are properly operated and maintained and that are in imminent danger of overflow to surface waters of the state due to a chronic or catastrophic precipitation event.

(2) Solid animal or other process wastes may be applied to frozen ground only if the proposed application site and practices ensure that the wastes will be retained at the application site.

(i) (1) Each operator, as required by the facility permit issued by the secretary, shall conduct sampling and analysis of animal or process wastes or sites utilized for the application of animal or process wastes from confined animal feeding facilities, to determine nutrient and salinity levels, to confirm utilization of the animal or process wastes at agronomic rates, and to ensure that public health and the environment are protected.

(2) (A) Each operator of a confined feeding facility not required to obtain a federal permit shall sample the soil of each field identified in the waste management plan for the confined feeding facility if both of the following conditions are met:

(i) The field is identified by KDHE as located in a sensitive groundwater area or over the Equus Beds.

(ii) The field has received manure or wastewater in one or more of the previous five years.

(B) The sampling and analysis shall be conducted in accordance with the procedures approved by the secretary. The test results shall be sent to the department within 30 days of receipt of the test results.

(3) Each operator required to obtain a federal permit shall conduct soil and waste sampling and analysis in accordance with the nutrient management plan. (Authorized by K.S.A. 2005 Supp. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2005 Supp. 65-166a, K.S.A. 2005 Supp. 65-171d, and K.S.A. 65-171h; effective Jan. 15, 1999; amended March 16, 2007.)

28-18-14. Inspections. (a) Each operator shall provide all necessary specialized equipment, clothing, or appurtenances to enable any authorized representative to enter a confined feeding facility for inspection.

(b) Each operator that develops or modifies animal health protocols and that requests KDHE conformance with the protocols shall submit a copy of the protocols to the department within

30 days of establishing or modifying the animal health protocols.

(c) Each operator shall allow any authorized representative following animal health protocols access to any confined feeding facility to conduct an inspection of the animal waste management system.

(d) Each operator shall allow any authorized representative access to conduct periodic inspections and review records at any confined feeding facility, scheduled as follows:

(1) For any confined feeding facility identified as having uncontrolled process wastes, every six months; or

(2) for any confined feeding facility not identified as having uncontrolled process wastes, at least once every five years if the confined feeding facility has a capacity of 300 or more animal units. (Authorized by K.S.A. 65-170b and 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, 65-166a, 65-170b, 65-171d, and 65-171h; effective Jan. 15, 1999; amended March 16, 2007; amended Nov. 19, 2021.)

28-18-15. Variance of specific requirements. (a) Each operator seeking a variance from the regulations in this article shall submit to the department a written request for variance from the regulations in this article and shall provide information relevant to the request.

(b) Each request shall specifically set forth why the variance should be considered and how the requested variance addresses the intent of this article.

(c) A variance may be granted by the department whenever site-specific conditions or proposals are in keeping with the purpose and intent of this article. (Authorized by and implementing K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, and K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; effective Jan. 15, 1999.)

28-18-16. Waste-retention lagoon or pond closure plan requirements. (a) Each operator shall notify the department of any intention to cease operation of, close, or abandon the waste-retention lagoon or pond.

(b) Each operator shall maintain and comply with a valid water pollution control permit for the confined feeding facility until closure of the waste-retention lagoon or pond is complete and all materials representing a threat to public health and the environment are removed.

(c) Each operator of a confined feeding facility located over the Equus Beds that is required to obtain a federal permit and proposes the new construction or expansion of a waste-retention lagoon or pond shall develop a waste-retention lagoon or pond closure plan. The operator shall submit the waste-retention lagoon or pond closure plan with the permit application to the department for consideration for approval. When submitting waste-retention lagoon or pond closure plans, each operator shall submit four paper copies or shall transmit an electronic copy of the closure plan.

(d) Each operator of a confined feeding facility required to obtain a federal permit shall develop a waste-retention lagoon or pond closure plan if all of the following conditions are met:

(1) The waste-retention lagoon or pond is located over the Equus Beds.

(2) The operator is applying for the renewal of the permit after the effective date of this regulation.

(3) The operator does not have an approved waste-retention lagoon or pond closure plan. The operator shall submit the closure plan with the permit renewal application to the department. When submitting a waste-retention lagoon or pond closure plan, the operator shall submit four paper copies or shall transmit an electronic copy of the plan.

(e) Each operator of a confined feeding facility with a waste-retention lagoon or pond shall submit a closure plan that includes the following information:

(1) A description of all animal waste management system components utilized to contain, control, or store process wastes at the facility;

(2) a description of the procedures to be employed to remove and dispose of animal or other process wastes;

(3) a description of the maintenance, deactivation, conversion, or demolition of all waste-retention lagoons or ponds or the closure of any waste-retention lagoon or pond by one of the following methods:

(A) Removing the berms and leveling and revegetating the site to provide erosion control;

(B) leaving the structure or structures in place for use as a freshwater farm pond or reservoir;

(C) retaining the structure or structures for future use as a part of an animal waste management system; or

(D) using any other method approved by the secretary that will be protective of the environ-

ment and meet all statutory and regulatory requirements; and

(4) a description of, and detailed drawings for, the plugging of any water or groundwater monitoring wells at the confined feeding facility.

(f) Each operator of a confined feeding facility required to have a waste-retention lagoon or pond closure plan shall amend and submit the amended plan to the department for approval whenever specifically directed by the secretary or whenever warranted by one or more of the following:

(1) Any significant changes in operation of the confined feeding facility;

(2) any significant change or modification in the animal waste management system; or

(3) any other significant conditions affecting the confined feeding facility or the animal waste management system.

(g) Each operator of a confined feeding facility required to develop a waste-retention lagoon or pond closure plan shall retain the current plan at the site office of the confined feeding facility or at a central records location in a manner that is accessible to inspection by any authorized representative.

(h) Within six months before the closure of a waste-retention lagoon or pond, the operator shall perform either of the following:

(1) Notification to the department of the proposed closure of the waste-retention lagoon or pond; or

(2) termination of operations for any confined feeding facility for which the operator is required to develop and implement a waste-retention lagoon or pond closure plan.

(i) Each operator seeking an extension of time for closure shall submit a written request detailing the reasons to the secretary. Only weather conditions or the legal change in ownership of the confined feeding facility shall be grounds for an extension.

(j) If the operator of a confined feeding facility is unwilling or unable to properly close the waste-retention lagoon or pond, the owner of the confined feeding facility and the property owner shall be responsible for closing the waste-retention lagoon or pond in a manner that protects the waters of the state, public health, and the environment. (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, 65-166a, 65-171d, and 65-171h; effective March 16, 2007; amended Nov. 19, 2021.)

28-18-17. Groundwater protection requirements for waste-retention lagoons or ponds and waste treatment facilities. (a) The provisions of this article of the department's regulations shall not apply to any permitted waste-retention lagoon or pond or waste treatment facility that was in existence on March 16, 2007 or that the secretary approved for construction before March 16, 2007, unless information becomes available showing that the waste-retention lagoon or pond or the waste treatment facility presents an imminent threat to public health or the environment.

(b)(1) The provisions of this article of the department's regulations shall not apply to any existing or proposed waste-retention lagoon or pond or waste treatment facility located at a confined feeding facility if all of the following conditions are met:

(A) The confined feeding facility existed on July 1, 1994.

(B) The operator registered the confined feeding facility with the secretary before July 1, 1996.

(C) The capacity of the existing or proposed waste-retention lagoon or pond or waste treatment facility is not greater than what was necessary to serve the confined feeding facility as described in the registration application submitted before July 1, 1996.

(D) The separation distance from the bottom of the existing or proposed waste-retention lagoon or pond or waste treatment facility to groundwater is less than 10 feet.

(2) Each operator of a confined feeding facility meeting the requirements of paragraph (b)(1) and proposing to use a waste-retention lagoon or pond or waste treatment facility shall propose site-specific groundwater protection measures for the secretary's consideration for approval.

(c) Each new or expanded portion of a waste-retention lagoon or pond or waste treatment facility other than those described in subsections (a) and (b) shall be located at least 10 feet above the static groundwater level, as measured from the lowest elevation of the finished interior grade of the waste-retention lagoon or pond or the waste treatment facility. Each operator or permit applicant for a confined feeding facility shall notify the department at least two days before performing any site investigations to determine the static groundwater level at the site.

(d) Each operator or permit applicant shall ensure that each liner for a new or expanded portion

of a waste-retention lagoon or pond or waste treatment facility meets the following requirements:

(1) If the new or expanded portion of the waste-retention lagoon or pond or waste treatment facility is not located over the Equus Beds or in a sensitive groundwater area, the materials used for the liner shall have a seepage rate of no more than $\frac{1}{4}$ inch per day.

(2) If the new or expanded portion of the waste-retention lagoon or pond or waste treatment facility is located in a sensitive groundwater area, the materials used for the liner shall have a seepage rate of no more than $\frac{1}{10}$ inch per day.

(3) If the new or expanded portion of the waste-retention lagoon or pond or waste treatment facility is located over the Equus Beds, either an impermeable synthetic membrane liner shall be used or the material used for the liner shall consist of either of the following:

(A) Two or more layers of compacted soil designed to have a seepage rate of no more than $\frac{1}{10}$ inch per day. To demonstrate that this seepage requirement is met, the soil liner seepage rate shall be determined within 12 months of placing the waste-retention lagoon or pond or waste treatment facility into operation. The test method used shall be the whole pond seepage test; or

(B) any material that has been approved through the variance process required by K.A.R. 28-18-15.

(e) Each permit applicant or operator that conducts testing to determine the seepage rate shall submit four paper copies or shall transmit an electronic copy of the test results to the department.

(f) An imminent threat to public health or the environment may be deemed to exist if physical, chemical, biological, or radiological substances or a combination of these substances is released into subsurface waters of the state and results in a concentration or amount of a substance in excess of the numerical criteria designated for aquatic life protection, agricultural use, or public health protection as provided in the "Kansas surface water quality standards: tables of numeric criteria," which is adopted by reference in K.A.R. 28-16-28e. If the background concentration of a substance is naturally occurring and is greater than the numerical criterion, the background concentration shall be considered the criterion. (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, 65-166a, 65-171d, and 65-171h; effective March 16, 2007; amended Nov. 19, 2021.)

Article 18a.—SWINE AND RELATED WASTE CONTROL

28-18a-1. Definitions. The following terms, and abbreviations shall have the following meanings, unless otherwise defined in an individual regulation or unless a different meaning is clear from the context in which it is used. Terms and abbreviations not provided in this article shall have the meanings specified in K.S.A. 65-101 et seq. and amendments thereto; articles 5, 16, 18, and 30; or the clean water act (CWA). If the same word is defined both in Kansas statutes or the regulations of this article and in any federal regulation adopted by reference in these regulations or in state regulations referenced in this article and the definitions are not identical, the definition prescribed in Kansas statutes or the regulations of this article shall control.

(a) “Agronomic application rates” has the meaning specified in K.S.A. 2-3302, and amendments thereto, and is regulated by the secretary of the Kansas department of agriculture.

(b) “Animal unit” has the meaning specified in K.S.A. 65-171d, and amendments thereto.

(c) “Animal unit capacity” has the meaning specified in K.S.A. 65-171d, and amendments thereto.

(d) “Best available technology for swine facilities” has the meaning specified in K.S.A. 65-1,178, and amendments thereto.

(e) “Best management practices for swine facilities” has the meaning specified in K.S.A. 65-1,178, and amendments thereto.

(f) “Certification” means a document issued by the secretary in lieu of a water pollution control permit, indicating that the facility meets applicable animal waste management statutes and regulations and does not represent a significant water pollution potential.

(g) “Change in operation” and “modification” mean any of the following:

(1) Expansion or enlargement of a facility beyond the scope or boundaries established by registration, permit, certification, or approved plans and specifications;

(2) any increase in the animal unit capacity beyond that authorized by a permit or certification; or

(3) a change in construction or operation of a swine facility that affects the collecting, storage, handling, treatment, utilization, or disposal of swine or other process wastes.

(h) “Clean water act” and “CWA” mean the federal water pollution control act, 33 U.S.C. 1251 et seq., as in effect on November 27, 2002.

(i) “Confined feeding facility” has the meaning specified in K.S.A. 65-171d, and amendments thereto.

(j) “Dead swine handling plan” means a written document that identifies the procedures by which the operator of a swine facility shall handle dead swine, to minimize the potential for the generation of nuisance, environmental, or public health threats.

(k) “Department” and “KDHE” mean the Kansas department of health and environment.

(l) “Director” means the director of the division of environment of the Kansas department of health and environment.

(m) “Division” means the division of environment, Kansas department of health and environment.

(n) “Emergency response plan for swine” means a written document that identifies the following procedures to be implemented by the operator of a swine facility if an emergency occurs:

(1) Actions to contain or manage an unauthorized discharge, spill, or release of swine or other process wastes;

(2) notification of the department; and

(3) any actions required to mitigate the adverse effects of an emergency.

(o) “Entity,” for the purposes of these regulations, means a person, individual, association, company, corporation, institution, group of individuals, joint venture, partnership, or federal, state, county, or municipal agency or department.

(p) “Environmental protection agency” and “EPA” mean the United States environmental protection agency.

(q) “Equus Beds,” for the purposes of these regulations, means an aquifer underlying the sections of land listed in the following table:

County	Range	Township	Section
Harvey	01W	22S	06, 07, 18, 19, 30, 31
Harvey	01W	23S	06, 07, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34
Harvey	01W	24S	03, 04, 05, 06, 07, 08, 09, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34
Harvey	02W	22S	All sections
Harvey	02W	23S	All sections
Harvey	02W	24S	All sections
Harvey	03W	22S	All sections

County	Range	Township	Section
Harvey	03W	23S	All sections
Harvey	03W	24S	All sections
McPherson	01W	19S	31, 32, 33, 34, 35
McPherson	01W	20S	02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33
McPherson	01W	21S	05, 06, 07, 18, 19, 30, 31
McPherson	02W	21S	12, 13, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36
McPherson	03W	18S	28, 29, 30, 31, 32, 33
McPherson	03W	19S	04, 05, 06, 07, 08, 09, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34
McPherson	03W	20S	03, 04, 05, 06, 07, 08, 09, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, 35
McPherson	03W	21S	02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36
McPherson	04W	18S	20, 21, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36
McPherson	04W	19S	01, 02, 03, 04, 09, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, 36
McPherson	04W	20S	01, 02, 03, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36
McPherson	04W	21S	01, 02, 03, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, 36
Reno	04W	22S	All sections
Reno	04W	23S	All sections
Reno	04W	24S	All sections
Reno	04W	25S	All sections
Reno	04W	26S	All sections
Reno	05W	22S	All sections
Reno	05W	23S	All sections
Reno	05W	24S	All sections
Reno	05W	25S	All sections
Reno	05W	26S	All sections
Reno	06W	22S	All sections
Reno	06W	23S	All sections
Reno	06W	24S	All sections
Reno	06W	25S	All sections
Reno	06W	26S	All sections
Reno	07W	22S	All sections
Reno	07W	23S	All sections

County	Range	Township	Section
Reno	07W	24S	All sections
Reno	07W	25S	All sections
Reno	07W	26S	All sections
Sedgwick	01E	26S	06, 07, 08, 17, 18, 19, 20
Sedgwick	01W	25S	03, 04, 05, 06, 07, 08, 09, 10, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36
Sedgwick	01W	26S	01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, 32
Sedgwick	01W	27S	05, 06
Sedgwick	02W	25S	All sections
Sedgwick	02W	26S	01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 34, 35, 36
Sedgwick	02W	27S	01
Sedgwick	03W	25S	01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 35, 36
Sedgwick	03W	26S	01, 02, 03, 04, 11, 12

(r) “Existing swine facility” has the meaning specified in K.S.A. 65-1,178, and amendments thereto.

(s) “Federal permit,” “national pollutant discharge elimination system permit,” and “NPDES permit” mean an authorization, license, or equivalent control document issued by the EPA or an approved state to implement the requirements of 40 C.F.R. Parts 122, 123, 124, and 412.

(t) “Food animals” means swine produced for consumption.

(u) “Fur animals” means swine raised for the skin, pelt, or hair.

(v) “Groundwater,” as used in this article, means water located under the surface of the land that is or can be the source of supply for wells, springs, seeps, or streams, or that is held in aquifers. For the purposes of this article, groundwater shall be considered capable of being a source of supply for wells if at least one of the following conditions is met:

(1) The groundwater can be produced at a rate of 10 gallons or more per hour from a borehole with a diameter of nine or fewer inches. In determining the groundwater production rate for an

excavation, borehole, or existing water or monitoring well, the quantity of produced water shall be adjusted for comparison purposes to the surface area of a borehole with a diameter of nine inches.

(2) The groundwater is currently being used within ½ mile of the proposed lagoon, regardless of the rate at which water can be produced.

(3) There is evidence of past groundwater use within ½ mile of the proposed lagoon.

(w) "Habitable structure" has the meaning specified in K.S.A. 65-171d, and amendments thereto.

(x) "Impermeable synthetic membrane liner" means a commercially manufactured membrane liner composed of synthetic materials commonly identified as being plastic, plastic polymer, or other synthetic materials that, when installed, provide for the more stringent of either of the following:

(1) A maximum monitored or calculated seepage rate of 1/64 inch per day; or

(2) the liner manufacturer's criteria for the maximum monitored or calculated seepage rate for the installed membrane liner, expressed in units of volume per unit area per unit of time (gallons per square foot per day).

(y) "Land application" means the distribution of swine or other process wastes onto, or incorporation into, the soil mantle for the purpose of disposal or utilization by crops or vegetation.

(z) "Liner" means any designed barrier in the form of in situ, layer, membrane, or blanket materials utilized or installed to reduce the potential for a significant hydrologic connection between swine or other process wastes that are controlled or retained by swine waste management systems and waters of the state.

(aa) "Manure management plan for swine" means a written document that identifies the procedures by which the operator of a swine facility shall operate, manage, and maintain a swine waste management system. This plan shall describe the methods for the handling and either disposal or utilization of all swine or other process wastes generated by the swine facility.

(bb) "Maximum soil liner seepage rate" and "specific discharge" mean the flow rate of water through the liner of a swine waste-retention lagoon or pond and shall be expressed as velocity (distance/time). The maximum seepage rate shall be calculated as $v = k(h/d)$, in which "k" is the hydraulic conductivity (coefficient of permeability) and "(h/d)" is the hydraulic gradient. The hydraulic gradient is the maximum vertical distance "h"

measured from the liquid surface to the liner bottom divided by the thickness of the soil liner "d." When calculating the maximum seepage rate, the maximum design depth, not considering design freeboard, shall be used.

(cc) "Minimum standards of design, construction, and maintenance" means the following:

(1) Effluent standards and limitations;

(2) other performance standards for treatment or utilization; and

(3) other standards of design, construction, and maintenance for confined feeding facilities or swine pollution control systems published by KDHE.

(dd) "Monitoring" means all procedures using any of the following methods:

(1) Either systematic inspection or collection and analysis of data on the operational parameters of a swine facility or swine pollution control system; or

(2) the systematic collection and analysis of data on the quality of the swine or other process wastes, groundwater, surface water, or soils on or in the vicinity of the swine facility or swine pollution control system.

(ee) "National pollutant discharge elimination system" and "NPDES" mean the national system for the issuance of permits under 33 U.S.C. section 1342, and shall include any state or interstate program that has been approved by the EPA administrator, in whole or in part, pursuant to 33 U.S.C. section 1342.

(ff) "Nutrient management plan" means a written document that identifies the practices and procedures that the operator of a swine facility that is required to obtain a federal permit plans to use to operate and maintain the swine waste management and pollution control system and to manage the handling, storage, utilization, and disposal of wastes generated by the swine facility.

(gg) "Nutrient utilization plan for swine" means a written document, on a form prescribed by the secretary of the Kansas department of agriculture, addressing site-specific conditions for the land application of manure, wastewater, and other nutrient sources from swine facilities, at agronomic application rates.

(hh) "Odor control plan for swine" means a written document for swine facilities that describes site-specific and facility-specific design considerations, operational activities and procedures, maintenance activities and procedures, and management practices to be employed to

minimize the potential for or limit odors from a swine facility, swine waste management, or swine pollution control system.

(ii) "Oil or gas well" shall have the meaning assigned to the term "well" in K.S.A. 55-150, and amendments thereto.

(jj) "Pleasure animals," as used in this article, means swine that are not produced for consumption or their skin, pelts, or hair.

(kk) "Point source" has the meaning specified in K.A.R. 28-16-28b.

(ll) "Pollution" has the meaning specified in K.S.A. 65-171d, and amendments thereto.

(mm) "Precipitation runoff" means the rainwater or the meltwater that is derived from snow, hail, sleet, or other forms of atmospheric precipitation and that flows by gravity over the surface of the land.

(nn) (1) "Process wastes" means any of the following:

(A) Excrement from swine, wastewater, or swine carcasses;

(B) precipitation that comes into contact with any manure, litter, bedding, or other material used in or resulting from the production of swine;

(C) spillage or overflow from watering systems;

(D) wastes from washing, cleaning, or flushing pens, barns, manure pits, equipment, trucks, trailers, or other associated swine facilities;

(E) wastes from washing swine or spraying swine for cooling;

(F) wastes from dust control;

(G) boiler blowdown and water softener regenerate wastes;

(H) precipitation runoff from confinement, loading, and unloading areas;

(I) spillage of feed, swine wastes, or any other process wastes described in this regulation;

(J) discharges from land application fields that occur during application;

(K) precipitation runoff from land application fields, if liquid or concentrated liquid wastes are applied during frozen, snow-covered, or saturated soil conditions without approval by the department;

(L) raw, intermediate, or finished materials associated with wastes or contaminated storm water runoff from swine waste or dead swine composting operations; or

(M) flows or runoff from waste storage areas.

(2) Process wastes shall not include swine wastes spilled by trucks transporting livestock on city, township, county, state, or federal streets, roads, or highways.

(oo) "Public livestock market" has the meaning specified in K.S.A. 47-1001, and amendments thereto. For the purposes of these regulations, this term shall include public livestock markets where federal veterinary inspections are regularly conducted.

(pp) "Registration" means any required fee and the properly completed and executed documents designated by the division and any additional required documents or information necessary for determining the need for a water pollution control permit.

(qq) "Salt solution mining well" has the meaning specified in K.S.A. 55-1,120, and amendments thereto.

(rr) "Secretary" means the secretary of the Kansas department of health and environment.

(ss)(1) "Sensitive groundwater areas," for the purpose of these regulations, means aquifers generally comprised of alluvial aquifers, the area within the boundaries of the Equus Beds groundwater management district no. 2 (GMD #2), and the dune sand area located south of the great bend of the Arkansas River. Each sensitive groundwater area shall be any section of land listed in "Kansas sensitive groundwater areas for wastewater lagoons," prepared by KDHE and dated January 1, 2005, which is adopted by reference in K.A.R. 28-16-160.

(2) Any operator proposing a new swine waste-retention lagoon or pond or expansion of an existing swine waste-retention lagoon or pond may request that the director make a site-specific sensitive groundwater area determination. The request shall be made in writing to the director. The request shall contain supporting data and information and an explanation of why the area in question should not be considered to be a sensitive groundwater area, for the purpose of these regulations.

(tt) "Sewage" has the meaning specified in K.S.A. 65-164, and amendments thereto.

(uu) "Significant water pollution potential" means any of the following, as determined by the secretary:

(1) A swine feeding operation that utilizes structures designed and constructed to collect, control the flow of, and direct swine or other process wastes, tanks, manure pits, or other structures designed and constructed to collect or store swine or other process wastes, waste-retention lagoons or ponds, waste treatment facility or facilities, or a swine waste management system;

(2) lots, pens, or concentrated feeding areas with creeks, streams, intermittent waterways, or any other conveying channel or device that has the potential to carry pollutants to waters of the state running through or proximate to the lots, pens, or concentrated feeding areas;

(3) any operation that cannot retain or control swine or other process wastes on the operator's facility or property, or adjacent property without the owner's permission; or

(4) a swine feeding operation determined to practice improper collection, handling, or disposal of swine or other process wastes that have the potential to degrade or impair the quality of any waters of the state.

(vv) "Surface waters," for water quality purposes, has the meaning specified in K.A.R. 28-16-28b.

(ww) "Suspend" and "suspension," as used in this article, mean, respectively, to abrogate temporarily and the temporary abrogation of a water pollution control permit or certification issued to a swine facility.

(xx) "Swine facility" has the meaning specified in K.S.A. 65-1,178, and amendments thereto.

(yy) "Swine facility closure plan" means a written document that identifies the practices and procedures that the operator of a swine facility is required to follow when closing the facility to protect public health and safety and the environment, and to prevent the escape of swine or other process wastes from the facility.

(zz) "Swine operator" means an individual, association, company, corporation, municipality, group of individuals, joint venture, partnership, a state or federal agency or department, or any business owning, leasing, or having charge or control of one or more swine facilities.

(aaa) "Swine pollution control system" means any land, structures, or practices utilized for the collection, containment, storage, distribution, land application, or disposal of swine or other process wastes generated by swine facility operations. This term shall include any of the following:

(1) Site grading to divert extraneous, uncontaminated precipitation runoff around the swine facility;

(2) structures designed and constructed to collect, control the flow of, and direct swine or other process wastes;

(3) vegetation cover utilized for controlling erosion or for filtering swine or other process wastes;

(4) tanks, manure pits, or other structures de-

signed and constructed to collect or store swine or other process wastes;

(5) waste-retention lagoons or ponds;

(6) land used for the application, utilization, or disposal of swine or other process wastes; and

(7) waste treatment facilities.

(bbb) "Swine waste management system" is as defined in K.S.A. 65-1,178, and amendments thereto.

(ccc) "Swine waste-retention lagoon or pond" has the meaning specified in K.S.A. 65-1,178, and amendments thereto.

(ddd) "Variance" means the secretary's written approval or permit authorizing a proposed action that knowingly results in a lack of conformity with one or more provisions of these regulations or the minimum standards of design, construction, and maintenance. Each variance authorized by the secretary shall be deemed to protect public health and the environment and to comply with the intent of these regulations and with federal NPDES permit requirements.

(eee) "Waste management plan" means a written document that identifies the practices and procedures that the operator of a swine facility not required to obtain a federal permit plans to use to operate and maintain the swine waste management and pollution control system and to manage the handling, storage, utilization, and disposal of wastes generated by the swine facility.

(fff) "Waste-retention lagoon or pond" means excavated or diked structures, or natural depressions provided for or used for the purpose of containing or detaining swine or other process wastes. Discharges from waste-retention lagoons or ponds shall not be allowed, except as authorized by a water pollution control permit.

(ggg) "Waste treatment facilities" means structures or devices that collect, store, stabilize, treat, or otherwise control pollutants, so that after the discharge, disposal, or land application of treated wastes, water pollution will not occur, and public health and the waters of the state will be protected.

(hhh) "Water pollution control permit" and "permit" mean an authorization, license, or equivalent control document issued by the secretary. This term shall not include any document that has not yet been the subject of final action by the secretary.

(iii) "Water quality standards" means the Kansas surface water quality standards as specified in K.A.R. 28-16-28b through K.A.R. 28-16-28g.

(jjj) "Water well" has the meaning specified in K.S.A. 82a-1203, and amendments thereto.

(kkk) “Waters of the state” has the meaning specified in K.S.A. 65-161, and amendments thereto.

(lll) “Whole pond seepage test” means a measurement of the evaporation from, and the change in water level of the waste-retention lagoon, pond, or structure, or swine waste-retention lagoon, pond, or structure using either of the following:

(1) Any method that meets the requirements specified in “standards for measuring seepage from anaerobic lagoons and manure storages,” which is adopted by reference in K.A.R. 28-18-1; or

(2) any equivalent method approved by the secretary.

(mmm) “Wildlife refuge” has the meaning specified in K.S.A. 65-171d, and amendments thereto. (Authorized by K.S.A. 2005 Supp. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2005 Supp. 65-166a, K.S.A. 65-171a, K.S.A. 2005 Supp. 65-171d, K.S.A. 65-171h, 65-1,178, 65-1,179, 65-1,181, 65-1,182, 65-1,183, 65-1,184, 65-1,187, 65-1,189, 65-1,190 and 65-1,188; effective Jan. 15, 1999; amended March 16, 2007.)

28-18a-2. Registration and application requirements. (a) Each entity proposing the construction, modification, or expansion of an unregistered swine facility, public livestock market, collection center, or transfer station, and each swine operator of an existing unregistered swine facility, public livestock market, collection center, or transfer station shall submit a registration form for the facility to the secretary, if any of the following conditions is met:

(1) The proposed or existing unregistered facility has an animal unit capacity of 300 or more animal units.

(2) The proposed or existing unregistered facility presents a significant water pollution potential as defined in K.A.R. 28-18a-1.

(3) The entity or swine operator is required by statute to obtain a permit for the facility.

(4) The entity or swine operator elects to register the facility in order to obtain a permit or certification, even though there is no requirement to obtain a permit or certification.

(b) Each registration form that any entity or swine operator submits to the secretary shall be accompanied by the required \$25 fee.

(c) Each entity proposing the construction, modification, or expansion of a swine facility, public livestock market, collection center, transfer

station, or truck-washing facility for animal wastes and each swine operator of an unpermitted swine facility, public livestock market, collection center, transfer station, or truck-washing facility for animal wastes shall submit a permit application for the facility to the secretary if any of the following conditions is met:

(1) The proposed or existing unpermitted facility presents a significant water pollution potential as defined in K.A.R. 28-18a-1.

(2) The entity or swine operator is required by statute to obtain a permit.

(3) The entity or swine operator proposing the construction, modification, or expansion of the facility or the swine operator of a facility that is not required to obtain a permit elects to obtain a permit.

(d) Each application that any entity or swine operator submits to the secretary shall be accompanied by the permit fee required pursuant to K.A.R. 28-16-56d.

(e) Each entity or swine operator proposing the construction, modification, or expansion of a swine facility and each swine operator of an unpermitted swine facility that is required by statute or regulation to obtain a federal permit shall apply to the secretary for a federal permit.

(f)(1) Each swine operator or entity proposing either the construction, modification, or expansion of a swine facility, swine waste management system, or swine pollution control system that is required to submit a registration form or apply for a permit shall not initiate construction until the swine operator or entity has obtained either of the following:

(A) The secretary’s written approval of the application, construction plans, specifications, and waste management plan, for each facility or system that the entity or swine operator proposes to be constructed, modified, or expanded; or

(B) a certification, issued by the secretary, for each facility or system that the entity or swine operator proposes to be constructed, modified, or expanded.

(2) Each swine operator or entity that is proposing the construction, modification, or expansion of a swine facility, swine waste management system, or swine pollution control system required to have a permit and that undertakes the construction, modification, or expansion before the issuance of a new or modified permit by the secretary shall be deemed to be undertaking the construction solely at the risk of the swine operator or entity.

(3) Before each swine operator or entity proposing the construction, modification, or expansion of a swine facility, swine waste management system, swine pollution control system, public livestock market, collection center, transfer station, or truck-washing facility for animal wastes that is required to have a permit or certification begins the operation of the new, modified, or expanded portion of a swine facility, swine waste management system, swine pollution control system, public livestock market, collection center, transfer station, or truck-washing facility for animal wastes, the swine operator or entity shall obtain a new or modified permit or certification issued by the secretary.

(4) Before each swine operator or entity proposing the construction, modification, or expansion of a swine facility, swine waste management system, swine pollution control system, public livestock market, collection center, transfer station, or truck-washing facility for animal wastes that is required to have a permit or certification begins the stocking of a new, modified, or expanded portion of a swine facility, swine waste management system, swine pollution control system, public livestock market, collection center, transfer station, or truck-washing facility for animal wastes at levels above the capacity authorized in the current permit or certification, the swine operator or entity shall obtain a new or modified permit or certification issued by the secretary. (Authorized by K.S.A. 2003 Supp. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2003 Supp. 65-166a, K.S.A. 2003 Supp. 65-171d, and K.S.A. 65-1,179; effective Jan. 15, 1999; amended March 16, 2007.)

28-18a-3. Separation distance requirements. (a) Separation distances between confined feeding facilities and any habitable structure, wildlife refuge, or city, county, state or federal park shall conform to the provisions and requirements of K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, secs. 1,15, and 18 and amendments thereto [K.S.A. 1998 Supp. 65-1, 192 and 65-1,194 and amendments thereto].

(b) The swine operator shall provide to the department any information required to ascertain the distance to the nearest habitable structure or determine which habitable structure is the nearest to the proposed or existing confined feeding facility.

(c) The construction of a new swine facility or expansion of an existing swine facility shall comply

with the separation distance requirements related to the 100-year floodplain, surface water bodies, private drinking water wells in active use, and publicly owned drinking water wells in active use, pursuant to L. 1998, ch. 143, secs. 4 and 18, and amendments thereto [K.S.A. 1998 Supp. 65-1,180 and 65-1,194, and amendments thereto]. The reference to any freshwater reservoir or pond pursuant to L. 1998, ch. 143, sec. 2, and amendments thereto [K.S.A. 1998 Supp. 65-178, and amendments thereto], shall refer only to a freshwater reservoir or pond for which a swine operator has charge or control.

(d) Each swine facility required to have a nutrient utilization plan shall comply with the separation distance requirements related to the sites utilized for the land application of swine or other process wastes, and the presence of any habitable structure, wildlife refuge, or city, county, state or federal park, pursuant to L. 1998, ch. 143, secs. 6, 15 and 18, and amendments thereto [K.S.A. 1998 Supp. 65-1,182, 65-1,192, and 65-1,194, and amendments thereto].

(e) When the animal unit capacity of a confined feeding facility is comprised of swine, in addition to other animals or fowl, the swine-specific separation distance requirements related to any habitable structure, wildlife refuge, or city, county, state or federal park shall be applied only to the animal unit capacity of the swine facility operation. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, K.S.A. 65-171h, and L. 1998, ch. 143, secs. 4, 6, 15, and 18 [K.S.A. 1998 Supp. 65-1,180, 65-1, 182, 65-1,192, and 65-1,194]; effective Jan. 15, 1999.)

28-18a-4. Filing of applications and payment of fees. (a) Each applicant for a swine facility permit shall submit the application required by K.A.R. 28-16-59 or K.S.A. 65-1,178 and amendments thereto, as applicable.

(b) In order for the department to provide adequate public notice regarding a permit for any proposed new construction or proposed new expansion of a swine facility, each applicant for a swine facility permit shall provide to the secretary the name and mailing address of each of the following:

(1) The United States post office or offices serving the immediate area of the swine facility; and

(2) each owner of a habitable structure or any property located within one mile of the swine facility perimeter, pursuant to K.S.A. 65-171d and amendments thereto.

(c) In addition to the application requirements of K.A.R. 28-16-59, for any new construction or new expansion of a swine facility, each applicant for a swine facility permit shall submit the following information:

(1) A map identifying the location and layout of the swine facility or the swine facility perimeter;

(2) a map identifying the location of any habitable structure or city, county, state, or federal park within one mile of the swine facility or the swine facility perimeter;

(3) a map identifying the location of any wildlife refuge within 16,000 feet of the swine facility or the swine facility perimeter;

(4) a map identifying all water wells on the swine facility property;

(5) a map identifying any streams and bodies of surface water within one mile of the swine facility or the swine facility perimeter;

(6) for swine facilities that utilize a swine waste-retention lagoon or pond, any information that the applicant possesses indicating the presence of any unplugged oil, gas, or salt solution mining wells located at the proposed or existing swine facility;

(7) a waste management plan for any swine facility whose operator is not required to obtain a federal permit;

(8) for swine facilities with an animal unit capacity of 1,000 animal units or more if the swine at the swine facility are not owned by the operator of the swine facility, a copy of the executed contract between the swine operator and the owner of the swine, specifying responsibility for management of the manure and wastewater generated at the swine facility; and

(9) for swine facilities with an animal unit capacity of 1,000 animal units or more, the following information:

(A) A manure management plan;

(B) a nutrient utilization plan that meets the requirements of the Kansas department of agriculture, if the swine facility applies manure or wastewater to land;

(C) an emergency response plan;

(D) an odor control plan;

(E) a dead swine handling plan;

(F) a nutrient management plan;

(G) a groundwater monitoring plan, if required;

(H) a closure plan, if required; and

(I) for swine facilities with an animal unit capacity of 3,725 animal units or more, financial assurance for closure of the swine facility and closure of the swine waste-retention lagoons or ponds.

(d)(1) If swine facilities adjoin and have a common swine waste management system or if swine facilities do not adjoin but have a common swine waste management system, the swine facilities shall be classified as one swine facility.

(2) If swine facilities do not adjoin and do not have a common swine waste management system or if swine facilities adjoin but do not have a common swine waste management system, the swine facilities shall be classified as separate swine facilities.

(e) Each applicant for a swine facility permit shall submit the application fee required by K.A.R. 28-16-56d.

(f) Each applicant shall sign the permit application as required by 40 C.F.R. 122.22, as adopted by reference in K.A.R. 28-18-4. (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, 65-166a, 65-171d, 65-171h, 65-1,179, 65-1,181, 65-1,184, 65-1,187, 65-1,188, 65-1,189, and 65-1,190; effective Jan. 15, 1999; amended March 16, 2007; amended Aug. 6, 2021.)

28-18a-5. Transfer of a permit or certification. (a) The automatic transfer of a permit shall be prohibited. Each swine operator wanting to transfer a water pollution control permit of a confined feeding facility shall make application consistent with the provisions of the regulations in this article.

(b) The automatic transfer of a certification shall be prohibited. Each swine operator wanting to transfer a certification for a confined feeding facility shall register with the department, in accordance with this article.

(c) The existing permit or certification shall remain in effect until the department authorizes the transfer by letter or reissues the permit or certification. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective Jan. 15, 1999.)

28-18a-6. Development of a draft permit. Development of each draft permit shall be consistent with the requirements of K.A.R. 28-16-60. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective Jan. 15, 1999.)

28-18a-7. Public notice of permit actions and public hearings. (a) Public notice of permit actions and public hearings shall be consistent with the requirements of K.A.R. 28-16-61. Public hearings scheduled by the department shall address only those matters for which the secretary has authority.

(b) A swine operator proposing either new construction of a swine facility or new expansion of an existing swine facility shall meet the following requirements:

(1) Publish a single notice of application in the official county newspaper and in a newspaper regularly published and generally circulated serving the county and general area of the proposed or existing swine facility, notifying the public of the proposal. If the official county newspaper is regularly published and generally circulated throughout the county and general area of the proposed or existing swine facility, a single notice in the official county newspaper shall be adequate. If a proposed or existing facility site is within one mile of an adjoining county, a single notification shall also be provided in the official newspaper serving the adjoining county.

(A) Publication of the notice in the newspaper or newspapers by the swine operator shall be made before the department can place the permit on public notice in the Kansas register. The operator shall be responsible for the cost of publication in the newspaper or newspapers.

(B) The notice that the swine operator shall publish in the newspaper or newspapers shall contain the information pursuant to L. 1998, ch. 143, sec. 3, and amendments thereto [K.S.A. 1998 Supp. 65-1,179 (c), and amendments thereto].

(2) Notify the department verbally or by facsimile within two working days after the date of publication of the notice in the newspaper or newspapers to confirm that the notice has been published. Within 20 calendar days following the

date of publication, the operator shall provide the department a publisher's affidavit of publication or certified copy of the publication. The processing of the permit shall be terminated by the department until the operator provides the publisher's affidavit or certified copy of the publication.

(3) Provide a copy of the notice to be published in the newspaper or newspapers to owners of habitable structures located within the prescribed separation distance for the swine facility. The notification shall be provided before the department places the permit on public notice in the Kansas register. The notice shall be provided by certified mail. The swine operator shall provide proof of this notification to the department within 20 calendar days of the notice being mailed.

(4) Provide a copy of the notice to be published in the newspaper or newspapers to the county commission representing the county in which the swine facility is or will be located. In addition, a copy of the notice shall be directed to the mayor of each municipality whose municipal boundary is located three miles or less from the swine facility or facility perimeter. Notification shall be made by certified mail before the department places the permit on public notice in the Kansas register. The swine operator shall provide proof of this notification to the department within 20 calendar days of the date the notice is mailed.

(c) Owners of habitable structures located within the applicable separation distance pertaining to habitable structures and either a proposed new swine facility or the proposed expansion of an existing swine facility that seek a public hearing shall meet the following requirements:

(1) Request a public hearing either before or during the public comment period established in the public notice published in the Kansas register by the department;

(2) request a public hearing in conformance with the provisions set forth in the public notice and shall also include the mailing address and telephone number of the habitable structure owner; and

(3) provide proof, upon request and in a form satisfactory to the department, of ownership of the habitable structure. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and L. 1998, ch. 143, sec. 3 [K.S.A. 1998 Supp. 65-1,179]; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-171d, as amended

by L. 1998, ch. 143, sec. 1, K.S.A. 65-171h, and L. 1998, ch. 143, sec. 3; [K.S.A. 1998 Supp. 65-1,179] effective Jan. 15, 1999.)

28-18a-8. Permit; terms and conditions.

(a) The terms and conditions of all permits shall be consistent with the requirements of K.A.R. 28-16-62, as appropriate.

(b)(1) Swine waste management and pollution control systems shall be designed, constructed, operated, and maintained in a manner that prevents pollution of waters of the state.

(2) Each operator of a swine waste management and pollution control system for a swine facility with an animal unit capacity of 1,000 or more shall ensure that the swine waste management and pollution control system is designed, constructed, operated, and maintained to prevent the discharge of swine or other process wastes to surface waters of the state. Any operator of a swine waste management and pollution control system may discharge the following to surface waters of the state, whenever precipitation events, either chronic or catastrophic, cause an overflow from a swine waste management or pollution control system designed, constructed, operated, and maintained to contain all swine and other process wastes:

(A) Swine or other process wastes; and

(B) the direct precipitation and the runoff from a 25-year, 24-hour precipitation event for the location of the swine facility.

(3)(A) Except as provided in paragraph (b)(3)(B), each swine waste management and pollution control system for any swine facility with an animal unit capacity of 999 or less shall be designed, constructed, operated, and maintained to prevent the discharge of swine or other process wastes to surface waters of the state as required in paragraph (b)(2).

(B) Any operator of a swine waste management and pollution control system for a swine facility with an animal unit capacity of 999 or less may discharge swine waste or other process wastes to surface waters of the state, consistent with the requirements of K.A.R. 28-16-28b through K.A.R. 28-16-28g, K.A.R. 28-16-57a, and K.A.R. 28-16-62, as appropriate, when specifically authorized by a permit.

(c) For each emergency or accidental discharge, overflow, or unplanned release of swine or other process wastes, each swine operator shall report the incident to the department within two hours of discovery. Each operator shall report any emer-

gency, spill, accidental discharge, overflow, or unplanned release associated with swine or other process wastes to the director, using the telephone numbers provided by the department. Each operator shall submit a written report to the department within three days of the incident.

(d) Each swine operator shall retain a copy of the current permit issued by the secretary at the site office for the facility or at a central records location.

(e) Each swine operator shall be responsible for advising the secretary within 60 days of any changes in mailing address or telephone number regarding the facility or designated facility contact.

(f) Each swine operator shall operate the facility in a manner to minimize or prevent any discharge that is in violation of the permit or that has a potential to adversely affect human health or the environment.

(g) Each swine operator shall, at all times, properly operate and maintain the swine waste management and pollution control system and any related appurtenances that are installed or utilized by the swine operator to achieve compliance with the conditions of the permit.

(h) Each operator of a swine facility with an animal unit capacity of 1,000 or more shall notify the department whenever the swine operator does not own all the swine at the swine facility, pursuant to K.S.A. 65-1,181, and amendments thereto.

(i) Each operator of a swine facility with an animal unit capacity of 1,000 or more shall notify the department before the operator sells or gives manure or wastewater to a person that is not employed by the swine facility and whenever disposal is by means other than land application on areas covered by the approved nutrient utilization plan for the swine facility. When the approved manure management plan for the swine facility addresses the requirements in K.S.A. 65-1,181 and amendments thereto, notification to the department shall not be required.

(j) Each operator of a swine facility with an animal unit capacity of 1,000 or more who land applies manure or wastewater shall comply with the nutrient utilization plan approved by the Kansas department of agriculture, pursuant to K.S.A. 65-1,182, and amendments thereto.

(k) Each operator of a swine facility with an animal unit capacity of 1,000 or more who land applies manure or wastewater and is required to develop and to implement a nutrient utilization plan, as prescribed by the secretary of the Kansas

department of agriculture, shall file the plan and any amendments to the plan with KDHE.

(l) Each operator of a swine facility required to develop a swine facility closure plan or a swine waste-retention lagoon or pond closure plan, or both, shall comply with each plan, as approved by the secretary. The operator shall amend each plan whenever warranted by changes in the facility or in other conditions affecting the facility, pursuant to K.S.A. 65-1,189, and amendments thereto.

(m) Each swine facility that is required to be permitted by the department and that has an animal unit capacity of 1,000 or more shall be staffed by a department-certified operator or an operator in training. (Authorized by K.S.A. 2005 Supp. 65-171d, K.S.A. 65-1,181, 65-1,183, and 65-1,184; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2005 Supp. 65-166a, K.S.A. 2005 Supp. 65-171d, K.S.A. 65-171h, K.S.A. 65-1,181, 65-1,182, 65-1,183, 65-1,184, 65-1,185; effective Jan. 15, 1999; amended March 16, 2007.)

28-18a-9. Certification; terms and conditions. (a) Each swine operator shall comply with all conditions, requirements, limitations, and operating provisions stipulated in the certification.

(b) Operation of a swine facility in violation of any conditions, requirements, limitations, and operating provisions of a certification, or in a manner that represents a significant water pollution potential, shall result in the revocation of the certification and any appropriate enforcement action. If a significant water pollution potential exists, as defined in K.A.R. 28-18-1, the swine operator shall apply for a permit. (Authorized by K.S.A. 2003 Supp. 65-171d; implementing K.S.A. 65-164, 65-165, and K.S.A. 2003 Supp. 65-171d; effective Jan. 15, 1999; amended March 16, 2007.)

28-18a-10. Permits; monitoring and reporting. (a) Any monitoring and reporting required by the department in the terms and conditions of a permit, certification, order, directive, or consent agreement shall be conducted consistent with the provisions of K.A.R. 28-16-63, as appropriate.

(b) The emergency or accidental discharge, overflow, or unplanned release of swine or other process wastes into surface waters of the state shall be reported to the department, pursuant to K.A.R. 28-16-27, within two hours of discovery. Each operator shall report any emergency, spill, accidental discharge, overflow, or unplanned re-

lease associated with swine or other process wastes to the department using telephone numbers as provided by the department. Each operator shall submit a written report to the department within three days of the incident.

(c) Any analysis required by a permit, certification, order, directive, or consent agreement of the department shall be performed in accordance with the provisions of 40 C.F.R. Part 136, as in effect on July 1, 1998, or as approved by the department.

(d) Each analysis shall be performed by a laboratory that has been certified by the department pursuant to K.S.A. 65-1711, and amendments thereto, or as approved by the department.

(e) 40 C.F.R. Part 136, as in effect on July 1, 1998, is adopted by reference. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective Jan. 15, 1999.)

28-18a-11. Confined feeding facilities; federal requirements. For the purpose of issuing federal permits and administering NPDES program requirements, the following definitions and provisions, as in effect on July 1, 2006 and as amended by 72 fed. reg. 40250 on July 24, 2007, are hereby adopted by reference:

(a) The concentrated animal feeding operation exclusions specified in 40 C.F.R. 122.3(e) and 40 C.F.R. 122.3(f);

(b) the provisions addressing concentrated animal feeding operations specified in 40 C.F.R. 122.23(b), (c), and (e), and 122.42(e);

(c) except for 40 C.F.R. 412.32, 412.44, and 412.46, the provisions addressing effluent limitations for concentrated animal feeding operations specified in 40 C.F.R. Part 412. (Authorized by K.S.A. 2006 Supp. 65-171d; implementing K.S.A. 65-165, K.S.A. 2006 Supp. 65-166a, K.S.A. 2006 Supp. 65-171d; effective Jan. 15, 1999; amended March 16, 2007; amended Jan. 4, 2008.)

28-18a-12. Design and construction of swine waste management and swine pollution control systems. (a) If a swine facility represents a significant water pollution potential or if the swine operator of the swine facility is required by statute or regulation to obtain a permit, as de-

terminated by the secretary, the swine operator shall provide a swine waste management or pollution control system that is designed in accordance with the minimum standards of design, construction, and maintenance and is constructed and operated in accordance with construction plans, specifications, and either a waste management plan or nutrient management plan approved by the secretary. If site topography, operating procedures, experience, and other available information indicate that more than the minimum standards of design, construction, and maintenance are required to effect adequate water pollution control, additional provisions may be required. Each applicant shall ensure that any new construction or new expansion of a swine facility, swine waste management system, or swine pollution control system meets the requirements of the "minimum standard of design, construction, and maintenance," as defined in K.A.R. 28-18a-1.

(b) The swine operator shall not initiate operation of any new swine facility, new swine waste management system, or new swine pollution control system, or expanded portions of any existing swine facility, existing swine waste management system, or existing swine pollution control system, until after issuance of the new or modified permit by the secretary. Initiation of construction before the issuance of a new or modified permit by the secretary shall be deemed to be solely at the risk of the swine operator.

(c) For the purpose of these regulations, each reference to a professional engineer or consultant shall be deemed to designate an individual offering a service for a fee for the design of a swine facility, swine waste management system, or swine pollution control system, exclusive of the nutrient utilization plan, soil or cropping consultations, hydrologic work involved in conducting hydrologic or geologic investigations, or in the siting, design, or construction of groundwater monitoring wells. Each reference to a professional engineer shall be deemed to designate an individual licensed to practice engineering in Kansas by the Kansas state board of technical professions.

(d) Consultants that prepare plans and specifications for the new construction or new expansion of swine facilities that are submitted to comply with statutes and regulations shall provide KDHE with documentation that adequate general commercial liability insurance coverage addressing errors and omissions in the design plans and specifications has been obtained and is in effect.

(e) (1) Each operator shall initiate any proposed new construction or new expansion of a swine facility that has been approved by the secretary and for which the required permit or permit modification has been issued, within two years after the date on which the permit or permit modification is effective or pursuant to the requirements of the permit issued by the secretary. Each operator shall complete any proposed new construction or new expansion of a swine facility that has been approved by the secretary and for which the required permit or permit modification is issued, within three years after the date on which the permit or permit modification is effective or as required by the permit issued by the secretary.

(2) Failure to initiate the approved construction or expansion within two years and to complete the approved construction or expansion within three years after the effective date of the permit or permit modification shall void the secretary's approval of the construction plans, specifications, and other associated plans. If phased construction is proposed, the initiation and completion of construction shall conform to the schedule stipulated by the secretary.

(3) If the approval becomes void, the permit or permit modification shall remain in effect for the term of the permit, but the operator shall re-submit the construction plans, specifications, and other associated plans to the secretary for review and consideration for approval before initiating the construction or expansion of the swine facility.

(f) Neither the approval of construction plans, specifications, or other required plans, nor the issuance of a permit or certification by the secretary shall prohibit the secretary from taking any enforcement action if the swine waste management or pollution control system fails to protect the waters of the state, meet any specified effluent criteria, or comply with state surface water quality standards. In addition, the secretary's approval of the plans or the secretary's issuance of a permit or certification shall not constitute a defense by the operator regarding violation of any statute, regulation, permit condition, or requirement.

(g) A new swine facility, swine waste management system, or swine pollution control system shall not be built in any stream, river, lake, reservoir, or water bodies meeting the definition of jurisdictional wetlands and consistent with the definition of "surface waters" in K.A.R. 28-16-28b.

(h) Each operator, when directed by the secretary, shall notify the department a minimum of

two days before performing any soil sample collection activities or liner integrity testing.

(i) There shall be no deviation from plans and specifications submitted to and approved by the secretary, unless amended plans and specifications showing proposed changes have been submitted to the department and approved by the secretary.

(j) Each construction plan shall indicate the location of any active, abandoned, or plugged water, oil, gas, or salt solution mining well within 600 feet of any planned location for a swine waste-retention lagoon or pond. If the operator is unable to confirm the exact location of any well or wells, the construction plan shall contain a note indicating the potential for the well or wells to be located in the vicinity of any proposed swine waste-retention lagoon or pond. Each active, abandoned, or plugged water, oil, gas, or salt solution mining well that is encountered during construction and that was not identified or located on the construction plan shall be reported to the department within 48 hours of discovery. Construction activities that would impact the well or wells or that would be in the immediate vicinity of the well or wells shall be immediately terminated until the secretary determines that the appropriate steps, including plugging the well, have been taken to protect public health and the environment.

(k) Following the completion of the proposed construction or proposed expansion, if requested by the secretary, each swine operator shall certify that the swine waste management system or swine pollution control system, or both, were constructed in accordance with the plans approved by the secretary. If the swine operator utilized a professional engineer or consultant to monitor the construction of the swine waste management system or swine pollution control system, or both, then the certification shall also be signed by the professional engineer or the consultant who monitored the construction or installation of each system, including any swine waste-retention lagoon or pond liner. The certification shall be based on actual observations during construction and any field or laboratory data developed during or following construction. The certification shall be maintained on-site or at a central records location and shall be made available to the department, along with any supporting information, upon request. (Authorized by K.S.A. 2005 Supp. 65-171d and K.S.A. 65-1,181; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2005 Supp. 65-171d, and K.S.A. 65-1,181; effective Jan. 15, 1999; amended March 16, 2007.)

28-18a-13. Manure management plan for swine. (a) A manure management plan shall be developed and implemented for any proposed new swine facility, proposed expansion of an existing swine facility, or existing swine facility with an animal unit capacity of 1,000 or more, pursuant to L. 1998, ch. 143, sec. 5, and amendments thereto [K.S.A. 1998 Supp. 65-1,181 and amendments thereto]. When submitting manure management plans to the department for approval, each swine operator shall submit at least four copies of the plan.

(b) The manure management plan shall describe the methods for, and shall account for, the disposal of all swine or other process wastes generated by the swine facility. The plan shall include a description of the following:

(1) The source or sources and volume of swine or other process wastes generated by the swine facility;

(2) the method for collecting the swine or other process wastes by the swine facility;

(3) the manner in which the swine or other process wastes shall be directed to any treatment or storage system;

(4) a description of each treatment system utilized;

(5) a description of each storage system utilized;

(6) the location of any sites, including the legal description, where land application of swine or other process wastes will take place;

(7) the method of ultimate disposal or utilization of the swine or other process wastes; and

(8) the procedures to be employed and the information to be retained and provided, pursuant to L. 1998, ch. 143, sec. 5, and amendments thereto [K.S.A. 1998 Supp. 65-1,181, and amendments thereto], if swine or other process waste is to be sold or given to a person not employed by the facility and is to be disposed of by means other than land application on areas covered by the facility nutrient utilization plan.

(c) Each swine facility required to develop and implement a manure management plan shall amend the plan and submit the plan to the department for approval whenever specifically directed by the department or whenever warranted by one or more of the following:

(1) Changes in operation of the swine facility;

(2) a change or modification in the swine waste management or pollution control system; or

(3) other conditions affecting the swine facility, waste management system, or pollution control system.

(d) Whenever the operator of a swine facility required to develop a manure management plan does not own all the swine at the facility, the operator shall provide, as a part of the manure management plan, a copy of the executed contract with the owner of the swine that specifies responsibility for management of the swine or other process wastes, pursuant to L. 1998, ch. 143, sec. 5, and amendments thereto [K.S.A. 1998 Supp. 65-1,181 and amendments thereto].

(e) The manure management plan and any associated records, data, or other information shall be retained at the facility's site office, in a manner that is accessible to inspection by representatives of the department. The operator shall retain, at the facility's site office, the current and previous three years' versions of the plan and any associated records, data, or other information. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, K.S.A. 65-171h, and L. 1998, ch. 143, secs. 5 and 14 [K.S.A. 1998 Supp. 65-1,181 and 65-1,191]; effective Jan. 15, 1999.)

28-18a-14. Nutrient utilization plan for swine. (a) A nutrient utilization plan shall be developed and implemented for each proposed new swine facility, proposed expansion of an existing swine facility, or existing swine facility with an animal unit capacity of 1,000 or more that applies swine or other process wastes to the land, pursuant to L. 1998, ch. 143, sec. 6, and amendments thereto [K.S.A. 1998 Supp. 65-1,182, and amendments thereto]. When submitting nutrient utilization plans to the department, each swine operator shall submit at least five copies of the plan.

(b) Each swine facility required to develop and implement a nutrient utilization plan shall amend the plan and submit the plan to the department whenever specifically directed by the department or whenever warranted by one or more of the following:

- (1) Changes in operation of the swine facility;
- (2) a change or modification in the swine waste management or pollution control system; or
- (3) other conditions affecting the swine facility, waste management system, or pollution control system.

(c) The nutrient utilization plan and any associated records, data, or other information shall be

retained at the facility's site office, in a manner that is accessible to inspection by representatives of the department. The operator shall retain, at the facility's site office, the current and previous five years' versions of the plan and any associated records, data, or other information. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and L. 1998, ch. 143, sec. 5 [K.S.A. 1998 Supp. 65-1,181]; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, K.S.A. 65-171h, and L. 1998, ch. 143, secs. 3, 5, 6, 9, and 14 [K.S.A. 1998 Supp. 65-1,179, 65-1,181, 65-1,182, 65-1,185, and 65-1,191]; effective Jan. 15, 1999.)

28-18a-15. Odor control plan for swine.

(a) An odor control plan shall be developed for each proposed new swine facility, proposed expansion of an existing swine facility, or existing swine facility with an animal unit capacity of 1,000 or more, pursuant to L. 1998, ch. 143, sec. 11, and amendments thereto [K.S.A. 1998 Supp. 65-1,187, and amendments thereto]. When submitting odor control plans to the department for approval, each swine operator shall submit at least four copies of the plan.

(b) Each swine facility required to develop and implement an odor control plan shall amend the plan and submit the plan to the department for approval, whenever specifically directed by the department or whenever warranted by one or more of the following:

- (1) Changes in operation of the swine facility;
- (2) a change or modification in the swine waste management or pollution control system; or
- (3) other conditions affecting the swine facility, waste management system, or pollution control system.

(c) Each operator of a swine facility shall implement the approved odor control plan consistent with any schedule of compliance established in the permit.

(d) The type and layout design of any vegetative screening utilized to minimize or control odors shall be approved by the department.

(e) The odor control plan and any associated records, data, or other information shall be retained at the facility's site office, in a manner that is accessible to inspection by representatives of the department. The operator shall retain, at the

facility's site office, the current and previous three years' versions of the plan and any associated records, data, or other information. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and L. 1998, ch. 143, sec. 11 [K.S.A. 1998 Supp. 65-1,187]; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, K.S.A. 65-171h, and L. 1998, ch. 143, secs. 11 and 14; [K.S.A. 1998 Supp. 65-1,187 and 65-1,191]; effective Jan. 15, 1999.)

28-18a-16. Emergency response plan for swine. (a) An emergency response plan shall be developed and implemented for each proposed new swine facility, proposed expansion for an existing swine facility, or existing swine facility with an animal unit capacity of 1,000 or more, pursuant to L. 1998, ch. 143, sec. 8, and amendments thereto [K.S.A. 1998 Supp. 65-1,184, and amendments thereto]. When submitting emergency response plans to the department for approval, each swine operator shall submit at least four copies of the plan.

(b) The emergency response plan for swine shall include, at a minimum, the following information:

(1) A description of potential sources, activities, and materials that may reasonably be expected to or could potentially result in pollution from an unauthorized discharge, spill, or release of swine or other wastes from the swine facility;

(2) a map, indicating an outline of the potential discharge area of the facility and existing structural control measures designed to contain or control any unauthorized discharge, spill, or release of swine or other process wastes from the swine facility;

(3) a spill contingency plan for swine or other process wastes;

(4) procedures for notification of the department;

(5) procedures to mitigate any adverse impacts of the emergency event; and

(6) training requirements for employees or contractors.

(c) Each swine facility required to develop and implement an emergency response plan shall amend the plan and submit the plan to the department for approval, whenever specifically directed by the department or whenever warranted by one or more of the following:

(1) Changes in operation of the swine facility;

(2) a change or modification in the animal or swine waste management system; or

(3) other conditions affecting the swine facility, waste management system, or pollution control system.

(d) The swine operator shall provide for and keep current the training of employees and contractors who are responsible for implementing the plan.

(e) The emergency response plan and any associated records, data, or other information shall be retained at the facility's site office, in a manner that is accessible to inspection by representatives of the department. The operator shall retain, at the facility's site office, the current and previous three years' versions for the plan and any associated records, data, or other information.

(f) A copy of the emergency response plan shall be maintained at the facility, in a location readily accessible to all employees or contractors responsible for implementing the plan. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and L. 1998, ch. 143, sec. 8 [K.S.A. 1998 Supp. 65-1,184]; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, K.S.A. 65-171h, and L. 1998, ch. 143, secs. 8 and 14 [K.S.A. 1998 Supp. 65-1,184 and 65-1,191]; effective Jan. 15, 1999.)

28-18a-17. Dead swine handling plan.

(a) A dead swine handling plan shall be developed and implemented for each proposed new swine facility, proposed expansion of an existing swine facility, or existing swine facility with an animal unit capacity of 1,000 or more, pursuant to L. 1998, ch. 143, sec. 17, and amendments thereto [K.S.A. 1998 Supp. 65-1,188, and amendments thereto]. When submitting dead swine handling plans to the department for approval, each swine operator shall submit at least four copies of the plan.

(b) The dead swine handling plan shall include, at a minimum, the following information:

(1) A description of how dead swine are to be handled before disposal, to decrease the possibility of spreading disease and preclude contamination of waters of the state. The description shall address the handling of carcasses associated with both normal mortality and a major disease outbreak or other situation that results in deaths significantly higher than normal mortality;

(2) the method of and location or locations at the facility to be utilized for temporary storage of the swine carcasses;

(3) the ultimate method or methods of disposal that will be utilized for the facility, including burial, rendering, incineration, composting or other methods as approved by the Kansas animal health department;

(4) procedures to be utilized to minimize the potential for pests and odors; and

(5) training requirements for employees and contractors.

(c) Each swine facility required to develop and implement a dead swine handling plan shall amend the plan and submit the plan to the department for approval whenever specifically directed by the department or whenever warranted by one or more of the following:

(1) Changes in operation of the swine facility;

(2) a change or modification in the swine waste management or pollution control system; or

(3) other conditions affecting the swine facility, waste management system, or pollution control system.

(d) The handling of dead swine shall be consistent with the provisions in L. 1998, ch. 143, sec. 17, and amendments thereto. [K.S.A. 1998 Supp. 65-1,188, and amendments thereto]

(e) The operator shall provide for and keep current the training of employees and contractors who are responsible for implementing the plan.

(f) The dead swine handling plan and any associated records, data, or other information shall be retained at the facility's site office, in a manner that is accessible to inspection by representatives of the department. The operator shall retain, at the facility's site office, the current and previous three years' versions of the plan and any associated records, data, or other information.

(g) A copy of the dead swine handling plan shall be maintained at the facility at a location readily accessible to all employees or contractors who are responsible for implementing the plan.

(h) The disposal of dead swine shall be conducted in conformance with the provisions of, and regulations adopted pursuant to, K.S.A. 47-1201, et seq., and amendments thereto. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and L. 1998, ch. 143, sec. 17 [K.S.A. 1998 Supp. 65-1,188]; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997

Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, K.S.A. 65-171h, and L. 1998, ch. 143, secs. 14 and 17 [K.S.A. 1998 Supp. 65-1,191 and 65-1,188]; effective Jan. 15, 1999.)

28-18a-18. Groundwater monitoring for swine facilities. (a) The installation and sampling of groundwater monitoring wells shall be conducted pursuant to L. 1998, ch. 143, secs. 4 and 5, and amendments thereto [K.S.A. 65-1,180 and 65-1,181, and amendments thereto].

(b) Any swine facility shall, when required by the department, provide for the installation and sampling of groundwater monitoring wells or the sampling of existing wells in the vicinity of waste-retention lagoons or ponds, waste treatment systems, land application sites, or other areas either known to be or potentially impacted by swine or other process wastes, or where warranted by groundwater, geologic, or construction conditions.

(c) Where a groundwater monitoring system is required by the department, the proposed location and design of the monitoring wells shall be approved by the department before being constructed.

(d) All water supply or groundwater monitoring wells shall be constructed by a water well contractor or driller licensed in Kansas, in conformance with regulations adopted pursuant to the Kansas groundwater exploration and protection act, K.S.A. 82a-1201 et seq., and amendments thereto.

(e) For the construction of a new swine facility, groundwater monitoring wells shall be sampled and analyzed to establish background concentrations of chemical parameters designated by the department before the facility is populated. For the installation of monitoring wells at existing facilities, each monitoring well shall be monitored within two months of installation to establish a baseline for the chemical parameters designated by the department.

(f) Background, baseline, and other data from monitoring wells shall be maintained for the life of the facility. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 65-169, 65-170, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, K.S.A. 65-171h, and L. 1998, ch. 143, secs. 4 and 5 [K.S.A. 1998 Supp. 65-1,180 and 65-1,181]; effective Jan. 15, 1999.)

28-18a-19. Operation of swine waste management and swine pollution control systems.

(a) Each swine waste management system and swine pollution control system shall be designed, constructed, maintained, and operated to prevent pollution of waters of the state and to protect public health and the environment.

(b) Each swine waste management system and each swine pollution control system shall be operated according to the plans approved by the secretary.

(c) When a liner is installed or constructed, the operator shall maintain the liner to comply with the minimum standards of design, construction, and maintenance. When soil liners are utilized, no trees or other deep-rooted vegetation shall be allowed to grow within 100 feet of the liner. Any mechanical or structural damage to the liner shall be reported to the department within two workdays of identification and shall be repaired in a time frame approved by the secretary and designed to protect public health and the environment.

(d) Each operator shall haul or transport swine or process wastes to land application sites in a manner that prevents loss or spillage during transport.

(e) When land application of swine or other process wastes is practiced, the application shall be conducted at agronomic rates.

(f) Irrigation practices shall be managed to minimize ponding or puddling of swine or other process wastes at the land application site. Irrigation practices shall be managed to ensure that swine or other process wastes are not discharged from the application sites.

(g) Adequate equipment and land application areas shall be available for removal of swine or other process wastes and contaminated storm water runoff from the swine facility to comply with the provisions of the permit and these regulations.

(h) (1) Unless approved in advance by the secretary, liquid waste, concentrated liquid swine waste, or other liquid process waste shall not be land applied when the ground is frozen, snow-covered, or saturated, or during a precipitation event. Land application of swine or other process wastes during these periods may be authorized by the secretary for use in filtering swine or other process wastes from retention structures that are properly operated and maintained and that are in imminent danger of overflow to surface waters of the state due to a chronic or catastrophic precipitation event.

(2) Solid swine or other process wastes may be applied to frozen ground only if the proposed ap-

plication site and practices ensure that the wastes will be retained at the application site.

(i) (1) Each swine operator, as required by the facility permit issued by the secretary, shall conduct sampling and analysis of swine or process wastes or sites utilized for the application of swine or process wastes from confined swine feeding facilities, to determine nutrient and salinity levels, to confirm utilization of the swine or process wastes at agronomic rates, and to ensure that public health and the environment are protected.

(2) (A) Each swine operator of a swine facility with 999 animal units or less shall sample the soil of each field identified in the waste management plan for the swine facility if both of the following conditions are met:

(i) The field is identified by KDHE as located in a sensitive groundwater area or over the Equus Beds.

(ii) The field has received manure or wastewater in one or more of the previous five years.

(B) The sampling and analysis shall be conducted in accordance with the procedures approved by the secretary. The test results shall be sent to the department within 30 days of receipt of the test results.

(3) Each swine operator required to obtain a federal permit shall conduct soil and waste sampling and analysis in accordance with the nutrient management plan. (Authorized by K.S.A. 2005 Supp. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2005 Supp. 65-171d, K.S.A. 65-171h, and K.S.A. 65-1,181; effective Jan. 15, 1999; amended March 16, 2007.)

28-18a-20. Denial, suspension, revocation, or termination of a permit or certification for swine facilities.

(a) A permit or certification may be denied, suspended, revoked, or terminated, pursuant to K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, L. 1998, ch. 143, sec. 16, and amendments thereto [K.S.A. 1998 Supp. 65-171d, K.S.A. 1998 Supp. 65-1,193, and amendments thereto].

(b) A permit or certification may be denied, suspended, revoked, or terminated for any of the following reasons:

(1) Misrepresentation or omission of a significant fact by the swine operator, either in the application for the permit or in information subsequently reported to the department;

(2) improper operation of the confined feeding facility, swine waste management system, or pol-

lution control system, including any land application areas that cause pollution or a public health hazard;

(3) violation of any provision of K.S.A. 65-159 et seq. and amendments thereto, any regulations of article 16 and article 18, or other restrictions set forth in the permit, certification, or waiver; or

(4) failure to comply with an order or modified permit issued by the secretary.

(c) Procedures and provisions for the denial, suspension, revocation, or termination of a permit shall be pursuant to the provisions of K.A.R. 28-16-62.

(d) Any swine operator aggrieved by the denial, suspension, revocation, or termination of a permit or certification may request a hearing in accordance with the provisions of the Kansas administrative procedure act, K.S.A. 77-501 et seq. and amendments thereto.

(e) If a confined feeding facility is required to terminate operations or reduce the number of animal units at the facility, the swine operator may be allowed by the secretary to finish feeding existing swine at the facility at the time of notification by the department, until the facility is permitted or certified, or complies with the provisions of these regulations. However, in no case shall the termination of operations or the reduction of the animal unit number exceed five months from the initial notification to terminate operations by the department. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, K.S.A. 65-171h, and L. 1998, ch. 143, sec. 16 [K.S.A. 1998 Supp. 65-1,193]; effective Jan. 15, 1999.)

28-18a-21. Inspections. (a) Each swine operator shall provide all necessary specialized equipment, clothing, or appurtenances to enable a department inspector to enter the facility for inspection.

(b) Each swine operator that develops or modifies the biosecurity protocols and that requests KDHE conformance with the protocols shall submit a copy of the protocols to the department within 30 days of establishing or modifying the biosecurity protocols.

(c) If any department inspector conducting an inspection of a confined feeding facility complies

with the facility's biosecurity protocol, that inspector shall be allowed to access the animal waste management system to conduct inspections. Biosecurity protocols shall not restrict the reasonable access of any department inspector. (Authorized by K.S.A. 2005 Supp. 65-171d; implementing K.S.A. 65-164, K.S.A. 2005 Supp. 65-171d, and K.S.A. 65-1,191; effective Jan. 15, 1999; amended March 16, 2007.)

28-18a-22. Swine facility closure requirements. (a) Each swine operator of a swine facility permitted by the department shall notify the department of any plans to cease operation of, close, or abandon the swine facility.

(b) Each swine operator shall maintain and comply with a valid water pollution control permit for the swine facility until closure of the swine facility is complete and all materials representing a threat to public health and the environment are removed.

(c)(1) Each permit applicant for each proposed new swine facility or new swine waste-retention lagoon or pond, proposed expansion of an existing swine facility, or proposed expansion of an existing swine waste-retention lagoon or pond shall develop and implement a swine facility closure plan or swine waste-retention lagoon or pond closure plan if either of the following conditions is met:

(A)(i) The new swine facility or expanded swine facility is proposed to have an animal unit capacity of 1,000 or more; and

(ii) the swine facility is proposed to be located over the Equus Beds; or

(B) The new swine facility, existing swine facility, or proposed expanded swine facility will have an animal unit capacity of 3,725 or more.

(2) Each swine operator of any existing swine facility or swine waste-retention lagoon or pond without a current swine facility or swine waste-retention lagoon or pond closure plan shall develop and implement a closure plan for the swine facility or swine waste-retention lagoon or pond if both of the following conditions are met:

(A) The existing swine facility has an animal unit capacity of 1,000 or more.

(B) The existing swine facility is located over the Equus Beds. The swine facility or swine waste-retention lagoon or pond closure plan shall be developed and submitted to the department with the next application for permit renewal or modification for the existing swine facility.

(d) When submitting a swine facility or swine waste-retention lagoon or pond closure plan to

the department, each swine operator shall submit at least four copies of the plan.

(e) A swine facility or swine waste-retention lagoon or pond closure plan shall include, at a minimum, the following:

(1) A description of all swine waste management and swine pollution control system components utilized to contain, control, or store swine or other process wastes at the swine facility;

(2) a description of the procedures to be employed to remove and dispose of swine or other process wastes;

(3) a description of the maintenance, deactivation, conversion, or demolition of all swine waste-retention lagoons or ponds at the swine facility pursuant to K.S.A. 65-1,190, and amendments thereto, or the closure of any swine waste-retention lagoon or pond by one of the following methods:

(A) Removing the berms, and leveling and revegetating the site to provide erosion control;

(B) leaving the structure or structures in place for use as a freshwater farm pond or reservoir;

(C) retaining the structure or structures for future use as a part of a swine waste management or pollution control system; or

(D) using any other method approved by the secretary; and

(4) a description of, and detailed drawings for, the plugging of any water or groundwater monitoring wells at the swine facility.

(f) Each swine operator of a swine facility required to have a swine facility closure plan and a swine waste-retention lagoon or pond closure plan shall amend each plan and submit the amended plans to the department for approval whenever specifically directed by the secretary or whenever warranted by one or more of the following:

(1) Any significant changes in operation of the swine facility;

(2) any significant change or modification in the swine waste management or swine pollution control systems; or

(3) any other significant conditions affecting the swine facility, swine waste management system, or swine pollution control system.

(g) Each operator of a swine facility that is required to develop a swine facility or swine waste-retention lagoon or pond closure plan shall retain the current plan at the site office of the facility or at a central records location, in a manner that is accessible to inspection by representatives of the department.

(h) The closure of a swine facility or swine waste-retention lagoon or pond shall be completed within six months of notification to the department of the proposed closure of the facility or termination of operations.

(i) Each swine operator seeking an extension of time for closure shall submit a written request to the secretary. The request shall detail the reasons for the extension. Only weather conditions or the legal change in ownership of the swine facility shall be grounds for the secretary to consider granting an extension.

(j) If the operator of a swine facility is unwilling or unable to properly close the swine facility, the owner of swine at the swine facility and the property owner shall be responsible for closing the swine facility in accordance with these regulations and in a manner that protects the waters of the state, public health, and the environment. (Authorized by K.S.A. 2005 Supp. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2005 Supp. 65-171d, K.S.A. 65-1,189 and 65-1,190; effective Jan. 15, 1999; amended March 16, 2007.)

28-18a-23. Financial assurance for swine facility closure. (a) On or before July 1, 1999 and annually thereafter before January 1 of each year, each operator of a swine facility with an animal unit capacity of 3,725 or more shall provide evidence, satisfactory to the department, that the operator has the financial ability to cover the cost of closure of the swine facility, as required by the department.

(b) For new construction or new expansion of a swine facility with a proposed animal unit capacity of 3,725 or more, the swine operator shall provide evidence, satisfactory to the department, that the operator has the financial ability to cover the cost of closure of the proposed new construction or expansion at the time the application is submitted to the department for review.

(c) Each operator of a swine facility with an animal unit capacity of 3,725 or more shall submit, as a part of the evidence provided to the department, a detailed written estimate in current dollars of the cost to close the swine facility in a manner acceptable to the department. The estimate shall be prepared by a professional engineer or consultant approved by the department.

(d) Each operator shall develop an estimate of the cost to close the swine facility as follows:

(1) The estimate shall be based on the cost charged by a third party to collect and dispose

of all swine or other process wastes stored or retained at the swine facility, excluding the swine waste-retention lagoons or ponds, at a specifically identified off-site application area.

(2) All waste management and pollution control system components shall be assumed to be at maximum capacity.

(3) The costs attributable to the swine waste-retention lagoons or ponds shall be excluded from the estimate.

(e) Each swine operator shall increase the closure cost estimate and the amount of financial assurance provided if any change in the facility closure plan or in operation increases the maximum cost of closure at any time.

(f) Each swine operator shall provide continuous financial assurance coverage for closure until the department determines the facility closure to be acceptable.

(g) Mechanisms used to demonstrate financial assurance shall ensure that the funds necessary to meet the cost to close the swine facility, pursuant to K.A.R. 28-18-22 (d), are accessible to the department in a timely fashion when needed. In establishing financial assurance for the facility closure, swine operators shall utilize any of the following options:

(1) Trust fund;

(2) surety bond guaranteeing payment or performance;

(3) letter of credit;

(4) insurance;

(5) self-insurance; or

(6) use of multiple mechanisms.

(h) Each operator that utilizes a trust fund shall meet the following requirements.

(1) Provide for a trustee. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement shall be provided to the department.

(2) Provide authority for the department or person authorized by the department to implement the closure to request and obtain from the trustee reimbursement for closure expenditures. Requests for reimbursement shall be granted by the trustee, to the limit of the funds in the trust fund and proper documentation of the incurred costs are provided.

(3) Maintain the trust fund. The operator shall maintain the trust fund until an alternative financial assurance mechanism is approved by the de-

partment and is in place, or shall cease operations and close out the facility before the trust fund is terminated or if the operator is no longer required to demonstrate financial responsibility.

(i) Each swine operator that utilizes a surety bond guaranteeing payment or performance shall meet all of the following requirements:

(1) Obtain a surety bond, with the penal sum of the bond in an amount at least equal to the estimated facility closure cost;

(2) provide the department with a copy of the bond;

(3) obtain the bond from a company that is licensed to issue bonds in Kansas;

(4) provide in the bond that the surety shall become liable on the bond obligation when the operator fails to perform as guaranteed by the bond;

(5) establish a standby trust fund;

(6) provide that payments made under the terms of the bond shall be deposited by the surety directly into the standby trust fund. Payments from the trust fund shall be made by the trustee to the limit of the bond amount when proper documentation of the incurred costs are provided; and

(7) obtain a bond providing that the surety may cancel the bond by sending notice of cancellation by certified mail to the operator and the department at least 120 days in advance of the cancellation. If the surety cancels the bond, the facility shall obtain alternative financial assurance before the cancellation or shall cease operations and close out the facility before the cancellation date of the bond, unless the operator is no longer required to demonstrate financial responsibility.

(j) Each swine operator that utilizes a letter of credit shall meet the following requirements:

(1) Obtain an irrevocable standby letter of credit by which the issuing institution shall be an entity that has authority to issue letters of credit and whose letter of credit operations are regulated by a federal or state agency. The letter of credit shall be in a form that constitutes an unconditional promise to pay and shall be in a form negotiable by the department;

(2) provide the department with a copy of the letter of credit. Information contained in the letter of credit or provided by the operator shall include the name, location, and permit number of the facility and the amount of funds assured;

(3) provide an irrevocable letter of credit issued for a period of at least one year in an amount at least equal to the current cost estimate for closure of the facility. The letter of

credit shall provide that the expiration date shall be automatically extended for a period of at least one year, unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the operator and department 120 days in advance of cancellation. If the letter of credit is canceled by the issuing institution, the owner shall obtain alternative financial assurance before the cancellation or shall cease operations and close out the facility before the cancellation date of the letter of credit, unless the operator is no longer required to demonstrate financial responsibility; and

(4) cancel the letter of credit only if alternative financial assurance, approved by the department, is substituted or if the operator is no longer required to demonstrate financial responsibility.

(k) Each operator that utilizes insurance shall meet all of the following requirements:

(1) Obtain insurance coverage for a period of at least one year in an amount at least equal to the current cost estimate for closure of the facility;

(2) obtain insurance from an insurer authorized to sell insurance in Kansas;

(3) provide the department with a copy of the insurance policy;

(4) ensure that the insurance policy guarantees that funds shall be available to close the facility in the event the operator is unable or unwilling to close the facility in accordance with the facility closure plan approved by the department;

(5) ensure that the insurance policy provides that the insurer is responsible for the payment of the department or person authorized to close the facility. Payments by the insurer for the policy shall be made by the insurer to the limit of the policy amount when proper documentation of the incurred costs are provided;

(6) ensure that the insurance policy provides that the insurer cannot cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the operator and the department 120 days in advance of the cancellation;

(7) if the insurer cancels the policy, obtain alternative financial assurance before the cancellation, or cease operations and close out the facility before the cancellation date of the insurance pol-

icy, unless the operator is no longer required to demonstrate financial responsibility; and

(8) cancel the insurance policy only if alternative financial assurance, approved by the department, is substituted or if the operator is no longer required to demonstrate financial responsibility.

(l) To establish evidence of financial ability for self-insurance, each swine operator shall meet the following requirements:

(1) Submit a financial statement, prepared by a certified public accountant, listing tangible assets and total liabilities of the swine operator. The assets shall not include the value of the swine at the facility. The financial statement shall include a general release, by the swine operator, providing the department with authorization for verification with banks or other financial institutions; and

(2) provide an indication on the financial statement of whether or not the tangible assets, less the total liabilities, are satisfactory to cover the estimated cost of closure. The financial statement shall note the estimated cost of closure utilized.

(m) Each swine operator that utilizes multiple financial assurance mechanisms shall meet the following requirements:

(1) Use only the financial assurance mechanisms provided for in this regulation; and

(2) provide that the total coverage of all the financial mechanisms utilized provides an amount at least equal to the current cost estimate for closure of the facility. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing L. 1998, ch. 143, sec. 12 [K.S.A. 1998 Supp. 65-1,189]; effective Jan. 15, 1999.)

28-18a-24. Financial assurance for swine waste-retention lagoon or pond closure.

(a) Before January 15 each year, each swine operator of a swine facility with an animal unit capacity of 3,725 or more that utilizes swine waste-retention lagoons or ponds shall provide evidence, satisfactory to the department, that the swine operator has the financial ability to cover the cost of closure of the swine waste-retention lagoons or ponds as required by the department.

(b) For new construction or new expansion of a swine facility with a proposed animal unit capacity of 3,725 or more that employs the use of swine waste-retention lagoons or ponds, the swine operator shall provide evidence, satisfactory to the department, that the swine operator has the financial ability to cover the cost of closure of the

proposed swine waste-retention lagoons or ponds at the time the application is submitted to the department for review.

(c) Each swine operator of a swine facility with an animal unit capacity of 3,725 or more shall submit, as a part of the evidence provided to the department, a detailed written estimate in current dollars of the cost to close the swine waste-retention lagoons or ponds in a manner acceptable to the department. The estimate shall be prepared by a professional engineer or consultant approved by the department.

(d) To estimate the cost to close the swine waste-retention lagoons or ponds, the swine operator shall consider the following:

(1) The cost of the swine waste-retention lagoons or ponds closure by determining the cost of a third party to collect and dispose of all swine or other process wastes stored or retained on-site in the lagoons or ponds at a specifically identified off-site application area; and

(2) all swine waste-retention lagoons or ponds to be 100 percent full, for the purpose of estimating costs.

(e) Each swine operator shall increase the closure cost estimate and the amount of financial assurance provided if changes in the swine facility closure plan addressing the swine waste-retention lagoons or ponds or a change in operation increase the maximum cost of closure at any time.

(f) Each swine operator shall provide continuous financial assurance for the cost of closure until the department determines the closure of the swine waste-retention lagoons or ponds to be acceptable.

(g) Mechanisms used to demonstrate financial assurance shall ensure that the funds necessary to meet the cost to close the swine waste-retention lagoons or ponds required by K.A.R. 28-18a-22 are accessible to the department in a timely fashion when needed. In establishing financial assurance for the swine waste-retention lagoons or ponds closure, swine operators shall utilize one or more of the following options:

(1) Trust fund;

(2) surety bond guaranteeing payment or performance;

(3) letter of credit;

(4) insurance; or

(5) self-insurance.

(h) If a swine operator utilizes a trust fund for financial assurance, the swine operator shall meet following requirements:

(1) The swine operator shall provide for a trustee that shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement shall be provided to the department.

(2) The swine operator shall provide authority for the department or person authorized by the department to implement the closure to request and obtain reimbursement for closure expenditures from the trustee. Requests for reimbursement shall be granted by the trustee, to the limit of the funds in the trust fund and with proper documentation of the incurred costs.

(3) The swine operator shall maintain the trust fund until an alternative financial assurance mechanism is approved by the department and is in place or shall cease operations and close the swine waste-retention lagoons or ponds before the trust fund is terminated, unless the operator is no longer required to demonstrate financial assurance.

(i) If a swine operator utilizes a surety bond guaranteeing payment or performance for financial assurance, the swine operator shall meet the following requirements:

(1) Obtain a surety bond, with the penal sum of the bond in an amount at least equal to the estimated swine waste-retention lagoons or ponds closure cost;

(2) provide the department with a copy of the bond;

(3) obtain the bond from a company that is licensed to issue bonds in Kansas;

(4) provide in the bond that the surety becomes liable on the bond obligation when the swine operator fails to perform as guaranteed by the bond;

(5) establish a standby trust fund;

(6) provide that payments made under the terms of the bond shall be deposited by the surety directly into the standby trust fund. Payments from the trust fund shall be made by the trustee to the limit of the bond amount when proper documentation of the incurred costs is provided; and

(7) obtain a bond providing that the surety may cancel the bond by sending notice of cancellation by certified mail to the swine operator and the department at least 120 days in advance of the cancellation. If the surety cancels the bond, the swine operator shall obtain alternative financial assurance before the cancellation or shall cease operations and close the swine waste-retention lagoons or ponds before the cancellation date of the bond,

unless the swine operator is no longer required to demonstrate financial assurance.

(j) If a swine operator utilizes a letter of credit for financial assurance, the swine operator shall meet the following requirements:

(1) Obtain an irrevocable standby letter of credit by which the issuing institution shall be an entity that has authority to issue letters of credit and whose letter of credit operations are regulated by a federal or state agency. The letter of credit shall be in a form that constitutes an unconditional promise to pay and shall be in a form negotiable by the department;

(2) provide the department with a copy of the letter of credit. Information contained in the letter of credit or provided by the swine operator shall include the name, location, and permit number of the swine facility and the amount of funds assured;

(3) provide an irrevocable letter of credit issued for at least one year in an amount at least equal to the current cost estimate for closure of the swine waste-retention lagoons or ponds. The letter of credit shall provide that the expiration date shall be automatically extended for at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the swine operator and department at least 120 days in advance of cancellation. If the letter of credit is canceled by the issuing institution, the swine operator shall obtain alternative financial assurance before the cancellation or shall cease operations and close the swine waste-retention lagoons or ponds before the cancellation date of the letter of credit, unless the swine operator is no longer required to demonstrate financial assurance; and

(4) cancel the letter of credit only if alternative financial assurance, approved by the secretary, is substituted or if the swine operator is no longer required to demonstrate financial assurance.

(k) If a swine operator utilizes insurance for financial assurance, the swine operator shall meet the following requirements:

(1) Obtain insurance coverage for at least one year in an amount at least equal to the current cost estimate for closure of the swine waste-retention lagoons or ponds;

(2) obtain insurance from an insurer authorized to sell insurance in Kansas;

(3) provide the department with a copy of the insurance policy;

(4) ensure that the insurance policy guarantees that funds shall be available to close the swine

waste-retention lagoons or ponds if the swine operator is unable or unwilling to close the swine waste-retention lagoons or ponds in accordance with the swine facility closure plan approved by the department;

(5) ensure that the insurance policy provides that the insurer is responsible for the payment of the department or person authorized to close the swine waste-retention lagoons or ponds. Payments by the insurer for the policy shall be made to the limit of the policy amount when proper documentation of the incurred costs is provided;

(6) ensure that the insurance policy shall provide that the insurer shall not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the swine operator and the department at least 120 days in advance of the cancellation;

(7) if the insurer cancels the policy, obtain alternative financial assurance before the cancellation or cease operations and close the swine waste-retention lagoons or ponds before the cancellation date of the insurance policy, unless the swine operator is no longer required to demonstrate financial assurance; and

(8) cancel the insurance policy only if alternative financial assurance, approved by the department, is substituted or if the swine operator is no longer required to demonstrate financial assurance.

(l) If a swine operator utilizes self-insurance for financial assurance, the swine operator shall meet the following requirements:

(1) Submit a financial statement, prepared by a certified public accountant, listing tangible assets and total liabilities of the swine operator. The assets shall not include the value of the swine at the swine facility. The financial statement shall include a general release by the swine operator, providing the department authorization for verification with banks or other financial institutions; and

(2) provide an indication on the financial statement of whether the tangible assets, less the total liabilities, are satisfactory to cover the estimated cost of closure. The financial statement shall note the estimated cost of closure utilized.

(m) Each swine operator that utilizes multiple financial assurance mechanisms shall meet both of the following requirements:

(1) Use only the financial assurance mechanisms specified in this regulation; and

(2) submit documentation to the department that confirms that the total coverage of all the financial mechanisms utilized provides an amount at least equal to the current cost estimate for closure of the swine waste-retention lagoons or ponds. (Authorized by and implementing K.S.A. 65-171d and 65-1,190; effective Jan. 15, 1999; amended Nov. 19, 2021.)

28-18a-25. Variance of specific requirements. (a) Each swine operator seeking a variance from the regulations in this article shall submit to the department a written request for variance from the regulations in this article and shall provide information relevant to the request.

(b) Each request shall specifically set forth why the variance should be considered and how the requested variance addresses the intent of this article.

(c) A variance may be granted by the department whenever site-specific conditions or proposals are in keeping with the purpose and intent of this article. (Authorized by and implementing K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, and K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; effective Jan. 15, 1999.)

28-18a-26. Requirements for swine facility operator certification. Each operator of a swine facility with an animal unit capacity of 1,000 or more that is required to have a permit shall obtain a swine waste management and swine pollution control system operator certificate. Each swine operator that desires or is required to obtain a swine facility operator certificate shall meet the following requirements:

(a) Each applicant shall be a swine facility operator who maintains or supervises a swine waste management or swine pollution control system.

(b) Each swine facility operator shall submit a complete application and the appropriate fee to the department. The application shall be received by the department at least two weeks before the scheduled examination date. Late applications shall not be accepted for the scheduled examination date.

(c) If an applicant provides false information on an application, the applicant shall not be accepted for examination, and the fee submitted with the application shall not be returned to the applicant. The applicant shall be notified of the decision denying

acceptance for examination and shall not be allowed to take the examination for two consecutive years. (Authorized by K.S.A. 2003 Supp. 65-171d, K.S.A. 65-1,183, and K.S.A. 65-4512; implementing K.S.A. 65-1,183, 65-1,186, and 65-4512; effective Jan. 15, 1999; amended March 16, 2007.)

28-18a-27. Eligibility for swine facility operator certification. (a) Each applicant for certification shall meet the following requirements:

(1) Submit a completed application, on forms provided by the department and with the appropriate fees; and

(2) complete six hours of training, as approved by the department.

(b) Certified swine operators shall acquire a minimum of six hours of approved training every five years as a condition for renewal of the certification. (Authorized by K.S.A. 65-4512, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and L. 1998, ch. 143, sec. 7 [K.S.A. 1998 Supp. 65-1,183]; implementing L. 1998, ch. 143, secs. 7 and 10 [K.S.A. 1998 Supp. 65-1,183 and 65-1,186]; effective Jan. 15, 1999.)

28-18a-28. Swine facility operator certification examinations. (a) Each applicant for a swine facility operator certificate shall pass a written examination administered by the department or a designee.

(b) Each swine operator who seeks to obtain a swine facility operator certification and who has allowed a certificate to lapse for a period of two years or more shall submit an application and fee, receive at least six hours of approved training, and pass a written examination. (Authorized by K.S.A. 65-4512, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and L. 1998, ch. 143, sec. 7 [K.S.A. 1998 Supp. 65-1,183]; implementing L. 1998, ch. 143, secs. 7 and 10 [K.S.A. 1998 Supp. 65-1,183 and 65-1,186]; effective Jan. 15, 1999.)

28-18a-29. Noncertified operators responsible for the operation and management of swine facilities, swine waste management systems, or pollution control systems. (a) Each noncertified operator of a new or proposed swine facility with an animal unit capacity of 1,000 or more shall notify the department within 30 days of the initial start-up of the facility that the operator is the designated facility operator. The operator shall be designated as an "operator in training (OIT)." The operator shall obtain six hours of approved training and shall obtain the certification

within one year of the notification to KDHE. Each noncertified operator of a swine facility with an animal unit capacity of 1,000 or more shall notify the department within 30 days of assuming responsibility for the operation of the swine facility.

(b) The OIT designation shall be renewed only once, if it is demonstrated to the department that the operator is attending training sessions or studying correspondence courses in preparation to retake the examination. (Authorized by K.S.A. 65-4512, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and L. 1998, ch. 143, sec. 7 [K.S.A. 1998 Supp. 65-1,183]; implementing L. 1998, ch. 143, secs. 7 and 10 [K.S.A. 1998 Supp. 65-1,183 and 65-1,186]; effective Jan. 15, 1999.)

28-18a-30. Issuance of certificate of competency. (a) Upon fulfillment of the requirements in K.A.R. 28-18-26, 28-18-27, and 28-18-28, a certificate shall be issued to the applicant. The certificate shall designate that the swine operator is qualified to operate and maintain a swine facility, swine waste management system, and pollution control system. This certificate shall be effective for five years from the date of issuance.

(b) A certificate may be issued, through reciprocity, to an applicant who has been issued a swine operator, or equivalent, certification in another state when the department determines that the standards for training and certification meet or exceed the requirements of the department. The swine operator shall provide any information that the department requires to determine whether or not a certificate may be issued through reciprocity. (Authorized by K.S.A. 65-4504, K.S.A. 65-4512, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and L. 1998, ch. 143, sec. 7 [K.S.A. 1998 Supp. 65-1,183]; implementing L. 1998, ch. 143, secs. 7 and 10 [K.S.A. 1998 Supp. 65-1,183 and 65-1,186]; effective Jan. 15, 1999.)

28-18a-31. Swine operator certification fees. (a) Fees for swine operator certification shall be as follows:

- (1) Operator in training (one-year certificate)..... No charge
- (2) operator in training (renewal of one year).....\$5.00
- (3) examination fee.....\$25.00
- (4) five-year renewal of certificates.....\$50.00
- (5) reinstatement of lapsed certificate up to one year after renewal date.....\$70.00
- (6) reinstatement of lapsed certificate between one and two years after renewal date.....\$80.00
- (7) reciprocity fee.....\$65.00

(b) Fees from applicants who are ineligible to take the certification examination, for reasons other than providing false information on the application, shall be returned.

(c) Fees from applicants who fail the examination shall not be returned.

(d) Each operator required to retake an examination shall submit a new application and fee.

(e) Fees for department-sponsored training sessions shall be established by the department. (Authorized by K.S.A. 65-4504, K.S.A. 65-4512, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and L. 1998, ch. 143, sec. 7 [K.S.A. 1998 Supp. 65-1,183]; implementing L. 1998, ch. 143, secs. 7 and 10 [K.S.A. 1998 Supp. 65-1,183 and 65-1,186]; effective Jan. 15, 1999.)

28-18a-32. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and L. 1998, ch. 143, sec. 5 [K.S.A. 1998 Supp. 65-1,181]; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, K.S.A. 65-171h, and L. 1998, ch. 143, sec. 5 [K.S.A. 1998 Supp. 65-1,181]; effective Jan. 15, 1999; revoked March 16, 2007.)

28-18a-33. Groundwater protection requirements for swine waste-retention lagoons or ponds, swine waste management systems, and waste treatment facilities. (a) The provisions of this article shall not apply to any permitted swine waste-retention lagoon or pond or swine waste management system, or waste treatment facility that is in existence or that the secretary approved for construction before the effective date of this regulation, unless information becomes available showing that the swine waste-retention lagoon or pond, swine waste management system, or waste treatment facility presents an imminent threat to public health or the environment.

(b)(1) The provisions of this article shall not apply to any existing or proposed swine waste-retention lagoon or pond, swine waste management system, or waste treatment facility located at a swine facility if all of the following conditions are met:

(A) The swine facility existed on July 1, 1994 and is still in existence as defined in K.S.A. 65-1,178, and amendments thereto.

(B) The swine operator registered the swine facility with the secretary before July 1, 1996.

(C) The capacity of the existing or proposed swine waste-retention lagoon or pond, swine waste management system, or waste treatment facility is no larger than that necessary to serve the facility as described in the registration application submitted before July 1, 1996.

(D) The separation distance from the bottom of the existing or proposed swine waste-retention lagoon or pond, swine waste management system, or waste treatment facility to groundwater is less than 10 feet.

(2) Each operator of a swine facility meeting the requirements of paragraph (b)(1) of this regulation and proposing to use a swine waste-retention lagoon or pond, swine waste management system, or waste treatment facility shall propose site-specific groundwater protection measures for the secretary's consideration for approval.

(c) Each new or expanded portion of a swine waste-retention lagoon or pond, swine waste management system, or waste treatment facility other than those described in subsections (a) and (b) shall be located a minimum of 10 feet above the static groundwater level, as measured from the lowest elevation of the finished interior grade of the swine waste-retention lagoon or pond, the swine waste management system, or the waste treatment facility. Each swine operator of or permit applicant for a swine facility shall notify the department at least two days before performing any site investigations to determine the static groundwater level at the site.

(d) Each swine operator or permit applicant shall ensure that each liner for a new or expanded portion of a swine waste-retention lagoon or pond, swine waste management system, or waste treatment facility meets the following requirements:

(1) If the new or expanded portion of the swine waste-retention lagoon or pond, swine waste management system, or waste treatment facility is not located over the Equus Beds or in a sensitive groundwater area, the materials used for the liner shall have a seepage rate of no more than 1/4 inch per day, except as required by K.S.A. 65-1,181, and amendments thereto.

(2) If the new or expanded portion of the swine waste-retention lagoon or pond, the swine waste management system, or the waste treatment facility is located in a sensitive groundwater area, the materials used for the liner shall have a seepage rate of no more than 1/10 inch per day.

(3) If the new or expanded portion of the swine waste-retention lagoon or pond, the swine waste management system, or the waste treatment facility is located over the Equus Beds, either an impermeable synthetic membrane liner shall be used or the material used for the liner shall consist of either of the following:

(A) Two or more layers of compacted soil designed to have a seepage rate of no more than 1/10 inch per day. To demonstrate that this seepage requirement is met, the soil liner seepage rate shall be determined within 12 months of placing the swine waste-retention lagoon or pond, the swine waste management system, or the waste treatment facility into operation. The test method used shall be the whole pond seepage test; or

(B) any material that has been approved through the variance process in accordance with K.A.R. 28-18a-25.

(e) Each permit applicant or operator that conducts testing to determine the seepage rate shall submit four copies of the test results to the department.

(f) For the purpose of K.A.R. 28-18a-1 through K.A.R. 28-18a-33, an imminent threat to public health or the environment may be deemed to exist if physical, chemical, biological, or radiological substances or a combination of these substances is released into subsurface waters of the state and results in a concentration or amount of a substance in excess of the numerical criteria designated for aquatic life protection, agricultural use, or public health protection as provided in the "Kansas surface water quality standards: table of numeric criteria," dated December 6, 2004, which is adopted by reference in K.A.R. 28-16-28e. If the background concentration of a substance is naturally occurring and is greater than the numerical criterion, the background concentration shall be considered the criterion. (Authorized by K.S.A. 2005 Supp. 65-171d; implementing K.S.A. 65-164, K.S.A. 2005 Supp. 65-171d, and K.S.A. 65-171h; effective March 16, 2007.)

Article 19.—AMBIENT AIR QUALITY STANDARDS AND AIR POLLUTION CONTROL

AMBIENT AIR QUALITY STANDARDS

28-19-1. (Authorized by K.S.A. 65-3001, 65-3005, 65-3010; effective Jan. 1, 1971; amended Jan. 1, 1972; revoked May 1, 1981.)

28-19-2. (Authorized by K.S.A. 65-3005, 65-3010; effective Jan. 1, 1971; amended Jan. 1, 1972; revoked May 1, 1981.)

28-19-4. (Authorized by K.S.A. 65-3005, 65-3010; effective Jan. 1, 1971; amended Jan. 1, 1972; revoked May 1, 1981.)

GENERAL REGULATIONS

28-19-6. (Authorized by K.S.A. 65-3001, 65-3005, 65-3006, 65-3007, 65-3010; effective Jan. 1, 1971; amended Jan. 1, 1972; revoked May 1, 1981.)

28-19-7. (Authorized by and implementing K.S.A. 1994 Supp. 65-3005; effective Jan. 1, 1971; amended Jan. 1, 1972; amended, E-73-8, Dec. 27, 1972; amended Jan. 1, 1974; amended May 1, 1975; amended, T-84-39, Dec. 21, 1983; amended May 1, 1984; amended, T-85-29, Nov. 14, 1984; amended May 1, 1985; amended May 1, 1988; amended Oct. 16, 1989; amended Nov. 22, 1993; amended Jan. 23, 1995; amended Dec. 8, 1995; revoked Oct. 10, 1997.)

28-19-8. Reporting required. The references in K.A.R. 28-19-9(a) and K.A.R. 28-19-16b to reporting requirements under this regulation, the reference in K.A.R. 28-19-16b to the information required to be included in a permit application by K.A.R. 28-19-8(a), and any other reference in these regulations to the requirements of K.A.R. 28-19-8, shall be interpreted to require compliance with K.A.R. 28-19-300 through K.A.R. 28-19-304. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3005, 65-3007, 65-3010; effective Jan. 1, 1971; amended Jan. 1, 1972; amended, E-73-8, Dec. 27, 1972; amended Jan. 1, 1974; amended May 1, 1975; amended, T-84-39, Dec. 21, 1983; amended May 1, 1984; amended, T-85-29, Nov. 14, 1984; amended May 1, 1985; amended May 1, 1988; amended Oct. 16, 1989; amended Jan. 23, 1995.)

28-19-9. Time schedule for compliance. Except as otherwise noted in specific emission control regulations, compliance with these regulations shall be according to the following schedules: (a) All new air contaminant emission sources or alterations to emission sources that are required to be reported under the provisions of K.A.R. 28-19-8(a) shall be in compliance with all applicable emission control regulations at the time that they go into operation. The department may authorize the operation of a new or altered emission source

for any additional specified time periods that are required to make necessary adjustments on the equipment before compliance can be demonstrated. This authorization shall be granted only at the request of the operator and under conditions that are approved by the department.

(b) Any air contaminant emission source that was operating, under construction or under purchase contract on January 1, 1971, and that has not previously been required to comply with any emission control requirement in these regulations, shall comply with that emission control requirement or those requirements within 180 days after the department notifies the owner or operator that the emission source is required to be reported under the provisions of K.A.R. 28-19-8(a).

(c) The owner or operator of any portable stationary air contaminant emission source that has been issued a permit under K.A.R. 28-19-14 and which is moved to another location within the state shall report the move to the department, in writing, at least 10 days before the source commences operation at the new location. The report shall identify the equipment being moved, describe the old and the new location, indicate the scheduled date that operation of the source at the new location is to begin, and indicate the expected operating period at this location. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3005, 65-3010; effective Jan. 1, 1971; amended, E-73-8, Dec. 27, 1972; amended Jan. 1, 1974; amended May 1, 1975; amended, T-84-39, Dec. 21, 1983; amended May 1, 1984.)

28-19-10. Circumvention of control regulations. (A) No person shall cause or permit the installation or use of any machine, equipment, device or other article, or alter any process in any manner which, without resulting in a reduction of the total amount of contaminants emitted, conceals or dilutes the emission of contaminants which would otherwise violate provisions of these control regulations.

(B) Exception to section A of this regulation may be granted by the department, upon request, provided that such action is intended to convert the physical and/or chemical nature of the contaminant emission and that failure to reduce total contaminant emissions results solely from the introduction of contaminants which are not deemed to be detrimental to the public interest. (Authorized by K.S.A. 1970 Supp. 65-3005, 65-3006, 65-3010; effective Jan. 1, 1971.)

28-19-11. Enforcement discretion due to startup, shutdown, malfunctions, or scheduled maintenance.

(a) An emission source having emissions that are in excess of the applicable emission limitation and standard and result from startup, shutdown, malfunctions, or scheduled maintenance of control or processing equipment and appurtenances may be exempt from enforcement action at the secretary's discretion if both of the following conditions are met:

(1) The person responsible for the operation of the emission source notifies the department of the occurrence and nature of the excess emissions resulting from startup, shutdown, malfunctions, or scheduled maintenance, in writing, within 10 days of discovery of the excess emissions.

(2) Reasonable action is taken regarding the occurrence specified in paragraph (a)(1) to initiate and complete any necessary repairs and place the equipment back in operation as quickly as possible.

(b) Emissions that are in excess of the applicable emission source emission limitation and standard and result from startup, shutdown, or malfunctions shall be evaluated by the secretary for potential enforcement action based on the frequency and severity of the excess emissions.

(c) Emissions that are in excess of the applicable emission source emission limitation and standard and result from scheduled maintenance of control or processing equipment and appurtenances shall be evaluated by the secretary for potential enforcement action based on the following:

(1) The severity of the excess emissions;

(2) any prior approval for scheduled maintenance by the secretary; and

(3) demonstration that the scheduled maintenance cannot be accomplished by maximum reasonable effort, including off-shift labor where required, during periods of shutdown of any related control or processing equipment.

(d) Any exemption granted under this regulation may be rescinded if the secretary obtains additional information and deems enforcement action necessary based upon this information.

(e) Lack of enforcement for excess emissions under this regulation shall not preclude the taking of enforcement action by USEPA or through private citizen lawsuits. (Authorized by K.S.A. 2016 Supp. 65-3005; implementing K.S.A. 65-3006 and K.S.A. 65-3010; effective Jan. 1, 1971; amended Jan. 1, 1972; amended, E-74-7, Jan. 1, 1974; amended May 1, 1975; amended Nov. 14, 2016.)

28-19-12. Measurement of emissions.

(A) The department may require any person responsible for the operation of an emission source to make or have tests made to determine the rate of contaminant emissions from the source whenever it has reason to believe on the basis of estimates of potential contaminant emission rates from the source and due consideration to probable efficiency of any existing control device, or visible emission determinations made by an official observer, that existing emissions exceed the limitations specified in these control regulations. Such tests may also be required pursuant to verifying that any newly installed control device meets performance specifications. If such a test demonstrates that the applicable emission requirement is met, no more than one (1) such test shall be required during any twelve (12) consecutive calendar month period. *Provided, however,* that should the department determine that the test did not represent normal operating conditions or emissions additional tests may be required. Such a requirement shall be considered as an order as provided for in K.S.A. 1970 Supp. 65-3011 and subject to all administrative and legal requirements specified therein.

Required tests shall be conducted in accordance with procedures approved by the director as being in accordance with sound analytical and sampling procedures. Such tests shall be conducted by reputable, qualified individuals, as approved by the department, and a certified written copy of the test results signed by the person conducting the test shall be provided to the department.

(B) The department may conduct tests of emissions of contaminants from any source. Upon written request from the department, the person responsible for the source to be tested shall cooperate with the department in providing all necessary test ports in stacks or ducts and such other safe and proper facilities, exclusive of instruments and sensing devices, as may be reasonably required to conduct the test with due regard being given to expenditures and possible disruption of normal operation of the source. A report concerning the findings of such tests shall be furnished to the person responsible for the source upon request.

(C) The director may require the owner or operator of any emission source which is subject to the provisions of these regulations to install, use, and maintain such stationary monitoring equipment as is required to demonstrate continuing compliance with any applicable emission limitations, and

to maintain records and make reports regarding such measured emissions to the department in a manner and on a schedule to be determined by the director. (Authorized by K.S.A. 1971 Supp. 65-3005, 65-3006, 65-3007, 65-3009, 65-3010; effective Jan. 1, 1971; amended Jan. 1, 1972.)

28-19-13. Interference with enjoyment of life and property. Compliance with the provisions of these emission control regulations (including exemptions included therein) notwithstanding, should it be found after public hearing that any specific emission source is, tends to be, will be, or will tend to be significantly injurious to human health or welfare, animal or plant life, or property or is or will be unreasonably interfering with the enjoyment of life and property of any inhabitant of the state, or will interfere with the attainment or maintenance of any national ambient air quality standard an appropriate order may be issued to require such additional prevention, abatement or control of the emission involved as is necessary to effect the purposes of the enabling act. (Authorized by K.S.A. 65-3001, 65-3002, 65-3005, 65-3011; effective Jan. 1, 1971; amended, E-73-8, Dec. 27, 1972; amended Jan. 1, 1974.)

28-19-14. Permits required. The reference in K.A.R. 28-19-19 to a permit condition under this regulation, the reference in K.A.R. 28-19-31 to a permit issued under this regulation, and any other reference in these rules to a permit under this regulation, shall be interpreted to include permits issued under K.A.R. 28-19-300 through 28-19-304 and K.A.R. 28-19-500 through 28-19-578. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3005, 65-3008; effective, E-78-8, Dec. 27, 1972; effective Jan. 1, 1974; amended, T-84-39, effective Dec. 21, 1983; amended May 1, 1984; amended May 1, 1986; amended May 1, 1987; amended Oct. 16, 1989; amended Jan. 24, 1994; amended Jan. 23, 1995.)

28-19-14a. (Authorized by and implementing K.S.A. 65-3005 and K.S.A. 1984 Supp. 65-3008; effective, T-84-39, Dec. 21, 1983; effective May 1, 1984; amended May 1, 1986; revoked Jan. 23, 1995.)

28-19-14b. (Authorized by and implementing K.S.A. 65-3005 and K.S.A. 1984 Supp. 65-3008; effective, T-84-39, Dec. 30, 1983; effective May 1, 1984; amended T-85-29, Nov. 14, 1984; amended May 1, 1985; revoked Jan. 24, 1994.)

28-19-15. Severability. If any clause, paragraph, subsection or section of these regulations shall be held invalid, it shall be conclusively presumed that the board would have enacted the remainder of these regulations not directly related to such clause, paragraph, subsection or section. (Authorized by K.S.A. 65-3005; effective Jan. 1, 1971.)

NONATTAINMENT AREA REQUIREMENTS

28-19-16. New source permit requirements for designated nonattainment areas. The provisions of K.A.R. 28-19-16 through K.A.R. 28-19-16m shall apply to the construction or major modification of major stationary sources of air pollution emissions located within any area that has been identified as not meeting a national ambient air quality standard for the pollutant for which the source is major, under the procedures prescribed by Section 107(d) of the federal clean air act (42 U.S.C. 7407(d)). (Authorized by and implementing K.S.A. 65-3005, 1984 Supp. 65-3008 and K.S.A. 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981; amended May 1, 1982; amended May 1, 1986.)

28-19-16a. Definitions. The following words and terms when used in K.A.R. 28-19-16 through K.A.R. 28-19-16m shall have the meanings as defined in subsections (a) through (s) of this regulation.

(a) "Actual emissions" means, in regard to determining creditable emissions decreases or increases of a pollutant, the average rate, in tons per year, at which a unit actually emitted the pollutant during a two-year period that precedes the particular date of interest and that is representative of normal source operation. This shall apply unless the department allows the use of a different time period upon a determination that it is more representative of normal source operation. These emissions shall be calculated using the unit's actual operating hours, production rates, and type of materials processed, stored, or combusted during the selected time period. Where specific emission limitations have been established for an individual source under the provisions of K.A.R. 28-19-13, K.A.R. 28-19-16b, the Kansas air quality regulations adopting and implementing 40 CFR §52.21, or any permits issued before May 1, 1983 by the U.S. environmental protection agency under the provisions of federal regulation 40 CFR §52.21(i), as amended at 52 FR 24634, July 1, 1987, effective on July 31, 1987, then actual emissions may be presumed to be equal to

these limitations. For any emissions unit that has not begun normal operations on a date of interest, actual emissions shall mean the potential of the unit to emit on that date.

(b) "Allowable emissions" means the emissions rate of a stationary source calculated by using the following:

(1) the maximum rated capacity of the source, unless the source is subject to federally enforceable limits that restrict the operating rate, hours of operation, or both; and

(2) limitations imposed by this or any other applicable state, federal, or local governmental air pollution control regulation, including those with a future compliance date.

(c) "Begin actual construction" shall have the meaning as defined in K.A.R. 28-19-200(i).

(d) "Building, structure, facility, or installation" shall have the meaning as defined in K.A.R. 28-19-200(j).

(e) "Commence," as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary state, local, and federal approvals or permits, and either has:

(1) begun, or caused to begin, a continuous program of actual on-site construction of the source to be completed within a reasonable time; or

(2) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(f) "Construction" means any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit, that would result in a change in actual emissions.

(g) "Contemporaneous emission increase or decrease" as used in K.A.R. 28-19-16a, paragraph (s) (2) means emission changes from the source that have occurred since December 21, 1976 or since the most recent permit was issued under the provisions of K.A.R. 28-19-16b, whichever date is the most recent.

(h) "Creditable emission decrease" means the amount by which the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions. No emission decrease shall be creditable if the secretary has previously given credit for it in a permit issued under the provisions of this regu-

lation that is presently in effect or if the decrease has been previously credited by the secretary as a result of actions initiated under the provisions of other state, federal, or local governmental air pollution control regulations. Credit shall be allowed only for decreases in emissions that have approximately the same qualitative significance for public health and welfare as do those emissions that increase as a result of a particular change.

(i) "Creditable emission increase" means the amount by which a new level of actual emissions exceeds the old level of actual emissions.

(j) "Emissions unit" means any part of a stationary source that emits or would have the potential to emit any pollutant subject to the provisions of this regulation.

(k) "Federally enforceable" shall have the meaning as defined in K.A.R. 28-19-200(ee).

(l) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(m) "Fugitive emissions" shall have the meaning as defined in K.A.R. 28-19-200(ff).

(n) "Implementation plan" means any documents, including state or locally adopted regulations, submitted by a state to the U.S. environmental protection agency as required by the provisions of 42 U.S.C. §7410 and any regulations promulgated by the administrator of the U.S. environmental protection agency pursuant to the provisions of that section. For the purpose of this regulation, a state plan is approved when the administrator has published the approval or conditional approval of the applicable provisions of the plan in the federal register.

(o) "Lowest achievable emission rate" means, for any source, the more stringent emission standard established by the secretary based on either of the following:

(1) the most stringent emissions limitation that is contained in the approved implementation plan of any state for that class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that these limitations are not achievable, or

(2) the most stringent emissions limitation that is achieved in practice by that class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the secretary establish a lower emission rate for a proposed new or modified stationary source that is less stringent than the amount allowable

under an applicable new source standard of performance promulgated by the U.S. environmental protection agency under the provisions of 42 U.S.C. §7411.

(p) "Major modification" means any modification of a major stationary source that would result in a significant net emissions increase of any pollutant subject to the provisions of this regulation.

(q) "Modification" means any physical change in, or change in the method of operation of, a stationary source that would result in an emissions increase of any pollutant subject to the provisions of this regulation. Each net emission increase that is considered significant for volatile organic compounds shall be considered significant for ozone. A physical change or change in the method of operation shall not include:

(1) routine maintenance, repair, and replacement;

(2) use of an alternative fuel or raw material by reason of an order under section 2(a) and (b) of the federal energy supply and environmental coordination act of 1974, or any superseding legislation, or by reason of a natural gas curtailment plan pursuant to the federal power act;

(3) use of an alternative fuel by reason of an order or rule under section 125 of the federal clean air act;

(4) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(5) use of an alternative fuel or raw material by a stationary source that:

(A) the source was capable of accommodating before December 21, 1976, unless the secretary determines that this change would be prohibited under any federally enforceable permit condition that was established after December 21, 1976 according to 40 CFR 52.21, as amended at 52 FR 24634, July 1, 1987, effective on July 31, 1987; or

(B) the source is approved to use under any permit issued under the provisions of this regulation;

(6) an increase in the hours of operation or in the production rate, unless the secretary determines that this change is prohibited under any federally enforceable permit condition that was established after December 21, 1976 according to 40 CFR 52.21, as amended at 52 FR 24634, July 1, 1987, effective on July 31, 1987; or

(7) any change in ownership at a stationary source.

(r) "Major stationary source" means any stationary source of air pollutants that emits, or has the potential to emit, 100 tons per year or more of any

pollutant subject to the provisions of this regulation, or any physical change that would occur at a stationary source not qualifying as a major stationary source under the previous definition, if the change would create a major stationary source by itself. A major stationary source that is considered major for volatile organic compounds shall also be considered major for ozone.

(s) "Net emissions increase" means the amount by which the sum of the following exceeds zero:

(1) any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(2) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change, and are otherwise creditable. (Authorized by K.S.A. 1996 Supp. 65-3005; implementing K.S.A. 1996 Supp. 65-3005, K.S.A. 1996 Supp. 65-3008 and K.S.A. 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981; amended May 1, 1982; amended Oct. 16, 1989; amended Oct. 10, 1997.)

28-19-16b. Permit required. (a) A major stationary source shall not begin actual construction, or major modification unless the owner or operator of the source has been issued a permit approving this activity. The permit shall be signed by the secretary or an authorized representative of the secretary and shall specify the emission rate limitations allowable for the source and any special conditions to be imposed on its operation to insure regulatory compliance. Special operating conditions may include, but need not be limited to, specified periods of operation, restrictions on the amount and types of material to be combusted, stored or processed, control equipment operating and maintenance requirements, emissions monitoring requirements, and restrictions on other source operations.

(b) Application for a permit shall be submitted on forms provided by the secretary or his or her designated representative. The application shall include, in addition to that information required by K.A.R. 28-19-8(a), the information that is required by the secretary to determine the net emissions increase that will occur at the time that the permitted activity is completed. All proposed actions reported under the provisions of K.A.R. 28-19-8 shall be reviewed by the secretary to determine the possible applicability of this regulation to the proposed action and advise the source owner or operator of any need to submit a per-

mit application. The secretary or a designated representative shall advise the applicant of each deficiency in the application or accompanying information. If a deficiency exists, the receipt date of the completed application shall be the date on which the department of health and environment or its designated representative received all required information. (Authorized by and implementing K.S.A. 65-3005, 1984 Supp. 65-3008 and K.S.A. 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981; amended May 1, 1982; amended May 1, 1986.)

28-19-16c. Creditable emission reductions. For the purpose of allowing credit for emissions reductions claimed in relation to the determination of reasonable further progress toward attainment of the national ambient air quality standards required under the provisions of K.A.R. 28-19-16g, the following additional requirements shall apply:

(a) If an existing fuel combustion source commits to switch, at some future date, to a fuel that emits less pollutants, emissions offset credit based upon allowable (or actual) emissions for the fuels involved shall not be allowed unless the source that has committed to the fuel switch has also committed to the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back, at some later date, to a fuel that emits more pollutants. Before the offset credits are given for these proposed fuel switches, the secretary shall ensure that adequate long term supplies of the new fuel are available.

(b) Where emission reduction credits are proposed to result from a shutdown of an existing source or permanently curtailing production or operating hours below baseline levels, these reductions shall not be credited unless the work force to be affected by this action has been notified of the proposed shutdown or curtailment. Source shutdowns or curtailments in production occurring before the completed source application is received by the department of health and environment or its designated representative may not be used for the purpose of establishing offset credits unless the applicant has demonstrated that this curtailment or shutdown occurred after August 7, 1977, and the proposed new source construction, reconstruction or modification is a replacement for the shutdown or curtailment that is proposed to be used to offset the emissions from it.

(c) Emissions reduction credit shall not be allowed for replacing one volatile organic compound with another of less reactivity, except for those compounds listed in Table 1 of the "Recommended Policy on Control of Volatile Organic Compounds" as published on page 35314 of the July 8, 1977 issue of the Federal Register. (Authorized by K.S.A. 65-3005, 65-3008, 65-3010; implementing K.S.A. 65-3005, 65-3008, 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981; amended May 1, 1982.)

28-19-16d. Fugitive emission exemption.

The provisions of K.A.R. 28-19-16b shall not apply to a source or modification of a source that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the source or modification, except for the following source categories:

- (a) Coal cleaning plants (with thermal dryers);
- (b) kraft pulp mills;
- (c) portland cement plants;
- (d) primary zinc smelters;
- (e) iron and steel mills;
- (f) primary aluminum ore reduction plants;
- (g) primary copper smelters;
- (h) municipal incinerators capable of charging more than two hundred and fifty (250) tons of refuse per day;
 - (i) hydrofluoric, sulfuric, or nitric acid plants;
 - (j) petroleum refineries;
 - (k) lime plants;
 - (l) phosphate rock processing plants;
 - (m) coke oven batteries;
 - (n) sulfur recovery plants;
 - (o) carbon black plants (furnace process);
 - (p) primary lead smelters;
 - (q) fuel conversion plants;
 - (r) sintering plants;
 - (s) secondary metal production plants;
 - (t) chemical process plants;
 - (u) fossil-fuel boilers (or combinations thereof) totaling more than 250,000,000 British thermal units per hour heat input;
 - (v) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
 - (w) taconite ore processing plants;
 - (x) glass fiber processing plants;
 - (y) charcoal production plants;
 - (z) fossil fuel-fired steam electric plants of more than 250,000,000 British thermal units per hour heat input; and

(aa) any other stationary source category which, as of August 7, 1980, was being regulated under Section 111 or 112 of the federal Clean Air Act (42 U.S.C. 7411 and 7412). (Authorized by and implementing K.S.A. 65-3005, 1984 Supp. 65-3008 and K.S.A. 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981; amended May 1, 1986.)

28-19-16e. Relaxation of existing emission limitations. At such time as any individual source or modification becomes a major source subject to the provisions of K.A.R. 28-19-16b solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on the hours of operation, then the requirements of K.A.R. 28-19-16 through 28-19-16m shall become applicable to the source or modification as though construction had not yet commenced on the source or modification. (Authorized by K.S.A. 65-3005, 65-3008, 65-3010; implementing K.S.A. 65-3005, 65-3008, 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981.)

28-19-16f. New source emission limits. A permit for major stationary source construction or major modification shall not be issued under the provisions of K.A.R. 28-19-16b unless the emissions resulting from this permitted activity are limited to the lowest achievable emission rate that has been established for the constructed or modified source. For phased construction projects, the determination of lowest achievable emission rate shall be reviewed by the secretary, and modified as appropriate, at the latest reasonable time prior to commencement of construction of each independent phase of the proposed construction or modification. Final determination of compliance with lowest achievable emission rate requirements shall be made by the secretary. (Authorized by K.S.A. 65-3005, 65-3008, 65-3010; implementing K.S.A. 65-3005, 65-3008, 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981; amended May 1, 1982.)

28-19-16g. Attainment and maintenance of national ambient air quality standards. (a) A permit for major stationary source construction or modification, shall not be issued under the provisions of K.A.R. 28-19-16b if emissions from this source would prevent the attainment and maintenance of the national ambient air quality stan-

dards by the date specified in the approved Kansas implementation plan.

(b) Attainment and maintenance of the national ambient air quality standards shall be determined according to compliance with either of the two following requirements:

(1) Reasonable further progress toward attainment of the national ambient air quality standards shall be required. This progress shall be demonstrated when, by the time the newly permitted source is to commence operation, total allowable emissions from:

(A) other existing sources in the identified non-attainment area;

(B) other new or modified sources which are not major stationary sources; and

(C) this proposed source shall be less than the total emissions allowed from sources existing before application for the permit.

(2) Emissions resulting from the proposed new or modified major stationary source shall not cause or contribute to emissions levels which exceed the allowance permitted for the pollutant in the area for all new or modified major stationary sources in the approved plan. (Authorized by and implementing K.S.A. 65-3005, 1984 Supp. 65-3008 and K.S.A. 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981; amended May 1, 1982; amended May 1, 1986.)

28-19-16h. Compliance of other sources. A permit for major stationary source construction or major modification shall not be issued under the provisions of K.A.R. 28-19-16b unless the owner or operator of this source has demonstrated to the secretary that all major stationary sources owned and operated by this person (or by an entity controlling, controlled by, or under common control of this person) in the state of Kansas are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under the federal clean air act and amendments thereto. (Authorized by K.S.A. 65-3005, 65-3008, 65-3010; implementing K.S.A. 65-3005, 65-3008, 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981; amended May 1, 1982.)

28-19-16i. Operating requirements. A constructed or modified major stationary source subject to the provisions of K.A.R. 28-19-16b shall not be operated, except in compliance with the requirements established by the permit issued for

the source. Each permitted physical change in a source that is intended to serve as a replacement unit, and which requires a shakedown period before it can be expected to operate at maximum efficiency, shall be considered operational only after completion of this period, provided that this period shall not exceed 180 days. (Authorized by and implementing K.S.A. 65-3005, 1984 Supp. 65-3008 and K.S.A. 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981; amended May 1, 1982; amended May 1, 1986.)

28-19-16j. Revocation and suspension of permit. Any permit issued under the provisions of K.A.R. 28-19-16b may be suspended or revoked by the secretary upon his or her findings that the owner or operator of such source has failed to comply with any requirement specified in the permit. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3005; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981.)

28-19-16k. Notification requirements. A permit shall not be issued, suspended or revoked under the provisions of K.A.R. 28-19-16b or 28-19-16j unless provision has been made for a public hearing on the matter upon the written request of any person affected by such proposed action. Such request shall be made within thirty (30) days of:

(a) publication of notice in a newspaper, having general circulation in the nonattainment area in which the source is, or will be, located, indicating the nature of the proposal and advising the public of the opportunity to either request a hearing or submit written comments directly to the secretary concerning the proposal;

(b) sending a copy of the public notice to the applicant and to state and local officials and agencies having cognizance over the location where the proposed actions will occur or emissions from it could significantly contribute to levels of air pollution in excess of the national ambient air quality standards; and

(c) sending a copy of the public notice to the regional administrator of the U.S. Environmental Protection Agency. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3005; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981.)

28-19-16l. Failure to construct. Each permit issued for the construction or major modification of a major stationary source under the provisions of K.A.R. 28-19-16b shall become

void if the construction has not commenced within 18 months after the applicant's receipt of such permit or if such construction is discontinued for 18 months or more. The secretary may extend the eighteen (18) month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project, in which case the construction shall be commenced on each phase within eighteen (18) months of the projected and approved commencement date. (Authorized by and implementing K.S.A. 65-3005, 1984 Supp. 65-3008 and K.S.A. 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981; amended May 1, 1986.)

28-19-16m. Compliance with provisions of law required. Any approval of a permit under the provisions of K.A.R. 28-19-16b shall not relieve any source owner or operator of the responsibility to comply fully with any other requirements of state, federal, or local law. (Authorized by K.S.A. 65-3005, 65-3008, 65-3010; implementing K.S.A. 65-3005, 65-3008, 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981.)

ATTAINMENT AREA REQUIREMENTS

28-19-17. Prevention of significant deterioration of air quality; cross-reference. Each reference in this article to K.A.R. 28-19-17 through K.A.R. 28-19-17q, individually or collectively, shall be interpreted to refer to K.A.R. 28-19-350. (Authorized by and implementing K.S.A. 2001 Supp. 65-3005, 65-3008, and K.S.A. 65-3010; effective May 1, 1983; amended May 1, 1986; amended May 1, 1987; amended June 8, 1992; amended Nov. 22, 2002.)

28-19-17a. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3005, 65-3008 and 65-3010; effective May 1, 1983; amended May 1, 1986; amended Oct. 16, 1989; amended June 8, 1992; revoked Nov. 22, 2002.)

28-19-17b. (Authorized by K.S.A. 65-3005, as amended by L. 1993, Ch. 13, Sec. 3; implementing K.S.A. 65-3005, as amended by L. 1993, Ch. 13, Sec. 3; 65-3008, as amended by L. 1993, Ch. 13, Sec. 5; 65-3010; effective May 1, 1983; amended May 1, 1986; amended Oct. 16, 1989; amended June 8, 1992; amended March 21, 1994; revoked Nov. 22, 2002.)

28-19-17c. (Authorized by K.S.A. 65-3005, as amended by L. 1993, Ch. 13, Sec. 3; implementing K.S.A. 65-3005, as amended by L. 1993, Ch. 13, Sec. 3; 65-3008, as amended by L. 1993, Ch. 13, Sec. 5; 65-3010; effective May 1, 1983; amended Oct. 16, 1989; amended June 8, 1992; amended March 21, 1994; revoked Nov. 22, 2002.)

28-19-17d. (Authorized by and implementing K.S.A. 65-3002, 65-3008, 65-3010; effective May 1, 1983; amended June 8, 1992; revoked Nov. 22, 2002.)

28-19-17e. (Authorized by and implementing K.S.A. 65-3005, 65-3008, 65-3010; effective May 1, 1983; amended June 8, 1992; revoked Nov. 22, 2002.)

28-19-17f. (Authorized by and implementing K.S.A. 65-3005, as amended by L. 1993, Ch. 13, Sec. 3; 65-3008, as amended by L. 1993, Ch. 13, Sec. 5; 65-3010; effective May 1, 1983; amended May 1, 1988; amended June 8, 1992; amended March 21, 1994; revoked Nov. 22, 2002.)

28-19-17g. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3005, 65-3008, 65-3010; effective May 1, 1983; amended Oct. 16, 1989; amended June 8, 1992; revoked Nov. 22, 2002.)

28-19-17h. (Authorized by and implementing K.S.A. 65-3005, 65-3008, 65-3010; effective May 1, 1983; amended June 8, 1992; revoked Nov. 22, 2002.)

28-19-17i. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3005, 65-3008, 65-3010; effective May 1, 1983; amended Oct. 16, 1989; amended June 8, 1992; revoked Nov. 22, 2002.)

28-19-17j through 28-19-17l. (Authorized by and implementing K.S.A. 65-3005, 65-3008, 65-3010; effective May 1, 1983; amended June 8, 1992; revoked Nov. 22, 2002.)

28-19-17m. (Authorized by K.S.A. 65-3005, as amended by L. 1993, Ch. 13, Sec. 3; implementing K.S.A. 65-3008, as amended by L. 1993, Ch. 13, Sec. 5; 65-3010; effective June 8, 1992; amended March 21, 1994; revoked Nov. 22, 2002.)

28-19-17n through 28-19-17q. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3008, 65-3010; effective June 8, 1992; revoked Nov. 22, 2002.)

STACK HEIGHT REQUIREMENTS

28-19-18. Stack heights. (a) The degree of emission limitation required of any source for control of any air pollutant must not be affected by the portion of any source's stack height that exceeds good engineering practice or any other dispersion technique. The provision of these regulations shall not apply to stack heights in existence or dispersion techniques implemented on or before December 31, 1970, except where pollutants are being emitted from those stacks or using those dispersion techniques by sources as defined in these regulations, which were constructed or reconstructed or for which major modifications, as defined in the Kansas state implementation plan, were carried out after December 31, 1970.

(b) Good engineering practice for a stack height shall be determined in accordance with the provisions of K.A.R. 28-19-18a through 28-19-18f. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983; amended May 1, 1986; amended, T-88-2, Jan. 23, 1987; amended May 1, 1988.)

28-19-18a. Stack height credit. (a) The stack height credit to be used in ambient air quality modeling that calculates the air quality impact of a source, for the purpose of meeting an applicable national ambient air quality standard or determining compliance with the provisions of K.A.R. 28-19-17e pertaining to an applicable maximum allowable increase, shall be the actual stack height unless this height exceeds the good engineering practice stack height determined by procedures prescribed by K.A.R. 28-19-18c. In this case, the allowable good engineering practice stack height value shall be used for the modeling.

(b) The requirements of this regulation shall not apply to any stack height that was in existence, or dispersion techniques implemented on or before December 31, 1970. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983; amended May 1, 1986.)

28-19-18b. Definitions. The following words and terms when used in K.A.R. 28-19-18 through 28-19-18f, shall have the following meanings:

(a) "Stack" means any point in a source designed to emit solids, liquids or gases into the air, including a pipe or duct but not including flares.

(b) "Stack height" is the distance from the

ground level elevation at the base of the stack to the elevation of the stack outlet.

(c) "Stack in existence" means that, before the date specified in K.A.R. 28-19-18a(b) and 28-19-18c(b)(1)(A), the owner or operator had begun or caused to begin a continuous program of physical on-site construction of the stack, to be completed within a reasonable time, or had entered into binding agreements or contractual obligations, which could not be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed within a reasonable time.

(d) "Nearby" is the distance up to five times the lesser of the height or the width dimension of a structure but not greater than 0.8 km for the purpose of applying the formula in K.A.R. 28-19-18c(b)(1)(A). For conducting demonstrations under K.A.R. 28-19-18d, nearby is a distance not greater than 0.8 km. However, a portion of a terrain feature may be considered to be nearby when it falls within a distance of up to 10 times the maximum height (HT) of the feature, not to exceed 3.2 km, if such feature achieves a height (Ht), within 0.8 km from the stack, that is at least 40 percent of the good engineering practice stack height determined by the formulas provided in K.A.R. 28-19-18c(b)(1)(B) or 26 meters, whichever is greater. The height of the structure or terrain feature shall be measured from the ground level elevation at the base of the stack.

(e) "Dispersion technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

- (1) Using the portion of a stack which exceeds good engineering practice stack height;
- (2) varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or
- (3) increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, combining exhaust gases from several existing stacks into one stack or other selective handling of exhaust gas streams. This shall not include:

(A) The reheating of a gas stream, following use of a pollution control system to return the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(B) the merging of exhaust gas streams where:

(i) The source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams; or

(ii) after July 8, 1985, the merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. The exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the pollutant affected by this change in operation; or

(iii) before July 8, 1985, the merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, merging shall be presumed to be motivated by an intent to gain emissions credit for greater dispersion. The department shall deny credit for the effects of this merging in calculating the allowable emissions for the source in the absence of an appropriate demonstration by the source owner or operator;

(C) smoke management in agricultural or silvicultural prescribed burning programs;

(D) episodic restrictions on residential wood burning and open burning; or

(E) techniques under K.A.R. 28-19-18b(e)(3) which increase final exhaust gas plume rise and which result in an allowable emission of sulfur dioxide from the facility that does not exceed 5,000 tons per year.

(f) "Excessive concentration," for the purpose of determining good engineering practice stack height under K.A.R. 28-19-18c(c), means:

(1) For sources seeking credit for a stack height exceeding the stack height established under K.A.R. 28-19-18c(b)(1), a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such effects and which contribute to a total concentration due to emissions from all sources that is greater than an ambient air quality standard or greater than a prevention of significant deterioration increment, for sources subject to K.A.R. 28-19-17. The allowable emission rate to use in making demonstrations under this part shall be prescribed by K.A.R. 28-19-83 et seq. unless the owner or operator demonstrates that this emission rate is infeasible.

Where such demonstrations are approved by the department, an alternative emission rate shall be established in consultation with the source owner or operator;

(2) for sources seeking credit after October 11, 1983 for increases in an existing stack height up to the height established under K.A.R. 28-19-18c(b)(1), a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects produced by nearby structures or nearby terrain features which is individually at least 40 percent in excess of the maximum concentration experienced in the absence of these effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard or greater than a prevention of significant deterioration increment, for sources subject to K.A.R. 28-19-17. The emission rate to use in making demonstration under this part shall be either:

(A) An emission rate specified by applicable SIP (or, in the absence of such a limit, the actual emission rate); or

(B) the actual presence of a local nuisance caused by the existing stack, as determined by the department; and

(3) for sources seeking credit after January 12, 1979 for a stack height determined under K.A.R. 28-19-18c(b)(1), use of a field study or fluid modeling to verify good engineering practice stack height shall be required by the department;

(A) for sources seeking stack height credit after November 9, 1984 based on the aerodynamic influence of cooling towers; and

(B) for sources seeking stack height credit after December 31, 1970 based on the aerodynamic influences of structures not represented adequately by K.A.R. 28-19-18c(b)(1), a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects that is at 40 percent in excess of the maximum concentration experienced in the absence of these effects. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983; amended May 1, 1986; amended, T-88-2, Jan. 23, 1987; amended May 1, 1988.)

28-19-18c. Methods for determining good engineering practice stack height. (a) The minimum good engineering practice stack height value allowable for any source, regardless of size or location of any structures or terrain features, shall be 65 meters.

(b)(1) Except as provided in subsection (c) of this regulation, the maximum good engineering practice stack height value allowable for any source shall be determined using one of the following mathematical formulas:

(A) for stacks that were in existence on January 12, 1979 and provided that the owner or operator presents evidence that this equation was relied upon when establishing an emission limit:

$$Hg = 2.5H$$

(B) for stacks constructed after January 12, 1979 and provided that the owner or operator, at the department's request, presents evidence through a field study or fluid modeling to verify that the height arrived at by the following formula is valid:

$$Hg = H + 1.5L$$

(2) When using formula (A) or (B), the terms and values used shall be as follows:

(A) Hg = good engineering practice stack height, measured from the ground level elevation at the base of the stack;

(B) H = height of any nearby structures measured from the ground level at the base of the stack; and

(C) L = lesser dimension of the height or projected width of any nearby structures.

(c) A source may obtain good engineering practice stack height credit in excess of that calculated by K.A.R. 28-19-18c(b)(1)(A) or K.A.R. 28-19-18c(b)(1)(B) provided that it demonstrates by fluid modeling or a field study approved by the department that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983; amended, T-88-2, Jan. 23, 1987; amended May 1, 1988.)

28-19-18d. Fluid modeling. In conducting a fluid modeling study, required by K.A.R. 28-19-18c(c), the guidelines and procedures described in the following referenced publications shall be used. These publications are adopted by reference:

(a) EPA-450/4-81-003. *Guideline for use of fluid modeling to determine good engineering practice stack height*, as published in July 1981;

(b) EPA-450/4-80-023. *Guideline for determination of good engineering practice stack height*, as published in July 1981; and

(c) EPA-600/8-81-009. *Guideline for fluid modeling of atmospheric diffusion*, as published in April 1981. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-18e. (Authorized by and implementing K.S.A. 65-3005, K.S.A. 65-3010; effective May 1, 1983; revoked May 1, 1986.)

28-19-18f. Notification requirements. A source shall not obtain credit for a good engineering practice stack height determined by a fluid modeling or field study or based on allowances for plume impaction, as provided for by K.A.R. 28-19-18c(c) unless:

(a) A public notice that indicates the nature of the proposal, the availability of the demonstration study, and that the public may either request a hearing or submit written comments directly to the secretary concerning the proposal is published in a newspaper, having general circulation in the area in which the source is, or will be, located;

(b) a copy of the public notice that is provided for by subsection (a) is sent to the applicant, state and local officials, and the regional administrator of U.S. environmental protection agency; and

(c) a public hearing is held on the matter upon the written request of any person affected by the proposed action. This request shall be made within 30 days of the date of notice being provided in the manner prescribed by subsections (a) and (b) of this regulation. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983; amended, T-88-2, Jan. 23, 1987; amended May 1, 1988.)

28-19-19. Continuous emission monitoring. (a) All sources subject to the provisions of this regulation shall install, test and continuously operate a continuous emission monitoring system or systems (CEMS) and comply with data reduction requirements of the department and reporting, record keeping and quality assurance requirements established by this regulation. For any emission unit subject to this regulation, CEMS data which shows emissions in excess of an applicable emission limitation or standard shall be evidence that the emission unit is in noncompliance with the emission limitation or standard.

(b) Emission units exempt from the provisions of this regulation include:

(1) Those which have been required to install CEMS under provisions of K.A.R. 28-19-83; and

(2) fossil-fuel fired steam generators whose annual capacity factor, as reported to the federal

power commission, is limited by permit condition under K.A.R. 28-19-14 to be less than 30 percent. If, upon application by the source owner or operator, the department approves removal of the capacity factor restriction, the appropriate CEMS shall be installed and operational within six months of the date that the department approved the restriction removal.

(c) Emission units required by this regulation to operate CEMS and monitor and report emissions include:

(1) Coal-fired steam generators that have a heat input greater than 250 million British Thermal Units per hour (BTU/hr). These generators shall be monitored for opacity; and

(2) coal-fired steam generators that have a heat input greater than 250 million BTU/hr and that have installed sulfur dioxide (SO₂) emission control equipment. These generators shall be monitored for SO₂, and carbon dioxide (CO₂) or oxygen (O₂) or some combination of these emissions; and

(3) fluid-bed catalytic cracking units catalyst regenerators at petroleum refineries with greater than 20,000 barrels per day fresh feed capacity. Such regenerators shall be monitored for opacity.

(d) Each emission unit required to operate CEMS shall complete the installation and demonstrate compliance with the performance tests of such equipment by November 1, 1987.

(e) If the affected emission unit is unable to comply with the requirements of subsection (d), a compliance schedule shall be submitted by the source owner or operator to and received by the department not later than June 1, 1987. A justification for the extended compliance schedule shall be submitted. The request may be approved or denied by the department and the source owner or operator shall be informed of the department's determination and the reasons for that decision. An extension shall not be permitted beyond November 1, 1988.

(f) The owner or operator of an affected emission unit shall notify the department of the following:

(1) the anticipated date of installation of the CEMS postmarked at least 30 days prior to that date. Each CEMS shall be installed in a location approved by the department before installation begins; and

(2) the date upon which CEMS performance tests commence in accordance with this regulation. Notification shall be postmarked not less than 30 days prior to that date.

(g) The performance specifications and test procedures for opacity, SO₂, O₂, and CO₂ CEMS in 40 CFR Part 60 Appendix B, as in effect on July 1, 1986, are adopted by reference except that reference to "Administrator" in 40 CFR Part 60 Appendix B shall mean the secretary of the department of health and environment. The specification test requirements for the CEMS are as follows:

- (1) Performance Specification 1 for opacity;
- (2) Performance Specification 2 for SO₂;
- (3) Performance Specification 3 for CO₂; and
- (4) Performance Specification 3 for O₂.

(h) Each source owner or operator subject to this regulation shall maintain a file of all measurements, including CEMS, monitoring device and performance testing measurements, all CEMS performance evaluations, all CEMS or monitoring device calibration checks, adjustments and maintenance performed on these systems or devices and all other information required by this regulation that shall be recorded in a permanent form suitable for inspection by a department or U.S. environmental protection agency representative. The file shall be retained at the affected source for at least two years following the date of the measurements, maintenance, reports, and records, or if longer, during the pending of any action to enforce the requirements of this regulation.

(i) All CEMS shall be operated continuously except for system breakdowns, repairs, calibration checks and zero and span adjustments required under the quality assurance plan of this regulation.

(j) Source emission shall be monitored during all phases of operation except during periods of scheduled emissions unit outages or turnaround. Emission units not in operation are not required to monitor emissions.

(k) Owners or operators of sources subject to this regulation shall submit a written report of emissions in excess of the applicable standards in a manner prescribed by the department for each calendar quarter to the department and it must be postmarked before the 30th day following the end of each calendar quarter. The report shall provide the following information:

- (1) the total time the affected emissions unit was in operation for the quarter;
- (2) the magnitude of excess emissions, computed in accordance with this regulation, any conversion factors used, and the date and time each period of excess emissions began and ended;

(3) specific identification of each period of excess emissions that occurred during startups, shutdowns, malfunctions and any other reason. The nature and cause of the excess emissions, the corrective action taken and the preventive measures adopted shall be specified;

(4) the date and time identifying each period during which the CEMS was inoperative except for the zero and span checks. The nature and cause of the CEMS breakdown and the repairs or corrective action taken shall be identified. Proof of CEMS performance may be required by the secretary whenever system repairs or adjustments have been made;

(5) the result of each performance audit; and

(6) if no excess emissions have occurred or the CEMS have not required corrective actions, a statement verifying that fact.

(1) The information required by subsections (k)(1) through (k)(6) shall be summarized in the following manner for monitoring and reporting purposes:

(1) Measurements of opacity shall be reduced to one-minute periods. Each one-minute period shall be calculated from 10 or more data points equally spaced through each one-minute period;

(2) gaseous measurements shall be reduced to three-hour averages in units of the emission standards; and

(3) data recorded during periods of CEMS breakdowns, repairs, calibration checks and zero and span adjustments shall not be included in the data averages or the emission report. An arithmetic or integrated average may be used for those time periods. After conversion to units of the standard, the data may be rounded to the same number of significant digits used to specify the emission standard.

(4) Owners or operators of affected sources shall use Method 19 of 40 CFR Part 60, appendix A, as in effect July 1, 1989, for converting CEMS data to units of the standard.

(5) The secretary may allow data reporting or reduction procedures varying from those set forth in this regulation if the owner or operator of a source shows to the satisfaction of the secretary that the procedures are at least as accurate as those of the regulation.

(m) Not less than 30 days prior to commencement of CEMS performance tests, each source owner or operator required to operate CEMS shall develop and submit to the department a quality assurance plan that shall contain all provisions necessary to ensure that the CEMS produce con-

tinuous data with sufficient accuracy and precision to allow the department to determine whether the emissions unit is in compliance with the applicable opacity and SO₂ limitations. Plan requirements for CEMS shall include, at a minimum, the requirements and recommendations of the CEMS manufacturer. The provisions of the quality assurance plan shall be enforceable by the department as independent requirements in addition to this regulation. Additional procedures may be imposed by the department or the source owner or operator may be required to revise quality control procedures. The complete quality assurance plan shall be kept at the affected source, shall be accessible to maintenance personnel and shall include:

(1) For quality control of opacity CEMS:

(A) calibration of the CEMS including a daily zero and span check, zero compensation accumulations and window cleaning;

(B) calibration drift determination and adjustment, including daily zero and span checks, zero compensation accumulation and window cleaning;

(C) preventive maintenance procedures for all monitoring system components, including the purge air system and the data recording system; and

(D) data recording and reporting procedures that are consistent with the record-keeping and reporting requirements of this regulation, including examples of all record-keeping formats; and

(2) for quality assurance of opacity CEMS:

(A) a precision assessment which includes a daily check of zero and span compensation levels;

(B) an annual accuracy audit which includes a zero alignment with an equivalency of true zero and simulated zero check;

(C) a quarterly accuracy audit which includes procedures for conducting the audit, the selection of filter values and the certification of filter values;

(3) for corrective action of opacity CEMS:

(A) if the 24-hour zero or span drift exceeds \pm four percent opacity, a description of necessary corrective action, including necessary calibration and cleaning followed by a verification that the drift is eliminated;

(B) if zero or span drift exceeds CEMS drift limits for five consecutive span checks, a requirement that the frequency of quality assurance checks must be increased;

(C) if the zero alignment exceeds two percent opacity, a requirement that corrective action be taken and that the action must be documented in records and quarterly reports;

(D) if the performance audit calibration error exceeds \pm plus or minus three percent opacity, a requirement that corrective action must include a recalibration of the monitor, followed by a repetition of the performance audit;

(4) for quality control of SO₂, O₂ and CO₂ CEMS: Procedures for calibration, calibration drift determination and adjustment, preventive maintenance, data recording and reporting, and malfunction abatement;

(5) for quality assurance of SO₂, O₂ and CO₂ CEMS: A description of the procedures and calculations for a precision assessment, accuracy assessment procedures including relative accuracy and a cylinder gas audit, and the calculations used in relative accuracy audits and cylinder gas audits;

(6) for corrective action of SO₂, O₂ and CO₂ CEMS, a requirement that corrective action must be taken when span drift response is greater than \pm five percent of CEMS span value, and when relative accuracy audit response and CEMS system cylinder gas audit response is greater than \pm 20 percent.

(n) If the effluents from two or more affected emissions units of similar design and operating characteristics are combined before being released to the atmosphere, the secretary may allow CEMS to be installed on the combined effluent, subject to petition by the source owner or operator. If the affected emissions units are not of similar design and operating characteristics, or when the effluent from one affected emissions unit is released to atmosphere through more than one point, the source owner or operator shall install applicable CEMS on each separate effluent unless prior approval of fewer CEMS has been granted by the department.

(o) If the source owner or operator wishes to use different, but equivalent, procedures and requirements for CEMS than those specified in this regulation, the source owner or operator shall provide a demonstration of equivalency before the approval of such alternative systems will be granted by the secretary with concurrence from the region VII administrator of the U.S. environmental protection agency. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1987; amended May 1, 1988; amended June 8, 1992.)

PROCESSING OPERATIONS EMISSIONS

28-19-20. Particulate matter emission limitations. (a) Subject to the provisions of K.A.R. 28-19-9 and 28-19-11, no person shall cause, suffer, allow or permit the emission of particulate

matter from any processing machine, equipment, device or other articles, or combination thereof, excluding indirect heating equipment and incinerators, in excess of the amounts allowed in table P-1 during any one hour.

(b) For the purposes of this regulation, the following definitions shall apply:

(1) "Process weight" shall mean the total weight of all materials introduced into a source operation which may constitute, or form, a source of particulate matter emissions. In the case of direct heating operations, any solid fuel used shall be included as part of the process weight, but liquid and gaseous fuels and combustion air shall not be included.

(2) "Process weight rate" shall mean the total process weight introduced into the source operation over a specific time period divided by that time period in hours. For a cyclical or batch operation, the time period shall be that time required to complete one operation or an integral number of cycles, and for continuous or long-run steady-state operations, time period shall be the total operating time or a typical portion.

(3) "Source operation" shall mean the last operation preceding the emission of particulate matter, which results in the separation of the particulate matter emissions from the processed materials or the conversion of the processed materials into the particulate matter emissions, excluding those operations which are an integral part of the functioning of a control device.

**TABLE P-1—Process Weight Table
Maximum Allowable Emission Rate**

Process weight rate		Rate of emission		Process weight rate		Rate of emission	
lb/hr.	tons/hr.	lb/hr.	lb/hr.	tons/hr.	lb/hr.	lb/hr.	lb/hr.
100	0.05	0.551	16,000	8.00	16.5		
200	0.10	0.877	18,000	9.00	17.9		
400	0.20	1.40	20,000	10.	19.2		
600	0.30	1.83	30,000	15.	25.2		
800	0.40	2.22	40,000	20.	30.5		
1,000	0.50	2.58	50,000	25.	35.4		
1,500	0.75	3.38	60,000	30.	40.0		
2,000	1.00	4.10	70,000	35.	41.3		
2,500	1.25	4.76	80,000	40.	42.5		
3,000	1.50	5.38	90,000	45.	43.6		
3,500	1.75	5.96	100,000	50.	44.6		
4,000	2.00	6.52	120,000	60.	46.3		
5,000	2.50	7.58	140,000	70.	47.8		
6,000	3.00	8.56	160,000	80.	49.0		
7,000	3.50	9.49	200,000	100.	51.2		
8,000	4.00	10.4	1,000,000	500.	69.0		

Process weight rate		Rate of emission		Process weight rate		Rate of emission	
lb/hr.	tons/hr.	lb/hr.	lb/hr.	tons/hr.	lb/hr.	lb/hr.	lb/hr.
9,000	4.50	11.2	2,000,000	1,000.	77.6		
10,000	5.00	12.0	6,000,000	3,000.	92.7		
12,000	6.00	13.6					

Interpolation of the data in table P-1 for other process weights shall be accomplished by use of the following equations:

Process weight ≤ 30 ton/hr, E = (4.1) (P^{0.67})

Process weight > 30 ton/hr, E = (55) (P^{0.11}) - 40

Where: E = rate of emissions in lb/hr.

P = process weight in ton/hr.

Where the nature of any process or operation or design of any equipment permits more than one interpretation of these definitions, the interpretation that results in the minimum allowable emission rate shall apply. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3005, 65-3010; effective Jan. 1, 1971, amended Oct. 16, 1989.)

28-19-21. Additional emission restrictions. If particulate matter emissions, because of their chemical and/or physical nature, require emission rates lower than those provided for in K.A.R. 28-19-20, the person responsible for the emission shall be notified by the department, in writing, of the reasons for lower emission rate restrictions for an existing or proposed contaminant emission and specify an alternate emission rate that shall not be exceeded. Such notification shall be an order as provided for in K.S.A. 65-3011 and subject to administrative and legal procedures. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3005, 65-3011, as amended by L. 1988, Ch. 356, Sec. 201; effective Jan. 1, 1971; amended Oct. 16, 1989.)

28-19-22. (Authorized by K.S.A. 65-3005, 65-3010; effective Jan. 1, 1972; amended, E-73-8, Dec. 27, 1972; amended Jan. 1, 1974; revoked Sept. 23, 2005.)

28-19-23. Hydrocarbon emissions—stationary sources. (A) No person shall place, store, or hold in any stationary tank reservoir or other container of more than 40,000 gallons capacity any gasoline or any petroleum distillate having a vapor pressure of 3.0 pounds per square inch, absolute, or greater under actual storage conditions unless such tank, reservoir, or other container is a pressure tank capable of maintaining working pressures sufficient to prevent vapor or gas loss to the atmosphere or is designed, and equipped with one of the following vapor loss control devices:

(1) A floating roof, such as a pontoon type, double deck type roof or internal floating cover, which will rest on the surface of the liquid contents and be equipped with a closure seal or seals to close the space between the roof edge and tank wall. This control equipment shall not be permitted if the gasoline or petroleum distillate has a vapor pressure of 13.0 pounds per square inch absolute or greater under actual storage conditions. All tank gauging or sampling devices shall be gas-tight except when tank gauging or sampling is taking place.

(2) A vapor recovery system, consisting of a vapor gathering system capable of collecting the volatile organic compound vapors and gases discharged and a vapor disposal system capable of processing such volatile organic vapors and gases so as to prevent their emission to the atmosphere and with all tank gauging and sampling devices gas-tight except when gauging or sampling is taking place.

(3) Other equipment or means of equal efficiency for purposes of air pollution control as may be approved by the department.

(B) No person shall emit to the atmosphere any ethylene waste gas stream of more than 50 pounds per day from any ethylene producing plant or other ethylene emission source unless the waste gas is properly burned at 1300°F for 0.3 seconds or greater in a direct-flame afterburner or equally effective device as approved by the director.

(C) No person shall emit to the atmosphere any hydrocarbon gas stream, excluding methane, of more than 50 pounds per day from a vapor blow down system unless these gases are burned by smokeless flares or an equally effective control device as approved by the director.

(D) Installations and equipment existing on January 1, 1972 shall be exempt from the provisions of this regulation. (Authorized by K.S.A. 65-3005, 65-3006, 65-3010; effective Jan. 1, 1972; amended, E-73-8, Dec. 27, 1972; amended Jan. 1, 1974.)

28-19-24. Control of carbon monoxide emissions. (A) No person shall cause or permit the emission of carbon monoxide gases generated during the operation of a grey iron cupola unless they are burned at 1300°F for 0.3 seconds or greater in a direct-flame afterburner or equivalent device as approved by the director.

(B) No person shall emit carbon monoxide waste gas stream from any catalyst regeneration of a petroleum cracking system, petroleum fluid coker, or

other petroleum process into the atmosphere, unless the waste gas stream is burned at 1300°F for 0.3 seconds or greater in a direct-flame afterburner or equivalent device as approved by the director.

(C) Installations and equipment existing on January 1, 1972 shall be exempt from the provisions of this regulation. (Authorized by K.S.A. 65-3005, 65-3006, 65-3010; effective Jan. 1, 1972; amended, E-73-8, Dec. 27, 1972; amended Jan. 1, 1974.)

28-19-25. (Authorized by K.S.A. 1971 Supp. 65-3005, 65-3010; effective Jan. 1, 1972; revoked, E-73-8, Dec. 27, 1972; revoked Jan. 1, 1974.)

28-19-26. Sulfuric acid mist emissions. (a) As used in this regulation, "sulfuric acid production unit" means a unit producing sulfuric acid through the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, organic sulfides and mercaptans, or acid sludge. Sulfuric acid production units shall not include units in which the conversion to sulfuric acid is used primarily to prevent emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

(b) No person shall cause or permit any gases which contain sulfuric acid mist (H_2SO_4) in excess of 0.5 pounds of acid mist per ton of acid produced to be released into the atmosphere from a sulfuric acid production unit. In calculating the amount of acid produced, the acid production shall be expressed as 100% H_2SO_4 .

(c) Reference Method 8 of Appendix A to 40 CFR Part 60, as in effect on August 18, 1977, is adopted by reference and shall be used for determining compliance with subsection (b) of this regulation. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3005 and 65-3010; effective May 1, 1985.)

INDIRECT HEATING EQUIPMENT EMISSIONS

28-19-30. General provisions. (A) These regulations apply to installations in which fuel is burned for the primary purpose of producing steam, hot water, or hot air or other indirect heating of liquids, gases, or solids and, in the course of doing so, the products of combustion do not come into direct contact with process materials. Fuels include those such as coal, coke, lignite, coke breeze, gas, fuel oil, and wood, but do not include refuse. When any products or by-products of a manufacturing process are burned for the same purpose or in conjunction with any fuel, the same maximum emission limitations shall apply.

(B) The heat content of coal shall be determined according to ASTM method D-271-64 "laboratory sampling and analysis of coal and coke" or ASTM method D-2015-66 "gross calorific value of solid fuel by the adiabatic bomb calorimeter," their replacements or other recognized method as approved by the department. The heat content of oil shall be determined according to ASTM method D-240-64 "heat of combustion of liquid hydrocarbons by bomb calorimeter," or by its replacement, or other recognized method as approved by the department.

(C) For purposes of this regulation the heat input shall be the aggregate heat content of all fuels whose products of combustion pass through a stack or stacks. The heat input value used shall be the equipment manufacturer's or designer's guaranteed maximum input, whichever is greater. The total heat input of all fuel burning units at a plant or on a premise shall be used for determining the maximum allowable amount of particulate matter which may be emitted. (Authorized by K.S.A. 1971 Supp. 65-3005, 65-3006, 65-3010; effective Jan. 1, 1971; amended Jan. 1, 1972.)

28-19-31. Emission limitations. Subject to the provisions of regulations 28-19-9 and 28-19-11: (a) A person shall not cause or permit the emission of particulate matter exceeding the specifications in table H-1 of this regulation.

TABLE H-1—Emission Limits for Indirect Heating Equipment

Total input 10 ⁶ BTU/hr	Allowable* lb/10 ⁶ BTU	Total input 10 ⁶ BTU/hr	Allowable* lb/10 ⁶ BTU
10 or less	0.60	1,000	0.21
50.....	0.41	2,000	0.17
100.....	0.35	5,000	0.14
500.....	0.24	7,500	0.13
700.....	0.22	10,000 or more	0.12

* The allowable emission rate for equipment having intermediate heat input between 10 (10⁶) BTU/hr and 10,000 (10⁶) BTU/hr may be determined by the formula:

$$A = \frac{1.026}{I^{.233}}$$

Where: A = the allowable emission rate in lb/10⁶ BTU
I = the total heat input in 10⁶ BTU/hr.

(b) A person shall not cause or permit visible contaminant emissions from any indirect heating equipment which equals or exceeds the following opacities:

- (1) Existing equipment: 40 percent opacity;
- (2) New equipment: 20 percent opacity.

(c) A person responsible for operation of any indirect heating equipment having a heat input

of 250 million BTU/hr or greater shall not cause or permit the emission of more than 3.0 pounds of sulfur dioxide per million BTU of heat input unless an alternative sulfur dioxide emission limit applicable to such indirect heating equipment is specified in a permit issued pursuant to K.A.R. 28-19-14. The operation of any indirect heating equipment for which an alternative sulfur dioxide emission limit has been specified by permit pursuant to this subsection shall be in compliance with such alternative sulfur dioxide emission limit on and after the effective date of the permit limitation in lieu of the 3.0 pounds of sulfur dioxide per million BTU of heat input limit specified in this subsection. Any alternative sulfur dioxide emission limit specified in a permit must be adequate to protect the ambient air quality standards for sulfur dioxide, and shall not be deemed an applicable implementation plan requirement under the federal clean air act until approved pursuant to section 110 of the act (42 U.S.C. §7410).

(d) A person responsible for operation of any gas or oil-fired indirect heating equipment having a heat input of 250 million BTU/hr or greater shall not cause or permit the emission of more than 0.30 pounds of nitrogen oxides per million BTU of heat input per hour.

(e) A person responsible for operation of any coal fired indirect heating equipment having a heat input of 250 million BTU/hr or greater shall not cause or permit the emission of more than 0.90 pounds of nitrogen oxides (calculated as NO₂) per million BTU of heat input per hour. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective Jan. 1, 1971; amended Jan. 1, 1972; amended, E-73-8, Dec. 27, 1972; amended Jan. 1, 1974; amended May 1, 1986; amended Nov. 8, 1993.)

28-19-32. Exemptions—indirect heating equipment. (a) Visible contaminant emissions of an opacity exceeding that allowed in K.A.R. 28-19-31(b) shall not be considered a violation of that section provided that the person responsible for operation of the indirect heating equipment demonstrates to the satisfaction of the department that this excessive opacity is solely the result of the presence of uncombined water in the plume.

(b) Indirect heating equipment which was existing on January 1, 1972, shall be exempt from the provisions of K.A.R. 28-19-31(d) and K.A.R. 28-19-31(e). (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3007, 65-3010; effective Jan.

1, 1971; amended Jan. 1, 1972; amended, E-73-8, Dec. 27, 1972; amended Jan. 1, 1974; amended May 1, 1981; amended May 1, 1982; amended Nov. 8, 1993.)

INCINERATOR EMISSIONS

28-19-40. General provisions. (A) These regulations shall apply to all incinerators and modified open burning operations except those situated on residential premises containing five (5) or less dwelling units and used exclusively for the disposal of waste originating from normal habitation of said dwellings.

(B) The burning capacity of an incinerator shall be the manufacturer's or designer's guaranteed maximum rate or such other rate as may be determined by the department in accordance with good engineering practice. In case of conflict, the findings of the department shall govern.

(C) No incinerator shall be used for the burning of wastes or the conducting of salvage operations unless such incinerator is a multiple chamber incinerator. For the purpose of this regulation a multiple chamber incinerator is defined as an incinerator consisting of three or more refractory lined combustion furnaces in series, physically separated by refractory walls, interconnected by gas passage ports or ducts and employing adequate design parameters necessary for maximum combustion of the material to be burned.

Existing incinerators which are not multiple chamber incinerators may be altered, modified or rebuilt as may be necessary to meet this requirement. The department may approve any other alteration or modification to an existing incinerator if such is found to be equally effective for the purpose of air pollution control as a modification or alteration which would result in a multiple chamber incinerator.

All new incinerators shall be multiple chamber incinerators, provided that the department shall approve any other kind of incinerator if it can be shown in advance of construction or installation that such other kind of incinerator is equally effective for purposes of air pollution control as an approved multiple chamber incinerator.

(D) Instructions for proper operation of each incinerator, including charging procedures, necessary air intake and damper adjustments, use of auxiliary burners, etc., shall be conspicuously posted, and maintained, at the incinerator location. In addition, all new incinerators, or incinerators remodeled to conform with these regulations

shall have a plate designating the rated capacity of the incinerator and any auxiliary burners, permanently affixed to the incinerator. (Authorized by K.S.A. 1970 Supp. 65-3005, 65-3006, 65-3010; effective Jan. 1, 1971.)

28-19-41. Restriction of emissions. Subject to the provisions of regulations 28-19-9 and 28-19-11: (A) No person may cause or permit the emission of particulate matter from any chimney stack or vent of any incinerator in excess of the following:

(1) Incinerators with a waste burning capacity of less than 200 pounds per hour: 0.3 grains of particulate matter per standard dry cubic foot of exhaust gas, corrected to twelve percent (12%) carbon dioxide.

(2) Incinerators with a waste burning capacity of 200 to 20,000 pounds of waste per hour: 0.2 grains of particulate matter per standard dry cubic foot of exhaust gas, corrected to twelve percent (12%) carbon dioxide.

(3) Incinerators with a waste burning capacity in excess of 20,000 pounds of waste per hour: 0.1 grains of particulate matter per standard dry cubic foot of exhaust gas, corrected to twelve percent (12%) carbon dioxide.

(B) No person may cause or permit the emission of visible contaminants from any incinerator of an opacity equal to or greater than 20 percent opacity. (Authorized by K.S.A. 65-3005, 65-3006, 65-3010; effective Jan. 1, 1971; amended, E-73-8, Dec. 27, 1972; amended Jan. 1, 1974.)

28-19-42. Performance testing. (A) Waste burned in conjunction with the performance tests specified in this regulation shall be a representative sample of the refuse normally generated by the operation which the incinerator is intended to serve.

(B) In calculating the amount of particulate matter in stack gas, the loading shall be adjusted to twelve percent (12%) carbon dioxide in the stack gas. The exhaust gases produced in the burning of the liquid or gaseous fuel in the incinerator shall be excluded from the calculation to twelve percent (12%) carbon dioxide. Emissions shall be measured when the incinerator is operating at the burning capacity as defined in regulation 28-19-40 (B) of this regulation.

(C) A performance test to determine compliance with the opacity requirements specified in regulation 28-19-41 (B) of these regulations shall

be performed by the department on each new incinerator, and each existing incinerator modified or rebuilt to conform with this regulation.

(D) The performance test specified in section B of this regulation may be required on any incinerator. The initial performance test shall be performed at the expense of the vendor or operator by an independent testing organization or by any other qualified person subject to the approval of the department. The performance test may be observed by the department or its designated representative. (Authorized by K.S.A. 1974 Supp. 65-3005, 65-3006, 65-3010; effective Jan. 1, 1971; amended Jan. 1, 1972; amended, E-74-7, Jan. 1, 1974; amended May 1, 1975.)

28-19-43. Exceptions. (A) Visible contaminant emissions of an opacity exceeding that allowed in regulation 28-19-41 (B) of this regulation shall not be considered a violation of that section provided that the person responsible for operation of the incinerator demonstrates to the satisfaction of the department that such failure to comply is solely the result of the presence of uncombined water in the plume. (Authorized by K.S.A. 1970 Supp. 65-3002, 65-3005, 65-3006, 65-3010; effective Jan. 1, 1971.)

OPEN BURNING RESTRICTIONS

28-19-45. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3005, 65-3010; effective Jan. 1, 1971; amended, E-73-8, Dec. 27, 1972; amended Jan. 1, 1974; amended, T-84-39, Dec. 30, 1983; amended May 1, 1984; revoked March 1, 1996.)

28-19-46. (Authorized by K.S.A. 1970 Supp. 65-3005, 65-3010; effective Jan. 1, 1971; revoked March 1, 1996.)

28-19-47. (Authorized by K.S.A. 65-3005, 65-3006, 65-3007, 65-3010; effective Jan. 1, 1971; amended, E-73-8, Dec. 27, 1972; amended Jan. 1, 1974; revoked March 1, 1996.)

GENERAL VISIBLE EMISSION LIMITATIONS

28-19-50. (Authorized by K.S.A. 65-3005, 65-3010; effective Jan. 1, 1971; amended, E-73-8, Dec. 27, 1972; amended Jan. 1, 1974; revoked Jan. 29, 1999.)

28-19-51. (Authorized by K.S.A. 1970 Supp. 65-3005, 65-3006, 65-3010; effective Jan. 1, 1971; revoked May 1, 1982.)

28-19-52. (Authorized by K.S.A. 1970 Supp. 65-3002, 65-3005, 65-3006, 65-3010; effective Jan. 1, 1971; revoked Jan. 29, 1999.)

AIR POLLUTION EMERGENCIES

28-19-55. General provisions. (A) These episode regulations are designed to prevent the excessive buildup of air contaminants during air pollution episodes, thereby preventing the occurrence of an emergency due to the effects of these contaminants on the public health. Any other provisions of the air pollution control regulations notwithstanding, they shall apply to all emission sources and premises located in any geographic area for which an air pollution emergency status has been established by the director in accordance with regulation 28-19-56.

(B) For the purposes of this regulation the following definition will apply: Soiling index shall be presumed to mean the concentration of particulates as measured by the automatic paper-tape sampler method, "ASTM standard method of test for particulate matter in the atmosphere, optical density of filtered deposit, D-1704-61" expressed as coefficient of haze (COH) per 1000 lineal feet. (Authorized by K.S.A. 1971 Supp. 65-3005, 65-3006, 65-3010, 65-3012, 65-3013, 65-3014; effective Jan. 1, 1972.)

28-19-56. Episode criteria. (a) Conditions justifying the proclamation of an air pollution alert, air pollution warning, or air pollution emergency shall exist whenever the director determines that the accumulation of air contaminants at any sampling location has attained levels which could, if such levels are sustained or exceeded, threaten the public health. In making this determination, the following criteria shall guide the director:

(1) An air pollution forecast, which is the issuance of a weather bureau high pollution potential advisory, or equivalent indication by any local weather bureau meteorologist that a stagnant atmospheric condition will exist for 36 consecutive hours.

(2) An air pollution alert, where the average sulphur dioxide level for the previous 24 consecutive hours equals 0.3 ppm (800 ug/m³) or the PM₁₀ level for the previous 24 consecutive hours equals 350 ug/m³, or the average carbon monoxide level for the previous eight consecutive hours equals 15 ppm, or the average ozone level for the preceding one hour equals 0.1 ppm, or the average nitrogen dioxide concentration for the preceding one hour

equals 0.6 ppm, or the average nitrogen dioxide concentration for the preceding 24 consecutive hours equals 0.15 ppm, and the local meteorologist predicts no major changes in existing adverse meteorological conditions for at least an additional 12 hours.

(3) Air pollution warning, where the average sulphur dioxide level for the previous 24 consecutive hours equals 0.60 ppm, (1600 ug/m³), or the PM₁₀ level for the previous 24 consecutive hours equals 420 ug/m³, or the average carbon monoxide level for the previous eight consecutive hours equals 30 ppm, or the average ozone level for the previous one hour equals 0.4 ppm, or the average nitrogen dioxide concentration for the previous one hour equals 1.2 ppm, or the average nitrogen dioxide concentration for the previous 24 consecutive hours equals 0.3 ppm, and the local meteorologist predicts no major changes in existing adverse meteorological conditions for the next 12 hours.

(4) An air pollution emergency, where the average sulphur dioxide level for the previous 24 consecutive hours equals 0.8 ppm (2100 ug/m³), or the PM₁₀ level for the previous 24 consecutive hours equals 500 ug/m³, or the average ozone level for the previous one hour equals 0.5 ppm, or the average carbon monoxide level for the previous eight consecutive hours equals 40 ppm, or the average nitrogen dioxide concentration for the previous one hour equals 1.6 ppm, or the average nitrogen dioxide concentration for the previous 24 consecutive hours equals 0.4 ppm, and the local meteorologist predicts no major changes in existing adverse meteorological conditions for at least an additional 12 hours.

(b) Any status prescribed in subsection (a) may be declared by the director on the basis of deterioration of air quality to the criteria levels alone without the issuance of a high air pollution potential advisory or equivalent advisory from a local weather bureau meteorologist if deemed necessary to protect the public health.

(c) Once declared, any status established on the basis of this regulation shall remain in effect until the criteria for that level are no longer met. At such time the next lower status will be assumed. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3005, 65-3006, 65-3010, 65-3012; effective Jan. 1, 1972; amended, E-73-8, Dec. 27, 1972; amended Jan. 1, 1974; amended Oct. 16, 1989.)

28-19-57. Emission reduction requirements. (A) Upon the declaration of any air pollu-

tion episode status by the director the provisions of sections B, C and D of this regulation shall be considered as an emergency order of the board issued in accordance with K.S.A. 65-3012 and subject to the provisions therein.

(B) During any time designated as an air pollution alert period no person shall operate any contaminant emission sources except in compliance with the requirements of table E-1.

(C) During any time designated as an air pollution warning period no person shall operate any contaminant emission sources except in compliance with the requirements of tables E-1 and E-2.

(D) During any time designated as an air pollution emergency period no person shall operate any contaminant emission source except in compliance with the requirements of table E-1, E-2, and E-3. (Authorized by K.S.A. 1971 Supp. 65-3005, 65-3006, 65-3010, 65-3012, 65-3013, 65-3014; effective Jan. 1, 1972.)

**TABLE E-1—Source Restrictions
Air Pollution Alert Status**

Source category	Action required
1. All private, public and commercial premises.	(a) There shall be no open burning except as required for immediate disposal of inflammable or otherwise hazardous gases or liquids. (b) The use of incinerators for the disposal of any waste materials shall be limited to the hours between 12:00 noon and 4:00 p.m. (c) Boiler lancing or soot blowing of fuel burning equipment requiring such operations shall be limited to the hours between 12:00 noon and 4:00 p.m.
2. Coal or oil-fired electric-power generating facilities.	(a) Units shall be operated on natural gas when possible. (b) Units shall be operated on the lowest sulfur and ash fuels available. (c) Substantial utilization shall be made of power generated outside of the area included in episode status declaration.
3. Other coal and oil-fired process steam generating facilities.	(a) Units shall be operated on natural gas when possible. (b) Units shall be operated on lowest sulfur and ash fuels available. (c) Steam loads shall be reduced to extent possible consistent with continuing plant operations.

Source category	Action required
4. Manufacturing industries required to submit episode plans in accordance with regulation 28-19-58.	(a) Air contaminants emissions from processing operations shall be substantially reduced by curtailing or postponing production and allied operations to extent possible without causing economic hardships.

**TABLE E-2—Source Restrictions
Air Pollution Warning Status**

Source category	Action required
1. All private, public and commercial premises.	(a) The use of incinerators for the disposal of any waste materials shall be prohibited.
2. Coal or oil-fired power generating facilities.	(a) Maximum utilization shall be made of power generated by facilities outside of the area included in the episode status declarations.
3. Other coal and oil-fired process steam generating facilities.	(a) Preparation shall be made to immediately take action required under emergency status.
4. Manufacturing industries required to submit episode plans in accordance with regulation 28-19-58.	(a) Air contaminant emissions from processing operations shall be reduced to the maximum degree possible by curtailing and postponing production and altered operations to the extent feasible with, if necessary, the assumption of reasonable economic hardships.
5. Transportation.	(a) The use of private and commercial motor vehicles should be limited by deferring unnecessary travel and utilizing car pools or mass transportation facilities where possible.

**TABLE E-3— Source Restrictions
Air Pollution Emergency Status**

Source category	Action required
1. All private, public, and commercial premises.	(a) The following places of employment shall immediately cease operations: (1) Mining and quarrying operations. (2) Construction projects except as required to avoid emergent physical harm. (3) All manufacturing operations except those operating under an approved episode plan. (4) Wholesale trade establishments. (5) Governmental units, except as required to implement the provisions of these regulations and other operations essential to immediate protection of the public welfare and safety.

Source category	Action required
1. All private, public, and commercial premises.	(6) Educational institutions. (7) Retail trade and service establishments except pharmacies, food stores and other similar operations providing for emergency needs. (8) Other commercial service operations such as those engaged in banking, insurance, real estate, advertising, etc. (9) Amusement and recreational facilities.
2. Electric power generating facilities.	Same as table E-2.
3. Process steam generating facilities.	(a) Facilities shall be shut down to the maximum extent possible consistent with preventing extensive equipment damage.
4. Manufacturing industries required to submit episode plan in accordance with regulation 28-19-58.	(a) Air contaminant emissions from processing operations shall be reduced to the maximum degree possible by ceasing or drastically curtailing all production and allied operations to the extent feasible with due regard to any immediate likelihood of resultant personal injury or substantial equipment damage.
5. Transportation.	(a) The use of motor vehicles shall be restricted to meeting private and public emergency needs.

28-19-58. Emergency episode plans.

(A) Any person responsible for the operation of a source of air contamination adjudged to be of major concern with respect to possible implementation of air pollution emergency episode control procedures either because of the nature or the quantity of its emissions shall, at the request of the department, prepare an emergency episode plan to be implemented in the event that any episode status is declared by the director. Such plans shall provide for the reduction of emissions of those contaminants for which episode criteria have been established and, consistent with good industrial practice and safe operating procedures, reflect adherence to the requirements established in tables E-1, E-2, and E-3 of regulation 28-19-57.

(B) All plans requested under the provisions of 28-19-58 (A) shall be submitted to the department in written form, within 60 days of receipt of such a request; and shall be subject to review and approval by the department. Such plans shall indicate the sources of contamination to be con-

trolled or eliminated; the manner in which such action will be accomplished; and the approximate amount of specific contaminant emissions that will be eliminated.

(C) The department after reviewing any plan submitted in accordance with this regulation shall approve or disapprove it on the basis of its consistency with the intent of regulation 28-19-57. If such a plan is disapproved the department shall state its reasons for disapproval and specify those changes needed to provide an approvable plan. Such action shall be in writing and considered to be issued under the provisions of K.S.A. 65-3011 and subject to the provisions therein.

(D) Those plans which are approved under section C of this regulation shall be maintained on the premises to which they apply and shall be implemented during those periods for which an episode status has been established. Implementation of such a plan shall be considered as an emergency order of the engineer of the board to immediately reduce or discontinue the emission of contaminants in accordance with K.S.A. 65-3012, and subject to the provisions contained therein. (Authorized by K.S.A. 1971 Supp. 65-3005, 65-3006, 65-3010, 65-3011, 65-3012, 65-3013, 65-3014; effective Jan. 1, 1972.)

VOLATILE ORGANIC COMPOUND EMISSIONS

28-19-61. Definitions. The following words, terms and abbreviations are in addition to those defined in K.A.R. 28-19-7 and shall have the following meanings, unless the context clearly indicates otherwise:

(a) "Accumulator" means the reservoir of a condensing unit receiving the condensate from the condenser.

(b) "Affected facility" means facility or emission unit subject to an applicable regulation.

(c) "Air-dried coating" means coatings which are dried by the use of air or forced warm air at temperatures up to 194°F.

(d) "Asphalt prime coat" means an application of low viscosity liquid asphalt to an absorbent surface to prepare it for the application of an asphalt concrete surface.

(e) "ASTM" means the American society for testing and materials.

(f) "Automobile" means all passenger cars or passenger car derivatives capable of seating no more than 12 passengers.

(g) "Automobile and light duty truck body" means the body section rearward of the wind-

shield and front-end sheet metal forward of the windshield of an automobile or light duty truck.

(h) "Automobile and light duty truck part" means a metal part intended to be attached to an automobile or light duty truck body for inclusion into a finished product for sale to vehicle dealers and to which surface coatings have been applied in the vehicle assembly plant.

(i) "Baseline transfer efficiency" means the transfer efficiency of coating applicators in use during the baseline period.

(1) Baseline transfer efficiencies have been established for use with volatile organic compounds (VOC) emission limits recommended in certain U.S. environmental protection agency (EPA) published control technique guidelines (CTG) documents.

(2) Baseline transfer efficiencies are:

(A) 30 percent for primer-surfacer coat and top coat operations in the automobile and light truck manufacturing industry; and

(B) 60 percent for surface coating operations in metal furniture manufacturing industries.

(3) Baseline transfer efficiency for surface coating in the metal parts and products manufacturing industry has not been established, however, the default value is 60 percent except where higher baseline transfer efficiencies are probable, as in dip or flow coating and spraying of interior surfaces. This default value will be used if the facility chooses not to test to determine a baseline transfer efficiency and insufficient information exists to determine an applicable baseline transfer efficiency.

(j) "Baseline period" means the 12-month period immediately preceding the date a facility becomes subject to applicable regulations.

(k) "Bottom filling" means the filling of a gasoline delivery vessel through an opening that is flush with the tank bottom, or filling of a stationary storage vessel through an opening near the bottom of the tank.

(l) "Bulk gasoline plant" means a gasoline storage and distribution facility with an average throughput of less than 20,000 gallons which receives gasoline from bulk terminals by trailer transport, stores it in tanks and subsequently dispenses it via account trucks to local farms, businesses and service stations.

(m) "Bulk gasoline terminal" means a gasoline storage facility which receives gasoline from refineries primarily by pipeline, ship, or barge, and delivers gasoline to bulk gasoline plants or to commercial or retail accounts primarily by delivery

vessels, and has an average daily throughput of more than 20,000 gallons of gasoline.

(n) "Carbon adsorption system" means a volatile organic compounds (VOC) emissions control device containing adsorbent material, including but not limited to activated carbon, alumina and silica gel, an inlet and outlet for exhaust gases and a system to regenerate the saturated adsorbent. The carbon adsorption system shall provide for the proper disposal or reuse of all VOC adsorbed.

(o) "Clear coat" means a transparent coating which uses the undercoat as a reflectant base or undertone color.

(p) "Coating applicator" means any device or equipment designed for the purpose of applying a coating material to a surface. The devices or equipment may include, but not be limited to, sprayers, flow coaters, dip tanks, rollers, knife coaters, extrusion coaters and gravure devices.

(q) "Coating application system" means all operations and equipment within each line which apply, convey and dry a surface coating, including spray booths, flow coaters, flash-off areas, air dryers and ovens.

(r) "Cold cleaning" means the batch process of cleaning and removing soils from metal surfaces with solvents by spraying, brushing, flushing or immersion while maintaining the solvent below its boiling point. Wipe cleaning is not included in this definition.

(s) "Condenser" means any heat transfer device used to liquefy vapors by removing their latent heat of vaporization. Such devices include shell and tube, coil, surface, or contact condensers.

(t) "Condensate" means hydrocarbon liquids which condensed due to changes in the temperature or pressure, or both, and which remain as a liquid.

(u) "Conveyorized degreasing" means the continuous process of cleaning and removing soils from metal surfaces by operating with either cold or vaporized solvents.

(v) "Crude oil" means a naturally occurring mixture which consists of hydrocarbons or any sulfur, nitrogen or oxygen derivatives of hydrocarbons, or any combination of these compounds, and which is liquid at standard conditions.

(w) "Custody transfer" means the transfer of produced crude oil or condensate, or both, after processing or treating, or both, in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

(x) "Cutback asphalt" means any asphalt cement which has been liquefied by blending with volatile organic compounds (VOC) liquid diluents.

(y) "Delivery vessel" means a tank truck or trailer that is equipped with a storage tank having a capacity greater than 1,000 gallons and that is used for transport of gasoline.

(z) "Emissions unit" means any part of a stationary facility which emits or would have the potential to emit any pollutant subject to regulation under the federal clean air act, 42 U.S.C. 7407 et seq., as amended August 7, 1977.

(aa) "Emulsified asphalt" means asphalt cement which has been liquefied by blending with water and an emulsifier containing seven percent or less by volume volatile organic compounds (VOC) as a diluent as determined by ASTM standard D-244, "Standard methods of testing emulsified asphalts," as in effect October 28, 1977.

(bb) "Exempt solvents" means those designated negligibly photochemically reactive compounds listed under definition of volatile organic compounds (VOC).

(cc) "External floating roof" means a storage vessel cover in an open-top tank consisting of a double deck or pontoon single deck which rests upon and is supported by the volatile organic compounds (VOC) liquid being contained and which is equipped with a closure seal or seals to close the space between the roof edge and tank wall.

(dd) "Extreme environmental conditions" means exposure to the weather all the time or to temperatures consistently above 203°F, or to detergents, abrasives, scouring agents, solvents, corrosive atmospheres or similar environmental conditions.

(ee) "Extreme performance coatings" means coatings designed for extreme environmental conditions.

(ff) "Facility" means any building, structure, installation, activity or all combinations thereof which contains a stationary source of air contaminants on the premises.

(gg) "Federally enforceable" means:

(1) All limitations and conditions that are enforceable by the administrator of the U.S. environmental protection agency;

(2) requirements of regulations included in the federally-approved Kansas implementation plan; and

(3) any permit requirements established pursuant to these requirements.

(hh) "Final repair" means the surface coatings applied to correct topcoat imperfections on a completely assembled vehicle.

(ii) "Firebox" means the chamber or compartment of a boiler or furnace in which fuels are burned, but does not mean the combustion chamber of an incinerator.

(jj) "Flash-off area" means the structure of an assembly line between an application area and oven where solvents applied with the coating material are evaporated.

(kk) "Flexographic printing" means a method of printing in which the image areas are raised above the non-image areas, and the image carrier is made of an elastomeric material.

(ll) "Forebay" means the primary sections of a waste water separator. Wastewater is a mixture of oil and water.

(mm) "Freeboard height" means the distance from the top of the vapor zone to the top of the degreaser tank.

(nn) "Freeboard ratio" means the freeboard height divided by the width of the degreaser.

(oo) "Gasoline" means any fuel sold in any state for use in motor vehicles and motor vehicle engines and commonly or commercially known or sold as gasoline.

(pp) "Gasoline dispensing facility" means any site where gasoline is dispensed to motor vehicle gasoline tanks from stationary storage tanks.

(qq) "Glass pull rate" means the mass of molten glass utilized in the manufacture of wood fiber-glass insulation at a single manufacturing line in a specified time period.

(rr) "Heat sensitive materials" means materials which cannot consistently be exposed to temperatures greater than 203°F.

(ss) "Hot well" means the reservoir of a condensing unit receiving the warm condensate from the condenser.

(tt) "Internal floating roof" means a cover in a fixed roof tank which rests upon or is floated upon the volatile organic compounds (VOC) liquid being contained, and which is equipped with a sliding seal or seals to close the space between the edge of the covers and the tank shell.

(uu) "Light duty truck" means any motor vehicle rated at 8,500 pounds gross weight or less which is designed primarily for purpose of transportation of property, or a derivative of such a vehicle.

(vv) "Liquid-mounted seal" means a primary seal mounted in continuous contact with the liq-

uid between the tank wall and the floating roof around the circumference of the tank.

(ww) "Loading rack" means the loading arms, pumps, meters, shut-off valves, relief valves and other piping and valves necessary to fill delivery vessels.

(xx) "Lower explosive limit (LEL)" means the concentration of a compound in air below which a flame will not propagate if the mixture is ignited.

(yy) "Low solvent coating" means a coating which contains less volatile organic compounds (VOC) solvent than the conventional solvent borne coatings used by the industry. Low solvent coating could include water-borne, higher solids and powder coatings.

(zz) "Miscellaneous metal parts and products" means those metal parts and products not otherwise specified and includes, but is not limited to: large farm machinery, small farm machinery, small appliances, commercial machinery, industrial machinery, fabricated metal products and any other industrial category which includes the coating of metal parts and products under standard industrial classification code of major groups 33 through 41 as listed in the standard industrial classification manual, 1972, U.S. office of management and budget.

(aaa) "Motor vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway.

(bbb) "Offset lithography" means the printing process in which the image and non-image areas are on the same plate and the image is transferred from a plate to a rubber blanket cylinder before being transferred to the substrate surface to be printed.

(ccc) "Open top vapor degreasing" means the batch process of cleaning and removing soils from metal surfaces by condensing hot solvent vapor on the colder metal parts.

(ddd) "Operator or owner" means any person who owns, leases, operates, controls or supervises an affected facility or a stationary source of which an affected facility is a part.

(eee) "Organic material" means a chemical compound of carbon excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates and ammonium carbonate.

(fff) "Packaging rotogravure printing" means rotogravure printing upon paper, paper board, metal foil, plastic film and other substrates, which are, in subsequent operations, formed into packaging products and labels.

(ggg) "Petroleum liquids" means crude oil condensate, and any finished or intermediate products manufactured or extracted in a petroleum refinery.

(hhh) "Petroleum refinery" means any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants or other products through distillation of crude oils, or through distillation, cracking, extraction, or reforming of unfinished petroleum derivatives.

(iii) "Primer coat" means the initial coating applied to a surface.

(jjj) "Primer-surfacer coat" means the surface coating applied over the primer coat and beneath the top coat.

(kkk) "Publication rotogravure printing" means rotogravure printing upon paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements and other types of printed materials.

(lll) "Purging" means the volatile organic compounds (VOC) cleaning material expelled from the coating applicator to maintain operating conditions or prior to using the same equipment for coating with different color or composition coatings.

(mmm) "Reasonably available control technology (RACT)" means the lowest emission limit of control technology that is reasonably available considering technological and economic feasibility.

(nnn) "Refinery fuel gas" means any gas which is generated by a petroleum refinery process unit and which is combusted, including any gaseous mixture of natural gas and fuel gas.

(ooo) "Reid vapor pressure" means the absolute vapor pressure of volatile crude oil and volatile non-viscous petroleum liquids, except liquified petroleum gases, as determined by ASTM, D-323-82, as approved August 27, 1982, unless an alternative method is specifically required by regulation.

(ppp) "Roll printing" means the application of words, designs and pictures to a substrate usually by means of a series of hard rubber or steel rolls each with only partial coverage.

(qqq) "Rotary spinning" means a process used to produce wool fiberglass insulation by forcing molten glass through numerous small orifices in the side wall of a spinner to form continuous glass fibers that are then broken into discrete lengths by high velocity air flow.

(rrr) "Rotogravure printing" means the application of words, designs and pictures to a substrate by means of a roll printing technique which involves an intaglio or recessed image areas in the form of cells.

(sss) "Solvent" means organic materials which are liquid at standard conditions and which are used as dissolvers, viscosity reducers or cleaning agents.

(ttt) "Solvent-borne" means a coating which contains five percent or less water by weight in its volatile fraction.

(uuu) "Solvent metal cleaning" means the process of cleaning soils from metal surfaces by cold cleaning, open-top vapor degreasing or conveyORIZED degreasing.

(vvv) "Standard conditions" means a temperature of 68° 4F and pressure of 760 millimeters of mercury or 29.92 inches of mercury.

(www) "Submerged filling" means the filling of a storage tank or a delivery vessel tank through a pipe or hose discharging within six inches of the tank bottom.

(xxx) "Surface coat" means a protective, decorative or functional thin film applied to the surface of an object.

(yyy) "Surface coating of metal furniture" means the coating of any metal part which will be assembled with other metal, wood, fabric, plastic or glass parts to form business, institutional or household furniture.

(zzz) "Top coat" means the coating applied to a surface for the purpose of establishing color and surface appearance which includes both base coat and clear coat in base coat/clear coat operations.

(aaaa) "Transfer efficiency" means the amount of coating solids transferred onto the surface of a part or product divided by the total amount of coating solids used.

(bbbb) "True vapor pressure" means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods described in American petroleum institute bulletin 2517, "evaporation loss from floating roof tanks," 1962. This information is available from the department upon written request.

(cccc) "Turnaround" means the procedure of shutting a refinery unit down after a run, to do necessary maintenance and repair work, and putting the unit back on stream.

(dddd) "Vacuum producing system" means any reciprocating, rotary, or centrifugal blower or compressor, or any jet ejector or device that takes suction from below atmospheric pressure and discharges against atmospheric pressure.

(eeee) "Vapor balance system" means a combination of pipes or hoses which create a closed system between the vapor spaces of an unloading

tank and a receiving tank such that vapors displaced from the receiving tank are transferred to the tank being unloaded.

(ffff) "Vapor collection system" means any equipment, including but not limited to, hoods and ventilation systems, that captures or contains displaced organic compounds vapors that they may be directed to a vapor processing system.

(gggg) "Vapor processing system" means all equipment used for recovery of oxidizing organic compound vapors displaced from an affected facility and generally includes a vapor collection system.

(hhhh) "Volatile organic compounds (VOC)" means any organic compound which participates in atmospheric photochemical reactions including any organic compound other than those which the department designates as having negligible photochemical reactivity. The department has designated the following organic compounds as negligibly reactive:

- (1) methane;
- (2) ethane;
- (3) 1,1,1-trichloroethane (methyl chloroform);
- (4) methylene chloride;
- (5) trichlorofluoromethane (CFC-11);
- (6) dichloro-difluoromethane (CFC-12);
- (7) chlorodifluoromethane (CFC-22);
- (8) trifluoromethane (CFC-23);
- (9) trichlorotrifluoroethane (CFC-113);
- (10) dichlorotetrafluoroethane (CFC-114);
- (11) chloropentafluoroethane (CFC-115);
- (12) dichlorotrifluoroethane (HCFC-123);
- (13) tetrafluoroethane (HCFC-134a);
- (14) dichlorofluoroethane (HCFC-141b); and
- (15) chlorodifluoroethane (HCFC-142b).

(iiii) "Volume fraction solids" means the arithmetic value determined by dividing the volume of surface coating solids contained in specific volume of surface coating material by the volume of the surface coating material. Calculation of volume fraction solids shall be determined by method 24, 40 CFR Part 60, appendix A, as in effect July 1, 1985.

(jjjj) "Waste water separator" means any device or piece of equipment which utilizes the difference in density between oil and water to remove oil and associated chemicals from water, or any device, including but not limited to a flocculation tank, clarifier, or other similar device, which removes petroleum derived compounds from waste water.

(kkkk) "Waxy, heavy-pour crudes" means any crude oil with a pour point of 30°F or higher as

determined by ASTM standard D-97-66, "test for pour point of petroleum oils," as in effect 1966, or with a Reid vapor pressure less than two pounds per square inch absolute as determined by ASTM standard D-323-82, "standard test method for vapor pressure of petroleum products (Reid method)," as in effect August 27, 1982.

(llll) "Wool fiberglass insulation" means a thermal insulation material composed of glass fibers and made from glass produced or melted at the same facility where the manufacturing line is located.

(mmmm) "Wool fiberglass manufacturing line" means the manufacturing equipment comprising the forming section, where molten glass is fiberized and a fiberglass mat is formed; the curing section, where the binder resin in the mat is thermally "set"; and the cooling section, where the mat is cooled. (Authorized by K.S.A. 65-3005, 65-3010; effective, E-81-28, Sept. 10, 1980; effective May 1, 1981; amended May 1, 1987; amended, T-88-55, Dec. 16, 1987; amended May 1, 1988; amended Oct. 7, 1991.)

28-19-62. Testing procedures. (a) Sampling and testing procedures required to demonstrate compliance with the volatile organic compound (VOC) emission limits shall be as described in the following referenced publications:

(1) Appropriate reference methods in 40 CFR Part 60, appendix A as in effect July 1, 1986 or alternate methods demonstrated to the satisfaction of the department to be equivalent;

(2) ASTM D 1186-06.01—Thickness of paints/related coatings dry film thickness of non-magnetic coatings applied to a ferrous base, as in effect 1981.

(3) ASTM D 1200-06.01—Standard test method for determining the viscosity of paints and related coating by the Ford viscosity cup test, as in effect 1982.

(4) ASTM D 3794-06.01—Standard test method for determining the viscosity of coil coatings by the Zahn cup method test, as in effect 1979.

(5) ASTM D 1475-60—Standard test method for determining the density of paint, varnish, lacquer and related products, as in effect 1980.

(6) ASTM D 2369-81—Standard test method for determining the volatile content of coatings using a one hour bake, as in effect 1981.

(7) ASTM D 3792-79—Standard test method for determining the water content of water reducible paint by direct injection into a gas chromatograph, as in effect 1979.

(8) ASTM D 4017-81—Standard test method for determining the water content in paints by the Karl Fischer titration method, as in effect 1981.

(9) ASTM D-244-83—Standard methods of testing emulsified asphalts, as in effect 1983.

(10) ASTM D-323-82—Vapor pressure of petroleum products (Reid method), as in effect 1982.

(11) ASTM—D-97-66—Test for pour point of petroleum oils, as in effect 1978.

(12) Reid vapor pressure of gasoline to be used as a fuel for motor vehicles shall be sampled according to the procedures in 40 CFR, Part 80, Appendix D, as in effect July 1, 1989 and amended at 55 FR 25835, June 25, 1990.

(13) Reid vapor pressure of gasoline to be used as a fuel for motor vehicles shall be tested according to the procedures in 40 CFR, Part 80, Appendix E, as in effect July 1, 1989 and amended at 55 FR 25835, June 25, 1990.

(b) The department may approve an alternate sampling or testing procedure developed or approved by the U.S. environmental protection agency as equivalent or improved procedures. (Authorized by K.S.A. 65-3005 and 65-3010; effective, E-81-28, Sept. 10, 1980; effective May 1, 1981; amended May 1, 1982; amended, T-88-55, Dec. 16, 1987; amended May 1, 1988; amended Oct. 7, 1991.)

28-19-63. Automobile and light duty truck surface coating.

(a) The provisions of this regulation shall be applicable to each automobile or light duty truck top coat and primer surfacer surface coating operation and all other automobile or light duty truck surface coating application systems at those facilities which have a VOC potential contaminant emission rate equal to or greater than three tons per year. For the purposes of this rule, surface coating operation means the combination of all coating application systems which apply the specific class of surface coatings identified at table A of subsection (b). The VOC potential contaminant emission rate of a facility shall be determined by:

(1) the maximum hourly production rate of each coating application system; and

(2) the assumption that the facility operates 24 hours per day, 365 days per year provided that the facility's operating hours are not otherwise limited by federally enforceable permit conditions.

(b) An owner or operator of any facility subject to this regulation shall not:

(1) conduct any surface coating operation that emits VOC to the atmosphere in excess of the amount specified in table A below.

Table A
VOC Emission Limits Based on Solids Applied

Surface Coating Operation	Emission Limit (Pounds of VOC/Gal. of Solids Applied)
Top Coat	15.1
Primer surfacer	15.1

(2) operate any surface coating application system that emits VOC to the atmosphere in excess of the amount specified in table B below.

Table B

Surface Coating Application System	Coating Characteristics lb/gal coating (minus exempt VOC and water)	Compliance Date
Body primer coat	1.2	12-31-82
Body primer-surfacer coat	3.0	12-31-82
Body top coat	2.8	12-31-87
	5.8	07-01-80
	5.0	12-31-81
Body final repair coat	2.8	12-31-87
	6.5	07-01-80
	4.8	12-31-87
Miscellaneous metal parts	3.5	07-01-82

(c) Use of additional VOC shall be considered as follows:

(1) for determining the potential contaminant emission rate of the facility in accordance with subsection (a), include that added for thinning coatings and that used for purging or washing coating applicators which cannot be otherwise accounted for in a reclamation system; and

(2) for compliance with subsection (b), include that added for thinning coatings.

(d) The emission limits which will result from the use of coatings in subsection (b) shall be achieved by:

(1) application of coatings which meet or exceed the characteristics of the coatings in table B of subsection (b) per coating application system on a daily weighted average basis. For the purpose of this subsection (d)(1), "daily weighted average" is the total weight of VOC emitted from a coating application system per day, divided by the volume of coating used per day; or

(2) application of coatings to achieve equivalent emissions based on the weight of VOC emitted per gallon of solids applied as specified in table A of subsection (b). For purposes of subsection (d) (2), "daily weighted average" is the total weight

of VOC emitted from a surface coating operation per day, divided by the volume of solids applied per day as determined by procedures described in the publication referenced in (f); or

(3) application, for the capture and reduction of VOC emissions through either destruction or collection, of emission control equipment demonstrated through testing as capable of maintaining an overall VOC emission reduction necessary to meet the emission requirements of subsection (b). Use of emission control equipment shall require that continuous monitors be installed, calibrated, operated and maintained. Maintenance records of the monitors shall be kept and made available for department inspection. The monitors shall continuously measure and record the following parameters:

(A) with an accuracy of the greater of ± 0.75 percent of the temperature being measured expressed in degrees Celsius, or 2.5 degrees Celsius, the exhaust gas temperature of all VOC destruction devices and the gas temperature immediately upstream and downstream of any catalyst bed;

(B) with an accuracy of ± 2.00 percent of the amount being monitored, the cumulative amount of VOC recovered during a calendar month for all VOC recovery equipment; and

(C) any other parameters considered necessary by the department to verify proper operation of emission control equipment; or

(4) any combination of methods approved by the department which results in emissions, when calculated as pounds of VOC per gallon of solids applied per coating application system, that are no greater on a daily weighted basis than those achieved with the appropriate coatings specified in table B of subsection (b).

(e) Prior to 180 days after a facility becomes subject to the provisions of this regulation, the owner or operator of the facility shall demonstrate, at the expense of the owner or operator, initial compliance with this regulation by testing. An owner or operator proposing to conduct testing shall notify the department, in writing, of the intent to test not later than 30 days prior to the proposed date of testing. The owner or operator shall submit to the department any information about the proposed test requested by the department. The department may require, at any time necessary to determine compliance with this regulation, the owner or operator of any facility subject to this regulation to demonstrate compliance by testing, and at the expense of the owner or operator. Testing, for purposes of this regulation, shall be approved by the department and consistent with:

(1) 40 CFR Part 60, appendix A, as in effect July 1, 1989; and

(2) procedures as established by the department in approving proposed test plans consistent with subsection (e)(1).

(f) Demonstration of continual compliance per top coat and primer surfacer surface coating operations achieved by subsection (d)(2) shall be based on the procedures in the publication "protocol for determining the daily volatile organic compound emission rate of automobile and light-duty truck topcoat operations," published in EPA document no. EPA-450/3-88-018 (December 1988).

(g) Demonstration of continual compliance per coating application system not covered by subsection (f), achieved by subsection (d)(3) or (d)(4) shall be based on the finding that the results obtained by the formula in (2) are equal to or less than the results obtained by the formula in (1), both results on a daily weighted average basis.

(1) complying coating equivalent emissions expressed as:

$$\frac{\text{VOC, lbs}}{\text{gal. of solids applied}} = \frac{\text{EL}}{(\text{VS})(\text{TE})}$$

EL = the coating characteristics established by this regulation, expressed as pounds of VOC per gallon of coating, less exempt VOC and water.

VS = volume fraction of solids in EL, expressed as a decimal, where the density of coating solvents is assumed to be 7.36 pounds per gallon, less exempt VOC and water.

TE = baseline transfer efficiency as defined at K.A.R. 28-19-61, expressed as a decimal.

(2) Actual coating equivalent emissions expressed as:

$$\frac{\text{VOC, lbs}}{\text{gal. of solids applied}} = \frac{\text{AC}(1 - \text{E})}{(\text{vs})(\text{te})}$$

AC = pounds of VOC per gallon of the coating as delivered to the coating application system, less exempt VOC and water.

E = the demonstrated efficiency of installed vapor processing system determined by the actual vapor collection system efficiency multiplied by the actual VOC emission control device efficiency, expressed as a decimal.

vs = volume fraction of solids of the coating as delivered to the coating application system, expressed as a decimal. For water-borne coatings, the volume fraction of solids is determined without water.

te = the demonstrated transfer efficiency of the coating application system, expressed as a decimal.

The owner or operator shall determine AC and vs by using 40 CFR Part 60, appendix A, reference method 24, as in effect July 1, 1989, and data supplied by the coating manufacturer adjusted by the VOC used for thinning purposes; or from analysis of coatings as applied. The analysis shall be conducted by the owner or operator in accordance with reference method 24, as in effect July 1, 1989. If manufacturers formulation data is used, verification of the data may be required by reference method 24, or a department approved equivalent method, and at the expense of the owner or operator.

(h) The owner or operator of each emission unit within a facility subject to this regulation shall keep and maintain records at the facility and make available for inspection by a department representative to determine continuous compliance of the facility with this regulation.

(1) In order to demonstrate compliance for surface coating operations under table A of subsection (b), the records used to complete the calculations found in EPA document no. EPA-450/3-88-018 referenced at subsection (f) shall be kept at the facility for two years following the date of record.

(2) In order to demonstrate compliance for coating application systems under table B of subsection (b), the records shall include the following information and shall be kept at the facility for two years following the date of record:

(A) the type and amount of coatings and thinning solvents delivered daily to each coating application system. The daily record-keeping requirements of this subsection may be waived if the owner or operator:

(i) demonstrates that it uses only coatings that have been determined to be in compliance with table B of subsection (b) of this regulation; and

(ii) has received written approval from the department for a waiver from this requirement;

(B) the manufacturer's coating formulation data, and other test data, including density, weight percent volatiles (as determined using a one hour bake), weight percent water, and weight percent exempt VOC, determined by reference method 24 for each coating;

(C) the coating's solids content, as delivered to the coating application system in volume percent;

(D) the results of any testing conducted at the facility pertaining to transfer efficiencies, capture efficiencies or control equipment reduction efficiencies;

(E) the type, density and amount of solvents used each month for purge and equipment cleaning;

(F) amount and density of waste solvents reclaimed; and

(G) those records as required in subsections (d)(3)(A) through (d)(3)(C).

(i) The owner or operator of a facility shall comply with all emission limits within 180 days after the facility becomes subject to the provisions of this regulation.

(j) The provisions of this regulation shall be applicable only to affected facilities located in areas which have been identified as not meeting the national primary ambient air quality standard for ozone in the manner prescribed by the provisions of section 107(d) of the federal clean air act, 42 U.S.C. 7407 as promulgated at 40 CFR Part 81 as in effect July 1, 1986 and amended at 51 Fed. Reg. 25,200 July 11, 1986. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective, E-81-28, Sept. 10, 1980; effective May 1, 1981; amended May 1, 1986; amended, T-88-55, Dec. 16, 1987; amended May 1, 1988; amended Nov. 8, 1993.)

28-19-64. Bulk gasoline terminals. (a) No owner or operator of any bulk gasoline terminal (BGT) with a gasoline throughput of 20,000 gallons or greater daily shall cause or permit loading of gasoline into any gasoline delivery vessel (GDV) from any loading rack unless:

(1) the loading rack includes a vapor collection system and a vapor processing system or an equivalent vapor control system approved by the director; and

(2) the GDV driver provides documentation showing the GDV owner or operator has complied with K.A.R. 28-19-70(c)(3).

(b) The following requirements shall apply to the loading rack and vapor collection and processing system at affected BGT's:

(1) VOC emissions to atmosphere shall be limited to 0.67 pound per 1,000 gallons of gasoline loaded. Initial compliance with this emission limitation shall be demonstrated by the owner or operator within 180 days after an affected BGT becomes subject to the provisions of this regulation. Compliance demonstration shall be in accordance with 40 CFR Part 60, as in effect July 1, 1986, subsections 60.503(c), (d), (e) and (f). The department may require compliance demonstration be repeated at any time necessary to determine compliance with this regulation, and at the expense of the owner or operator.

(2) all vapors and gases from the loading rack shall be vented only to the vapor processing system; and

(3) the vapor collection and processing system shall be designed and operated to prevent gauge pressure in the GDV from exceeding 18 inches of water and prevent vacuum gauge pressure from exceeding six inches of water during the gasoline loading operation.

(c) The owner or operator of an affected BGT required to install a vapor collection and processing system to comply with this regulation shall:

(1) Within 16 weeks of the effective date of this regulation submit a control plan to the department providing for final compliance with this regulation as expeditiously as practicable but not later than the date prescribed by subsection (c)(5) of this regulation;

(2) award contracts or purchase orders for the vapor collection and processing system within 24 weeks on the effective date of this regulation;

(3) initiate on site construction or installation of the vapor collection and processing system within 48 weeks of the effective date of this regulation;

(4) complete construction or installation of the vapor collection and processing system within 100 weeks of the effective date of this regulation; and

(5) demonstrate final compliance with this regulation within two years of the effective date of this regulation.

(d) The owner or operator of an affected BGT shall submit to the director by March 31 of each year, a report of the monthly gasoline throughput for the previous calendar year.

(e) The owner or operator of an affected BGT shall inspect, at least once each calendar quarter, each loading rack and vapor collection and processing system during loading of GDV's for liquid or vapor leaks. Inspect for liquid leaks visually, vapor leaks shall be detected in accordance with 40 CFR Part 60, appendix A, reference method 21 or an alternate method as demonstrated to the satisfaction of the department to be equivalent. Combustible organic vapors shall be less than 100 percent of the lower explosive limit, measured as propane, at one inch around the perimeter of any leak source on the loading rack and vapor collection and processing system up to the point of connection with GDV. Leaks detected shall be repaired within 15 days. The owner or operator of the affected BGT shall record the following information and keep the information available for at least two years for department inspection at the

BGT or submittal to the department upon department request:

(1) date of each inspection, including corresponding number of leaks detected; and

(2) date and location of leaks detected and date and type of corrective actions taken.

(f) In addition to inspecting for leaks required in subsection (e), the owner or operator of an affected BGT shall:

(1) take precautions necessary to prevent liquid drainage from the loading rack when not in use and when disconnecting from any GDV; and

(2) notify the department, on forms supplied by the department, and before each March 2nd, that all GDV's servicing the BGT during the past calendar year complied with the requirements of K.A.R. 28-19-70(c).

(g) The provisions of this regulation shall be applicable to all affected BGT's which are located in areas which were identified as not meeting the national ambient air quality standard for ozone in the manner prescribed by the provisions of Section 107(d) of the federal clean air act, 42 U.S.C. 7407 as promulgated at 40 CFR Part 81 as in effect July 1, 1986 and amended at 51 Fed. Reg. 25,200 July 11, 1986. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective, E-81-28, Sept. 10, 1980; effective May 1, 1981; amended May 1, 1986; amended, T-88-55, Dec. 16, 1987; amended May 1, 1988.)

28-19-65. Volatile organic compounds (VOC) liquid storage in permanent fixed roof type tanks.

(a) No person shall place, store, or hold in any stationary tank, reservoir, or other container capable of holding more than 40,000 gallons of any VOC liquid having a true vapor pressure of one and five tenths pounds per square inch absolute (psia) or greater under actual storage conditions unless the tank, reservoir, or other container is a pressure tank capable of maintaining working pressures sufficient to prevent vapor loss to the atmosphere or is designed and equipped with one of the following vapor loss control devices:

(1) for storage of VOC liquid having a true vapor pressure of less than 11.1 psia at storage conditions, an internal floating roof meeting the following requirements:

(A) it shall have a primary seal and continuous secondary seal extending from the floating roof to the tank wall. The primary seal shall be a liquid mounted type or when the floating roof already has a primary seal, a metallic shoe seal will be in-

stalled to function as a primary seal. Replacement primary seals shall be liquid mounted or metallic shoe type; and

(B) automatic vent openings shall be closed except when the floating roof is being floated off or landing on the leg supports; or

(2) for storage of VOC liquid having a true vapor pressure of equal to or greater than 11.1 psia at storage conditions, a pressure tank sealed or vented to a vapor processing system; or

(3) a properly installed, operated and maintained vapor processing system. The vapor processing system shall consist of a vapor collection system capable of collecting the VOC vapors to prevent their emission to the atmosphere. The vapor processing system shall achieve an overall VOC emissions reduction efficiency of at least 90% by weight on a continuous basis; or

(4) equipment or means other than in (1) through (3) demonstrated to the satisfaction of the department to be equal in efficiency for purposes of air pollution control.

(b) The owner or operator shall maintain each affected storage tank so that the following conditions prevail:

(1) no visible holes, tears or other openings in the secondary seal or seal fabric;

(2) no visible gaps between the secondary seal and tank wall are apparent;

(3) VOC liquid does not accumulate on the internal floating roof; and

(4) all tank openings shall be gas tight except when tank gauging or sampling is taking place.

(c) This regulation shall not apply to tanks having a storage capacity of 420,000 gallons or less and used to store produced crude oil and condensate prior to lease custody transfer.

(d) The owner or operator of an affected facility shall:

(1) within 16 weeks after the facility becomes subject to the provisions of this regulation submit a control plan to the department providing for final compliance with this regulation as expeditiously as practicable but not later than the date prescribed by subsection (d)(5) of this regulation;

(2) award contracts or purchase orders for emissions control equipment necessary to comply with the provisions of the regulation within 24 weeks after the facility becomes subject to the provisions of this regulation;

(3) initiate construction or installation of the required emission control equipment within 48

weeks after the facility becomes subject to the provisions of this regulation.

(4) complete the construction or installation of the required emission control equipment within 100 weeks after the facility becomes subject to the provisions of this regulation;

(5) demonstrate compliance with this regulation within two years after the facility becomes subject to the provisions of this regulation.

(e) The owner or operator of each affected storage tank shall visually inspect the internal floating roof, the primary seal and secondary seal each time the storage tank is emptied and degassed. The owner or operator shall then conduct any repairs necessary to comply with (b)(1) through (b)(3) before refilling the storage tank.

(f) The owner or operator of each affected storage tank shall maintain records on a monthly basis for two years from the date of record at the facility available for department inspection for:

(1) amount and type of VOC liquids stored/turned over;

(2) inspection dates with the corresponding findings;

(3) date and description of repairs of each storage tank and floating roof or vapor processing system; and

(4) the average temperature on a monthly basis of the stored VOC liquids.

(g) The provisions of this regulation shall be applicable only to VOC liquid storage tanks operated at facilities subject to the provisions of either K.A.R. 28-19-64, 28-19-67 or 28-19-68. (Authorized by K.S.A. 65-3005, 65-3010; effective, E-81-28, Sept. 10, 1980; effective May 1, 1981; amended, T-88-55, Dec. 16, 1987; amended May 1, 1988.)

28-19-66. Volatile organic compounds (VOC) liquid storage in external floating roof tanks.

(a) No person shall place, store, or hold in any stationary tank, reservoir, or other container not having a permanent fixed roof and capable of holding more than 40,000 gallons of any VOC liquid with a true vapor pressure of 1.5 pounds per square inch absolute (psia) or greater at storage conditions unless the container is equipped with an external floating roof having a primary seal system. The container shall also be equipped with a continuous secondary seal extending from the floating roof to the container wall if:

(1) the container is of welded construction with a metallic type shoe seal, a liquid mounted foam

seal, a liquid mounted liquid filled seal or any other closure device which has been demonstrated to the satisfaction of the department to be an equivalent primary seal system, and the true vapor pressure of the stored VOC liquid is four psia or greater at storage conditions;

(2) the container floating roof has a vapor mounted primary seal, unless the seal can be demonstrated to the satisfaction of the department to be equivalent to a metallic or liquid mounted seal, in which case the requirements of subsection (a)(1) apply; or

(3) the container is of riveted construction.

(b) All seal closure devices shall meet the following requirements:

(1) There shall be no visible holes, tears, or other openings in the seal or the seal fabric;

(2) they shall be intact and there shall be no visible gaps between the secondary seal and the wall of the storage tank; and

(3) when a vapor mounted seal is demonstrated to the satisfaction of the department to be an equivalent primary closure device, the accumulated area of openings exceeding one-eighth inch in width between the secondary seal and the tank wall shall not exceed one square inch per foot of tank diameter.

(c) All openings in the external floating roof, except for automatic bleeder vents, rim space vents and leg sleeves, shall provide a projection below the liquid surface. The openings shall be equipped with a cover, seal or lid. The cover, seal or lid shall be in a closed position at all times except when the roof is floated off or landed on the roof leg supports and rim vents shall be set to open when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting. No VOC liquid shall accumulate on the floating roof. Any emergency roof drain shall be provided with a slotted membrane fabric cover or equivalent cover that covers at least 90 percent of the area of the opening.

(d) The following are specifically exempted from the requirements of this regulation:

(1) external floating roof tanks having capacities less than 10,000 barrels used to store produced crude oil and condensate prior to lease custody transfer;

(2) a metallic-type shoe seal in a welded tank which has a secondary seal from the top of the shoe seal to the tank wall;

(3) external floating roof tanks storing waxy, heavy pour crudes; and

(4) external floating roof tanks with other closures or devices demonstrated to the satisfaction of the department to be equal in efficiency for purposes of air pollution control.

(e) The owner or operator of a facility subject to the provisions of this regulation shall:

(1) within 16 weeks after the facility becomes subject to the provisions of this regulation, submit a control plan to the department providing for final compliance as expeditiously as practicable but not later than the date prescribed by subsection (e)(5) of this regulation;

(2) award contracts or purchase orders for seal systems or other equipment necessary for compliance within 24 weeks after the facility becomes subject to the provisions of this regulation;

(3) initiate on site construction or installation activities required for compliance within 48 weeks after the facility becomes subject to the provisions of this regulation;

(4) complete on site construction or installation of equipment for compliance within 100 weeks after the facility becomes subject to the provisions of this regulation; and

(5) demonstrate final compliance with applicable provisions of this regulation within two years after the facility becomes subject to the provisions of this regulation except that final compliance shall be demonstrated within one year after the facility becomes subject to the provisions of this regulation where such compliance does not require the purchase, relocation or construction of equipment items other than piping.

(f) The owner or operator of each affected storage tank shall visually inspect the floating roof primary seal each time the storage tank is emptied and degassed, but no less than once every five years. A visual inspection of the secondary seal shall be conducted semi-annually and the secondary seal gap measurements shall be conducted annually to ensure compliance with (b)(2) and (b)(3). The owner or operator shall repair any damage to the secondary seal or seal fabric within 72 hours of finding secondary seal damage and repair primary seal damage prior to refilling the storage tank.

(g) The owner or operator of each affected storage tank shall maintain records on a monthly basis for two years from the date of record at the facility available for department inspection for:

(1) amount and type of VOC liquids stored/turned over;

(2) inspection dates with the corresponding findings;

(3) date and description of repairs of each storage tank and floating roof; and

(4) the average temperature on a monthly basis of the stored VOC liquids.

(h) The provisions of this regulation shall be applicable only to VOC liquid storage tanks operated at facilities subject to the provisions of either K.A.R. 28-19-64, 28-19-67 or 28-19-68. (Authorized by K.S.A. 65-3005, 65-3010; effective, E-81-28, Sept. 10, 1980; effective May 1, 1981; amended, T-88-55, Dec. 16, 1987; amended May 1, 1988.)

28-19-67. Petroleum refineries. (a) A person shall not permit the use of any vacuum producing system at a petroleum refinery unless the vapor emissions from the condensers, hot wells or accumulators of the system are reduced by:

(1) Piping the noncondensable vapors to a firebox or incinerator;

(2) compressing the vapors and adding them to the refinery fuel gas; or

(3) other equipment or means of equal efficiency for purposes of air pollution control as may be approved by the department.

(b) A person shall not permit the use of any waste water (oil and water) separator at a petroleum refinery unless covers and seals approved by the department have been provided on all separators and forebays, and all openings in covers, separators and forebays have been equipped with lids or seals so that the lids or seals are in the closed position at all times except when in actual use.

(c) A person shall not perform a process unit turnaround at a petroleum refinery unless a detailed procedure for minimization of volatile organic compound emissions during process unit turnarounds has been developed, submitted to, and approved by the department. As a minimum, the procedure shall provide for:

(1) Depressurization venting of the process unit or vessel to a fuel gas system, vapor recovery system, flare or firebox, or other equipment or means of equal efficiency for purposes of air pollution control, as approved by the department;

(2) no emission of volatile organic compounds from a process unit or vessel until its internal pressure is 19.7 pounds per square inch, absolute, or less; and

(3) submission to the department, within 30 days of placing the process unit on stream after a turnaround, the following information:

(A) The dates of the process unit shutdown and startup; and

(B) the approximate total quantity of volatile organic compounds emitted to the atmosphere.

(d) The owner or operator of any source subject to the provisions of subsections (a) and (b) of this regulation shall:

(1) Within 16 weeks of the effective date of this regulation submit a control plan providing for compliance with the provisions as expeditiously as practicable but not later than the date prescribed by subsection (e)(5) of this regulation.

(2) award contracts or purchase orders necessary to comply with the provisions within 24 weeks of the effective date of this regulation.

(3) initiate on site construction or installation activities required to comply with the provisions within 48 weeks of the effective date of this regulation.

(4) complete the construction or installation of equipment necessary to comply with the provisions within 100 weeks of the effective date of this regulation.

(5) demonstrate final compliance with the provisions within two years of the effective date of this regulation, except that final compliance shall be demonstrated within one year of the effective date of this regulation where such compliance does not require the purchase, relocation or construction of equipment items other than piping.

(e) The owner or operator of a source subject to the provisions of subsection (c) of this regulation shall develop and submit the required procedures to the department within six months of the effective date of this regulation and shall implement such procedures within three months of the date of their approval by the department.

(f) This regulation shall be applicable only to the use of vacuum producing systems and wastewater separators and turnaround operations at petroleum refineries which are located in areas which were identified as not meeting the national ambient air quality standard for ozone in the manner prescribed by the provisions of Section 107(d) of the federal clean air act (42 U.S.C. 7407), as promulgated at 48 FR 46783 (October 14, 1983), and have a cumulative potential contaminant emission rate equal to or greater than one hundred (100) tons of volatile organic compounds per year for all emission sources subject to the provisions of this part. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective, E-81-28, Sept. 10, 1980; effective May 1, 1981; amended May 1, 1986.)

28-19-68. Leaks from petroleum refinery equipment. (a) If the volatile organic compound concentration leaking from pump seals, compressor seals, seal oil degassing vents, pipeline valves, flanges, and other connections, pressure relief devices, process drains, and open ended pipes exceeds 10,000 parts per million, the leak shall be repaired within 15 days.

(b) Any leaks which cannot be repaired during the 15 day period shall be reported to the department, in writing, within the 15 day period. The report shall state the source of the leak, the reasons why repairs cannot be made during the period, and the earliest date by which the repairs can be accomplished.

(c) The monitoring of volatile organic compound leaks shall be performed by the refinery according to the following schedule: (1) Weekly: visual inspection shall be made of pump seals to detect leaks. Whenever liquid leaks are observed, the volatile organic compound concentration shall be monitored immediately.

(2) quarterly: compressor seals, pipeline valves in gas service, and atmospheric vented pressure relief valves in gas service.

(3) annually: pump seals, pipeline valves in liquid service, and process drains.

(d) The monitoring for the detection of volatile organic compound leaks other than visual inspection required by subsection (c) shall be conducted in accordance with the provisions of K.A.R. 28-19-62(a)(3).

(e) A written monitoring plan providing for compliance with the provisions of subsection (c) shall be submitted to the department by the owner or operator of any source subject to its provisions within one year of the effective date of this regulation. The plan shall contain, at a minimum, a list of the refinery units to be monitored, the calendar quarter during which they will be monitored, a copy of the leak survey log format that will be used, and the make and model of the monitoring equipment that will be used.

(f) The ends of all pipes and lines which normally contain volatile organic compounds and which terminate with a valve fitting other than a pressure relief valve shall be sealed with a second valve, a blind flange, a plug, or a cap. The seals shall be removed only when the line must be opened for the collection of samples or other purposes.

(g) This regulation shall be applicable only to pump seals, compressor seals, seal oil degassing vents, pipeline valves, flanges and other connec-

tions, pressure relief devices, process drains and open ended pipes in use at petroleum refineries which are located in areas which were identified as not meeting the national ambient air quality standard for ozone in the manner prescribed by the provisions of Section 107(d) of the federal clean air act (42 U.S.C. 7407), as promulgated at 48 FR 46783 (October 14, 1983), and have a cumulative potential contaminant emission rate equal to or greater than 100 tons of volatile organic compounds per year for all emissions sources subject to the provisions of this part. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective, E-81-28, Sept. 10, 1980; effective May 1, 1981; amended May 1, 1986.)

28-19-69. Cutback asphalt. (a) A person shall not cause, allow or permit the use or application of cutback asphalt for the purposes of paving after December 31, 1982, without the approval of the department. A person seeking approval from the department shall submit a request in writing which provides as much information as the department may require. Any approval may be subject to conditions imposed by the department which may include, but are not limited to, maintenance of records necessary to demonstrate compliance with this regulation. Emulsified asphalt shall be an acceptable substitute for cutback asphalt.

(b) The use or application of cutback asphalts may be approved where:

(1) the liquified cutback asphalt is used to produce a plant-mix for sale and use outside the areas as described in subsection (c);

(2) the liquified cutback asphalt is used in a plant-mix or road-mix which is used only for filling potholes on emergency road repair; or

(3) the cutback asphalt is used only as an asphalt prime coat or an asphalt seal coat or absorbent surfaces.

(c) This regulation shall be applicable only to the use or application of cutback asphalt within areas which were identified as not meeting the national ambient air quality standard for ozone in the manner prescribed by the provisions of Section 107(d) of the federal clean air act, 42 U.S.C. 7407, as promulgated at 40 CFR Part 81 as in effect July 1, 1986. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective, E-81-28, Sept. 10, 1980; effective May 1, 1981; amended May 1, 1986; amended, T-88-55, Dec. 16, 1987; amended May 1, 1988.)

28-19-70. Leaks from gasoline delivery vessels and vapor collection systems. (a) No person shall load or permit the loading of gasoline from any bulk gasoline terminal (BGT) loading rack into any gasoline delivery vessel (GDV) unless the BGT loading rack is equipped with a vapor collection system that is connected to a vapor processing system and unless this person complies with the requirements of this regulation.

(b) The loading of gasoline from a BGT into a GDV shall be carried out in compliance with the following requirements.

(1) The level of combustible organic vapors shall be less than 100 percent of the lower explosive limit, measured as propane, at one inch around the perimeter of any leak source on the GDV or the connected BGT vapor collection system during the gasoline loading operation. Compliance shall be determined in accordance with 40 CFR Part 60, appendix A, reference method 21, revised as of July 1, 1986, or an alternate method demonstrated to the satisfaction of the department to be equivalent to that reference method.

(2) There shall not be any visible liquid leaks from the GDV or the BGT vapor collection and processing system during the gasoline loading operation.

(3) The vapor collection and vapor processing system provided at the BGT shall be designed and operated to prevent gauge pressure in the GDV from exceeding 18 inches of water and to prevent vacuum gauge pressure in the GDV from exceeding six inches of water during the gasoline loading operation.

(4) The GDV being loaded shall be in compliance with the requirements of subsection (c) of this regulation.

(c)(1) The owner or operator of each GDV that is operated within the area of applicability, as defined in subsection (f) of this regulation, shall demonstrate that a pressure change in the GDV of not more than three inches of water in five minutes will occur when the GDV is subjected to these conditions:

(A) pressurized to a gauge pressure of 18 inches of water; and

(B) evacuated to a gauge pressure of six inches of water. This demonstration shall be made using the testing procedures prescribed in 40 CFR Part 60, appendix A, method 27, revised as of July 1, 1986.

(2) The owner or operator of each GDV operated within the area of applicability, as defined in subsection (f) of this regulation, shall certify that

the GDV satisfies the requirements of paragraph (c)(1) of this regulation in the following manner.

(A) The owner or operator shall demonstrate compliance with the parameters in paragraph (c) (1) by the successful completion of an annual test of each GDV.

(B) The period for annual testing shall be from January 1 to May 31, inclusive, of each year.

(C) The owner or operator shall submit the result or results of GDV testing to the department, on forms approved by the department, before July 31 of the same year in which the test is completed and in which compliance is to be demonstrated.

(D) Failure to test a GDV operated within the area of applicability, as defined in subsection (f) of this regulation, before June 1 of each year, shall be a violation of this regulation.

(E) Failure to submit the results of testing for a GDV operated within the area of applicability on the department-approved forms before July 31 of the certification year shall be a violation of this regulation.

(3) Each owner or operator of a GDV subject to this regulation shall place a copy or copies of the annual successful test results in the respective GDV, which test results name the company or person performing the testing.

(4) Within 15 days after a GDV fails the required testing, the owner or operator shall either repair and then certify that the GDV passed the required testing, or discontinue use as a GDV in areas identified as not meeting the national ambient air quality standard for ozone in the manner prescribed by the provisions of Section 107(d) of the federal clean air act, 42 U.S.C. §7407(d), as promulgated at 40 CFR Part 81, revised as of July 1, 1986, and amended at 51 Fed. Reg. 25,200, July 11, 1986, until it has been tested successfully.

(5) Each owner or operator of a GDV shall notify the director within 15 days of the date any liquid or vapor leaks occur at the GDV during gasoline loading and transfer operations, and shall identify the corrective measures taken to repair the GDV.

(6) Each owner or operator of a GDV shall notify the department of the first time and place after certification that the GDV transfers gasoline at a gasoline dispensing facility subject to K.A.R. 28-19-72, to provide the department with the opportunity to inspect the GDV after certification in accordance with paragraphs (1) through (4) of this subsection.

(d) Gasoline shall not be loaded into or from any GDV that has not been certified as complying with subsection (c).

(e) The provisions of this regulation shall apply only to gasoline loading operations conducted at BGTs subject to the provisions of K.A.R. 28-19-64, and to gasoline transfer operations at gasoline dispensing facilities subject to the provisions of K.A.R. 28-19-72.

(f) Each owner or operator of a GDV operating in areas that have been identified as not meeting the national ambient air quality standard for ozone in the manner as prescribed by the provisions of section 107(d) of the federal clean air act, 42 U.S.C. §7407(d), as promulgated at 40 CFR Part 81, revised as of July 1, 1986, and amended at 51 Fed. Reg. 25,200, July 11, 1986 shall meet these requirements:

(1) comply with applicable requirements of this regulation within 60 days after the GDV becomes subject to the provisions of this regulation for GDVs in service before the effective date of this regulation; and

(2) comply with applicable requirements of this regulation as of the date of entering service for GDVs entering service after the effective date of this regulation. (Authorized by K.S.A. 1996 Supp. 65-3005, K.S.A. 65-3010; implementing K.S.A. 1996 Supp. 65-3005, K.S.A. 65-3010; effective May 1, 1982; amended, T-88-55, Dec. 16, 1987; amended May 1, 1988; amended May 15, 1998.)

28-19-71. Printing operations. (a) The provisions of this regulation shall apply to all packaging rotogravure, publication rotogravure and flexographic printing facilities with potential contaminant emission rate of volatile organic compounds (VOC) equal to or more than 100 tons per year. The potential contaminant emission rate calculations may include federally enforceable permit restrictions.

(b) An owner or operator of an affected facility may not operate, cause, allow or permit the operation of the facility unless:

(1) the ink, as it is applied to the substrate, contains:

(A) for a water borne ink, a volatile content of 25.0 percent or less by volume VOC and 75 percent or more by volume water; and

(B) for a high solids, solvent borne ink, less water, 60.0 percent or more by volume solid fraction; or

(2) the owner or operator installs and operates a vapor processing system which uses a carbon adsorber or an incinerator as a VOC emissions control device or other types of VOC emissions control devices may be used upon department approval. A

vapor collection system, the design and operation of which shall be consistent with good engineering practice, shall be used with any vapor processing system. The vapor processing system shall provide, as demonstrated to the satisfaction of the department, an overall emissions reduction of at least:

(A) 75.0 percent where a publication rotogravure process is employed;

(B) 65.0 percent where a packaging rotogravure process is employed; or

(C) 60.0 percent where a flexographic printing process is employed.

(c) The owner or operator of an affected facility not in compliance with subsection (b) after the facility becomes subject to the provisions of this regulation shall meet the increments of progress to achieve compliance in the following schedules:

(1) For process equipment alterations and add-on vapor processing systems requiring purchase orders:

(A) Submit final plans for the vapor processing system or process alterations, or both, within 75 days after the facility becomes subject to the provisions of this regulation;

(B) award contracts or purchase orders for the vapor processing system or process alterations, or both, within 135 days after the facility becomes subject to the provisions of this regulation;

(C) initiate onsite construction or installation of the vapor processing system or process alterations, or both, within 200 days after the facility becomes subject to the provisions of this regulation;

(D) complete onsite construction or installation of the vapor processing system or process alterations, within 300 days after the facility becomes subject to the provisions of the regulation; and

(E) achieve final compliance within 365 days after the facility becomes subject to the provisions of this regulation.

(2) for process equipment alterations and vapor processing systems not requiring purchase orders:

(A) submit final plans for the vapor processing system or process alterations, or both, within 45 days after the facility becomes subject to the provisions of this regulation;

(B) award contracts for process alterations or for the vapor processing system, or both, within 90 days after the facility becomes subject to the provisions of this regulation;

(C) initiate onsite construction or installation of process alterations or vapor processing system, or both, within 120 days after the facility becomes subject to the provisions of this regulation;

(D) complete onsite construction or installation of process alterations or vapor processing system, or both, within 180 days after the facility becomes subject to the provisions of this regulation; and

(E) achieve final compliance within 200 days after the facility becomes subject to the provisions of this regulation.

(D) The owner or operator of an affected facility not in compliance with subsection (b) after the facility becomes subject to the provisions of this regulation may submit to the department, and the department may approve, a proposed alternate compliance schedule to those outlined in subsection (c), provided the following requirements are met:

(1) the proposed alternate compliance schedule shall be submitted within 45 days after the facility becomes subject to the provisions of this regulation;

(2) the owner or operator shall demonstrate to the satisfaction of the department the need for an alternate schedule;

(3) the alternate compliance schedule shall contain increments of progress;

(4) sufficient documentation and certification from appropriate suppliers, contractors, manufacturers, or fabricators shall be submitted to the department by the owner or operator of the affected facility to justify the dates proposed for the increments of progress;

(5) the owner or operator shall certify in writing to the department, within five days after the deadline for each increment of progress, that the required increment of progress has been met; and

(6) final compliance shall be achieved within 365 days after the facility becomes subject to the provisions of this regulation.

(e)(1) The owner or operator of an affected facility shall, within 365 days after the facility becomes subject to the provisions of this regulation and at other times considered necessary by the department to determine compliance with this regulation and at the owner or operator's expense, demonstrate compliance to the satisfaction of the department with subsection (b) by the test methods outlined in the following documents or alternate methods demonstrated to the satisfaction of the department to be equivalent:

(A) appropriate reference methods in 40 CFR Part 60, appendix A, as in effect July 1, 1986; and

(B) U.S. environmental protection agency guideline series document "Procedures for Certifying Quantity of Volatile Organic Compounds

Emitted by Paint, Ink and Other Coatings", EPA-450/3-84-011, as in effect December, 1984.

(2) The owner or operator shall notify the department of the intent to test not less than 30 days before the proposed initiation of any tests, and the notification shall contain the information required by, and be in a format approved by, the department.

(f) Subsequent to the initial performance test required in subsection (e), the owner or operator shall monitor compliance with subsection (b) by maintaining and analyzing the daily records required by subsection (h) using composition of the ink as applied to the substrate determined by:

(1) ink analysis conducted by the owner or operator in accordance with 40 CFR Part 60, appendix A, reference method 24A, as in effect July 1, 1986; or

(2) formulation data supplied by the ink manufacturer plus VOC added to alter ink viscosity before application to the substrate. The department may require the manufacturer's data be verified, at the expense of the owner or operator, by method 24A referenced in subsection (f)(1), if the department has reason to believe compliance with subsection (b) is not being achieved.

(g) Use of vapor processing systems shall require that continuous monitors be installed, calibrated, operated and maintained. The continuous monitors shall continuously measure and record the following parameters:

(1) with an accuracy of the greater of ± 0.75 percent of the temperature being measured, expressed in degrees celsius, of 2.5 degrees celsius, the exhaust gas temperature of all VOC destruction devices and the gas temperature immediately upstream and downstream of any catalyst bed; and

(2) with an accuracy of ± 2.00 percent of the amount being monitored, the cumulative amount of VOC recovered during a calendar month for all VOC recovery equipment; and

(3) any other parameters considered necessary by the department.

(h) The owner or operator of an affected facility shall keep and maintain at the facility, and make available for inspection by a department representative, records for each emission unit demonstrating continuous compliance with this regulation. The records shall include daily records of the following information and shall be kept at the facility for two years following the date of record:

(1) properties of inks as supplied: density in pounds per gallon, total volatile content in weight percent, total VOC content in pounds per gallon

minus water, water content in weight percent, and nonvolatiles content in weight percent;

(2) properties of dilution solvents: chemical name and density in pounds per gallon;

(3) properties of inks as applied to substrate: weighted average density in pounds per gallon and ink dilution ratio in gallons of solvent to gallons of ink as supplied;

(4) quantity of individual inks as applied to substrate;

(5) results of any testing conducted on an emissions unit at an affected facility; and

(6) maintenance records of the vapor processing systems.

(i) The provisions of this regulation shall be applicable only to the printing operations located within areas which were identified as not meeting the national primary ambient air quality standard for ozone in the manner prescribed by the provisions of the federal clean air act, 42 U.S.C. 7407, as promulgated at 40 CFR Part 81 as in effect July 1, 1986 and amended at 51 Fed. Reg. 25,200 July 11, 1986. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1986; amended May 1, 1987; amended, T-88-55, Dec. 16, 1987; amended May 1, 1988.)

28-19-72. Gasoline dispensing facilities.

(a) No owner or operator of a gasoline dispensing facility (GDF) or a gasoline delivery vessel (GDV) shall cause or permit the transfer of gasoline from any GDV into any stationary storage container with a capacity greater than 2000 gallons unless such container is equipped with a submerged fill pipe and a vapor balance system properly installed and in good working order.

(b) No owner or operator of a GDF or a GDV shall cause or permit the transfer of gasoline from any GDV into any stationary storage container with a capacity greater than 250 gallons, but equal to or less than 2000 gallons, unless such container is equipped with a submerged fill pipe.

(c) The transfer of gasoline from any GDV into any stationary storage container at an affected GDF shall be conducted in compliance with the following requirements:

(1) combustible organic vapors shall be less than 100 percent of the lower explosive limit, measured as propane, at one inch around the perimeter of any leak source on the GDV or the connected vapor balance system during the gasoline transfer operation. Compliance shall be determined in accordance with 40 CFR Part 60, appendix A, reference

method 21, as in effect July 1, 1986, or by a method demonstrated to the satisfaction of the department to be equivalent to reference method 21;

(2) there shall not be any visible liquid leaks from the GDV or connections to the stationary storage container during the gasoline transfer operation:

(3) the GDV shall remain closed and contain all vapors collected during the gasoline transfer operation until such time as it is refilled in accordance with K.A.R. 28-19-70 if:

(A) refilled in areas which were identified as not meeting the national ambient air quality standard for ozone as described in subsection (h) of this regulation; or

(B) refilled at bulk gasoline terminals or bulk gasoline plants located in areas meeting the national ambient air quality standard for ozone as described also in subsection (h); and

(4) an owner or operator of an affected GDF or an affected GDV shall, during all transfer operations to an affected stationary storage container, inspect the vapor balance system and GDV connections for liquid gasoline or vapor leaks. Leak detection may be by sight, sound or odor. Each detection of a leak shall be recorded and described in records maintained by the GDF owner or operator at the GDF. Transfer operations shall cease until repair of the leak is accomplished.

(d) The vapor balance system shall be constructed so as to ensure that the gas tight vapor return line is connected to the GDV before gasoline can be transferred into the stationary storage container.

(e) GDV's, including the vessel's vapor collection system, that deliver gasoline to an affected GDF shall comply with K.A.R. 28-19-70(c).

(f) The owner or operator of an affected GDF shall:

(1) maintain written records for a period of at least two consecutive years at the GDF. The records shall be available upon request or for inspection by a department representative and shall specify:

(A) the name and address of the owner or operator of the GDV for each delivery of gasoline transferred into the stationary storage container or containers;

(B) the date of delivery and quantity of gasoline transferred;

(C) identification of and the date when each GDV servicing the GDF was last tested, and determined to comply with the pressure test in K.A.R. 28-19-70(c);

(D) the date when the GDF was last tested and determined to comply with subsection (c)(1) and the name of the person performing the test;

(E) the date and extent of any repairs to the submerged fill pipe connection and vapor balance system at the GDF;

(F) the date of inspection, the description of findings and the corrective actions taken for the inspections conducted in subsection (c)(4); and

(2) notify the department, on forms supplied by the department, and before each March 2nd, that all GDV's servicing the GDF during the past calendar year complied with the requirements of K.A.R. 28-19-70(c).

(g) Each owner or operator of:

(1) an affected GDF shall comply with all requirements within 180 days after the GDF becomes subject to the provisions of this regulation;

(2) GDV's in service prior to the effective date of this regulation shall comply with applicable requirements of this regulation within 60 days after the GDV becomes subject to the provisions of this regulation; and

(3) GDV's entering service after the effective date of this regulation shall comply with applicable requirements of this regulation as of the date of entering service.

(h) This regulation shall be applicable only to affected GDF's which are located in and GDV's which operate in areas which were identified as not meeting the national ambient air quality standard for ozone in the manner prescribed by the provisions of Section 107(d) of the federal clean air act, 42 U.S.C. 7407 as promulgated at 40 CFR Part 81 as in effect July 1, 1986 and amended at 51 Fed. Reg. 25,200 July 11, 1986. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1987; amended, T-88-55, Dec. 16, 1987; amended May 1, 1988.)

28-19-73. Surface coating of miscellaneous metal parts and products and metal furniture. (a) The provisions of this regulation shall be applicable to each miscellaneous metal parts and products and metal furniture coating application system at those facilities which have a VOC potential contaminant emission rate equal to or greater than three tons per year on a facility-wide basis. The VOC potential contaminant emission rate of a facility shall be determined by:

(1) the maximum hourly production rate of each coating application system; and

(2) the assumption that the facility operates 24

hours per day, 365 days per year provided that the facility's operating hours are not otherwise limited by federally enforceable permit conditions.

(b) This regulation shall not be applicable to the following manufacturing categories which have miscellaneous metal parts and products coating operations:

(1) automobiles and light duty trucks;

(2) metal cans;

(3) customized top coating of automobiles and trucks, if less than 35 vehicles per day are processed; and

(4) automobile refinishing.

Each facility subject to this regulation shall remain subject so long as this regulation remains in effect or until the facility's VOC potential contaminant emission rate is demonstrated, to the satisfaction of the department, to be always less than three tons per year.

(c) An owner or operator of any facility subject to this regulation shall not conduct any surface coating operation that emits VOC to the atmosphere in excess of that which would be emitted by using the following coatings with the VOC content specified; (1) through (5) applicable to miscellaneous metal parts and products, and (6) applicable to metal furniture.

(1) 4.3 pounds per gallon of coating, less water and exempt VOC, delivered to a coating application system that applies clear coatings;

(2) 3.5 pounds per gallon of coating, less water and exempt VOC, delivered to a coating application system that is air-dried or forced warm air-dried at temperatures up to 194°F;

(3) 3.5 pounds per gallon of coating, less water and exempt VOC, delivered to a coating application system that applies extreme performance coatings except that coatings applied to the interior of metal pails and metal drums may contain 4.3 pounds per gallon of coating, less water and exempt VOC. As used in this regulation pails shall mean any nominal cylindrical metal container of 1-12 gallon capacity, and drums shall mean any cylindrical metal container of 13 to 110 gallons capacity;

(4) 0.4 pounds per gallon of coating, less water and exempt VOC, delivered to a coating application system that applies powder coatings;

(5) 3.0 pounds per gallon of coating, less water and exempt VOC, delivered to a coating application system for any other coating; and

(6) 3.0 pounds per gallon of coating, less water and exempt VOC, delivered to a coating appli-

cation system for prime, top-coat or single coat operations.

(d) If more than one emission limitation in subsection (c) applies to a specific coating, then the least stringent emission limitation shall apply.

(e) Use of additional VOC shall be considered as follows:

(1) for determining the potential contaminant emission rate of the facility in accordance with subsection (a), include that added for thinning coatings and that used for purging or washing coating applicators which cannot be otherwise accounted for in a reclamation system; and

(2) for compliance with subsection (c), include that added for thinning coatings.

(f) The emission limits which will result from the use of coatings in subsection (c) shall be achieved by:

(1) application of coatings which meet or exceed the requirements of subsection (c) per coating application system on a daily weighted average basis; or

(2) application of coating with improved transfer efficiency demonstrated, through testing, by methods approved by the department, to achieve equivalent emissions based on the weight of VOC emitted per gallon of solids applied as would be emitted with the coatings specified in subsection (c) per coating application system on a daily weighted average basis; or

(3) application, for the capture and reduction of VOC emissions through either destruction or collection, of a VOC vapor processing system demonstrated through testing as capable of maintaining an overall VOC emission reduction of at least 90 percent. Use of a VOC vapor processing system shall require that continuous monitors be installed, calibrated, operated, and maintained. The continuous monitors shall continuously measure and record the following parameters:

(A) with an accuracy of the greater of ± 0.75 percent of the temperature being measured expressed in degrees Celsius, or 2.5 degrees Celsius, the exhaust gas temperature of all VOC destruction devices and the gas temperature immediately upstream and downstream of any catalyst bed;

(B) with an accuracy of ± 2.00 percent of the amount being monitored, the cumulative amount of VOC recovered during a calendar month for all VOC recovery equipment;

(C) any other parameters considered by the department necessary to achieve compliance with this regulation; or

(4) any combination of methods approved by the department which results in emissions, when calculated as pounds of VOC per gallon of solids applied per coating operation, that are no greater on a daily weighted average basis than those achieved with the appropriate coatings specified in subsection (c).

(5) For the purpose of this subsection the term “daily weighted average” is the total weight of VOC emitted from a coating application system per day divided by the volume of coating used or volume solids applied per day, depending on the units of the emission limitation.

(g) Prior to 180 days after a facility becomes subject to the provisions of this regulation, the owner or operator of the facility shall demonstrate, at the expense of the owner or operator, initial compliance with this regulation by testing. An owner or operator shall notify the department, in writing, of the intent to test not later than 30 days prior to the scheduled date of testing. The owner or operator shall submit to the department any information about the test requested by the department. If necessary to determine compliance with this regulation, the owner or operator of any facility subject to this regulation may be required to demonstrate compliance with this regulation by testing at the expense of the owner or operator. Testing, for purposes of this regulation, shall be approved by the department and consistent with:

(1) the test procedures found at 40 CFR Part 60, appendix A, as in effect July 1, 1989; and

(2) procedures as established by the department in approving proposed test plans consistent with subsection (g)(1).

(h) Demonstration of continual compliance per coating application system achieved by sections (f)(2) through (f)(4) shall be based on the finding that the results obtained by the formula in (2) are equal to or less than the results obtained by the formula in (1), both results on a daily weighted average basis.

(1) complying coating equivalent emissions expressed as:

$$\frac{\text{VOC, lbs}}{\text{gal of solids applied}} = \frac{(\text{EL})}{(\text{TE})(\text{VS})}$$

EL = the coating characteristics established by this regulation, expressed as pounds of VOC per gallon of coating, less water and exempt VOC;

TE = baseline transfer efficiency as defined at K.A.R. 28-19-61, expressed as a decimal;

VS = volume fraction of solids in EL, expressed as a decimal, where the density of coating solvents is assumed to be 7.36 pounds per gallon.

(2) actual coating equivalent emissions expressed as:

$$\frac{\text{VOC, lbs}}{\text{gal of solids applied}} = \frac{(\text{AC}) (1-\text{E})}{(\text{vs})(\text{te})}$$

AC = pounds of VOC per gallon of the coating as delivered to the coating application system, less exempt VOC and water;

E = the demonstrated efficiency of installed vapor processing system determined by the actual vapor collection system efficiency multiplied by the actual VOC emissions control device efficiency, expressed as a decimal;

vs = volume fraction of solids of the coating as delivered to the coating application system, expressed as a decimal. For water-borne coatings, the volume fraction of solids is determined without water;

te = the actual demonstrated transfer efficiency of the coating application system, expressed as a decimal.

(A) The owner or operator shall determine AC and vs by (1) using Reference Method 24 data supplied by the coating manufacturer, adjusted by the VOC used for thinning purposes, or (2) from an applied coating analysis conducted by the owner or operator in accordance with Reference Method 24. If manufacturer's formulation data is used, verification of the data may be required by Reference Method 24, or a department approved equivalent method, and at the expense of the owner or operator.

(i) The owner or operator of each emission unit within a facility subject to this regulation shall keep and maintain records at the facility and make available for inspection by a department representative to determine continuous compliance of the facility with this regulation. The records shall include the following information and shall be kept at the facility for two years following the date of record:

(1) the type and amount of coatings delivered daily to each coating application system. The daily record-keeping requirements of this subsection may be waived if the owner or operator:

(A) demonstrates that it uses only coatings that have been determined to be in compliance with subsection (c) of this regulation, and

(B) has received written approval from the department for a waiver from this requirement;

(2) the manufacturer's coating formulation data, and other test data, including density, weight percent volatiles (as determined using a one hour bake), weight percent water, and weight percent exempt VOC, determined by Reference Method 24 for each coating;

(3) the coating's solids content, as delivered to the coating application system, in volume percent;

(4) the results of any testing conducted at the facility pertaining to transfer efficiencies, capture efficiencies or control equipment reduction efficiencies;

(5) the type, density and amount of solvents used daily for coating thinning, purge and equipment cleaning;

(6) amount, components and density of waste solvents reclaimed daily;

(7) those records as required in subsections (f)(3)(A) through (f)(3)(C); and

(8) maintenance records of the temperature monitoring equipment.

(j) The owner or operator of a facility shall comply with all emission limits within 180 days after the facility becomes subject to the provisions of this regulation.

(k) The provisions of this regulation shall be applicable only to affected facilities located in areas which have been identified as not meeting the national primary ambient air quality standard for ozone in the manner prescribed by the provisions of Section 107(d) of the federal clean air act, 42 U.S.C. 7407 as promulgated at 40 CFR Part 81 as in effect July 1, 1989. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1987; amended, T-88-55, Dec. 16, 1987; amended May 1, 1988; amended June 8, 1992.)

28-19-74. Wool fiberglass manufacturing.

(a) The provisions of this regulation shall be applicable to each wool fiberglass manufacturing facility which has a VOC potential contaminant emission rate equal to or greater than 100 tons per year on a facility-wide basis. A facility's VOC potential contaminant emissions rate shall be determined by:

(1) the facility owner or operator estimate of the maximum hourly production rate of each wool fiberglass manufacturing line; and

(2) assuming that the facility operates 24 hours per day, 365 days per year.

(b) No owner or operator of a wool fiberglass manufacturing line shall cause or allow VOC to be discharged into the atmosphere in excess of five pounds of VOC per ton of glass pulled.

(c) The owner or operator of the affected facility shall demonstrate that each wool fiberglass manufacturing line is in compliance with the VOC emissions rate of subsection (b) through testing as specified in subsection (d) and calculations as specified in subsection (f).

(d) Testing of each wool fiberglass manufacturing line shall be conducted:

(1) initially within 180 days after a facility becomes subject to the provisions of this regulation, if recent department approved testing has not been conducted prior to the time the facility becomes subject to the provisions of this regulation, and thereafter at other times considered by the department necessary to determine compliance with this regulation;

(2) at the expense of the owner;

(3) in accordance with a test plan approved by the department before the testing is scheduled. The plan shall include:

(A) name of testing agency;

(B) testing dates;

(C) sampling location;

(D) sampling equipment;

(E) sampling procedures;

(F) sample recovery methods; and

(G) any other information considered necessary by the department;

(4) not less than 30 days after the owner or operator submits, in writing, the proposed date of testing to the department; and

(5) in a manner consistent with:

(A) procedures established by the department in approving test plans;

(B) 40 CFR Part 60, appendix A, reference method 5E, as in effect July, 1986, with the following stipulations:

(i) the sampling time for each test run being at least two hours and the volume of gas sampled being at least 90 dry standard cubic feet;

(ii) samples collected in the impingers shall be recovered as specified in "Container No. 5" in paragraph 4.2;

(iii) samples shall be analyzed as specified for "Container No. 5" in paragraph 4.3; and

(iv) the concentration of VOC shall be calculated as specified for "Cc" in paragraphs 6.1 and 6.2; and

(C) the reference methods of 40 CFR Part 60, appendix A, as in effect July 1, 1986, for the collection of data required during the testing procedure, as follows:

(i) reference method 1 for stack or duct gas sample and velocity traverses;

(ii) reference method 2 for stack or duct gas velocity and gas volumetric flow rate;

(iii) reference method 3 for stack or duct gas dry molecular weight; and

(iv) reference method 4 for stack or duct gas moisture content.

(e) In addition to the parameters required to be recorded in subsection (d), the owner or operator

shall concurrently record the following parameters relating to baseline operating conditions at each wool fiberglass manufacturing line:

(1) the product being produced;

(2) glass pull rate, weight per unit time;

(3) binder type;

(4) binder application rate, weight per unit time;

(5) line speed where applicable, length per unit time;

(6) trimmed mat width where applicable, length;

(7) mat weight where applicable, weight per unit area;

(8) loss on ignition as determined by ASTM Standard Test Method D-2584-68, "Ignition Loss of Cured Reinforced Resin," percent; and

(9) the operating parameters of any VOC emissions control devices at least once during each eight hour work shift, such as:

(A) electrostatic precipitator electrical data and inlet temperature;

(B) wet scrubbing device water flow rate, volume per unit time;

(C) wet scrubbing device pressure drop, pressure units; and

(10) other parameters determined by the department to be necessary to establish baseline conditions of the control system.

(f) The actual VOC emissions rate, to be used in determining compliance with the VOC emissions rate of subsection (b), shall be calculated as follows:

(1) The VOC emissions rate, R, from each wool fiberglass manufacturing line being determined using the VOC concentration, Cc, determined in subsection (d)(5)(B)(iv) and the volumetric flow rate, Q, as determined in subsection (d)(5)(C)(ii), using the following equation:

$$R = CcQ$$

where:

R = weight of VOC per unit time

Cc = weight of VOC per unit volume

Q = volumetric flow rate of gas stream at testing location, actual volume per unit time;

(2) for each two hour test run, the average glass pull rate, P, for each wool fiberglass manufacturing line shall be computed from at least three glass pull rates determined at intervals of at least 30 minutes during the test run. The individual glass pull rates shall be:

(A) computed according to the following equation:

$$P = \frac{LWM(100 - LOI)}{100}$$

where:

- P = glass pull rate, weight per unit time
- L = line speed, length per unit time
- W = trimmed mat width, length
- M = mat weight, weight per unit area
- LOI = loss on ignition, percent, as determined by ASTM Standard Test Method D-2584-68, "Ignition Loss of Cured Reinforced Resins," as in effect 1979; or

(B) determined by measurements of the glass flowing from the rotary spinning process; and

(3) the emissions level, E, for purposes of determining compliance with subsection (b), being computed using the following equation:

$$E = \frac{R}{P}$$

where:

- E = emissions level, weight of VOC emissions per unit weight of product, converted to units of the emissions standard in subsection (b)
- R = emissions rate, from subsection (f)(1)
- P = average glass pull rate, from subsection (f)(2).

(g) The owner or operator of each wool fiberglass manufacturing line subject to this regulation shall keep and maintain at the facility, and make available for inspection by a department representative, records needed to determine continuous compliance of the plant with this regulation. The owner or operator shall keep the records in a form suitable for inspection and shall maintain them at the facility for two years following the date of record. The owner or operator shall maintain a record of the production parameters listed in subsection (e) and any other parameter the department may consider to be necessary to determine compliance with this regulation.

(h) The provisions of this regulation shall be applicable only to affected facilities in areas which have been identified as not meeting the national primary ambient air quality standard for ozone in the manner prescribed by the provisions of Section 107(d) of the federal clean air act, 42 U.S.C. 7407 as promulgated at 40 CFR Part 81 as in effect July 1, 1986 and amended at 51 Fed. Reg. 25,200 July 11, 1986. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1987;

amended, T-88-55, Dec. 16, 1987; amended May 1, 1988.)

28-19-75. This revocation shall be effective on and after September 1, 2002. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1987; amended, T-88-55, Dec. 16, 1987; amended May 1, 1988; revoked Sept. 1, 2002.)

28-19-76. Lithography printing operations. (a) The provisions of this regulation shall apply to all offset lithography printing facilities with a potential contaminant emission rate of volatile organic compounds (VOC) equal to or more than 100 tons per year. The potential contaminant emission rate calculations may include federally enforceable permit conditions.

(b) The provisions of this regulation do not apply to:

- (1) printing on fabric, metal or plastic;
- (2) sheet fed lithographic presses with cylinder widths of 26 inches or less; or
- (3) web lithographic presses with cylinder widths of 18 inches or less.

(c) Any owner or operator of an offset lithographic printing press subject to this regulation and employing fountain solution (the solution applied to the image plate to maintain the hydrophilic properties of the non-image areas) containing VOC shall not operate, or cause or allow the operation of, such process unless:

- (1) the fountain solution shall continuously contain 10 percent by weight or less of alcohol. For purposes of this regulation, alcohol is defined as isopropanol or isopropyl alcohol;
- (2) the fountain solution is refrigerated to a temperature of 55 degrees Fahrenheit or less for alcohol based solutions;

(3) the fountain temperature at the mixing tank is capable of being determined continuously and of being recorded once per shift;

(4) the fountain solution mixing tanks are covered.

(d) Any owner or operator of an offset lithographic printing facility subject to this regulation and employing cleanup solvents containing VOC shall not operate, or cause or allow the operation of, such process unless:

(1) the cleanup solvents are kept in tightly covered tanks or containers during transport and storage; and

(2) cleaning rags used in conjunction with the cleanup solvents are placed, when not in use, in

tightly closed containers and collected for proper disposal or recycling.

(e) Any owner or operator of a heatset web-offset lithographic printing press subject to this regulation with an actual emission rate of greater than or equal to 10 tons per year of VOC and employing a dryer shall not operate or cause or allow the operation of such press unless 100 percent of the dryer exhaust is ducted to a control device which achieves 85 percent by weight or greater control efficiency for VOC's as determined by 40 CFR Part 60, Appendix A, reference method 25 or reference method 25A, as in effect July 1, 1989.

(1) The owner or operator shall keep and maintain at the facility, and make available to inspection by a department representative, records for each heatset web-offset lithographic printing press sufficient to demonstrate that control efficiency is maintained.

(2) Use of emission control equipment shall require that continuous monitors be installed, calibrated, operated and maintained. The monitors shall continuously measure the following parameters:

(A) with an accuracy of the greater of ± 0.75 percent of the temperature being measured expressed in degrees Celsius, or 2.5 degrees Celsius, the exhaust gas temperature of all VOC destruction devices and the gas temperature immediately upstream and downstream of any catalyst bed; or

(B) with an accuracy of ± 2.00 percent of the amount being monitored, the cumulative amount of VOC recovered during a calendar month for all VOC recovery equipment; and

(C) any other parameters considered necessary by the department to verify proper operation of emission control equipment.

(f) For purposes of compliance:

(1) The owner or operator of a facility which is subject to the provisions of this regulation shall provide to the department for approval a demonstration of compliance with subsections (c), (d) and (e) of this regulation:

(A) upon alteration of an existing source or upon commencement of operation of an emission source which is not in existence and operating on the effective date of this regulation and at any time thereafter if requested by the department; or

(B) within 18 months after the effective date of this regulation for all other facilities and at any time thereafter if requested by the department, except that sheet-fed lithographic presses with cylinder widths of 60 inches or more which are in existence

and operating on the effective date of this regulation shall have 36 months after the effective date of this regulation to provide, for the approval of the department, a demonstration of compliance with subsection (c)(1) of this regulation.

(2) If the demonstration of compliance will not be conducted within 12 months after an existing facility becomes subject to this regulation, a final control plan shall be submitted to the secretary by December 31, 1991 for approval. This plan shall include the following:

(A) a detailed plan for process modification; and

(B) a time schedule for compliance containing increments of progress and a final compliance date.

(g) The owner or operator of a facility subject to this regulation shall keep and maintain at the facility, and make available to inspection by a department representative, records sufficient to determine continuous compliance with this regulation. The records shall include the following information and shall be kept at the facility for two years following the date of record:

(1) properties of inks (determined by the manufacturer's formulation data) as applied, density in pounds per gallon, and total volatile content in weight percent;

(2) quantity of inks as applied to substrate in pounds on a monthly basis;

(3) quantity of alcohol added to the fountain solution of each regulated press in pounds each month;

(4) percent by weight of alcohol in fountain solution as monitored on a once per shift basis using a calibrated hydrometer, refractometer or other approved testing device;

(5) quantity of cleanup solvents used on a monthly basis;

(6) quantity of coatings used on a monthly basis and percent VOC in coating by weight on a formulation basis;

(7) results of any testing conducted on an emission unit at a regulated facility;

(8) maintenance records of any air pollution control equipment;

(9) maintenance records of any continuous air pollution monitoring equipment;

(10) the temperature of the fountain solution as recorded on a once per shift basis; and

(11) records as required by the department.

(h) For the purpose of calculating facility-wide VOC emissions the following factors may be taken into consideration unless an alternative method is

approved by the department. The facility may assume that:

(1) when properly disposing of used solvent laden rags, 50 percent of the solvent used for cleanup is retained in the rag, if the facility demonstrates, to the satisfaction of the department, that the solvents are not evaporated into the air during the waste-rag disposal process;

(2) 40 percent of the heatset ink oils stay in the paper web (substrate printed in a continuous rolled printing process);

(3) no VOC's are emitted from the inks used in sheet fed presses and non-heatset web presses; and

(4) 50 percent of the solvent from the fountain solution of a heatset web-offset lithographic printing press is emitted from the dryer.

(i) The provisions of this regulation shall be applicable only to offset lithography printing facilities located in areas which have been identified as not meeting the national primary ambient air quality standard for ozone in the manner prescribed by the provisions of the federal clean air act, 42 U.S.C. 7407, as promulgated at 40 CFR Part 81, as in effect July 1, 1989. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3010; effective Oct. 7, 1991.)

28-19-77. Chemical processing facilities that operate alcohol plants or liquid detergent plants. (a) The provisions of this regulation shall apply to any facility that:

(1) Uses, produces, or stores ethanol or methanol;

(2) has a volatile organic compound (VOC) potential contaminant emission rate of 100 tons per year or greater;

(3) is located in an area which has been identified as not meeting the national primary ambient air quality standard for ozone in the manner prescribed by the provisions of the federal clean air act, 42 U.S.C. 7407 as promulgated at 40 CFR Part 81, as in effect July 1, 1989.

(b) For purposes of this regulation, the potential contaminant emission rate shall be determined as the sum of all potential VOC emissions from point and fugitive sources, including any VOC's present in the wastewater stream, 100 percent of which are presumed to be emitted to the atmosphere.

(c) VOC emission sources are:

(1) Point sources, which include process tanks, alcohol storage tanks, wastewater vents, and wastewater VOC removal devices; and

(2) fugitive sources, which include all sources of

VOC emissions other than point sources, including leaking valves, compressors, pumps, gauges, open-ended lines, sample flanges, and other sources of fugitive emissions including alcohol loading and unloading operations.

(d) The owner or operator of an affected facility shall control VOC emissions from process tanks and alcohol storage tanks by installing and operating the following, singly or in combination:

(1) Retrofitting the tanks with an internal or external floating roof. Internal and external floating roof tanks shall be designed and constructed to meet or exceed the design specifications found at 40 CFR Part 60, Subpart Kb, as in effect July 1, 1989; or

(2) retrofitting the tanks with a vapor collection system and control device to reduce VOC emissions by 95 percent, by weight or greater. Vapor collection systems and control devices installed pursuant to this regulation shall be operated at all times when emissions may be vented to them.

(e) The owner or operator of an affected facility shall reduce the VOC concentration in process wastewater by 90 percent by weight or greater, less any credit for VOC reductions achieved through pollution prevention, by:

(1) installing a wastewater VOC recovery device or devices to remove and capture VOC's contained in process wastewater streams for recovery or destruction using a control device pursuant to subsection (f); or

(2) taking credit for preventing VOC's from entering the wastewater stream through pollution prevention actions such as equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

(f) The owner or operator of an affected facility shall control VOC emissions from wastewater point sources by installing and operating a device or devices to collect and recover or destroy VOC's from wastewater point sources to reduce VOC emissions by 95 percent, by weight, or greater. For treatment purposes, emissions from wastewater point sources may be combined, in a common vapor collection system or systems, with emissions collected from process tanks and alcohol storage tanks to achieve 95 percent reduction of VOC's by weight, or greater.

(g) The owner or operator of an affected facility shall minimize VOC emissions from fugitive

sources by developing a fugitive source emission control plan which shall be submitted to the department within 12 months after the effective date of this regulation or upon commencing operation of the affected facility, whichever is later.

(1) The plan shall include a description of the control strategy and a testing program to evaluate the percent reduction of VOC emissions.

(2) The approved control strategy and testing program shall be implemented and the results of testing submitted to the department within six months of the department's approval of the plan.

(3) The fugitive source emission control plan shall be designed to achieve at least 50 percent control efficiency.

(h) During compliance demonstrations under subsections (d), (e), or (f):

(1) The averaging time for percent reduction requirements for gaseous VOC streams shall be the duration of the 40 CFR Part 60, Appendix A, reference method 25, performance test, as in effect July 1, 1989. Control equipment parameters, measured by continuous monitoring devices, shall indicate whether control equipment is properly operated and maintained; and

(2) the averaging time for percent reduction requirements for process wastewater streams shall be daily, confirmed by at least one daily sample of the process wastewater stream at both the inlet and outlet of the control device.

(i) No later than eighteen months after the effective date of this regulation or within 180 days of completion of control equipment installation, whichever date occurs first, the owner or operator of an affected facility shall conduct performance tests to demonstrate compliance with the applicable VOC control requirements found in subsections (d), (e), (f) and (g). If the performance test will not be conducted within 12 months after an existing facility becomes subject to this regulation, a final control plan shall be submitted to the secretary by December 31, 1991 for approval. This plan shall include the following:

(1) a detailed plan for process modifications; and

(2) a time schedule for compliance containing increments of progress and a final compliance date.

(j) The owner or operator of an affected facility shall conduct performance tests to demonstrate compliance with the applicable percent reduction requirements found in subsections (d) and (f) in accordance with 40 CFR Part 60, Appendix A, ref-

erence method 25 or reference method 25A, as in effect July 1, 1989, and other applicable approved EPA reference methods for gaseous streams and demonstrate compliance with the applicable percent reduction requirement found in subsection (e) by methods approved by the department for process wastewater streams. All monitoring equipment shall be installed and calibrated prior to commencement of performance tests.

(k) The owner or operator of an affected facility shall conduct an initial performance evaluation for all tanks retrofitted with an internal or external floating roof in accordance with the testing requirements found at 40 CFR 60.113b, as in effect on July 1, 1989.

(l) The owner or operator of an affected facility which addresses VOC reduction:

(1) By means of a thermal incinerator shall install, operate, maintain and calibrate a monitoring device to continuously measure and record the temperature in the firebox, accurate to within ± 1.0 percent of the temperature being measured or ± 2.5 degrees Celsius, whichever is greater;

(2) by means of a catalytic incinerator shall install, operate, maintain and calibrate a monitoring device to continuously measure and record the exhaust gas temperature immediately before and after the catalyst bed, accurate to within ± 1.0 percent of the temperature being measured or ± 2.5 degrees Celsius, whichever is greater;

(3) by means of an absorber shall install, operate, maintain and calibrate a monitoring device to continuously measure and record the scrubbing liquid temperature and specific gravity (or other parameter approved by the department to measure absorbing liquid saturation);

(4) by means of a condenser shall install, operate, maintain and calibrate a monitoring device to continuously measure and record the product side temperature, accurate to within ± 1.0 percent of the temperature being measured or ± 0.5 degrees Celsius, whichever is greater;

(5) by means of a carbon adsorption unit shall install, operate, maintain and calibrate a monitoring device to continuously measure and record the carbon bed temperature and integrated stream flow;

(6) by means of retrofitting any tank with an internal or external floating roof shall implement a visual inspection and repair program consistent with 40 CFR 60.113b;

(7) of process wastewater shall, at least once daily, collect water samples simultaneously, at the in-

let and outlet of the control device, and determine the VOC concentration in the samples. Percent reduction shall be determined as the difference between the inlet and outlet concentration divided by the inlet concentration; and

(8) by any means, including those specified in this subsection, shall measure any parameters and implement any programs which the department has notified the affected facility are necessary to verify proper operation of the emission control equipment.

(m) For the purpose of subsection (l), any monitoring required to be conducted continuously shall, at the minimum, require the monitoring system to measure the required parameter at 15 minute intervals and record the average of the measurements at least once per hour, with at least one hourly average recorded for each hour the process is operated.

(1) Monitoring equipment shall be operated during all periods, except when the VOC-generating process is completely shut down and the VOC concentration to the control device is zero.

(2) All monitoring equipment shall be installed and operated in accordance with the manufacturer's written specifications.

(n) The owner or operator of an affected facility shall maintain the following records, in a form suitable for inspection, for a minimum of two years from the date of generation:

(1) all measurements, including continuous monitoring system, monitoring device, and performance testing measurements;

(2) all continuous emission monitoring system performance evaluations;

(3) all continuous emission monitoring or monitoring device calibration checks, and adjustments and maintenance performed on these systems or devices; and

(4) any other information considered necessary by the department to verify proper operation and maintenance of emission control equipment.

(o) The owner or operator of an affected facility shall comply with the following reporting requirements:

(1) The owner or operator of any existing facility shall notify the department of the date installation of control equipment is completed. The notification shall be postmarked no later than 15 days after completion of installation.

(2) The owner or operator shall notify the department of the anticipated test dates at least 30 days,

but not more than 60 days, prior to commencement of the compliance demonstration tests.

(3) The owner or operator shall submit a copy of all performance test results within 30 days of completion of any tests. Test results shall include a summary of all monitored control equipment parameters measured during the performance evaluation. (Authorized by K.S.A. 65-3006; implementing K.S.A. 65-3010; effective Oct. 7, 1991.)

28-19-78. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3010; effective Oct. 7, 1991; revoked March 21, 1994.)

28-19-79. (Authorized by K.S.A. 1995 Supp. 65-3005; implementing K.S.A. 65-3010; effective May 2, 1997; revoked April 27, 2001.)

SOURCE MONITORING FEES

28-19-80. Power generation facility monitoring programs. (a) On or before December 31 of each year, the owner or operator of a power generation facility who, for the purpose of consideration under the provisions of K.A.R. 28-19-81, proposes to conduct any air quality or radiological environmental impact monitoring of the facility shall submit to the department of health and environment a report describing the activities proposed for the 12 month period commencing on July 1 of the following year. The report shall include, at a minimum, the following information:

(1) The types of samples to be collected;

(2) the method of collecting the samples;

(3) the types of analyses to be conducted on the samples;

(4) the number and location of the sampling sites; and

(5) the sampling schedule.

(b) Upon receipt of the report required under subsection (a) of this regulation, the Department shall require that all data obtained as the result of the monitoring activities be submitted, in writing, to the Department, in accordance with a schedule prescribed by the Department and provided to the plant owner or operator.

(c) All data required to be reported in accordance with subsection (b) of this regulation shall be subject to quality review and evaluation by the Department. Pursuant to the conduct of this quality review and evaluation, the Department may require the owner or operator of the facility to provide additional information and conduct any

additional instrumentation and analytical checks that are necessary to verify the data. (Authorized by and implementing K.S.A. 65-3022; effective, T-83-11, June 9, 1982; effective May 1, 1983.)

28-19-81. Environmental impact monitoring. (a) On or before April 1 of each year, the department of health and environment shall notify the owner or operator of each power generation facility of any environmental impact monitoring activities that the Department proposes to conduct at the facility during the 12 month period commencing on July 1 of that year. This proposal shall include the information required to be reported under the provisions of K.A.R. 28-19-80 (a) and shall reflect consideration of any proposals received by the Department under the provisions of that regulation.

(b) At the time of giving notice, as required by subsection (a) of this regulation, the Department also shall notify the owner or operator of the facility of the fee to be collected for determining and monitoring the environmental impact of the power generation facility, including any quality review and evaluation of monitoring proposed to be conducted by the owner or operator of the facility. The fee shall be computed in accordance with K.A.R. 28-19-82 on the basis of reasonable estimates of costs of the department of health and environment for the conduct of these activities during the proposed 12 month monitoring period.

(c) If, upon receipt of the notices provided for in subsections (a) and (b) of this regulation, the owner or operator of a facility who has submitted a monitoring program proposal in accordance with the provisions of subsection (a) of K.A.R. 28-19-80 believes the monitoring activities to be conducted represent an avoidable duplication of effort and expense, the owner or operator may request that the Department modify the monitoring activities to be conducted. The request shall be submitted, in writing, within 30 days of the receipt of the notices and shall identify the basis upon which duplication is alleged.

(d) Upon receipt of the notices provided for in subsections (a) and (b) of this regulation the owner or operator of a facility who has not submitted a monitoring proposal in accordance with the provisions of subsection (a) of K.A.R. 28-19-80 may submit a monitoring proposal providing the information required by that regulation and additional information indicating the proposed date by which this plan is to be fully placed into effect.

This plan shall be submitted to the Department in writing not later than 30 days after receipt of the notices. Any facility owner or operator submitting a plan in accordance with this subsection may request that the Department consider this plan and modify the proposals provided under the provisions of subsection (a) of this regulation in order to avoid any specifically identified duplication of effort and expense between monitoring activities proposed to be carried out by the Department and those proposed to be carried out under the plan. This request shall be in writing and shall be submitted with the plan.

(e) Within 30 days of receipt of a request as provided for by subsections (c) or (d), the Department shall review the request and make a final determination of the monitoring activities that it will conduct at the facility. When possible these activities shall avoid duplication of effort and expense between activities approved to be carried out by the owner or operator of the facility and those to be carried out by the Department. The Department shall notify the owner or operator of the facility, in writing, of that determination and the basis upon which it was made. If the monitoring activities to be conducted at the facility by the Department are modified due to the request, the Department shall recompute the monitoring fee and notify the owner or operator of the new fee.

(f) All fee remittances shall be made payable to the state of Kansas, power generating facility fee fund, and shall be paid annually on or before July 1.

(g) The department of health and environment shall prepare a report that describes the nature and findings of each environmental impact monitoring activity that has been conducted at any power generation facility under the provisions of this regulation. This report shall be provided for each 12 month monitoring period proposed under the provisions of subsection (a) of this regulation. A copy of this report shall be sent to the owner or operator of these facilities not more than 120 days after the end of the monitoring period.

(h) The department of health and environment shall prepare a final fiscal report that computes its actual costs for each power generating facility environmental impact monitoring activity conducted under the provisions of this regulation. This report shall cover the 12 month period reported under subsection (g) of this regulation. A copy of this report shall be sent to the owner or operator of each monitored facility at the same time that the report required by subsection (g) is sent.

(i) The department of health and environment shall determine an adjusted fee to be applicable to each facility for which environmental impact monitoring activities have been conducted. This fee shall be calculated in accordance with the provisions of K.A.R. 28-19-82 using the cost figures included in the reports required by subsection (h) of this regulation. This adjusted fee shall be compared with the fee originally paid by the owner or operator for the same period under the provisions of subsection (f). If the Department finds that the adjusted fee is more than the fee originally paid by the source owner or operator, it shall:

(1) add the difference between the adjusted fee and the original fee that is established under subsections (b) or (e) to the next annual fee for the facility, or any other facility owned or operated by the same person; or

(2) if no new monitoring fees are proposed for those facilities by the following April 1, the Department shall subsequently provide the owner or operator with written notice that an additional fee equal to this difference is to be paid by the following July 1. If the Department finds that the adjusted fee is less than the original fee paid, it shall deduct the difference between the adjusted fee and the original fee from the next annual fee that is established under subsections (b) and (e) for the facility, or any other facility owned or operated by the same person. The source owner or operator shall pay any fee determined in accordance with this subsection in the manner prescribed by subsection (f). (Authorized by and implementing K.S.A. 65-3022; effective, T-83-11, June 9, 1982; effective May 1, 1983.)

28-19-82. Fee determination basis. (a) The fee to be collected for determining and monitoring the environmental impact of a power generation facility during any 12 month period included under the provisions of K.A.R. 28-19-81(a) shall be determined upon the basis of the type of fuel used to power the facility and the generating design capacity of the facility. The maximum fee for any facility powered by coal or nuclear energy shall be based on the following formula:

$$\text{Impact Monitoring Fee} = \frac{\text{G.M.} \times \text{C.M.}_y}{\text{T.G.M.}_y} + \frac{\text{G.Q.R.} \times \text{C.Q.R.}_y}{\text{T.G.Q.R.}_y}$$

When using the formula, the following values shall be used:

1. G.M. = the generating design capacity for that particular facility which is monitored with sampling equipment operated by the department of health and environment;

2. T.G.M._y = the sum of the generating design capacities for all facilities in the state powered by the same type of fuel that are monitored with identical sampling equipment operated by the department of health and environment during the same 12 month period;

3. C.M._y = the sum of all of the costs of the department of health and environment during the same 12 month period for operating identical sampling equipment at each power generation facility powered by the same type of fuel;

4. G.Q.R. = the generating design capacity for that particular facility where monitoring activities conducted by the owner or operator are subject to quality review and evaluation by the department of health and environment;

5. T.G.Q.R._y = the sum of the generating design capacities for all facilities in the state powered by the same type of fuel where monitoring activities conducted by the owner or operator are subject to identical quality review and evaluation by the department of health and environment during the same 12 month period; and

6. C.Q.R._y = the sum of the costs of the department of health and environment during the same 12 month period for providing identical quality review and evaluation of monitoring activities conducted by the owner or operator at each power generation facility powered by the same type of fuel. (Authorized by and implementing K.S.A. 65-3022; effective, T-83-11, June 9, 1982; effective May 1, 1983.)

28-19-83. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1986; revoked May 10, 1996.)

28-19-84. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1986; amended May 1, 1988; revoked May 10, 1996.)

NEW SOURCE PERFORMANCE STANDARDS

28-19-85. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983; amended May 1, 1986; amended May 1, 1988; revoked May 10, 1996.)

28-19-86. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; revoked May 10, 1996.)

28-19-87 to 28-19-95. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983; revoked May 10, 1996.)

tive May 1, 1983; amended May 1, 1986; amended May 1, 1988; revoked May 10, 1996.)

28-19-96. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; revoked May 10, 1996.)

28-19-97. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983; revoked May 1, 1986.)

28-19-98. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; revoked May 10, 1996.)

28-19-98a. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1986; amended May 1, 1987; amended May 1, 1988; revoked May 10, 1996.)

28-19-99 to 28-19-103. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; revoked May 10, 1996.)

28-19-104 to 28-19-108. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1986; amended May 1, 1987; amended May 1, 1988; revoked May 10, 1996.)

28-19-108a. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1988; revoked May 10, 1996.)

28-19-109. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1986; amended May 1, 1987; amended May 1, 1988; revoked May 10, 1996.)

28-19-119 to 28-19-121a. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1986; amended May 1, 1987; amended May 1, 1988; revoked May 10, 1996.)

28-19-123 to 28-19-125. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1986; amended May 1, 1987; amended May 1, 1988; revoked May 10, 1996.)

28-19-127 to 28-19-131. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1986; amended May 1, 1987; amended May 1, 1988; revoked May 10, 1996.)

28-19-133 to 28-19-141. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1986; amended May 1, 1987; amended May 1, 1988; revoked May 10, 1996.)

28-19-149. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1986; amended May 1, 1987; amended May 1, 1988; revoked May 10, 1996.)

**EMISSION STANDARDS
FOR HAZARDOUS AIR POLLUTANTS**

28-19-150 to 28-19-151. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; revoked May 10, 1996.)

28-19-152. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983; revoked May 10, 1996.)

28-19-153 to 28-19-154. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983; amended May 1, 1987; amended May 1, 1988; revoked May 10, 1996.)

28-19-155. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983; amended May 1, 1988; revoked May 10, 1996.)

28-19-156. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983; revoked May 10, 1996.)

28-19-157. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983; revoked May 10, 1996.)

28-19-158. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983; amended May 1, 1988; revoked May 10, 1996.)

28-19-159. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983; amended May 1, 1987; amended May 1, 1988; revoked May 10, 1996.)

28-19-160 to 28-19-162. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983; revoked May 10, 1996.)

GENERAL REQUIREMENTS

28-19-200. General provisions; definitions. All terms and abbreviations used in the

Kansas air quality regulations shall have the following meanings, unless otherwise defined in an individual regulation or unless the context clearly requires otherwise.

(a) "Affected facility" or "facility" means any building, structure, machine, equipment, device, or installation, or combination thereof, to which an emissions limitation or standard applies.

(b) "Affected source" means a stationary source that includes one or more affected units subject to emission reduction requirements or limitations under title IV of the federal clean air act, 42 U.S.C. §7401 et seq., "acid deposition control."

(c) "Affected state" means any state:

(1) that is contiguous with Kansas and whose air quality may be affected by emissions from a stationary source or proposed stationary source in Kansas; or

(2) that is within 50 miles of a permitted stationary source located in Kansas.

(d) "Agricultural-related activity."

(1) "Agricultural-related activity" means processes used in the production of any of the following:

(A) popcorn that is packaged but not popped;

(B) ornamental floriculture and nursery products;

(C) shortening, table oils, and margarine;

(D) prepared feeds and feed ingredients for animals and fowl;

(E) molasses that is mixed or blended;

(F) cotton ginnings; and

(G) flour and other grain mill products.

(2) "Agricultural-related activity" also means sunflower oil reclaiming, seed cleaning, and operations related to alfalfa dehydrators, sun-cured alfalfa plants, soybean oil mills, and grain elevators.

(e) "Applicable requirement," for purposes of class I operating permits, means any of the following:

(1) the standards or other requirements that are part of the approved state implementation plan or part of any applicable federally promulgated implementation plan;

(2) any term or condition of a construction permit issued pursuant to:

(A) K.A.R. 28-19-16 through 16m, and amendments thereto, nonattainment area requirements;

(B) K.A.R. 28-19-17 through 17q, and amendments thereto, prevention of significant deterioration requirements;

(C) part C of title I of the federal clean air act by the USEPA; or

(D) K.A.R. 28-19-300, or its predecessor, K.A.R. 28-19-14;

(3) any standard or other requirement promulgated under 42 U.S.C. §7411 of the federal clean air act, "standards of performance for new stationary sources," including 42 U.S.C. §7411(d);

(4) any standard or other requirement promulgated under 42 U.S.C. §7412 of the federal clean air act, "hazardous air pollutants," including any requirement concerning accident prevention under 42 U.S.C. §7412(r)(7);

(5) any standard or other requirement of the acid rain program under title IV of the federal clean air act, "acid deposition control," or regulations promulgated thereunder;

(6) any requirement established pursuant to 42 U.S.C. §7661c(b) of the federal clean air act, "permit requirements and conditions, monitoring and analysis," or 7414(a)(3) of the federal clean air act, regarding inspections, monitoring and entry, enhanced monitoring, and compliance certification;

(7) any standard or other requirement governing solid waste incineration under 42 U.S.C. §7429 of the federal clean air act, "solid waste combustion";

(8) any standard or other requirement for consumer and commercial products under 42 U.S.C. §7511b of the federal clean air act, "federal ozone measures," subsection (e) "control of emissions from certain sources";

(9) any standard or other requirement for tank vessels under 42 U.S.C. §7511b(f) of the federal clean air act, "federal ozone measures," subsection (f) "tank vessel standards";

(10) any standard or other requirement of the regulations promulgated to protect stratospheric ozone under title VI of the federal clean air act, "stratospheric ozone protection," unless the USEPA has determined that such requirements need not be contained in a class I operating permit; and

(11) any national ambient air quality standard or increment or visibility requirement under part C, "prevention of significant deterioration of air quality," of title I of the federal clean air act, but only as it would apply to temporary sources permitted pursuant to requirements adopted to enable the department to administer a program developed to implement the provisions of 42 U.S.C. §7661c, "permit requirements and conditions," subsection (e), "temporary sources," of the federal clean air act.

(f) “Application” or “application form” means the application form and all supporting documentation, unless the context clearly indicates otherwise.

(g) “Area source” means a stationary source of hazardous air pollutants that is not a major source.

(h) “ASTM” means the American society for testing and materials.

(i) “Begin actual construction” means the initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. These activities include, but shall not be limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities that mark the initiation of the change.

(j) “Building, structure, facility, or installation” means all of the air pollutant emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control. Air pollutant emitting activities shall be considered as part of the same industrial grouping if they have the same two-digit code as described in the “standard industrial classification manual 1987,” as published by the U.S. governing printing office, as adopted at K.A.R. 28-19-301(f)(2).

(k) “Calendar quarter” means January through March, April through June, July through September, or October through December of any calendar year.

(l) “Capture efficiency” (CE) means the amount of an air contaminant emitted from an emissions unit and directed to an air emissions control device (ce), divided by the total emissions of the air contaminant from the emissions unit (te), and expressed as a two-decimal number between 0.00 and 1.00. ($CE = ce/te$)

(m) “Class I or class II substance” means a substance subject to a standard promulgated under or established by title VI of the federal clean air act, “stratospheric ozone protection,” 42 U.S.C. § 7401 et seq.

(n) “Class I, II or III area” means a classification assigned to any area of the state under the provisions of 42 U.S.C. § 7472 and § 7474 of the federal clean air act.

(o) “Commercial or medical waste incinerator” means any incinerator used to dispose of waste

from any commercial operation or used to dispose of any medical services waste as defined at K.A.R. 28-29-27.

(p) “Construction” means any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit.

(q) “Control device” means any equipment, device, or other article that is designed, installed, or both, for the purpose of reducing or preventing the discharge of contaminant emissions to the air.

(r) “Control device efficiency (CDE)” means the amount of an air contaminant directed to an air emissions control device or devices (ce) minus the emissions of the air contaminant emitted from the air emissions control device or devices, or otherwise released into the atmosphere (re), divided by the amount of the air contaminant directed to the air emissions control device or devices (ce), expressed as a two-decimal number between 0.00 and 1.00. ($CDE = (ce - re)/ce$)

(s) “De minimis emissions” means air emissions of hazardous air pollutants for which no applicable requirements exist.

(t) “Department” means the Kansas department of health and environment or an authorized representative of the department.

(u) “Direct heating equipment” means any device in which fuel is burned in direct contact with, and for the purpose of heating, air that comes in direct contact with the material being processed.

(v) “Director” means the secretary of health and environment or a designated representative of the secretary.

(w) “Emission limitation and standard” means a requirement established pursuant to the Kansas air quality regulations.

(x) “Emission source” means any machine, equipment, device, or other article or operation that directly or indirectly releases contaminants into the outdoor atmosphere.

(y) “Emission unit” means any part or activity of a stationary source that emits or would have the potential-to-emit any regulated pollutant or any pollutant listed under 42 U.S.C. § 7412(b) of the federal clean air act.

(z) “Existing” means that a processing machine, equipment, device, or other article, or any combination of the above, or any indirect heating equipment or incinerator is completed, under construction, or under purchase contract on the effective date of any applicable regulation.

(aa) "Existing facility" means a facility that is completed, under construction, or under purchase contract at the time an emission limitation or standard becomes applicable to such facilities.

(bb) "Facility" or "affected facility" means any building, structure, machine, equipment, device, or installation, or combination thereof, to which an emissions limitation or standard applies.

(cc) "Federal clean air act" means 42 U.S.C. §7401 et seq., as in effect on January 15, 1996.

(dd) "Federally designated fugitive emissions source" means any of the following:

- (1) coal cleaning plants, with thermal dryers;
- (2) kraft pulp mills;
- (3) portland cement plants;
- (4) primary zinc smelters;
- (5) iron and steel mills;
- (6) primary aluminum ore reduction plants;
- (7) primary copper smelters;
- (8) municipal incinerators capable of charging more than 250 tons of refuse per day;
- (9) hydrofluoric, sulfuric, or nitric acid plants;
- (10) petroleum refineries;
- (11) lime plants;
- (12) phosphate rock processing plants;
- (13) coke oven batteries;
- (14) sulfur recovery plants;
- (15) carbon black plants that use a furnace process;

- (16) primary lead smelters;
- (17) fuel conversion plants;
- (18) sintering plants;
- (19) secondary metal production plants;
- (20) chemical process plants;
- (21) fossil-fuel boilers, or a combination thereof, totaling more than 250 million British thermal units per hour heat input;
- (22) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (23) taconite ore processing plants;
- (24) glass fiber processing plants;
- (25) charcoal production plants;
- (26) fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(27) any other stationary source categories regulated by a standard promulgated as of August 7, 1980, under 42 U.S.C. §7411, "new source performance standards," or 42 U.S.C. §7412, "hazardous air pollutants," of the federal clean air act, but only with respect to those air pollutants that have been regulated for that category.

(ee) "Federally enforceable" means:

(1) all limitations and conditions that are enforceable by the administrator of the U.S. environmental protection agency;

(2) requirements of regulations included in the federally approved state implementation plan; and

(3) any permit requirements established pursuant to these requirements.

(ff) "Fugitive emissions" means those emissions that directly result from operation of an emissions unit or stationary source but that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(gg) "Hazardous air pollutant" shall have the meaning as defined in K.A.R. 28-19-201(a).

(hh) "Incinerator" means any device or structure used for the destruction or volume reduction of garbage, rubbish, or other liquid or solid waste materials, by combustion, for the purpose of disposal or salvage.

(ii) "Indirect heating equipment" means any device in which fuel is burned to produce heat, which heat is transferred through a heat-conducting materials barrier or by a heat storage medium to a material that is to be heated so that the material being heated is not contacted by, and adds no substance to, the products of combustion.

(jj) "Kansas air quality regulations" means those regulations at article 28-19 of the Kansas administrative regulations, as adopted by the secretary pursuant to K.S.A. 65-3001 et seq., and amendments thereto.

(kk) "Major source" means any stationary source, or any group of stationary sources that are located on one or more contiguous or adjacent properties and are under common control of the same person, or persons who are under common control, belonging to a single major industrial grouping and that are described in paragraphs (1), (2), (3) or (4) of this subsection. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant-emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group with the same two-digit code as described in the "standard industrial classification manual, 1987."

(1) For pollutants other than radionuclides, major source shall include any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential-to-emit, in the aggregate, 10

tons per year or more of any hazardous air pollutant, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the secretary may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well, with its associated equipment, and emissions from any pipeline compressor station or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

(2) For radionuclides, major source shall have the meaning specified by the secretary by regulation.

(3) Major source shall include a major stationary source of air pollutants, as defined in 42 U.S.C. §7602 of the federal clean air act, that directly emits or has the potential-to-emit 100 tons per year or more of any air pollutant, including any major source of fugitive emissions of any such pollutant from a federally designated fugitive emissions source. The fugitive emissions of a stationary source shall not be considered in determining whether or not it is a major stationary source, unless the source is a federally designated fugitive emissions source.

(4) Major source shall include a major stationary source as defined in part D of title I of the federal clean air act.

(ll) "Modified open burning operation" means an open burning operation in which the contaminants emitted to the ambient air as a result of combustion are reduced, controlled, or both, through positive regulation of fuel-to-air ratios, air screens, or other control techniques. Combustion devices used solely for the purpose of disposing of flammable gases shall not be considered to be modified open burning operations.

(mm) "Municipal solid waste landfill" or "MSW landfill" means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of wastes regulated pursuant to subtitle D of the resource conservation and recovery act (RCRA), 42 U.S.C. §6901, et seq., such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion.

(nn) "National ambient air quality standard," "national primary ambient air quality standard" and "national secondary ambient air quality standard" mean those standards promulgated at 40 CFR Part 50, revised as of July 1, 1995, which are adopted by reference.

(oo) "Official observer."

(1) "Official observer" means a designated representative of the department who has been certified by the department as being trained, and qualified on the basis of actual testing, to determine the degree of opacity of visible plumes by direct visual observation. The testing procedure shall be established and published by the department. Each certified individual shall be required to be re-tested at least once every six months to maintain certification.

(2) The term "official observer" shall also include a representative of the USEPA that has been properly certified pursuant to 40 CFR Part 60, appendix A, method 9.

(pp) "Opacity" means the degree to which a contaminant emission obscures an official observer's view of transmitted light passing through that contaminant. Zero percent opacity is perfect transparency and 100 percent opacity is impenetrable to light.

(qq) "Open burning operation" means the burning of any materials in which contaminants resulting from combustion are emitted directly into the ambient air without passing through a stack or chimney from an enclosed chamber. A chamber shall be considered enclosed when only those apertures, ducts, stacks, flues or chimneys that are required to supply combustion air and to permit the escape of exhaust gases are open during the combustion process.

(rr) "Organic material" means a chemical compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.

(ss) "Owner or operator" means any person who owns, leases, operates, controls, or supervises an affected facility, emissions unit, or stationary source subject to any standard or requirement of the Kansas air quality act, K.S.A. 65-3001 et seq., or any rule and regulation promulgated thereunder.

(tt) "Particulate matter" means any airborne finely divided solid or liquid material, except uncombined water, including PM10.

(uu) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, politi-

cal subdivision of this state, any other state or political subdivision or agency thereof, or any legal successor, representative, agent, or agency of the foregoing.

(vv) "PM₁₀" or "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers, as measured by a reference method based on appendix J of 40 CFR, Part 50 and designated in accordance with 40 CFR §53.8, or by an equivalent method designated by the administrator of the U.S. environmental protection agency on or before the effective date of this regulation in accordance with 40 CFR §53.8, revised as of July 1, 1995. Appendix J of 40 CFR, Part 50 and 40 CFR §53.8, revised as of July 1, 1995 are adopted by reference.

(ww) "Portable source" means an emissions unit or stationary source that, due to the design of the emissions unit or stationary source, is capable of being moved from one location to another and that, except for storage purposes, remains at one location no longer than 180 days during any 365-day period, unless otherwise approved in writing by the department. A mobile source shall not be considered a portable source.

(xx) "Potential contaminant emission rate" means the total weight of a contaminant that is or, in the absence of control equipment, would be emitted from an air contaminant source when that source is operating at its maximum capacity. The potential contaminant emissions rate shall be determined by:

(1) sampling in a flue or duct prior to the inlet of any control device serving the flue or duct;

(2) estimating such emissions by performing a "material balance" calculation that indicates the difference between processing input weight and output weight of materials;

(3) using potential contaminant emission factors as recognized by the department; or

(4) using any other estimating technique mutually agreeable to the department and the person responsible for operation of the source.

(yy) "Potential-to-emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally en-

forceable. Secondary emissions shall not be considered in determining the potential-to-emit of a stationary source.

(zz) "Premises" means one or more contiguous or adjacent parcels of land and any structures or equipment located on the parcels under one ownership. For the purpose of this definition, a parcel of land that is bordering another parcel divided solely by a public roadway or a railroad right of way shall be considered to be adjacent.

(aaa) "Processing" means any operation related to the handling, storage, treatment, or conversion of input materials to produce a saleable or usable end product.

(bbb) "Regulated pollutant" means:

(1) nitrogen oxides or any volatile organic compounds;

(2) any pollutant for which a national ambient air quality standard has been promulgated;

(3) any pollutant that is subject to any standard promulgated under 42 U.S.C. §7411, "standards of performance for new stationary sources," of the federal clean air act;

(4) any class I or II substance subject to a standard promulgated under or established by title VI of the federal clean air act, "stratospheric ozone protection"; or

(5) any pollutant subject to a standard or other requirements promulgated or established under 42 U.S.C. §7412 of the federal clean air act, "hazardous air pollutants," including 42 U.S.C. §7412(g), (j), and (r), including the following:

(A) any pollutant subject to requirements under 42 U.S.C. §7412(j) of the federal clean air act. If the administrator of the USEPA fails to promulgate a standard by the date established pursuant to 42 U.S.C. §7412(e) of the federal clean air act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to 42 U.S.C. §7412(e) of the federal clean air act; and

(B) any pollutant for which the requirements of 42 U.S.C. §7412(g)(2) of the federal clean air act have been met, but only with respect to the individual source subject to 42 U.S.C. §7412(g)(2) requirement.

(ccc) "Responsible official" means one of the following:

(1) For a corporation, a president, secretary, treasurer or vice-president in charge of a principal business function, or any other person who performs similar policy or decision-making functions

for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to permit or other relevant regulatory requirement and if either:

(A) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million, in second quarter, 1980 dollars; or

(B) the delegation of authority to such representative is approved in advance by the department;

(2) for a partnership or sole proprietorship, a general partner or the proprietor, respectively;

(3) for a municipality, or a state, federal, or other public agency, a principal executive officer or ranking elected official. For purposes of this definition, a principal executive officer of a federal agency shall include the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency; or

(4) for affected sources, the designated representative under title IV of the federal clean air act, "acid deposition control."

(ddd) "Secondary emissions" means emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall include emissions from any off-site support facility that would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions shall not include any emissions that come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(eee) "Significant" means in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

(1) 100 tons per year of carbon monoxide;

(2) 40 tons per year of nitrogen oxides;

(3) 40 tons per year of sulfur dioxide;

(4) 25 tons per year of particulate matter emissions;

(5) 15 tons per year of PM10 emissions;

(6) 40 tons per year of volatile organic compounds for ozone; or

(7) 0.6 tons per year of lead.

(fff) "Smoke" means particulate matter emissions, resulting from incomplete combustion, that

consist primarily of carbon, ash, and other material and that form a visible plume in the ambient atmosphere.

(ggg) "Start-up" or "startup" means the setting in operation of a stationary source for any purpose.

(hhh) "State implementation plan" means any documents, including state or locally adopted regulations, submitted by a state to, and approved by, the U.S. environmental protection agency as required by the provisions of 42 U.S.C. §7410 of the federal clean air act, and any regulations promulgated by the administrator of the U.S. environmental protection agency pursuant to the provisions of that section.

(iii) "Stationary source" or "source" means any building, structure, facility, or installation that emits or may emit any air pollutant subject to any emission limitation or standard or that is required to obtain a permit pursuant to the Kansas air quality regulations.

(jjj) "Temporary" means, in relation to the emissions from a source, that the emissions will not occur at a particular location for a period of more than two years, unless a longer time is approved by the secretary or an authorized representative of the secretary.

(kkk) "Total suspended particulate" means particulate matter as measured by the method described in appendix B of 40 CFR Part 50, revised as of July 1, 1995, which is adopted by reference.

(lll) "USEPA" means the United States environmental protection agency, or its successor.

(mmm) "Volatile organic compounds (VOC)" shall have the meaning as defined in K.A.R. 28-19-201(b).

(nnn) "Waste" means garbage, refuse and other discarded materials including, but not limited to solids, semisolids, sludges, liquids and contained gaseous waste materials resulting from industrial, commercial, agricultural and domestic activities. The term "waste" shall not include hazardous wastes as defined in K.A.R. 28-31-3. (Authorized by K.S.A. 1996 Supp. 65-3005; implementing K.S.A. 1996 Supp. 65-3005; effective Oct. 10, 1997.)

28-19-200a. General provisions; definitions to implement the federal greenhouse gas tailoring rule. (a) The definition of "major source," as adopted by reference in this regulation, shall supersede the definition of "major source" in K.A.R. 28-19-200 for the purposes of the following regulations:

(1) K.A.R. 28-19-500 through K.A.R. 28-19-502;
 (2) K.A.R. 28-19-510 through K.A.R. 28-19-518;

(3) K.A.R. 28-19-540 through K.A.R. 28-19-546; and

(4) K.A.R. 28-19-561 through K.A.R. 28-19-564.

(b) "Major source," as defined in 40 C.F.R. 70.2 and as revised on July 1, 2009 and amended by 75 fed. reg. 31607 (2010), is adopted by reference.

(c) "Subject to regulation," as defined by 75 fed. reg. 31607 (2010), which amends 40 C.F.R. 70.2, is adopted by reference. This definition of "subject to regulation" shall apply only to that term as used in the definition of "major source," which is adopted by reference in subsection (b) of this regulation.

This regulation shall be effective on and after January 2, 2011. (Authorized by and implementing K.S.A. 2009 Supp. 65-3005; effective Jan. 2, 2011.)

28-19-201. General provisions; definitions; regulated compounds list. As used in this regulation, "CAS Number" means chemical abstract service number. (a) "Hazardous air pollutant" means one or more of the following chemical pollutants:

CAS Number	Chemical name
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
53963	2-Acetylaminofluorene
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
92671	4-Amino biphenyl
62533	Aniline
90040	o-Anisidine
1332214	Asbestos
71432	Benzene (including benzene from gasoline)
92875	Benzidine
98077	Benzotrichloride
100447	Benzyl chloride
92524	Biphenyl
117817	Bis(2-ethylhexyl)phthalate (DEHP)
542881	Bis(chloromethyl) ether
75252	Bromoform
106990	1,3-Butadiene
	CAS Number
	Chemical name
156627	Calcium cyanamide
133062	Captan
63252	Carbaryl
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid
532274	2-Chloroacetophenone
108907	Chlorobenzene
510156	Chlorobenzilate
67663	Chloroform
107302	Chloromethyl methyl ether
126998	Chloroprene
1319773	Cresols/Cresylic acid (isomers and mixture)
95487	o-Cresol
108394	m-Cresol
106445	p-Cresol
98828	Cumene
94757	2,4-D, salts and esters
3547044	DDE
334883	Diazomethane
132649	Dibenzofurans
96128	1,2-Dibromo-3-chloropropane
84742	Dibutylphthalate
106467	1,4-Dichlorobenzene(p)
91941	3,3-Dichlorobenzidene
111444	Dichloroethylether(Bis(2-chlorethyl) ether)
542756	1,3-Dichloropropene
62737	Dichlorvos
111422	Diethanolamine
121697	N, N-Diethyl aniline (N,N-Dimethylaniline)
64675	Diethyl sulfate
119904	3,3-Dimethoxybenzidine
60117	Dimethyl aminoazobenzene
119937	3,3-Dimethyl benzidine
79447	Dimethyl carbamoylchloride
68122	Dimethyl formamide
57147	1,1-Dimethyl hydrazine
131113	Dimethyl phthalate
77781	Dimethyl sulfate
534521	4,6-Dinitro-o-cresol, and salts
51285	2,4-Dinitrophenol

CAS Number	Chemical name	CAS Number	Chemical name
121142	2,4-Dinitrotoluene	1634044	Methyl tert butyl ether
123911	1,4-Dioxane (1,4-Diethylene oxide)	101144	4,4-Methylene bis(2-chloroaniline)
122667	1,2-Diphenylhydrazine	75092	Methylene chloride (Dichloromethane)
106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)	101688	Methylene diphenyl diisocyanate (MDI)
106887	1,2-Epoxybutane	101779	4,4-Methylenedianiline
140885	Ethyl acrylate	91203	Naphthalene
100414	Ethyl benzene	98953	Nitrobenzene
51796	Ethyl carbamate (Urethane)	92933	4-Nitrobiphenyl
75003	Ethyl chloride (Chloroethane)	100027	4-Nitrophenol
106934	Ethylene dibromide (Dibromoethane)	79469	2-Nitropropane
107062	Ethylene dichloride (1,2-Dichloroethane)	684935	N-Nitroso-N-methylurea
107211	Ethylene glycol	62759	N-Nitrosodimethylamine
151564	Ethylene imine (Aziridine)	59892	N-Nitrosomorpholine
75218	Ethylene oxide	56382	Parathion
96457	Ethylene thiourea	82688	Pentachloronitrobenzene (Quintobenzene)
75343	Ethylidene dichloride (1,1-Dichloroethane)	87865	Pentachlorophenol
50000	Formaldehyde	108952	Phenol
76448	Heptachlor	106503	p-Phenylenediamine
118741	Hexachlorobenzene	75445	Phosgene
87683	Hexachlorobutadiene	7803512	Phosphine
77474	Hexachlorocyclopentadiene	7723140	Phosphorus
67721	Hexachloroethane	85449	Phthalic anhydride
822060	Hexamethylene-1,6-diisocyanate	1336363	Polychlorinated biphenyls (Aroclors)
680319	Hexamethylphosphoramide	1120714	1,3-Propane sultone
110543	Hexane	57578	beta-Propiolactone
302012	Hydrazine	123386	Propionaldehyde
7647010	Hydrochloric acid	114261	Propoxur (Baygon)
7664393	Hydrogen fluoride (Hydrofluoric acid)	78875	Propylene dichloride (1,2-Dichloropropane)
123319	Hydroquinone	75569	Propylene oxide
78591	Isophorone	75558	1,2-Propylenimine (2-Methyl aziridine)
58899	Lindane (all isomers)	91225	Quinoline
108316	Maleic anhydride	106514	Quinone
67561	Methanol	100425	Styrene
72435	Methoxychlor	96093	Styrene oxide
74839	Methyl bromide (Bromomethane)	1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
74873	Methyl chloride (Chloromethane)	79345	1,1,2,2-Tetrachloroethane
71556	Methyl chloroform (1,1,1-Trichloroethane)	127184	Tetrachloroethylene (Perchloroethylene)
78933	Methyl ethyl ketone (2-Butanone)	7550450	Titanium tetrachloride
60344	Methyl hydrazine	108883	Toluene
74884	Methyl iodide (Iodomethane)	95807	2,4-Toluene diamine
108101	Methyl isobutyl ketone (Hexone)	584849	2,4-Toluene diisocyanate
624839	Methyl isocyanate	95534	o-Toluidine
80626	Methyl methacrylate	8001352	Toxaphene (chlorinated camphene)

CAS Number	Chemical name
120821	1,2,4-Trichlorobenzene
79005	1,1,2-Trichloroethane
79016	Trichloroethylene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
121448	Triethylamine
1582098	Trifluralin
580841	2,2,4-Trimethylpentane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidene chloride (1,1-Dichloroethylene)
1330207	Xylenes (isomers and mixture)
95476	o-Xylenes
108383	m-Xylenes
106423	p-Xylenes
0	Antimony Compounds
0	Arsenic Compounds (inorganic, including arsine)
0	Beryllium Compounds
0	Cadmium Compounds
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
0	Cyanide Compounds ¹
0	Glycol ethers ²
0	Lead Compounds
0	Manganese Compounds
0	Mercury Compounds
0	Fine mineral fibers ³
0	Nickel Compounds
0	Polycyclic Organic Matter ⁴
0	Radionuclides (including radon) ⁵
0	Selenium Compounds

NOTE: For all listings above that contain the word "compounds" and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical as part of that chemical's infrastructure.

¹ X'CN where X = H' or any other group where a formal dissociation may occur, for example, KCN or Ca(CN)₂.

² Includes mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol R - (OCH₂CH₂)_n -OR' where

n = 1, 2, or 3

R = alkyl or aryl groups

R' = R, H, or groups that, when removed, yield glycol ethers with the structure:

R - (OCH₂CH₂)_n -OH. Polymers are excluded from the glycol category.

³ Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral-derived fibers) of average diameter 1 micrometer or less.

⁴ Includes organic compounds with more than one benzene ring, and that have a boiling point greater than or equal to 100°C.

⁵ A type of atom that spontaneously undergoes radioactive decay.

(b) "Volatile organic compounds (VOC)" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, that participates in atmospheric photochemical reactions including any organic compound other than those that have been designated by the department as having negligible photochemical reactivity. For purposes of programs and plans implementing the national ambient air quality standards for ozone only, the following organic compounds have been designated by the department as having negligible photochemical reactivity:

(1) methane;

(2) ethane;

(3) 1,1,1-trichloroethane (methyl chloroform);

(4) methylene chloride;

(5) trichlorofluoromethane (CFC-11);

(6) dichloro-difluoromethane (CFC-12);

(7) chlorodifluoromethane (CFC-22);

(8) trifluoromethane (CFC-23);

(9) trichlorotrifluoroethane (CFC-113);

(10) dichlorotetrafluoroethane (CFC-114);

(11) chloropentafluoroethane (CFC-115);

(12) dichlorotrifluoroethane (HCFC-123);

(13) tetrafluoroethane (HCFC-134a);

(14) dichlorofluoroethane (HCFC-141b);

(15) chlorodifluoroethane (HCFC-142b);

(16) chlorotetrafluoroethane (HCFC-124);

(17) pentafluoroethene (HCFC-125);

(18) tetrafluoroethane (HCFC-134);

(19) trifluoroethane (HCFC-143a);

(20) difluoroethane (HCFC-152a);

(21) parachlorobenzotrifluoride (PCBTF);

(22) cyclic, branched, or linear, completely methylated siloxanes;

(23) acetone;

(24) The following classes of perfluorocarbon compounds:

(A) cyclic, branched, or linear, completely fluorinated alkanes;

(B) cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(C) cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturation; and

(D) sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine;

(25) perchloroethylene;

(26) difluoromethane (HFC-32);

(27) ethylfluoride (HFC-161);

(28) 1,1,1,3,3,3-hexafluoropropane (HFC-236fa);

(29) 1,1,2,2,3-pentafluoropropane (HFC-245ca);

(30) 1,1,2,3,3-pentafluoropropane (HFC-245ea);

(31) 1,1,1,2,3-pentafluoropropane (HFC-245eb);

(32) 1,1,1,3,3-pentafluoropropane (HFC-245fa);

(33) 1,1,1,2,3,3-hexafluoropropane (HFC-236ea);

(34) 1,1,1,3,3-pentafluorobutane (HFC-365mfc);

(35) chlorofluoromethane (HCFC-31);

(36) 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);

(37) 1-chloro-1-fluoroethane (HCFC-151a);

(38) 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxybutane (C₄F₉OCH₃);

(39) 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CF₂OCH₃);

(40) 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅);

(41) 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CF₂OC₂H₅);

(42) decafluoropentane (HFC-43-10mee);

(43) 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HFC-225ca);

(44) 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HFC-225cb); and

(45) methyl acetate (HFC 43-10mee). (Authorized by and implementing K.S.A. 1997 Supp. 65-3005; effective Oct. 10, 1997; amended Feb. 12, 1999.)

28-19-202. (Authorized by K.S.A. 2009 Supp. 65-3005 and 65-3024; implementing K.S.A. 65-3024; effective Nov. 22, 1993; amended Jan. 23, 1995; amended March 15, 1996; amended Feb. 21, 1997; amended Feb. 13, 1998; amended March 23, 2001; amended Jan. 30, 2004; amended Nov. 5, 2010; revoked Jan. 5, 2018.)

28-19-204. General provisions; permit issuance and modification; public participa-

tion. (a) The public shall be provided the opportunity to participate in the permit development or modification process prior to issuance of a construction permit for an affected facility, a class I or class II operating permit, or a significant modification of a class I or class II operating permit.

(b) Prior to the issuance of a permit or permit modification which requires public participation or prior to any public hearing held pursuant to K.S.A. 1993 Supp. 65-3008a, a notice shall be placed in the Kansas Register and a newspaper of general circulation in the area where the facility is, or will be located.

(c) The notice shall:

(1) identify the facility which is the subject matter of the permit action, except in the case of a general permit;

(2) state the name and address of the owner or operator of the facility, except in the case of a general permit;

(3) state the address of the facility, except in the case of a general permit;

(4) describe the activity or activities involved in the permit action;

(5) describe the air emissions from any proposed new facility or involved in any permit modification;

(6) state the name, address and telephone number of a person from whom interested persons may obtain additional information which is not confidential, including:

(A) copies of the proposed permit or permit modification;

(B) the application;

(C) all relevant supporting materials including any monitoring and compliance certification and compliance plan; and

(D) all other materials available to the department that are relevant to the permitting decision;

(7) state the department's name and address;

(8) include a brief description of the procedures for submitting written comments including a date which is 30 or more days after the notice is first published by which comments shall be submitted to the department; and

(9) include a statement of the procedures to request a public hearing or specify the time and place of the public hearing if a public hearing has been scheduled. If a public hearing has been scheduled, notice of the hearing shall be published at least 30 or more days in advance of the hearing.

(d) The notice shall state that a copy of the proposed permit and all supporting documentation

is available for public review at the department's central office and at the appropriate district office or local agency, and shall provide the name, address and telephone number of a contact person at the central office and at the appropriate district office or local agency.

(e) The notice may describe more than one permit action or public hearing.

(f) Written comments timely received by the department during the public comment period and written comments and oral testimony received during a public hearing shall become part of the permit record. All such written and oral comments which are relevant to the permit decision and which are within the jurisdiction established by the permit action shall be considered in making a final decision on the proposed permit action.

(g) A response to the comments shall be issued at the time any final permit decision is issued. The response to the comments shall be available to the public and shall:

(1) specify any changes made to the proposed permit as a result of any public comments; and

(2) briefly respond to any significant comments received during the public comment period or during the public hearing.

(h) Copies of the proposed permit, the application, all relevant supporting materials including any compliance plan and compliance certification, and all other materials available to the permitting authority that are relevant to the permitting decision shall, upon request, be furnished without charge to the USEPA and to any affected state. Any other person requesting copies of such documentation shall pay a fee equal to that regularly charged by the department for copying documents unless some other provision of law provides otherwise. (Authorized by K.S.A. 1993 Supp. 65-3005 and implementing K.S.A. 1993 Supp. 65-3008a; effective Jan. 23, 1995.)

28-19-210. Calculation of actual emissions. (a) Whenever required to be determined by the Kansas air quality regulations, the quantity of actual emissions from any emissions unit or stationary source shall be calculated by the owner or operator of an emissions unit or stationary source using:

(1) Data generated from continuous monitoring systems as specified in subsection (c) of this regulation;

(2) approved emission factors as specified in subsection (d) of this regulation;

(3) material balances as specified in subsection (e) of this regulation;

(4) any other method specifically approved by the department in writing, specified in a permit issued to the owner or operator by the department for the particular emission unit or stationary source using such method, or specified in the Kansas air quality regulations for the particular emissions unit or stationary source;

(5) the potential to emit if the emission unit or stationary source fails to qualify for any other method; or

(6) any combination of the above which most accurately demonstrates actual emissions from each emissions unit.

(b) Actual emissions shall be calculated in a manner which most accurately reflects the actual emissions of each emissions unit using the best available data for that emissions unit under current operating conditions. Where a specific actual emissions calculation procedure is required for any other purpose by the Kansas air quality regulations or 40 CFR part 75, as promulgated at 58 FR 3590 on January 11, 1993, that calculation procedure shall also be used to calculate actual emissions for purposes of this regulation.

(c) Data generated by continuous monitoring systems may be used to calculate actual emissions for any emissions unit if the requirements of this subsection are met.

(1) For sources subject to 40 CFR part 75, actual emissions shall be calculated as required by 40 CFR part 75.

(2) For sources not subject to 40 CFR part 75, the owner or operator shall:

(A) Obtain approval from the department prior to using data generated by a continuous monitoring system for the purpose of calculating actual emissions;

(B) develop and follow a written quality assurance procedure for the continuous monitoring system which is appropriate for purposes of this regulation as determined by the department; and

(C) submit the data to the department in a format approved by the department.

(3) For sources not subject to 40 CFR part 75, actual emissions during periods of missing data shall be calculated as follows.

(A) For periods of missing data of one hour or less, data for the hour immediately preceding the missing data and data for the hour immediately following the missing data shall be averaged and submitted to the department as actual emissions for the missing data. For purposes of this subsection, periods of operation of less than one hour

between periods of missing data shall be included as part of the period of missing data.

(B) For periods of missing data of more than one hour but equal to or less than 24 consecutive hours, actual emissions reported to the department shall be the greater of:

(i) the data determined by the method specified in subsection (c)(3)(A) of this regulation; or

(ii) the average of the actual emission data for the applicable reporting time period during which the continuous monitoring system was properly operating.

(C) For periods of missing data of more than 24 consecutive hours, actual emissions shall be determined using other appropriate calculation methods specified by this regulation.

(D) For periods during upsets, start-up, shut-down, control equipment malfunctions, and other abnormal operating conditions, actual emissions shall be determined using other appropriate calculation methods specified in this regulation.

(d) Actual emissions determined using emission factors shall be calculated using the following formula:

$$\text{Actual emissions} = \text{OR} \times \text{EF} \times (1 - (\text{CE} \times \text{CDE}))^{\circ}$$

Where:

OR = the operating rate as documented through records kept at the emissions unit or stationary source. If insufficient records are kept to determine the actual operating rate of the emissions unit or stationary source during the reporting period, the operating rate shall be determined using the maximum operating capacity during the known hours of operation. If the known hours of operation cannot be determined, the hours of operation shall be the maximum number of hours the facility is permitted to operate during the reporting period.

EF = an appropriate emission factor obtained from an approved publication listed in subsection (g) unless the permittee demonstrates to the satisfaction of the department that an alternative emission factor is applicable to the relevant emissions unit or stationary source.

CE = capture efficiency of the control device emissions collection system determined according to subsection (f) of this regulation or through performance testing.

CDE = control device efficiency determined according to subsection (f) of this regulation or through performance testing.

[°] This formula assumes a single overall control efficiency has been developed for situations where emissions are controlled by a series of air emissions control devices. If a single overall control efficiency has not been developed, actual emissions shall be calculated as follows:

$$\text{Actual emissions} = \text{OR} \times \text{EF} \times (1 - (\text{CE} \times \text{CDE}))_{\text{D1}} \times (1 - (\text{CE} \times \text{CDE}))_{\text{D2}} \times \dots \times (1 - (\text{CE} \times \text{CDE}))_{\text{Dn}}$$

where D is an emissions control device (or devices) for which an overall control efficiency is available.

Prior approval by the department shall be obtained before the development of an alternative emission factor or control device efficiency based upon performance testing of an emissions unit or stationary source.

(e) Actual emissions determined using material balances shall be calculated using one of the following formulas:

(1) For volatile organic compound emissions;

$$\text{Actual emissions} = (Q_{\text{added}} - Q_{\text{recovered}}) \times (1 - (\text{CE} \times \text{CDE}))^{\circ}$$

(2) for sulfur dioxide emissions;

$$\text{Actual emissions} = (F_{\text{burned}} \times (\%S/100) \times \text{CF}) \times (1 - (\text{CE} \times \text{CDE}))^{\circ}$$

(3) for all other emissions for which a material balance procedure is appropriate;

$$\text{Actual emissions} = (Q_{\text{added}} - Q_{\text{consumed}} - Q_{\text{recovered}}) \times (1 - (\text{CE} \times \text{CDE}))^{\circ}$$

Where:

Q_{added} = the total quantity of the regulated substance which enters the process or operation;

$Q_{\text{recovered}}$ = the total quantity of the regulated substance recovered for reuse which is not accounted for by the emission control device calculations;

Q_{consumed} = the total quantity of the regulated substance which becomes an integral part of the product;

F_{burned} = the quantity of sulfur containing fuel by weight;

%S = percent sulfur, by weight, in the sulfur containing fuel;

CE = capture efficiency of the control device emissions collection system determined according to subsection (f) of this regulation or through performance testing;

CDE = control device efficiency determined according to subsection (f) of this regulation or through performance testing; and

CF = a conversion factor of 1.95 for coal and 2.00 for natural gas, oil and other fuels.

[°] See footnote [°] at subsection (d) of this regulation.

(f) Calculation of credits for actual emissions reductions due to air emission control equipment capture efficiencies and control device efficiencies may be taken in accordance with this subsection.

(1) All emissions during startup, shut down, control equipment malfunctions or by-passes, or other periods of greater than normal emissions, shall be calculated as if the emissions unit or stationary source was being operated without air emission control equipment unless a more ac-

curate manner of calculating actual emissions is demonstrated by the owner or operator and approved by the department.

(2) Unless otherwise specifically approved in writing by the department or stated in an air quality permit issued by the department for the emissions unit or stationary source, the following air emission control equipment control device efficiencies shall be used when calculating actual emissions:

(A) Particulate matter, in the absence of information to the contrary, all particulate matter emissions from any control equipment shall be assumed to be PM₁₀.

- | | |
|--|-------|
| (i) electrostatic precipitator or baghouse | 0.90 |
| (ii) high energy wet scrubber | 0.80 |
| (iii) low energy wet scrubber | 0.70 |
| (iv) cyclonic separator | 0.50 |
| (B) Acid gases: | |
| (i) wet scrubber | 0.90 |
| (ii) dry scrubber | 0.70 |
| (C) Volatile organic compounds: | |
| (i) incinerator (operating at a temperature 1400° Fahrenheit or greater) | 0.98 |
| (ii) carbon adsorber | 0.95. |

(3) Unless otherwise specifically approved in writing by the department or stated in an air quality permit issued by the department for the emissions unit or stationary source, the following air emission control equipment control device capture efficiencies shall be used when calculating actual emissions:

(A) The capture efficiency for a totally enclosed emissions source operating under negative pressure shall be 1.00.

(B) The capture efficiency for an emissions source which is not totally enclosed or which is not operated under negative pressure shall be 0.50.

(4) Capture efficiencies and control device efficiencies for other types of air emission control equipment not listed in paragraphs (f)(2) and (f)(3) shall be determined by the department on a case by case basis based upon an appropriate demonstration by the owner or operator of the capture efficiency and control device efficiency of the air emission control equipment.

(5) Capture efficiencies and control device efficiencies alternative to those specified in paragraphs (f)(2) and (f)(3) may be approved by the department upon an appropriate demonstration by the owner or operator of capture efficiency and

control device efficiency of the air emission control equipment.

(6) Each owner or operator which uses an air emission control equipment capture efficiency or control device efficiency, or both, when calculating actual emissions shall maintain the air emission control equipment in accordance with any applicable Kansas air quality regulation, permit requirement or manufacturer's recommendation. Beginning January 1, 1994, the owner or operator shall also keep a written log recording the date and type of action taken when performing preventive or other maintenance on the air emission control equipment. Failure of the owner or operator to maintain the air emission control equipment or to keep a written record as required by this subsection shall be considered a control equipment malfunction for purposes of subsection (f)(1).

(g) Appropriate emission factors obtained from the following publications or data bases are approved for determining emissions from emission units or stationary sources:

(1) AP-42 compilation of air pollution emission factors—4th edition—September, 1985. United States environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(2) AIRS facility subsystem source classification codes (SCCs) and emission factor listing for criteria pollutants (EPA-450/4-90-003). United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(3) Locating and estimating air emissions from sources of acrylonitrile. EPA #450/4-84-007A, March, 1984. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(4) Locating and estimating air emissions from sources of carbon tetrachloride. EPA #450/4-84-007B, March, 1984. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(5) Locating and estimating air emissions from sources of chloroform. EPA #450/4-84-007C, March, 1984. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(6) Locating and estimating air emissions from sources of ethylene dichloride. EPA #450/4-84-

007D, March, 1984. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(7) Locating and estimating air emissions from sources of nickel. EPA #450/4-84-007F, March, 1984. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(8) Locating and estimating air emissions from sources of chromium. EPA #450/4-84-007G, March, 1984. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(9) Locating and estimating air emissions from sources of epichlorohydrin. EPA #450/4-84-007J, September, 1985. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(10) Locating and estimating air emissions from sources of vinylidene chloride. EPA #450/4-84-007K, September, 1985. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(11) Locating and estimating air emissions from sources of manganese. EPA #450/4-84-007H, September, 1985. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(12) Locating and estimating air emissions from sources of phosgene. EPA #450/4-84-007I, September, 1985. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(13) Locating and estimating air emissions from sources of ethylene oxide. EPA #450/4-84-007L, September, 1986. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(14) Locating and estimating air emissions from sources of chlorobenzenes. EPA #450/4-84-007M, September, 1986. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(15) Locating and estimating air emissions from

sources of polychlorinated biphenyls (PCB's). EPA #450/4-84-007N, May, 1987. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(16) Locating and estimating air emissions from sources of polycyclic organic matter (POM). EPA #450/4-84-007P, September, 1987. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(17) Locating and estimating air emissions from sources of benzene. EPA #450/4-84-007Q, March, 1988. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(18) Estimating air toxics emissions from organic liquid storage tanks. EPA #450/4-88-004, October, 1988. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(19) Locating and estimating air toxics emissions from municipal waste combustors. EPA #450/2-89-006, April, 1989. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(20) Locating and estimating air emissions from sources of chromium (supplement). EPA #450/2-89-002, August, 1989. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(21) Locating and estimating air emissions from sources of perchloroethylene and trichloroethylene. EPA #450/2-89-013, August, 1989. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(22) Locating and estimating air emissions from sources of 1, 3-butadiene. EPA #450/2-89-021, December, 1989. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(23) Locating and estimating air toxics emissions from sewage sludge incinerators. EPA #450/2-90-009, May, 1990. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(24) Locating and estimating air emissions from sources of formaldehyde (revised). EPA #450/4-91-012, March, 1991. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(25) Locating and estimating air emissions from sources of styrene, interim report. EPA #450/4-91-029, October, 1991. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3007 and L. 1993, Ch. 13; effective Nov. 22, 1993.)

28-19-212. General provisions; approved test methods and emission compliance determination procedures. (a) The following test methods shall be approved for demonstrating compliance or non-compliance with an appropriate emission standard or limitation:

(1) those test methods specified at 40 CFR part 60, appendix A, as in effect on July 1, 1993;

(2) those test methods specified at 40 CFR part 60, appendix B, as in effect on July 1, 1993;

(3) those test methods specified at 40 CFR part 60, appendix F, as in effect on July 1, 1993;

(4) those test methods specified at 40 CFR part 60, appendix J, as in effect on July 1, 1993;

(5) those test methods specified at 40 CFR part 61, appendix B, as in effect on July 1, 1993;

(6) those test methods specified at 40 CFR part 51, as in effect on July 1, 1993;

(7) those test methods specified at 40 CFR part 63, appendix A, as in effect on July 1, 1993;

(8) any alternative or miscellaneous test procedures currently approved by the USEPA and published in the federal register prior to the effective date of this regulation;

(9) ASTM D 1186-06.01—thickness of paints/related coatings dry film thickness of non-magnetic coatings applied to a ferrous base, as in effect on July 1, 1994;

(10) ASTM D 1200-06.01—standard test method for determining the viscosity of paints and related coatings by the Ford viscosity cup test, as in effect on July 1, 1994;

(11) ASTM D 3794-06.01—standard test method for determining the viscosity of coil coatings by the Zahn cup method test, as in effect on July 1, 1994;

(12) ASTM D 1475-60—standard test method for determining the density of paint, varnish, lac-

quer and related products, as in effect on July 1, 1994;

(13) ASTM D 2369-81—standard test method for determining the volatile content of coatings using a one hour bake, as in effect on July 1, 1994;

(14) ASTM D 3792-79—standard test method for determining the water content of water reducible paint by direct injection into a gas chromatograph, as in effect on July 1, 1994;

(15) ASTM D 4017-81—standard test method for determining the water content in paints by the Karl Fischer titration method, as in effect on July 1, 1994;

(16) ASTM D-244-83—standard methods of testing emulsified asphalts, as in effect on July 1, 1994;

(17) ASTM D-323-82—vapor pressure of petroleum products (Reid method), as in effect on July 1, 1994;

(18) ASTM D-97-66—test for pour point of petroleum oils, as in effect on July 1, 1994;

(19) the procedures in 40 CFR, Part 80, Appendix D, as in effect on July 1, 1993, for the sampling of reid vapor pressure of gasoline to be used as a fuel for motor vehicles;

(20) the procedures in 40 CFR, Part 80, Appendix E, as in effect on July 1, 1993, for the testing of reid vapor pressure of gasoline to be used as a fuel for motor vehicles; and

(21) an alternate sampling or testing procedure approved by the department and developed or approved by the U.S. environmental protection agency as an equivalent or improved procedure.

(b) Notwithstanding any other provision of these regulations, data from continuous emission monitoring systems may be used for purposes of determining compliance with any emission limitation or standard only if:

(1) the emissions are from an affected source and the continuous emission monitoring system is subject to, and in compliance with, the requirements of 40 CFR part 75; or

(2) the continuous emission monitoring system is not subject to 40 CFR part 75 and:

(A) a written quality assurance and quality control plan is maintained by the owner or operator of the emission source;

(B) the plan includes the more stringent of either all recommendations of the manufacturer or manufacturers of the continuous emission monitoring system components or all applicable quality assurance and quality control requirements required by any state or federal regulation or air quality permit;

(C) the owner or operator maintains records demonstrating adherence to the quality assurance and quality control plan; and

(D) the quality assurance and quality control plan is reviewed and updated annually.

Data from a continuous emission monitoring system which satisfies the requirements of this subsection and which demonstrates compliance with the relevant emission limitation or standard, shall create a rebuttable presumption of compliance with the relevant emission limitation or standard.

(c) Notwithstanding any other provisions of these regulations, data which demonstrates non-compliance with an emission limitation or standard shall create a rebuttable presumption of non-compliance if the data is from continuous emission monitoring systems or any other sampling or monitoring protocols, and the systems or protocols are required by:

- (1) any applicable requirement;
- (2) any air quality regulation;
- (3) any compliance plan;
- (4) any order or consent agreement issued pursuant to the authorities specified in the Kansas air quality act;
- (5) the provisions of any air quality construction or operating permit; or
- (6) any other provision or authority of the Kansas air quality act or air quality regulation.

(d) Notwithstanding any other provision of this regulation, any credible evidence may be used for the purpose of establishing non-compliance with an emission limitation or standard.

(e) Notwithstanding any other provision of these regulations, the owner or operator is not prohibited from using the following in addition to any specified compliance methods for the purpose of submission of compliance certifications:

- (1) an enhanced monitoring protocol approved by the department; or
- (2) any other monitoring method approved for the source incorporated into any federally enforceable operating permit. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3007; effective Jan. 23, 1995.)

ACID RAIN AND OTHER TRADING PROGRAMS

28-19-274. Nitrogen oxides; allocations.

(a)(1) For purposes of this regulation, the terms “allocate,” “allocation,” “TR NO_x annual allowance,” “TR NO_x annual trading program,” and “TR NO_x annual unit” shall have the meanings specified in 40 C.F.R. 97.402, as in effect on Octo-

ber 7, 2011. These definitions are hereby adopted by reference.

(2)(A) For purposes of this regulation, each reference to “administrator” shall mean “USEPA administrator.”

(B) For purposes of this regulation, each reference to “State” and each reference to “permitting authority” shall mean “secretary of the Kansas department of health and environment.”

(C) For purposes of this regulation, each reference to “§52.38” shall mean “40 C.F.R. 52.38.”

(b) For purposes of this regulation, Indian country new unit set-aside allowances shall be those unallocated TR NO_x annual allowances for calendar year 2017, 2018, or 2019 available for allocation in accordance with a determination by the department after completion by USEPA of the procedures under 40 C.F.R. 97.412(b)(9) and (12) for that year.

(c) Pursuant to 40 C.F.R. 52.38(a)(4) as in effect on July 1, 2015, this regulation shall replace the provisions of 40 C.F.R. 97.411(a) and (b)(1) and 97.412(a) as in effect on July 1, 2015 for the calendar years 2017, 2018, and 2019 with regard to the implementation of the TR NO_x annual trading program by the department.

(d) Each TR NO_x annual unit shall receive TR NO_x annual allowance allocations and, except as provided in subsection (e), Indian country new unit set-aside allowance allocations for 2017, 2018, and 2019 according to the department’s document titled “TR NO_x annual allowance allocations for 2017, 2018, and 2019,” dated July 17, 2015, which is hereby adopted by reference.

(e) If the total number of available Indian country new unit set-aside allowances for 2017, 2018, or 2019 is less than 31, the allocations shall be determined under this subsection instead of subsection (d), according to the following:

(1) The TR NO_x annual units listed in the department’s document titled “TR NO_x annual allowance allocations for 2017, 2018, and 2019” shall be ordered in descending order of the amounts of their Indian country new unit set-aside allowance allocations as shown in that document, with units whose allocations are the same ordered in ascending order of “ReceiveAcct” and “UnitId” as shown in that document.

(2) The TR NO_x annual units shall forfeit one allowance sequentially, starting with the first listed unit, until the total number of the revised allocations equals the total number of available Indian country new unit set-aside allowances.

(Authorized by K.S.A. 2015 Supp. 65-3005; implementing K.S.A. 2015 Supp. 65-3005 and K.S.A. 65-3010; effective Nov. 6, 2015.)

28-19-275. Special provisions; acid rain deposition. (a) The provisions of this regulation are in addition to any construction or operating permit requirements specified elsewhere in the Kansas air quality regulations. For stationary sources or emissions units subject to this regulation, the requirements of this regulation take precedence in cases of conflicts with other Kansas air quality regulations applicable to the stationary source or emissions unit.

(b) Where applicable, the terms used in the federal regulations adopted by reference herein shall have the definition specified at 40 CFR 72.2 as in effect on July 1, 1994, with the following exception. "Permitting authority" shall mean the secretary of health and environment.

(c) 40 CFR part 72 as applicable to phase II of the federal acid rain program and as in effect on July 1, 1994, is adopted by reference. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

CONSTRUCTION PERMITS AND APPROVALS

28-19-300. Construction permits and approvals; applicability. (a) Each person who proposes to construct or modify a stationary source or emission unit shall obtain a construction permit before beginning actual construction or modification if at least one of the following conditions is met:

(1) The potential-to-emit of the proposed stationary source or emission unit, or the increase in the potential-to-emit resulting from the modification, equals or exceeds any of the following:

(A) Either 25 tons of particulate matter per year or 15 tons of PM10 per year, except for any agricultural-related activity, in which case the emission level shall be 100 tons of particulate matter per year, including PM10;

(B) 40 tons of sulfur dioxide or sulfur trioxide, or a combination of these, per year;

(C) 100 tons of carbon monoxide per year;

(D) 40 tons of volatile organic compounds per year;

(E) 40 tons of oxides of nitrogen per year;

(F) 0.6 tons of lead or lead compounds per year; or

(G) 10 tons of directly emitted PM2.5 per year. For the purposes of this paragraph, "PM2.5" shall

mean particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers.

(2) For the purposes of this paragraph, the definitions in 40 C.F.R. part 63 adopted by reference in K.A.R. 28-19-750 shall apply. The construction or modification project is located at a stationary source and involves any of the following:

(A) The construction of any new major source of hazardous air pollutants;

(B) the reconstruction of any existing major source of hazardous air pollutants;

(C) the modification of any existing area source of hazardous air pollutants such that the source becomes a major source; or

(D) any activity specified in 40 C.F.R. 63.5(b)(3).

(3) The source is requesting a federally enforceable operational restriction or permit condition pursuant to K.A.R. 28-19-302(b).

(4) The emission unit or stationary source is an incinerator used to dispose of refuse by burning or pyrolysis or used for the processing of salvageable materials, except incinerators installed on residential premises that contain fewer than six dwelling units and are used to burn waste materials associated with normal habitation of those dwelling units.

(5) The emission unit or stationary source is required to apply for a construction approval pursuant to paragraph (b)(2), and the secretary determines that air emissions from the emission unit or stationary source require that the permit issuance procedures be implemented.

(b) Each person who proposes to construct or modify a stationary source or emission unit who is not required to obtain a construction permit pursuant to subsection (a) shall, before beginning actual construction or modification of the stationary source or emissions emission unit, obtain an approval from the department to begin actual construction or modification if at least one of the following conditions is met:

(1) The potential-to-emit of the proposed stationary source or emission unit, or the increase in the potential-to-emit resulting from the modification, equals or exceeds one or more of the following:

(A) Either five pounds of particulate matter per hour or two pounds of PM10 per hour, except for any agricultural-related activity, in which case the emission level shall be five pounds of particulate matter per hour, including PM10;

(B) two pounds of sulfur dioxide or sulfur trioxide, or a combination of these, per hour;

(C) 50 pounds of carbon monoxide per 24-hour period;

(D) 50 pounds of volatile organic compounds per 24-hour period, except when the stationary source or emission unit is located in an area designated as a nonattainment area in 40 C.F.R. 81.317 as in effect on July 1, 1989, in which case approval shall be required if the emission level exceeds either 15 pounds per 24-hour period or three pounds per hour;

(E) 50 pounds of oxides of nitrogen calculated as nitrogen dioxide per 24-hour period; or

(F) 0.1 pounds of lead or lead compounds per hour.

(2) The secretary determines that any other air contaminant emissions from the emission unit or stationary source could cause or contribute to air pollution within the state because of the specific chemical or physical nature of the emissions or because of the quantity discharged.

(3) The construction or modification project is located at a stationary source for which a standard has been promulgated under 40 C.F.R. part 60, as adopted by reference in K.A.R. 28-19-720, and the project involves the construction of any new source or the modification or reconstruction of any existing source subject to the standard. For the purposes of this paragraph, the definitions in 40 C.F.R. part 60 adopted by reference in K.A.R. 28-19-720 shall apply. A construction approval shall not be required for construction, reconstruction, or modification projects subject to the standards of performance for new residential wood heaters, 40 C.F.R. part 60, subpart AAA.

(4) The construction or modification project is located at a stationary source for which a standard has been promulgated under 40 C.F.R. part 61, as adopted by reference in K.A.R. 28-19-735, and the project involves the construction of any new source or the modification of any existing source subject to the standard. For the purposes of this paragraph, the definitions in 40 C.F.R. part 61 adopted by reference in K.A.R. 28-19-735 shall apply. A construction approval shall not be required for construction or modification projects subject to 40 C.F.R. 61.145.

(5) The construction or modification project is located at a stationary source for which a relevant standard has been promulgated under 40 C.F.R. part 63, as adopted by reference in K.A.R. 28-19-750, and the project involves the construction of

any new source or the reconstruction of any existing source subject to the relevant standard. For the purposes of this paragraph, the definitions in 40 C.F.R. part 63 adopted by reference in K.A.R. 28-19-750 shall apply. A construction approval shall not be required solely if the project is subject to any of the following:

(A) 40 C.F.R. part 63, subpart M;

(B) 40 C.F.R. part 63, subpart CCCCCC; or

(C) 40 C.F.R. part 63, subpart ZZZZ, if the project is located at an area source.

(6) The source is seeking an approval with operational restrictions pursuant to K.A.R. 28-19-302(c).

(c) For the purpose of this regulation, neither of the following shall be considered a modification:

(1) Routine maintenance or parts replacement; or

(2) an increase or decrease in operating hours or production rates if both of the following conditions are met:

(A) Production rate increases do not exceed the originally approved design capacity of the stationary source or emission unit; and

(B) the increased potential-to-emit resulting from the change in operating hours or production rates does not exceed any emission or operating limitations imposed as a condition to any permit issued under this article of the department's regulations. (Authorized by K.S.A. 2016 Supp. 65-3005; implementing K.S.A. 2016 Supp. 65-3008; effective Jan. 23, 1995; amended Nov. 18, 2016.)

28-19-301. Construction permits and approvals; application and issuance. (a) Application for a permit or approval to construct or modify a stationary source or emissions unit shall be made by the owner or operator on forms provided or approved by the department. The owner or operator may be required to furnish additional information to determine compliance with the Kansas air quality regulations.

(b) A construction permit shall not be issued to a source whose potential-to-emit equals or exceeds that specified at K.A.R. 28-19-500(a) or K.A.R. 28-19-500(b) without first satisfying the public participation requirements of K.A.R. 28-19-204.

(c) Each permit or approval issued for the construction or modification of a source shall become void if the construction or modification has not commenced within 18 months after permit issuance or if the activity required to complete the modification or construction has been discontinued for 18 months or more.

(d) No construction permit or approval shall be issued if the department determines that the air contaminant emissions from the source will interfere with the attainment or maintenance of any ambient air quality standard that has been established under the provisions of the federal clean air act, as amended, or under the provisions of state law.

(e) Each construction permit or approval that is issued may be conditioned upon compliance by the owner or operator with any special restrictions that are deemed necessary to insure compliance with these regulations or otherwise prevent air pollution.

(1) The restrictions may include, but need not be limited to, special requirements concerning methods of operation, emissions limitations or control procedures to be implemented.

(2) Each restriction shall be in writing as part of, or as an attachment to, the permit or approval.

(f) Each construction permit or approval that is issued may identify one or more air contaminant emission sources that are approved to be constructed, modified, used, or operated.

(1) The sources shall be located on the same premises, shall be under one ownership, and shall be considered as part of the same industrial grouping as determined by the department.

(2) The major industrial grouping shall be identified by using the industrial titles and descriptions provided in the "standard industrial classification manual 1987," as published by the U.S. government printing office, stock number 041-001-00314-2, which is adopted by reference. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-302. Construction permits and approvals; additional provisions; construction permits. (a) The owner or operator of any source which is required to obtain a construction permit pursuant to K.A.R. 28-19-16 through 28-19-16m, nonattainment area requirements, or K.A.R. 28-19-17 through 28-19-17q, prevention of significant deterioration requirements, shall comply with any applicable construction permit requirements of the regulations in addition to the requirements set forth herein.

(b) The owner or operator submitting an application for the construction of a new source or modification of an existing source may request a federally enforceable operational restriction

be included in the construction permit which, either alone or in conjunction with a federally enforceable permit condition regarding properly maintained and operated air pollution control equipment, reduces the potential-to-emit of the emissions unit or stationary source or otherwise results in avoidance of any requirement of the federal clean air act. Such permit restriction shall meet the requirements of K.A.R. 28-19-501(b) to be considered federally enforceable.

(c) Any owner or operator which would otherwise be required to submit an application for the construction of a new source may, in lieu of applying for a construction permit, request an operational restriction be included in a construction approval which, either alone or in conjunction with properly maintained and operated air pollution control equipment, reduces the potential emissions of the source below the threshold requiring a construction permit if:

(1) the potential-to-emit is less than the threshold requiring a permit pursuant to any applicable requirements of:

(A) K.A.R. 28-19-16 through 28-19-16m, nonattainment area requirements;

(B) K.A.R. 28-19-17 through 28-19-17q, prevention of significant deterioration requirements;

(C) K.A.R. 28-19-510 *et seq.*, class I operating permits; and

(D) K.A.R. 28-19-540 *et seq.*, class II operating permits;

(2) the owner or operator specifies and quantifies the operational restrictions which will reduce the potential emissions of the source and agrees to operate the source in compliance with such operational restrictions;

(3) the owner or operator specifies a procedure for maintaining records that demonstrate compliance with the operational restrictions; and

(4) the owner or operator complies with the requirements of K.A.R. 28-19-501(d) in regards to any air pollution control equipment relied upon to reduce potential emissions of the source.

(d) Any failure to comply with an operational restriction, record-keeping requirement or control equipment requirement which provided the basis for issuance of an approval pursuant to subsection (c) of this regulation shall be deemed a violation of this regulation.

(e) For purposes of the Kansas air quality act, a construction permit shall be an approval to construct or modify an air contaminant emission stationary source. (Authorized by K.S.A. 1993 Supp.

65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-303. Construction permits and approvals; additional provisions; construction approvals. (a) A construction approval shall not contain conditions that allow a source to avoid any requirement of the federal clean air act. Any person requesting an operational restriction that would result in avoidance of a federal requirement shall apply for and obtain a construction permit prior to the construction or modification of the relevant stationary source or emissions unit.

(b) If the potential-to-emit of the proposed construction or modification may cause or contribute to a violation of a national ambient air quality standard, a construction approval shall not be issued for the construction or modification of an emissions unit or stationary source. An application for a construction permit shall be required for the construction or modification.

(c) A construction approval issued pursuant to this regulation, regarding an emissions unit or stationary source which is subject to any requirement of the Kansas air quality act or the federal clean air act, shall contain provisions requiring operation of the emissions unit or stationary source in compliance with all requirements of the Kansas air quality act and the federal clean air act which are applicable to the emissions unit or stationary source.

(d) For purposes of the Kansas air quality act, an approval issued pursuant to this regulation shall be considered to be an approval to construct or modify an air contaminant emission stationary source. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-304. Construction permits and approvals; fees. An application for an approval or a permit shall not be reviewed until the department has received an application fee pursuant to the requirements of this regulation.

(a) The fee for each construction approval application shall be \$750.00.

(b) The fee for each construction permit application shall be determined according to the following source categories:

- (1) \$4,000 for each of the following:
 - (A) Aircraft manufacturing;
 - (B) cellulosic organic fiber manufacturing;
 - (C) chemical manufacturing, except ethanol manufacturing;

- (D) electric power generation with total plant-wide capacity at least 100 megawatts;

- (E) fiberglass insulation manufacturing;
- (F) foundries;
- (G) glass and glass product manufacturing;
- (H) hazardous waste and medical waste incinerators;

- (I) pesticide, fertilizer, and other agricultural chemical manufacturing;

- (J) petroleum refineries;
- (K) portland cement manufacturing;
- (L) sulfuric and nitric acid manufacturing; and
- (M) tire manufacturing;

- (2) \$2,000 for each of the following:
 - (A) Agriculture, construction, and mining machinery manufacturing;

- (B) aircraft engine or parts manufacturing;
- (C) animal slaughtering and processing;
- (D) ethanol manufacturing, including distilleries;

- (E) fabricated metal product manufacturing;
- (F) grain and oilseed milling, including oil extraction;

- (G) lime and gypsum product manufacturing;
- (H) motor vehicle manufacturing, including vehicle body, truck trailer, and camper manufacturing;

- (I) paint, coating, and adhesive manufacturing;
- (J) pipeline transportation of refined petroleum, crude oil, and natural gas;

- (K) printing and related support activities;
- (L) rubber product manufacturing, except tire manufacturing;

- (M) ship and boat building;
- (N) soap and cleaning compound manufacturing;

- (O) solid waste landfills; and
- (P) storage battery manufacturing; and
- (3) \$1,000 for each of the following:

- (A) Each source category listed in paragraph (b) (1) that is not a major source, as defined in K.A.R. 28-19-200;

- (B) air curtain combustors;
- (C) animal crematory services;
- (D) animal food manufacturing;
- (E) asphalt paving mixture and block manufacturing;

- (F) crude petroleum and natural gas extraction;
- (G) electric power generation with total plant-wide capacity less than 100 megawatts;

- (H) food manufacturing;
- (I) grain elevators;
- (J) hog and pig farming;

(K) nonmetallic mineral mining and quarrying;
 (L) plastics product manufacturing, including fiberglass products; and

(M) ready-mix concrete manufacturing.

(c) The fee for each construction permit application for any source category not listed in subsection (b) shall be \$1,000.

(d)(1) The construction permit application fees in subsections (b) and (c) shall not apply if the proposed construction or modification is also subject to review and permitting requirements under K.A.R. 28-19-16 through 28-19-16m, pertaining to nonattainment area requirements, or K.A.R. 28-19-350, pertaining to prevention of significant deterioration. Instead, the fees shall be as follows:

(A) For each application for new permit, \$10,000; or

(B) for each application for modification of an existing permit, \$10,000 if the modification includes any of the following:

(i) A new best available control technology (BACT) analysis or a modification of an existing BACT analysis;

(ii) a review of emissions or net emissions calculations; or

(iii) the addition of a new unit subject to BACT; and

(C) for each application for modification of an existing permit not specified in paragraph (d)(1)(B), \$3,000.

(2) In addition to the construction permit application fee requirements of paragraphs (d)(1)(A) and (B), the following fees shall apply:

(A) For each refined modeling analysis, \$8,000;

(B) for each revision to application, \$5,000; and

(C) for each revision to modeling, \$4,000.

(e) Each fee, which shall be nonrefundable, shall be remitted in the form of a check, draft, credit card payment, or money order made payable to the Kansas department of health and environment. Receipt of any type of payment that is not covered by sufficient funds shall be cause for the denial of the construction permit or approval. (Authorized by K.S.A. 2016 Supp. 65-3005; implementing K.S.A. 2016 Supp. 65-3008; effective Jan. 23, 1995; amended Nov. 18, 2016.)

28-19-325. Compressed air energy storage. (a) The terms “compressed air energy storage” and “CAES,” as used in this regulation, shall mean the compression and storage of air that is released and converted to energy for the production of electricity.

(b) Each person who proposes to construct, modify, or operate a CAES facility with a potential-to-emit that equals or exceeds the emissions thresholds, emissions limitations, or standards specified in K.A.R. 28-19-300 shall comply with the following upon application for a construction permit or approval:

(1) All applicable provisions of the Kansas air quality act and the Kansas air quality regulations as directed by the secretary; and

(2) for underground CAES facilities, any applicable regulations adopted by the Kansas corporation commission pursuant to K.S.A. 66-1274, and amendments thereto.

(c) Each person who proposes to construct or modify a CAES facility that includes underground storage and does not include energy production utilizing combustion shall meet the following requirements:

(1) Upon application for a construction permit or approval, the person shall comply with any applicable regulations adopted by the Kansas corporation commission pursuant to K.S.A. 66-1274, and amendments thereto.

(2) The person shall develop and submit to the department for approval, with the application for a construction permit or approval, a site emissions characterization plan that determines the types and quantities of any regulated pollutants that reasonably could be present. The site emissions characterization plan shall include the following:

(A) A list of volatile organic compounds and hazardous air pollutants, as defined in K.A.R. 28-19-201, that are or reasonably could be present in the proposed storage formation within the facility and that could be emitted as a result of the facility’s operations;

(B) the spatial characteristics of the proposed storage formation, including existing and proposed injection and withdrawal wells;

(C) a site characterization sampling plan that includes plans, either maps or diagrams, and a rationale for the following:

(i) Proposed sample types;

(ii) sampling locations;

(iii) number of samples; and

(iv) test methodologies;

(D) a quality assurance plan;

(E) the use of a laboratory approved by the secretary;

(F) any additional information that may be required by the department to fully characterize the site’s emissions;

(G) a schedule that includes a timeline for implementing the requirements prescribed in paragraph (c)(2); and

(H) existing information or knowledge about the proposed site or an adjacent site, as approved by the secretary, to complete, supplement, or take the place of any or all elements of the site emissions characterization plan prescribed in paragraph (c)(2).

(3)(A) If the site emissions characterization plan results indicate that emissions equal or exceed the emissions thresholds, emissions limitations, or standards specified in K.A.R. 28-19-300, the person proposing to construct or modify the CAES facility shall be subject to the applicable provisions of K.A.R. 28-19-300 through 28-19-350 for obtaining a construction permit or approval before commencing construction.

(B) If the person decides to proceed with the proposed CAES facility, the person shall submit the site emissions characterization plan results with an application for a construction permit or approval to the department.

(d)(1) The owner or operator of each CAES facility operating pursuant to a permit or approval issued by the department shall conduct emissions testing once every four calendar quarters in accordance with a sampling plan approved by the secretary. A certified copy of the test results signed by the person conducting the tests shall be provided to the department not later than 60 days after the end of the calendar quarter in which the emissions testing was conducted.

(2) The owner or operator may be required by the secretary to increase test frequency if emissions test results are close to or exceed an emissions limitation or an emissions threshold specified in a permit or approval issued by the secretary to the CAES facility.

(3) Upon written request by the owner or operator, decreased or suspended emissions testing may be approved by the secretary if the source demonstrates emissions test results significantly below emissions limitations or emissions thresholds specified in a permit or approval for three consecutive years.

(e)(1) The owner or operator of each CAES facility operating pursuant to a permit or approval issued by the department shall inspect the above-ground components of each CAES well and storage facility for liquid and vapor leaks at least once each calendar quarter. The owner or operator shall visually inspect for liquid leaks and shall test

for vapor leaks using test methods consistent with USEPA method 21 in 40 C.F.R. part 60, appendix A, as adopted by reference in K.A.R. 28-19-720, or an alternate method as demonstrated to the satisfaction of the secretary to be equivalent. Leak detection points to be inspected and tested shall include the following:

- (A) Valves;
- (B) flanges and other connections;
- (C) pumps and compressors;
- (D) pressure-relief devices;
- (E) process drains;
- (F) open-ended lines or valves;
- (G) seal system degassing vents and accumulator vents; and
- (H) access door seals.

(2) The owner or operator shall record the following information and keep the information available at the CAES facility for at least five years for department inspection or for submittal upon request by the department, which may include submittal with the emissions test results specified in subsection (d):

- (A) The total number and the locations of the leak detection points;
- (B) the date of each inspection;
- (C) the number of leak detection points inspected and the number of leaks detected for each inspection date;
- (D) the location of leaks detected for each inspection date; and
- (E) the date and type of each corrective action taken. (Authorized by K.S.A. 2009 Supp. 65-3005 and 66-1275; implementing K.S.A. 2009 Supp. 65-3005, K.S.A. 65-3007, 65-3008, 65-3010, and K.S.A. 2009 Supp. 66-1275; effective Nov. 29, 2010.)

28-19-350. Prevention of significant deterioration (PSD) of air quality. (a) PSD requirements. The requirements of this regulation shall apply to the construction of major stationary sources and major modifications of stationary sources as defined in 40 C.F.R. 52.21 in areas of the state designated as attainment areas or unclassified areas for any pollutant under the procedures prescribed by section 107(d) of the federal clean air act, 42 U.S.C. 7407(d).

- (b) Adoption by reference; exceptions.
 - (1) 40 C.F.R. 52.21, as revised on July 1, 2011 and as amended by 76 fed. reg. 43507 (2011) and 77 fed. reg. 65118-65119 (2012), is adopted by reference, except as specified in paragraph (b)(2).

(2) The following provisions of the federal regulation adopted in paragraph (b)(1) are excluded from adoption:

- (A) Plan disapproval, 52.21(a)(1);
- (B) stack heights, 52.21(h);
- (C) air quality analysis, 52.21(m)(1)(v);
- (D) visibility monitoring, 52.21(o)(3);
- (E) public participation, 52.21(q);
- (F) environmental impact statements, 52.21(s);
- (G) disputed permits or redesignations, 52.21(t);
- (H) delegation of authority, 52.21(u); and
- (I) permit rescission, 52.21(w).

(c) Provisions adopted by reference; term usage. When used in any provision adopted from 40 C.F.R. 52.21, each reference to “administrator” shall mean the “secretary of health and environment or an authorized representative of the secretary,” except for the following:

(1) In subsections 52.21(b)(3)(iii)(a) and 52.21(b)(48)(ii), “administrator” shall mean both the “secretary of health and environment” and the “administrator of USEPA.”

(2) In subsections 52.21(b)(17), 52.21(b)(37)(i), 52.21(b)(43), 52.21(b)(48)(ii)(c), 52.21(b)(50)(i), 52.21(b)(51), 52.21(g), 52.21(i)(6-8), 52.21(l)(2), and 52.21(m)(1)(vii -viii), “administrator” shall mean only the “administrator of USEPA.”

(d) Internal references.

The following portions of 40 C.F.R. part 51 are hereby adopted by reference:

(1) Subpart I, as revised on July 1, 2011 and as amended by 76 fed. reg. 43507 (2011) and 77 fed. reg. 65118 (2012);

(2) appendix S, as revised on July 1, 2011 and as amended by 77 fed. reg. 65118 (2012); and

(3) appendix W, as revised on July 1, 2011.

(e) Definitions. For the purposes of this regulation, the following definitions shall apply:

(1) “Act” shall mean the federal clean air act, 42 U.S.C. 7401 et seq.

(2) “Class I, II or III area” shall mean a classification assigned to any area of the state under the provisions of sections 162 and 164 of the act, 42 U.S.C. 7472 and 7474, and amendments thereto.

(3) “State” shall mean the state of Kansas, unless the context clearly indicates otherwise.

(f) Ambient air ceiling protection. In relation to ambient air ceilings, the following requirements shall apply:

(1) Except as stated in paragraph (f)(2) of this regulation, a permit shall not be issued for any new major stationary source or major modification as defined in 40 C.F.R. 52.21(b) if the source or

modification will be located in an attainment area or an unclassifiable area for any national ambient air quality standard and if the source or modification would cause or contribute to a violation of any national ambient air quality standard. A major source or major modification shall be considered to cause or contribute to a violation of a national ambient air quality standard if the air quality impact of the source or modification would exceed the following levels at any locality that does not or would not meet the applicable national standard:

Pollutant	Averaging Time				
	Annual	24hrs.	8hrs.	3hrs.	1hr.
Sulphur dioxide	1.0 µg/m ³	5 µg/m ³	-----	25 µg/m ³	-----
PM ₁₀	1.0 µg/m ³	5 µg/m ³	-----	-----	-----
PM _{2.5}	0.3 µg/m ³	1.2 µg/m ³	-----	-----	-----
Nitrogen dioxide	1.0 µg/m ³	-----	-----	-----	-----
Carbon dioxide	-----	-----	0.5 mg/m ³	-----	2 mg/m ³

(2) A permit may be granted for a major stationary source or major modification as identified in paragraph (f)(1) of this regulation if the impact of the major stationary source’s or major modification’s emissions upon air quality is reduced by a sufficient amount to compensate for any adverse impact at the location where the major source or modification would otherwise cause or contribute to a violation of any national ambient air quality standard. Subsection (f) shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that the source is located in an area that has been identified as not meeting either the national primary or secondary ambient air quality standard for that particular pollutant.

(g) Stack height requirements. K.A.R. 28-19-18 through K.A.R. 28-19-18f, regarding stack height requirements, shall apply to the sources subject to this regulation.

(h) Application required. Each application for a PSD permit shall be submitted by the owner or operator on the forms provided or approved by the department. K.A.R. 28-19-300 through K.A.R. 28-19-304, regarding construction permit and approval requirements, shall apply to the sources subject to this regulation.

(i) Impact on federal class I areas; notification required. If the emissions from any proposed major stationary source or major modification subject to this regulation will affect any air quality-related values in any federal class I area, a copy of the permit application for the source or modification shall be transmitted by the secretary or an

authorized representative of the secretary to the administrator of USEPA through the appropriate regional office. The administrator, through the appropriate regional office, shall also be notified of every action taken concerning the application.

(j) Permit suspension or revocation. Any permit issued under this regulation may be suspended or revoked by the secretary upon a finding that the owner or operator has failed to comply with any requirement specified in the permit or with any other statutory or regulatory requirement. This subsection shall not be interpreted to preclude any other remedy provided by law to the secretary.

(k) Public participation requirements. In addition to the requirements of K.A.R. 28-19-204, the following public participation requirements shall be met before issuance of the permit:

(1) The public notice shall include the following:

(A) A statement specifying the portion of the applicable maximum allowable increment that is expected to be consumed by the source or modification; and

(B) A statement that the federal land manager of any adversely impacted federal class I area has the opportunity to provide the secretary with a demonstration that the emissions from the proposed source or modification will have an adverse impact on air quality-related values in the federal class I area.

(2) A copy of the public notice shall be mailed to the following:

(A) The applicant;

(B) the administrator of USEPA through the appropriate regional office;

(C) any state or local air pollution control agency having jurisdiction in the air quality control region in which the new or modified installation will be located;

(D) the chief executives of the city and county where the source will be located;

(E) any comprehensive regional land use planning agency having jurisdiction where the source will be located; and

(F) any state, federal land manager, or Indian governing body whose lands will be affected by emissions from the new construction or modification.

(3) In addition to those materials required to be available for public review at the appropriate district office or local agency, a summary analysis and discussion of those materials as they relate to establishing compliance with the requirements of this regulation shall be made available for public review.

(4) Copies of all comments received and the written determination of the secretary shall be made available for public inspection at the appropriate district office or local agency. (Authorized by K.S.A. 2011 Supp. 65-3005; implementing K.S.A. 2011 Supp. 65-3005 and K.S.A. 65-3008; effective Nov. 22, 2002; amended June 30, 2006; amended Oct. 23, 2009; amended Nov. 29, 2010; amended Dec. 28, 2012.)

GENERAL PERMITS

28-19-400. General permits; general requirements. (a) A general permit applicable to a similar category of emissions units or stationary sources required to obtain a permit by the Kansas air quality regulations may be adopted by the department subject to the following conditions:

(1) the department determines there are a sufficient number of potentially eligible sources to justify adoption of a general permit;

(2) the general permit requires compliance with all requirements of the Kansas air quality statutes, Kansas air quality regulations, and federal clean air act which are applicable to the category of sources covered by the general permit; and

(3) the general permit adoption process complies with all procedures and requirements applicable to the issuance of the corresponding class of construction or operating permit.

(b) A general permit shall have the same term as the corresponding class of construction or operating permit.

(c) Affected sources under title IV, acid deposition control, of the federal clean air act, shall not be eligible to operate under the terms of a general permit. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-401. General permits; adoption by the secretary. (a) Any source that is within the category of sources to which a general permit would apply may petition the secretary to adopt a general permit applicable to that category of sources.

(b) The petition for the adoption of a general permit shall be made on forms provided or approved by the department.

(c) Contents of the petition shall include, but not be limited to:

(1) all information required in the application for issuance of the class of construction or operating permit applicable to the category of sources covered by the proposed general permit;

(2) a description of the category of emissions units or stationary sources which would qualify for the general permit; and

(3) an estimate, and the basis for the estimate, of the number of stationary sources which would qualify for the general permit.

(d) The applicant shall provide such other information as is requested by the department.

(e) A general permit may be adopted by the secretary on the secretary's own motion.

(f) Filing a petition for the adoption of a general permit shall not be considered the filing of an application for the corresponding construction or operating permit in regards to any emissions unit or stationary source of the applicant.

(g) Before any person may apply to construct an emissions unit or stationary source pursuant to the terms of a general construction permit, the general construction permit shall be submitted to, and approved by, the USEPA as a modification to the state implementation plan pursuant to the requirements of section 110 of the federal clean air act. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-402. General permits; availability of copies; lists of sources to which permits issued. (a) Any person may obtain a copy of a general permit by making a request for a copy of the permit from the department.

(b) Any owner or operator who is constructing or operating an emissions unit or stationary source pursuant to the terms of a general permit shall be specified on a list maintained by the department stating:

(1) the name of the owner or operator;

(2) the category of emissions unit or stationary source operating pursuant to the general permit; and

(3) the permit number assigned by the department to the stationary source. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-403. General permits; application to construct or operate pursuant to terms of general permit. (a) Any person may apply to the department requesting authorization to construct or operate an emissions unit or stationary source pursuant to the terms of a general permit adopted by the secretary.

(b) The application shall be on forms provided or approved by the department.

(c) The application shall include, but not be limited to:

(1) information necessary to determine whether the emissions unit or stationary source qualifies for the general permit;

(2) a statement that the emissions unit or stationary source shall remain in compliance with all conditions, limitations and requirements of the general permit, and all other applicable requirements; and

(3) submission of the applicable application fee.

(d) The owner or operator of the emissions unit or stationary source shall provide such additional information as is requested by the department.

(e) The application shall be certified by a responsible official.

(f) The timely and complete submission of an application to construct or operate under the terms of a general permit adopted by the secretary shall be considered equivalent to the timely and complete filing of an application for the issuance of the appropriate construction or operating permit.

(g) The owner or operator of an emissions unit or stationary source which has been granted approval to construct or operate pursuant to a general permit shall not be shielded from enforcement action if it is subsequently determined that the emissions unit or stationary source did not qualify for the general permit.

(h) The grant or denial of an application to construct or operate under the terms of a general permit shall not be considered final agency action with regard to the terms of the general permit within the meaning of K.S.A. 77-601 through 77-627, the act for judicial review and civil enforcement of agency actions. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-404. General permits; modification; revocation. If a general permit is modified or revoked, the owner or operator of an emissions unit or stationary source which is authorized to operate pursuant to a general permit shall reapply for the general permit or submit a complete application for the appropriate permit within 12 months of the date of modification or revocation of the general permit unless a different time frame is specified by the department. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

OPERATING PERMITS

28-19-500. Operating permits; applicability. (a) A stationary source shall obtain a class I operating permit in accordance with the provisions of K.A.R. 28-19-510 if the stationary source is:

(1) a major source, except that a source is not required to obtain a permit if it would be classified as a major source solely because it has the potential-to-emit major amounts of a pollutant listed pursuant to section 112(r)(3) of the federal clean air act and is not otherwise required to obtain a permit under this regulation;

(2) an affected source;

(3) a solid waste incinerator unit required to obtain a permit pursuant to section 129(e) of the federal clean air act;

(4) subject to an emission limitation or standard under section 111 of the federal clean air act, new source performance standards, except for a stationary source which is exempt as provided in paragraph (h) of this regulation;

(5) subject to an emission limitation or standard under section 112 of the federal clean air act, hazardous air pollutants, except for a stationary source which is exempt as provided in paragraph (h) of this regulation. This provision shall not require a source to get a class I operating permit solely because it is subject to regulations or requirements under section 112(r) of the federal clean air act, prevention of accidental releases; or

(6) not a major source but is within a source category designated by the secretary as requiring a class I operating permit.

(b) A stationary source may avoid obtaining a class I operating permit by electing to reduce its potential-to-emit through any physical or operational limitation or use of pollution control equipment required by a class II operating permit. The potential-to-emit shall not be considered to be reduced until a class II permit has been issued to the source. A class II operating permit may be obtained in accordance with K.A.R. 28-19-540 by:

(1) submitting an application for a class II operating permit that contains operational restrictions or requirements for air pollution control equipment, or both;

(2) submitting an application to operate in accordance with the terms of a class II general operating permit issued pursuant to K.A.R. 28-19-400; or

(3) for those source categories identified in K.A.R. 28-19-561 through K.A.R. 28-19-563, sub-

mitting an application for a permit-by-rule in accordance with K.A.R. 28-19-542.

(c) Each commercial or medical waste incinerator which is not otherwise required to obtain an operating permit shall obtain a class III operating permit in accordance with the provisions of K.A.R. 28-19-575.

(d) Each stationary source which is not otherwise required to obtain an operating permit but which is subject to any air quality regulatory emission limitation or standard shall obtain a class III operating permit in accordance with the provisions of K.A.R. 28-19-575. However, a stationary source shall not be required to obtain a class III operating permit pursuant to the terms of this subsection if the only emission limitations or standards applicable to the source are one or more of the following:

(1) K.A.R. 28-19-20 through K.A.R. 28-19-26, processing operation emissions;

(2) K.A.R. 28-19-30 through K.A.R. 28-19-32, indirect heating equipment emissions;

(3) K.A.R. 28-19-50, opacity requirements;

(4) K.A.R. 28-19-69, cutback asphalt;

(5) K.A.R. 28-19-70, leaks from gasoline delivery vessels and vapor collection systems;

(6) K.A.R. 28-19-72, gasoline dispensing facilities;

(7) 40 CFR part 60, subpart AAA, standards of performance for new residential wood heaters;

(8) 40 CFR 61.145, national emissions standard for asbestos, standard for demolition and renovation; or

(9) K.A.R. 28-19-750, hazardous air pollutants, if the source is an area source.

(e) Class I, II, and III permits.

(1) For purposes of the Kansas air quality act, a class I operating permit is a permit to operate an air contaminant emission stationary source.

(2) For purposes of the Kansas air quality act, a class II operating permit or a class III operating permit is an approval, rather than a permit, to operate an air contaminant emission stationary source.

(f) After the date an application for a class I, class II or class III operating permit is due, a person shall not operate an air emissions unit or stationary source for which the operating permit is required unless:

(1) an appropriate, valid operating permit has been issued for the air emissions unit or stationary source; or

(2) a complete application, including any required fee, for the appropriate operating permit is pending with the agency.

(g) An application for an operating permit for an emissions unit or stationary source may be submitted and processed simultaneously with the application for a construction permit or construction approval filed pursuant to K.A.R. 28-19-300 *et seq.* for that emissions unit or stationary source.

(h) Unless otherwise required by an applicable requirement, a stationary source which is not a major source, but which would be required to obtain a class I operating permit solely because of the provisions of paragraph (a)(4) or (a)(5) of this regulation, or both, is exempt from the requirement to obtain a class I operating permit until otherwise required by the department. Nothing in these regulations shall be interpreted to preclude any such air emission source from applying for and operating under the terms of a class I operating permit.

(i) Until such time as a stationary source is required to apply for a class I, class II, or class III operating permit, the stationary source shall be considered in compliance with this regulation if the source has a valid construction permit or approval or valid operating permit issued pursuant to the requirements of K.A.R. 28-19-300 *et seq.*, or its predecessor K.A.R. 28-19-14. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-501. Operating permits; emissions limitations and pollution control equipment for class I and class II operating permits; conditions. (a) The owner or operator of an emissions unit or stationary source may request an operational permit restriction or a permit condition requiring the use of air pollution control equipment, or both, which reduce the potential-to-emit of an emissions unit or stationary source.

(b) Operational restrictions specified in an operating permit shall reduce the potential-to-emit of an emissions unit or stationary source if:

(1) all restrictions imposed in the operating permit are at least as stringent as any other applicable limitations or restrictions contained in the state implementation plan;

(2) the restrictions do not waive, or make less stringent, any limitations, restrictions or requirements contained in or issued pursuant to the state implementation plan or that are otherwise federally enforceable; and

(3) the restrictions are permanent, quantifiable and otherwise enforceable as a practical matter.

(c) The owner or operator of an emissions unit or stationary source which is subject to operational restrictions set forth in a class I or class II operating permit, except as otherwise specifically required, shall maintain at the stationary source records demonstrating that the operational restrictions imposed have not been exceeded. Records shall be updated monthly, no later than the last day of the following calendar month.

(1) If, at the end of any calendar quarter, the monitored operational parameters demonstrate that actual operations have exceeded 85% of the operational restrictions for the past four calendar quarters, including the most recently completed calendar quarter, the owner or operator shall report the actual operations to the department for that period of time. The actual operations shall be reported in the same units as the operational restrictions specified in the operating permit. The report shall be submitted to the department within 45 days of the last day of the month following the conclusion of the calendar quarter.

(2) Exceeding operational restrictions.

(A) If, at any time, the actual operations of the emissions unit or stationary source exceed the operational restrictions specified in the operating permit, the owner or operator shall notify the department in writing, the notice to be mailed or delivered the first working day following discovery of exceeding any operating permit operational restriction.

(B) Within 60 days of discovery of exceeding the operational restrictions, the owner or operator of the stationary source shall submit to the department a compliance plan, signed by a responsible official, stating those actions being taken by the owner or operator to assure future compliance with the operational restrictions or to otherwise bring the stationary source into compliance with the permit or the Kansas air quality statutes and regulations.

(C) If appropriate, the owner or operator shall also file the appropriate application for a permit modification or a class I operating permit within 180 days of discovery of exceeding any operating permit operational restriction.

(D) Compliance with the requirements of subsection (c)(2) of this regulation does not shield the owner or operator from enforcement action for exceeding any operating permit operational restriction or for other violations of the Kansas air quality act or regulations.

(d) Except as otherwise authorized by the Kansas air quality regulations or the operating permit

issued to the source, air pollution control equipment identified in an operating permit shall reduce the potential-to-emit of an emissions unit or stationary source, either alone or in conjunction with an operational restriction, if the owner or operator of the emission unit or stationary source:

(1) continuously operates the air pollution control equipment while operating the associated emissions unit or units;

(2) develops, implements and maintains on-site a written maintenance plan to assure proper operation of the air pollution control equipment; and

(3) maintains a log showing the date of all routine or other maintenance, malfunction or repair of the air pollution control equipment, the nature of the action taken on such date, and any corrective action or preventative measures taken.

(e) Except in the case of a permit-by-rule issued pursuant to K.A.R. 28-19-542, when calculating the potential-to-emit, reductions in emissions due to operational restrictions or to air pollution control equipment shall reduce the potential-to-emit only if:

(1) the provisions of K.A.R. 28-19-204 have been satisfied;

(2) notice soliciting comments on the proposed restrictions is:

(A) given to the USEPA;

(B) placed in the *Kansas Register*; and

(C) except in the case of a general permit, placed in a newspaper of general circulation in the area in which the emissions unit or stationary source is, or will be, located, at least 30 days prior to issuance of the operating permit; and

(3) the USEPA is provided, in a timely manner, with a copy of the proposed and final class II operating permit. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-502. Operating permits; identical procedural requirements. (a) Upon the written request of the applicant and as approved by the department, procedural requirements for the issuance of an initial operating permit or modification of an operating permit which are identical to procedural requirements for the issuance of the construction permit for the new stationary source or the relevant modification, may be considered satisfied if accomplished during the construction permit issuance process.

(b) This regulation shall not be interpreted to relieve an applicant from the requirement to

timely file a complete application, appropriate application fee or any other information required by the department, when applying for an operating permit or modification to an operating permit. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

CLASS I OPERATING PERMITS

28-19-510. Class I operating permits; application timetable. A complete application, including any applicable application fee, shall be submitted to the department by the owner or operator of any stationary source specified in subsection (a) of K.A.R. 28-19-500, within the following time schedules:

(a) on or before the date specified by the department as published in the *Kansas Register* for any source which is existing on such date except as specified at subsection (b) of this regulation;

(b) for initial phase II acid rain permits as addressed in title IV, acid deposition control, of the federal clean air act, by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides;

(c) on or before the date specified at K.A.R. 28-19-541(a) when applicable to any stationary source operating under a class II operating permit;

(d) within one year of the initial startup of any modification to an existing source that is not required to operate under a class I or class II operating permit if the modification increases the potential-to-emit of the stationary source above any major source threshold or if the modification would otherwise require the source to obtain a class I operating permit;

(e) within one year of the initial startup of any other stationary source which is required to obtain a class I operating permit;

(f) within one year after commencing operation for any stationary source required to meet the requirements of section 112(g) of the federal clean air act or for any stationary source required to have a construction permit pursuant to a requirement of the state implementation plan submitted to fulfill the requirements of part C or part D of title I of the federal clean air act. If an existing class I operating permit prohibits such construction or change in operation, a permit revision to the class I operating permit shall be issued before commencing such operation. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-511. Class I operating permits; application contents. (a) Applications for class I operating permits and renewals of class I operating permits shall be submitted in writing on forms provided or approved by the department.

(1) The original and two copies of the application, including all supporting documentation, shall be submitted to the department.

(2) An additional copy shall be submitted for each affected state.

(b) Except as provided in paragraph (h) of this regulation, an application for a class I operating permit shall include, but is not limited to, the following information:

(1) identifying information, including:

(A) company name and address or plant name and address if different from the company name;

(B) the owner's name and agent;

(C) the name and address of the responsible official; and

(D) the telephone number and names of plant site manager or contact person;

(2) a description of the stationary source's processes and products, by standard industrial classification code, including any associated with each alternate scenario identified by the applicant;

(3) all emissions, including fugitive emissions, of pollutants for which the source is major and all emissions, including fugitive emissions, of regulated pollutants.

(A) A permit application shall describe all emissions of regulated pollutants emitted from any emissions unit, except for insignificant activities, a list of which shall be maintained by the department, or insignificant emission levels.

(B) For insignificant activities which are exempt because of size or production rate, a list of such insignificant activities shall be included in the application.

(C) Information regarding an insignificant activity or emission shall not be omitted if the information is necessary to determine whether an applicable requirement applies or should be imposed.

(D) Additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source may be required by the department.

(E) For purposes of this subsection, insignificant emission levels include those from emissions units which do not have a potential-to-emit in excess of the following and for which no applicable requirement exists:

(i) the de minimis level for any hazardous air pollutant;

(ii) one hundred tons per year of carbon monoxide;

(iii) forty tons per year of nitrogen oxides;

(iv) forty tons per year of sulfur dioxide;

(v) twenty-five tons per year of particulate matter emissions;

(vi) fifteen tons per year of PM10 emissions;

(vii) forty tons per year of volatile organic compounds; or

(viii) 0.6 tons per year of lead;

(4) identification and description of all points of emissions described in paragraph (b)(3) of this regulation in sufficient detail to establish the applicability of requirements of the Kansas air quality act;

(5) emissions rates stated in tons per year and in such terms as are necessary to establish compliance consistent with any applicable standard reference test methods;

(6) the following information to the extent it is needed to determine or regulate emissions:

(A) fuels;

(B) fuel use;

(C) raw materials;

(D) production rates; and

(E) operating schedules;

(7) identification and description of air pollution control equipment and compliance monitoring devices or activities;

(8) limitations on source operations affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the emissions unit or stationary source;

(9) any other information required by any applicable requirement, including information related to stack height limitations developed pursuant to K.A.R. 28-19-18 through 28-19-18f;

(10) calculations on which the information in paragraphs (b)(3) through (b)(9) of this regulation is based;

(11) the citation and a description of all applicable requirements and a description of or reference to any applicable test method for determining compliance with each applicable requirement;

(12) other specific information that may be necessary to implement and enforce other applicable requirements or to determine the applicability of such requirements;

(13) an explanation of any proposed exemptions from otherwise applicable requirements;

(14) additional information as determined to be necessary by the department to define alternative

operating scenarios identified by the applicant or to define other permit terms and conditions;

(15) a statement of whether the stationary source is obligated to register and submit a risk management plan pursuant to section 112(r) of the federal clean air act and, if so, whether the required submittal has been prepared and submitted to the appropriate authorities;

(16) a compliance plan for all emissions units or stationary sources. These compliance plan content requirements shall also be applicable to affected sources under title IV, acid deposition control, of the federal clean air act unless specifically superseded by statute or regulation. A compliance plan shall contain all of the following:

(A) a description of the compliance status of the emissions unit or stationary source with respect to all applicable requirements;

(B) a description as follows:

(i) for applicable requirements with which the emissions unit or stationary source is in compliance, a statement that the emissions unit or stationary source will continue to comply with such requirements;

(ii) for applicable requirements that will become effective during the permit term, a statement that the emissions unit or stationary source will meet such requirements on a timely basis;

(iii) for requirements for which the emissions unit or stationary source is not in compliance at the time of permit issuance, a narrative description of how the emissions unit or stationary source will achieve compliance with such requirements;

(iv) for any source that fails to verify in its application pursuant to K.A.R. 28-19-511(b)(15) that it has submitted a risk management plan in accordance with section 112(r) of the federal clean air act, a statement that the source will submit the required plan by a date specified in the permit;

(C) a compliance schedule as follows:

(i) for applicable requirements with which the emissions unit or stationary source is in compliance, a statement that the emissions unit or stationary source will continue to comply with such requirements;

(ii) for applicable requirements that will become effective during the permit term, a statement that the emissions unit or stationary source will meet such requirements on a timely basis. A statement that the emissions unit or stationary source will comply in a timely manner with any applicable requirements that become effective during the

permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement;

(iii) a schedule of compliance for emissions units or stationary sources that are not in compliance with all applicable requirements at the time of permit issuance. The schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the emissions unit or stationary source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the emissions unit or stationary source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based;

(D) a schedule for submission of certified progress reports no less frequently than every 6 months for emissions units or stationary sources required to have a schedule of compliance to remedy a violation; and

(E) a statement that failure to comply with any term of a compliance plan or compliance schedule shall be considered a violation of this regulation; and

(17) requirements for compliance certification, including the following:

(A) a certification of compliance with all applicable requirements by a responsible official consistent with paragraph (e) of this regulation and K.S.A. 65-3008(b) and amendments thereto;

(B) a statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(C) a schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or the department;

(D) a statement indicating the compliance status of the emission unit or stationary source with any applicable enhanced monitoring requirements and applicable compliance certification requirements; and

(E) a statement indicating that the stationary source is properly implementing any required risk management plan in accordance with section 112(r) of the federal clean air act.

(c) The owner or operator of the stationary source shall provide additional information requested by the department.

(d) The owner or operator of the stationary source may apply for restrictions of operating hours or restrictions on the type or amount of material combusted, stored or processed. The restrictions may be incorporated into the class I operating permit. The calculation of the potential-to-emit of the stationary source shall take into consideration such operational restrictions if the procedures set out at K.A.R. 28-19-501 were followed during the issuance of the construction or class I operating permit.

(e) Any application form, report, or compliance certification submitted pursuant to these regulations shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under the Kansas air quality act, and regulations promulgated thereunder, shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

(f) Any person who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the stationary source after the date a complete application was filed but prior to the solicitation of public comments regarding the proposed permit.

(g) Failure to comply with any term of a compliance plan or compliance schedule shall be considered a violation of this regulation.

(h) For any non-major or area source required to obtain a class I operating permit, an application shall address only the applicable requirements applicable to emission units that cause the source to require a class I operating permit. These non-major or area sources shall be subject to an application fee of \$50.00 in lieu of the requirements of K.A.R. 28-19-516. (Authorized by K.S.A. 1994 Supp. 65-3005; implementing K.S.A. 1994 Supp. 65-3008; effective Jan. 23, 1995; amended Dec. 8, 1995.)

28-19-512. Class I operating permits; permit content. (a) The owner or operator of a stationary source which is authorized to operate

pursuant to a class I operating permit shall assure that the stationary source operates in compliance with the terms and conditions of the class I operating permit, which shall include, but are not limited to:

(1) emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance;

(2) all applicable requirements for all relevant emissions units for a major source;

(3) all applicable requirements applicable to emissions units that cause a non-major source to require a class I operating permit;

(4) a description of fugitive emissions in the same manner as stack emissions, regardless of whether the source is a federally designated fugitive emissions source;

(5) specification and reference to the origin of and authority for each term or condition, identifying any difference in form as compared to the applicable requirement upon which the term or condition is based;

(6) where an applicable requirement of any other title of the federal clean air act is more stringent than an applicable requirement of regulations promulgated under title IV, acid deposition control, of the federal clean air act, both provisions;

(7) where a permit contains an emission limitation which is authorized by the state implementation plan and is an alternative to an emission limitation contained in the state implementation plan, provisions to ensure that any resulting emissions limitation has been demonstrated to be quantifiable, enforceable, and based on replicable procedures;

(8) specification of a fixed term of the class I operating permit determined pursuant to K.A.R. 28-19-514;

(9) emissions monitoring and related record-keeping and reporting requirements, including:

(A) all emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods adopted to comply with the requirements of section 504(b), permit requirements and conditions, or section 114(a)(3), enhanced monitoring and compliance certifications, of the federal clean air act;

(B) periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to paragraph (a)(8)

of this regulation where the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring, which may consist of recordkeeping designed to serve as monitoring. The monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement; and

(C) as necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods;

(10) applicable recordkeeping requirements and required monitoring information, including:

(A) the date, place as defined in the permit, and time of sampling or measurements of required monitoring information;

(B) the date or dates analyses were performed;

(C) the company or entity that performed the analyses;

(D) the analytical techniques or methods used;

(E) the results of such analyses;

(F) the operating conditions as existing at the time of sampling or measurement; and

(G) the retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information shall include all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit;

(11) applicable reporting requirements, including:

(A) submittal of reports of any required monitoring at least every 6 months. All instances of deviations from permit requirements shall be clearly identified in such reports. All required reports shall be certified by a responsible official consistent with K.A.R. 28-19-511(e); and

(B) as specified in the permit, prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken;

(12) conditions prohibiting emissions exceeding any allowances that the emissions unit or stationary source lawfully holds under title IV, acid deposition control, of the federal clean air act or the regulations promulgated thereunder.

(A) A permit revision shall not be required for increases in emissions that are authorized by al-

lowances acquired pursuant to title IV, acid deposition control, of the federal clean air act, provided that such increases do not require a permit revision under any other applicable requirement.

(B) A limit shall not be placed on the number of allowances held by the emissions unit or stationary source. The emissions unit or stationary source shall not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(C) Any allowance shall be accounted for according to the procedures established in regulations promulgated under title IV, acid deposition control, of the federal clean air act;

(13) a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portion of the permit;

(14) provisions stating that:

(A) the permittee must comply with all conditions of the permit. Any permit noncompliance shall constitute a violation of the Kansas air quality act and shall be grounds for enforcement action, for permit revocation or amendment, or for denial of a permit renewal application;

(B) it shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit;

(C) the permit may be modified, revoked, reopened and reissued, or terminated for cause. An action for a permit modification or amendment, or of a notification of planned changes or anticipated noncompliance shall not stay any permit condition;

(D) the permit shall not convey any property rights of any sort, or any exclusive privilege; and

(E) the permittee shall furnish to the department, within a reasonable time, any information that the department may request in writing to determine whether cause exists for amending or revoking the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the department copies of records required to be kept by the permit;

(15) a provision to ensure that the owner or operator of a permitted emissions unit or stationary source pays fees to the permitting authority consistent with the fee schedule set out in these regulations;

(16) a provision stating that no permit revision shall be required under any approved economic incentives, pollution prevention incentives, mar-

ketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit;

(17) terms and conditions for reasonably anticipated operating scenarios identified by the owner or operator of the emissions unit or stationary source in its application as approved by the department. The terms and conditions:

(A) shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

(B) may extend the permit shield described in paragraph (b) of this regulation to all terms and conditions under each such operating scenario; and

(C) shall ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this part;

(18) terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for such trading without a case-by-case approval of each emissions trade. The source shall provide the department and the USEPA with written notice at least seven days in advance of any proposed change within the source stating when the change will occur, the changes in emissions that will result, and how the emissions decreases or increases will comply with the terms and conditions of the permit. The terms and conditions:

(A) shall include all terms required under subsection (a) of this regulation to determine compliance;

(B) may extend the permit shield described in paragraph (b) of this regulation to all terms and conditions that allow such increases and decreases in emissions; and

(C) shall meet all applicable requirements and requirements of the Kansas air quality regulations;

(19) provisions that designate as not being federally enforceable under the federal clean air act any terms and conditions included in the permit that are not required under the federal clean air act or under any of its applicable requirements;

(20) a statement of all federally enforceable permit restrictions;

(21) consistent with other relevant subsections of this regulation, certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and

conditions of the permit. Any document, including reports, required by the permit shall contain a certification by a responsible official that meets the requirements of K.A.R. 28-19-511(e);

(22) inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the department or an authorized representative to:

(A) enter upon the permittee's premises where the emissions unit or stationary source is located or emissions-related activity is conducted, or where records shall be kept under the conditions of the permit;

(B) have access to and copy, at reasonable times, any records that shall be kept under the conditions of the permit;

(C) inspect at reasonable times any facilities, equipment including monitoring and air pollution control equipment, practices, or operations regulated or required under the permit; and

(D) as authorized by the Kansas air quality act, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements;

(23) a schedule of compliance consistent with the requirements of K.A.R. 28-19-511(b)(16)(C);

(24) progress reports consistent with any applicable schedule of compliance established pursuant to K.A.R. 28-19-511(b)(16)(D) to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the permitting authority. The progress reports shall contain the following:

(A) dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(B) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted;

(25) requirements for compliance certification with the terms and conditions contained in the permit, including:

(A) emission limitations, standards or work practices, and risk management plan implementation; and

(B) a means of monitoring the compliance of the emissions unit or stationary source with its emissions limitations, standards, and work practices in accordance with the relevant provisions of this regulation;

(26) requirements to submit compliance certifications annually or more frequently as specified in the applicable requirement or by the department, which shall include the following:

(A) the identification of each term or condition of the permit that is the basis of the certification;

(B) the compliance status;

(C) whether compliance was continuous or intermittent;

(D) the method or methods used for determining the compliance status of the emissions unit or stationary source, currently and over the reporting period, consistent with relevant provisions of this regulation; and

(E) other facts as the department may require to determine the compliance status of the source;

(27) a requirement that all compliance certifications be submitted to the USEPA as well as to the department;

(28) a requirement for additional monitoring as may be required by the federal clean air act; and

(29) other provisions as the department deems necessary to accomplish the purposes of the Kansas air quality act.

(b) Permit shield.

(1) Except as otherwise provided in the air quality regulations, the department may expressly include in a class I operating permit a permit shield stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(A) the applicable requirements are included and are specifically identified in the permit; or

(B) the department, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the emissions unit or stationary source, and the permit includes the determination or a concise summary thereof.

(2) A permit that does not expressly state that a permit shield exists shall be presumed not to provide a shield.

(3) Nothing in this regulation or in any permit shall alter or affect the following:

(A) the provisions of section 303, emergency orders, of the federal clean air act, including the authority of the administrator of the USEPA under that section or the air pollution emergency provisions of the Kansas air quality regulations, K.A.R. 28-19-55 through 28-19-58;

(B) the liability of an owner or operator of an emissions unit or stationary source for any viola-

tion of applicable requirements prior to or at the time of permit issuance;

(C) the applicable requirements of title IV, acid deposition control, of the federal clean air act, consistent with section 408(a) of the federal clean air act; or

(D) the ability of the USEPA to obtain information from a source pursuant to section 114, inspections, monitoring and entry, of the federal clean air act.

(c) Portable sources. A permit for a portable emissions unit or stationary source may authorize similar operations by the same source owner or operator at multiple temporary locations. The operation shall be temporary and involve at least one change of location during the term of the permit. An affected source shall not be permitted as a portable source. Permits for portable sources shall include the following:

(1) conditions that will assure compliance with all applicable requirements at all authorized locations:

(2) requirements that the owner or operator notify the permitting authority at least 10 days in advance of each change in location; and

(3) conditions that assure compliance with all other provisions of the Kansas air quality regulations.

(d) Emergencies.

(1) An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) An emergency shall constitute an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of paragraph (d)(3) of this regulation are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(A) an emergency occurred and that the permittee can identify the cause or causes of the emergency;

(B) the permitted facility was at the time being properly operated;

(C) during the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit; and

(D) the permittee submitted notice of the emergency to the department within two working days of the time when emission limitations were exceeded due to the emergency. This notice shall fulfill the requirement of paragraph (a)(11)(B) of this regulation. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency shall have the burden of proof.

(5) This provision shall be in addition to any emergency or upset provision contained in any applicable requirement. Whenever the provisions of this regulation regarding emergencies conflict with the provisions of K.A.R. 28-19-11, the provisions of this regulation shall control. (Authorized by K.S.A. 1994 Supp. 65-3005; implementing K.S.A. 1994 Supp. 65-3008; effective Jan. 23, 1995; amended Dec. 8, 1995.)

28-19-513. Class I operating permits; permit amendment, modification or reopening and changes not requiring a permit action.

(a) The provisions of this subsection shall apply to administrative permit amendments.

(1) An "administrative permit amendment" is a permit revision that:

(A) corrects typographical errors;

(B) identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(C) requires more frequent monitoring or reporting by the permittee;

(D) allows for a change in ownership or operational control of a source where the department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the department; or

(E) incorporates into the class I operating permit the requirements from a preconstruction review permit authorized under K.A.R. 28-19-300 *et seq.*, construction permits and approvals, pro-

vided that the preconstruction review procedural requirements are substantially equivalent to the requirements applicable to a permit modification, and compliance requirements substantially equivalent to those contained in K.A.R. 28-19-512.

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV, acid deposition control, of the federal clean air act.

(3) Any other revision to a permit shall be considered a permit modification or reopening.

(4) An administrative permit amendment may be made by the department without providing notice to the public or affected states provided that it designates any such permit amendment as having been made pursuant to this subsection (a).

(5) The emissions unit or stationary source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(6) The department may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in K.A.R. 28-19-513(b) for administrative permit amendments made pursuant to paragraph (a)(1)(E) of this regulation which meet the relevant requirements pertaining to permit requirements, permit amendment, modification, reopening or change, or review by the USEPA and affected states for significant permit modifications.

(b)(1) Any revision to a permit that is not accomplished as an administrative permit amendment or reopening shall be considered a permit modification.

(A) A permit modification may be either minor or significant.

(B) A permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV, acid deposition control, of the federal clean air act.

(2) A permit modification may be issued only if all of the following conditions have been met:

(A) Except for modifications qualifying for minor permit modification procedures, compliance with the requirements for public participation pursuant to K.A.R. 28-19-515(a);

(B) compliance with the requirements for affected state participation pursuant to K.A.R. 28-19-515(b);

(C) the permit, as modified, provides for compliance with all applicable requirements and the requirements of the Kansas air quality regulations; and

(D) compliance with the requirements for USEPA participation pursuant to K.A.R. 28-19-515(c) and K.S.A. 1993 Supp. 65-3008b(7)(g).

(c) The provisions of this subsection shall apply to minor permit modifications.

(1) Minor permit modification procedures shall only be used for those permit modifications that:

(A) do not violate any applicable requirement;

(B) do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(C) do not require or change a case-by-case determination of an emission limitation or other standard, a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(D) do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. The terms and conditions shall include:

(i) a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of title I, air pollution prevention and control, of the federal clean air act; and

(ii) an alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5), early reductions, of the federal clean air act;

(E) are not modifications under any provision of title I, air pollution prevention and control, of the federal clean air act; and

(F) are not required to be processed as a significant modification.

(2) Minor permit modification procedures may also be used for permit modifications involving the use of economic incentives, marketable permits, pollution prevention incentives, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the state implementation plan.

(3) An application requesting the use of minor permit modification procedures shall meet the requirements of K.A.R. 28-19-511 and shall include the following:

(A) a description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(B) the suggested draft permit for the emissions unit or stationary source;

(C) certification by a responsible official, consistent with K.A.R. 28-19-511(d), that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

(D) completed forms for the department to use to notify the administrator of the USEPA and any affected states.

(4) The emissions unit or stationary source may make the change proposed in its minor permit modification application immediately after it files such application with the department. After the emissions unit or stationary source makes that change, and until the department takes any action in regard to the minor permit modification application, the emissions unit or stationary source shall comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the emissions unit or stationary source shall not be required to comply with the existing permit terms and conditions it seeks to modify. However, if the emissions unit or stationary source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it. This subsection shall also apply to modifications eligible for group processing.

(5) The permit shield provisions of K.A.R. 28-19-512(b) shall not extend to minor permit modifications.

(6) The procedure outlined in paragraph (c)(3) of this regulation may be modified by the department to process groups of an emission unit's or stationary source's applications for certain modifications eligible for minor permit modification processing. Group processing of modifications shall only be used for those permit modifications that meet the criteria for minor permit modification procedures and that are collectively below whichever of the following amounts is the least:

(A) 10 percent of the emissions allowed by the permit for the emissions unit for which the change is requested;

(B) 20 percent of the applicable definition of major source in 40 CFR §70.2, as in effect July 1, 1993; or

(C) 5 tons per year.

(7) Each application requesting the use of group processing procedures shall meet the requirements of K.A.R. 28-19-511(b) and shall include the following:

(A) a description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(B) the suggested draft permit of the emission unit or stationary source;

(C) certification by a responsible official, consistent with K.A.R. 28-19-511(e), that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used;

(D) a list of any other pending applications of that emission unit or stationary source that are awaiting group processing and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold;

(E) certification, consistent with the requirements of K.A.R. 28-19-511(e), that the source has notified the USEPA of the proposed modification. The notification shall only be required to contain a brief description of the requested modification; and

(F) completed forms for the department to use to notify the administrator of the USEPA and affected states.

(8) The permit shield shall not apply to modifications eligible for group processing.

(9) An application for a minor permit modification shall be acted upon within 90 days of receipt by the department. An application for group processing of minor permit modifications shall be acted upon within 180 days of receipt by the department.

(d) The provisions of this subsection shall apply to significant permit modifications.

(1) Significant permit modification procedures shall be used for each application requesting any permit modification that does not qualify as a minor permit modification, an administrative amendment or a reopening.

(2) Significant permit modifications shall include, but shall not be limited to, every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions. Nothing herein shall be construed to preclude the permittee from making changes consistent with this article that would render existing permit compliance terms and conditions irrelevant.

(3) Each significant permit modification application shall be subject to the provisions of K.A.R. 28-19-511.

(4) Each significant permit modification shall meet all requirements of the Kansas air quality

regulations, including those for applications, public participation, review by affected states, and review by EPA, as they apply to class I operating permit issuance and permit renewal.

(e) The provisions of this subsection shall apply to reopening of a permit.

(1) Each issued permit shall be subject to provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

(A) additional applicable requirements under the federal clean air act become applicable to an emissions unit or stationary source with a remaining permit term of 3 or more years. A reopening shall not be required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended;

(B) additional requirements, including excess emissions requirements, become applicable to an affected source under title IV, acid deposition control, of the federal clean air act. Upon approval by the administrator of the USEPA, excess emissions offset plans shall be deemed to be incorporated into the permit;

(C) it is determined by the department that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit;

(D) it is determined by the department that it is necessary to revise or revoke a permit in order to assure compliance with the applicable requirements.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists.

(3) Reopenings under this subsection (e) shall not be initiated before a notice of intent to reopen is provided to the owner or operator of the emissions unit or stationary source by the department at least 30 days in advance of the date that the permit is to be reopened, except that the department may provide a shorter time period in the case of an emergency.

(f)(1) A source which is operating pursuant to a class I operating permit may, without making application for a permit amendment or modification, make changes within the facility that:

(A) are not modifications under any provision of title I, air pollution prevention and control, of the federal clean air act;

(B) do not cause emissions in excess of any emissions limit stated in the class I operating permit; and

(C) do not alter conditions of the permit that address requirements for:

- (i) monitoring (including test methods);
- (ii) record-keeping;
- (iii) reporting; or
- (iv) compliance certification requirements.

(2) Prior to making a change pursuant to the preceding paragraph, the facility shall provide the department and the USEPA written notification at least seven days in advance of implementing the proposed change.

(A) The stationary source, the department and the USEPA shall attach the notice to their copy of the relevant permit.

(B) For each such change, the written notification required above shall include:

- (i) a brief description of the change within the permitted facility;
- (ii) the date on which the change will occur;
- (iii) any change in emissions;
- (iv) and any permit term or condition that is no longer applicable as a result of the change.

(3) The permit shield provisions of K.A.R. 28-19-512(b) shall not apply to any change made under the provisions of subsection (f) of this regulation.

(g)(1) A stationary source which is operating pursuant to a class I operating permit may, without a permit modification, make changes to the stationary source if the changes are either:

(A) not subject to any requirement under any provision of title IV of the federal clean air act, acid deposition control; or

(B) not modifications under any provision of title I of the federal clean air act, air pollution prevention and control.

(2) Each change made at the stationary source without a permit modification pursuant to this subsection shall be subject to the following provisions.

(A) The change shall meet all applicable requirements and shall not violate any existing permit term or condition.

(B) The owner or operator shall provide contemporaneous written notice to the department and the USEPA of the change, except for changes that qualify as insignificant under the provisions of K.A.R. 28-19-511(b)(3). The written notice shall describe the change, including the date of the change, all regulated pollutants emitted, any

change in emissions, and any applicable requirement that would apply as a result of the change.

(3) The change shall not qualify for the permit shield under K.A.R. 28-19-512(b).

(4) The owner or operator shall keep a record describing changes made at the stationary source that result in emissions of a regulated pollutant subject to an applicable requirement that are not otherwise regulated under the permit, and the emissions resulting from those changes. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-514. Class I operating permits; permit term; renewal. (a) Permit term. Each class I operating permit shall specify the expiration date of the permit.

(1) Class I operating permits issued to solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the federal clean air act, shall have a maximum term of 12 years from the date of issuance and shall be reviewed by the department every five years.

(2) Class I operating permits issued to affected sources shall have a term of five years.

(3) All other class I operating permits shall have a maximum term of five years from the date of issuance.

(b) The class I operating permit shall not expire on the expiration date if a complete application, as defined at K.A.R. 28-19-518, for renewal of the current permit, including any applicable application fee, has been submitted to the department not less than six months and not more than eighteen months before the expiration date of the permit. In such case, the class I operating permit shall expire on the earliest of the following dates:

- (1) any date the application is determined incomplete subsequent to the expiration date;
- (2) the date the permit is renewed;
- (3) the effective date of any new operating permit if a different class of operating permit is issued for the stationary source;

(4) the date the department determines the stationary source does not require an operating permit; or

(5) if the department's action on the application is unfavorable, the last day for seeking judicial review of the department's action.

(c) The application for renewal of a class I operating permit shall be in writing and made on forms provided or approved by the department.

(d) An application for renewal of a class I operating permit shall be consistent with the requirements of K.A.R. 28-19-511. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-515. Class I operating permits; public participation, affected state participation, and USEPA participation. (a) Except for administrative permit amendments or modifications qualifying for minor permit modification procedures, all permit proceedings, including initial permit issuance, significant modifications, and renewals, shall provide adequate procedures for public notice including offering an opportunity for public comment and an opportunity for a public hearing on the proposed permit. In addition to procedures specified at K.A.R. 28-19-204, the procedures shall include the following requirements.

(1) Notice shall be given to persons on a mailing list developed by the department, including those who request in writing to be on the list and by other means if necessary to assure adequate notice to the affected public.

(2) The notice shall identify the emissions change involved in any permit modification.

(3) The notice shall state that prior to the issuance of the permit, permit modification, or permit renewal, the USEPA has the right to object to issuance of the permit. The notice shall further state that if the USEPA fails to object to issuance of the permit within 45 days of receipt of the permit which the department proposes to issue, a person may petition the administrator of the USEPA to review the permit by filing a petition with the administrator of the USEPA within 60 days of the expiration of the USEPA's 45 day review period.

(4) Notice and opportunity for participation by affected states shall be provided pursuant to subsection (b) of this regulation.

(5) A record of the commenters and of the issues raised during the public participation process shall be made so that the USEPA may fulfill its obligation under section 505(b)(2) of the federal clean air act to determine whether a citizen petition may be granted, and such records shall be available to the public.

(b)(1) Notice of each proposed permit, permit renewal, or permit modification shall be provided to any affected state on or before the time that notice is provided to the public under subsection (a)

of this regulation, except to the extent minor permit modification procedures or group processing of minor permit modification procedures require the timing of the notice to be different.

(2) As part of the submittal of the proposed permit to the USEPA, or as soon as possible after the submittal for minor permit modification procedures allowed under K.A.R. 28-19-513(c), the USEPA and any affected state shall be notified by the department in writing of any refusal to accept all recommendations for the proposed permit that the affected state submitted during the public or affected state review period.

(A) The notice shall include the reasons for not accepting any such recommendation.

(B) The department shall not be required to accept recommendations that are not based on applicable requirements, the requirements of 40 CFR part 70, or the requirements of the Kansas air quality regulations.

(c) Unless waived by the USEPA, the USEPA shall be provided a copy of each permit application including any application for permit modification, each proposed permit, and each final class I operating permit. The applicant may be required by the department to submit a copy of the permit application, including the compliance plan, directly to the USEPA.

(d) Any person may request a copy of the statement developed by the department and submitted to the USEPA that sets forth the legal and factual basis for the proposed permit conditions, including references to the applicable statutory or regulatory provisions.

(e) Copies of the proposed permit, the application, all relevant supporting materials, including any compliance plan and compliance certification, and all other materials available to the department that are relevant to the permit decision shall, upon request, be furnished without charge to the USEPA and any affected state. Any other person requesting copies of such documentation shall pay a fee equal to that regularly charged by the department for copying of documents. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-516. Class I operating permits; application fees. (a) Each of the following class I operating permit applications shall be accompanied by the fee specified in this subsection:

(1) For an initial application submitted under K.A.R. 28-19-510, \$3,000.00;

(2) for a renewal application submitted under K.A.R. 28-19-514, \$3,000.00;

(3) for an application for a significant permit modification submitted under K.A.R. 28-19-513, \$1,500.00;

(4) for a general permit petition submitted under K.A.R. 28-19-401, \$2,250.00; and

(5) for a general permit application submitted under K.A.R. 28-19-403, \$750.00.

(b) Each application fee shall be remitted in the form of a check, bank draft, credit card payment, or money order made payable to the Kansas department of health and environment. All application fees shall be nonrefundable. (Authorized by K.S.A. 2017 Supp. 65-3005; implementing K.S.A. 2017 Supp. 65-3008; effective Jan. 23, 1995; amended Jan. 5, 2018.)

28-19-517. Class I operating permits; annual emissions inventory and fees. The owner or operator of each stationary source that is required to apply for a class I operating permit shall comply with this regulation.

(a) Annual emissions inventory.

(1) Each owner or operator shall submit to the department an annual emissions inventory for each stationary source for the year preceding the calendar year in which the source is required to apply for an operating permit and each year thereafter.

(2) Each annual emissions inventory shall be submitted for any regulated pollutant deemed necessary by the secretary from each emission unit, as defined in K.A.R. 28-19-200, and shall include the following:

(A) All operating information;

(B) actual emissions, including fugitive emissions, calculated pursuant to K.A.R. 28-19-210;

(C) any quantity of emissions regardless of operating hours, including sources that did not operate; and

(D) emissions from each source only while operating in Kansas, if the source operates both in Kansas and out of state.

(b) Annual emissions fee.

(1) Each owner or operator shall submit to the department an annual emissions fee based on the annual emissions inventory determined under subsection (a). Annual emissions fees shall be the greater of the following:

(A) \$1,000.00; or

(B) \$53.00 per ton of emissions multiplied by the total number of tons of emissions, with a maximum

of 4,000 tons of each of the following pollutants rounded to the nearest ton:

(i) Sulfur dioxide;

(ii) nitrogen oxides;

(iii) PM10;

(iv) volatile organic compounds (VOCs); and

(v) hazardous air pollutants (HAPs), excluding HAPs already accounted for as VOCs or PM10.

(2) Each owner or operator shall make annual emissions fee payments by check, bank draft, credit card, or money order payable to the Kansas department of health and environment.

(c) Submittal.

(1) Each annual emissions inventory determined under subsection (a) and each annual emissions fee determined under subsection (b) shall be submitted on forms provided by the department, using either of the following:

(A) An electronic inventory submission; or

(B) a paper inventory submission, including a fee of \$250.00 for each paper inventory submittal and \$10.00 for each single-sided page.

(2) Each submission shall be signed by a responsible official, as defined in K.A.R. 28-19-200, and shall be due on or before April 1 of each year or, if April 1 is a Saturday or Sunday, on or before the next business day following April 1.

(3) If there is a change in the owner or operator of the stationary source, the owner or operator at the time the submission is due shall be responsible for submitting the annual emissions inventory and fee payment. For purposes of determining the annual emissions inventory required by subsection (a) for any period in which there was any other owner or operator of the stationary source, the owner or operator may assume current operating and emission information if the owner or operator is unable to obtain actual information from any previous owner or operator.

(d) Late fee and refund.

(1) Each owner or operator who fails to submit the annual emissions inventory and pay the annual emissions fee by the due date specified in subsection (c) shall pay a late fee. The late fee shall be \$200.00 per day or 0.10 percent of the annual emissions fee per day, whichever is greater.

(2) Any overpayment of \$100.00 or more made by the owner or operator of a stationary source may be refunded. Overpayments in any amount less than \$100.00 shall not be refunded. (Authorized by K.S.A. 2017 Supp. 65-3005 and 65-3024; implementing K.S.A. 65-3007 and K.S.A. 2017 Supp. 65-3024; effective Jan. 23, 1995; amended

Feb. 20, 1998; amended Sept. 23, 2005; amended Nov. 5, 2010; amended Jan. 5, 2018.)

28-19-518. Class I operating permits; complete applications. (a) An application for the issuance, renewal or significant modification of a class I operating permit that is timely filed and deemed complete shall have the effect of allowing the emissions unit or stationary source to continue to operate in the same legal capacity as on the date the application is deemed complete until such time as final agency action is taken on the application or until such time as the application is subsequently deemed incomplete.

(b) An application for a class I or class II operating permit shall be deemed complete as of the date the application was submitted to the department if:

(1) the department determines that the information submitted by the applicant substantially complies with the requirements of K.A.R. 28-19-511 and notifies the applicant, in writing within 60 days after the application was submitted, that the application has been deemed complete;

(2) after an application has been deemed complete, the applicant submits additional information requested in writing by the department within the time-frame specified by the department or within 60 days of the date of the request if no time-frame is specified by the department; or

(3) the department fails to notify the applicant that the application is not complete within the time-frames specified in paragraphs (b)(1) and (b)(2) of this regulation.

(c) The department may request additional information from the applicant even though the department has previously deemed the application to be complete. Failure of the applicant to submit any additional information the department has requested in writing within the time-frame specified in the request, or within 60 days of the date of the request if no time-frame is specified, shall result in the application being deemed incomplete as of the date the requested information was to be submitted, even though the application may have been deemed complete prior to the date the additional information was to be submitted to the department.

(d) For purposes of this regulation, a document shall be considered submitted to the department on the day it is physically delivered to the department or the date of the post mark if the document is mailed to the department.

(e) Any person who fails to submit any relevant facts or who has submitted incorrect information in an application for the issuance, renewal or significant modification of a class I operating permit shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, the owner or operator shall submit to the department such additional information as is necessary to address any requirements that become applicable to the emissions unit or stationary source after the date a complete application was filed but prior to the date the permit is placed on public notice. (Authorized by K.S.A. 1994 Supp. 65-3005; implementing K.S.A. 1994 Supp. 65-3008; effective Jan. 23, 1995; amended Dec. 8, 1995.)

CLASS II OPERATING PERMITS

28-19-540. Class II operating permits; applicability. The owner or operator of a stationary source which would otherwise require a class I operating permit may submit an application for a class II operating permit for the stationary source requesting the potential-to-emit of the stationary source be limited below the major source threshold. The potential-to-emit of the stationary source may be limited:

(a) through:

(1) the reduction of emissions by restricting operating hours or the type or amount of material combusted, stored or processed in accordance with K.A.R. 28-19-501;

(2) a permit restriction pursuant to K.A.R. 28-19-300, or its predecessor K.A.R. 28-19-14;

(3) the reduction of emissions by air pollution control equipment maintained in accordance with the requirements of K.A.R. 28-19-501; or

(4) any combination of operational restrictions and air pollution control equipment;

(b) for those source categories identified at K.A.R. 28-19-561 through K.A.R. 28-19-563, by operating the stationary source in accordance with the applicable restrictions contained in those regulations and in K.A.R. 28-19-542, and in accordance with all other requirements for class II operating permits, unless any requirements for class II operating permits are identified in these rules as inapplicable to class II operating permits by rule; or

(c) by operating the source in compliance with a general class II operating permit issued pursuant to K.A.R. 28-19-400. (Authorized by K.S.A. 1993

Supp. 65-3005; implementing K.S.A. 65-3008; effective Jan. 23, 1995.)

28-19-541. Class II operating permits; application timetable and contents. (a) Any stationary source that has been issued a construction permit with federally enforceable permit restrictions pursuant to K.A.R. 28-19-302(b), shall file a complete initial application for a class II operating permit in accordance with K.A.R. 28-19-518 subsections (b) through (e), within one year of commencing operations or within one year of the effective date of this regulation, whichever is later. Any other stationary source that seeks a class II operating permit or a class II operating permit-by-rule shall file a complete initial application in accordance with K.A.R. 28-19-518 no later than 180 days before the date by which the applicant seeks issuance of the permit.

(b) The initial application for any class II operating permit, including a permit-by-rule pursuant to K.A.R. 28-19-542, shall be in writing and on forms provided or approved by the department. Until the department issues a class II operating permit to the source, the potential-to-emit of that source shall not be considered to be reduced.

(c) An application for a class II operating permit, other than an application for a permit-by-rule pursuant to K.A.R. 28-19-542, shall be accompanied by:

(1) sufficient information for the department to determine the potential-to-emit of the stationary source;

(2) any air pollution control equipment maintenance plan required by the provisions of K.A.R. 28-19-501;

(3) any proposed operational restrictions which would reduce the potential-to-emit of the stationary source, including:

(A) specification of any proposed operating restrictions;

(B) proposed methods for quantifying such restrictions;

(C) proposed methods for monitoring such restrictions; and

(4) the appropriate application fee.

(d) The owner or operator of the source shall provide any additional information requested by the department.

(e) The application shall be certified by a responsible official.

(f) Any person who fails to submit any relevant facts or who has submitted incorrect informa-

tion in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the stationary source after the date a complete application was filed but prior to the solicitation of public comments regarding the proposed permit.

(g) A stationary source to which a class I operating permit has been issued shall not be eligible for a class II operating permit until the class I operating permit has expired. A stationary source that holds a class I operating permit and seeks a class II operating permit shall submit an application for a class II operating permit no later than 180 days prior to expiration of the class I permit. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-542. Class II operating permits; permit-by-rule. (a) Any owner or operator of any stationary source that is within a source category specified in K.A.R. 28-19-561 through K.A.R. 28-19-564 may submit an application to the department for an operating permit-by-rule.

(b) Each application for a permit-by-rule shall be submitted on forms provided by the department or approved by the secretary and shall contain information sufficient for the secretary to determine the applicability of the requirements of K.A.R. 28-19-561 through K.A.R. 28-19-564 to the stationary source and the eligibility of the source to obtain a permit-by-rule. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3008; effective Jan. 23, 1995; amended Sept. 23, 2005.)

28-19-543. Class II operating permits; permit term and content; operational compliance. A class II operating permit shall remain valid until modified, revoked or otherwise determined invalid. A stationary source for which a class II operating permit has been issued shall comply with all applicable air quality regulations, whether or not addressed in the class II operating permit, unless specific provision is made within the class II operating permit specifying the stationary source is not required to comply with an otherwise applicable regulation. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-544. Class II operating permits; modification of source or operations. (a) Any

stationary source operating pursuant to a class II operating permit shall not modify the stationary source in any manner which increases the potential-to-emit of any pollutant included in the categories listed at K.A.R. 28-19-500 without first obtaining a written approval from the department authorizing such modification pursuant to K.A.R. 28-19-300 *et seq.*, construction permits and approvals.

(b) The owner or operator of a stationary source shall submit to the department a complete application for modification of a class II operating permit, including any applicable application fee, within 180 days of the initial startup of any modification if the modification increases the potential-to-emit of the stationary source.

(c) The application for modification shall be in writing and made on forms provided or approved by the department.

(d) An application for modification of a class II operating permit shall be accompanied by:

(1) sufficient information for the department to determine the potential-to-emit of the stationary source;

(2) any air pollution control equipment maintenance plan required by the provisions of K.A.R. 28-19-501;

(3) any proposed operational restrictions which would reduce the potential-to-emit of the stationary source, including:

(A) specification of any proposed operating restrictions;

(B) proposed methods for quantifying such restrictions; and

(C) proposed methods for monitoring such restrictions; and

(4) the appropriate application fee.

(e) The owner or operator of the source shall provide any additional information requested by the department.

(f) The application shall be certified by a responsible official. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-545. Class II operating permits; application fee. (a) An application pertaining to a class II operating permit shall not be deemed complete unless accompanied by the appropriate fee.

(b) Fees.

(1) The fee for an initial application for a class II operating permit other than a general permit or a permit-by-rule shall be \$200.00.

(2) The fee for a class II operating permit modification application shall be \$100.00.

(3) The fee for a class II general operating permit petition shall be \$750.00.

(4) The fee for a class II general operating permit application shall be \$50.00.

(5) The fee for a class II operating permit-by-rule application shall be \$50.00. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-546. Class II operating permits; annual emission inventory. Except as may be otherwise specifically required, each owner or operator of a stationary source that is required by these regulations to apply for a class II operating permit shall, on or before April 1 of each year, submit to the department all operating information and any other relevant information deemed necessary by the secretary to estimate the actual air emissions from the stationary source for the preceding year. If April 1 falls on a Saturday, Sunday, or holiday, then the submissions shall be due on or before the next business day following April 1. The timeliness of the submissions shall be determined by the postmark if submitted by mail. This information shall be submitted on forms provided by the department or approved by the secretary. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3007; effective Jan. 23, 1995; amended Feb. 20, 1998; amended Sept. 23, 2005.)

CLASS II OPERATING PERMITS; PERMIT-BY-RULE

28-19-561. Class II operating permits; permit-by-rule; reciprocating engines. (a) Definition. For purposes of this regulation, "reciprocating engine stationary source" shall mean a source with one or more stationary reciprocating engines of any design or fuel type that does not contain other emission units that, alone or in combination with the reciprocating engines, would require the owner or operator of the source to obtain a class I operating permit solely because of its potential-to-emit. For purposes of this regulation, each reciprocating engine stationary source shall be presumed to operate without emission controls.

(b) Applicability; presumption. The requirements of this regulation shall apply to each reciprocating engine stationary source with a capacity equal to or greater than 730 horsepower, 550 kilowatts, or 5.1 million Btu per hour fuel input. Each reciprocating engine stationary source with a ca-

capacity of less than 730 horsepower, 550 kilowatts, or 5.1 million Btu per hour fuel input shall be presumed to have a potential-to-emit of less than 100 tons of each regulated pollutant per year.

(c) Operating conditions. In lieu of obtaining a class I permit under K.A.R. 28-19-500 or a class II permit under K.A.R. 28-19-540, each owner or operator of a reciprocating engine stationary source who elects to operate the source pursuant to this regulation and K.A.R. 28-19-542 shall meet the following requirements:

(1) Limit the operations of the source during each consecutive 12-month period to 5,800,000 horsepower hours, 4,300,000 kilowatt hours, or 40,000 million Btu fuel input;

(2) maintain records demonstrating that the operating restrictions specified in this regulation have not been exceeded;

(3) update the required records monthly, not later than the last day of the month following the month to which the records relate;

(4) retain the required records on-site for at least two years following the date of record, unless an alternative record storage location is authorized by the secretary in writing; and

(5) submit an annual emission report to the department as required in K.A.R. 28-19-546.

(d) Reporting required.

(1) If at the end of any calendar quarter, a source has operated during the previous four consecutive calendar quarters at a level exceeding 85% of the restrictions specified in paragraph (c)(1) of this regulation, the owner or operator of this source shall report in writing to the department the actual operations for the past four quarters.

(2) The actual operations shall be reported in the same units as those in the operating restrictions specified in this regulation.

(3) The report shall be submitted to the department within 45 days of the last day of the last calendar quarter that is the subject of the reporting requirements of this subsection.

(e) Notice of exceedance required.

(1) If at any time a reciprocating engine stationary source that the owner or operator has elected to operate pursuant to this regulation exceeds the operational limitations of paragraph (c)(1) of this regulation, the owner or operator shall notify the department in writing by mailing or delivering the notice on or before the first working day following discovery of the exceedance.

(2) Within 60 days of the discovery of the exceedance of any limitations of paragraph (c)(1) of

this regulation, the owner or operator shall submit to the department a written compliance plan identifying those actions being taken and to be taken by the owner or operator to ensure future compliance with the applicable requirements or to otherwise bring the source into compliance with this regulation, any other applicable Kansas air quality regulations, and the Kansas air quality statutes.

(3) The owner or operator shall file an application for any required operating permit within 180 days of discovery of an exceedance of the provisions of paragraph (c)(1) of this regulation.

(4) Compliance with the requirements of this subsection shall not shield the owner or operator from any enforcement action for exceeding any applicable requirement or for other violations of the Kansas air quality act or regulations.

(5) The timeliness of the required notifications, compliance plan submittals, and applications shall be determined by the postmark, if submitted by mail.

(f) Other applicable requirements. Each source that the owner or operator elects to operate in accordance with this regulation shall continue to be subject to all other applicable requirements of the Kansas air quality statutes and regulations. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3007 and 65-3008; effective Jan. 23, 1995; amended Feb. 20, 1998; amended Sept. 23, 2005.)

28-19-562. Class II operating permits; permit-by-rule; organic solvent evaporative sources. (a) Definition. For the purposes of this regulation, “organic solvent evaporative source” shall mean each stationary source that meets both of the following conditions:

(1) The owner or operator of the stationary source purchases or uses materials that contain volatile organic compounds, hazardous air pollutants, or both, that are used in cleaning solvents, printing operations, adhesives, or surface coatings.

(2) The stationary source does not contain emission units, other than organic solvent evaporative sources, that, alone or in combination with all organic solvent evaporative sources, would require the owner or operator of the source to obtain a class I operating permit solely because of the source’s potential-to-emit.

(b) Applicability. The requirements of this regulation shall apply to each organic solvent evaporative source for which the owner or operator elects to limit the source’s purchase or use of materials

during any consecutive 12-month period to meet all of the following criteria:

(1) The materials contain less than a total of 90 tons of volatile organic compounds.

(2) The materials contain less than a total of 22.5 tons of any combination of hazardous air pollutants.

(3) The materials contain less than a total of nine tons of each single hazardous air pollutant.

(c) Presumption. Each organic solvent evaporative source that uses, or for which the owner or operator purchases, in any consecutive 12-month period materials that contain less than a total of nine tons of volatile organic compounds or hazardous air pollutants, or both, shall be presumed to have a potential-to-emit of less than 100 tons of volatile organic compounds per year, less than 25 tons of any combination of hazardous air pollutants per year, and less than 10 tons of a single hazardous air pollutant per year.

(d) Operating conditions. In lieu of obtaining a class I permit under K.A.R. 28-19-500 or a class II permit under K.A.R. 28-19-540, each owner or operator of any organic solvent evaporative source who elects to operate pursuant to this regulation and K.A.R. 28-19-542 shall meet all of the following requirements:

(1) Limit the purchase or use of materials that contain volatile organic compounds, hazardous air pollutants, or both, to the amounts specified in subsection (b) of this regulation;

(2) maintain records of the materials containing volatile organic compounds or hazardous air pollutants, or both, that were either purchased or used by the source, to demonstrate that the restrictions specified in subsection (b) of this regulation have not been exceeded;

(3) update the required records monthly, not later than the last day of the month following the month to which the records relate;

(4) retain the required records on-site for at least two years from the date of record, unless an alternative record storage location is authorized by the secretary in writing; and

(5) submit an annual emission report to the department as required in K.A.R. 28-19-546.

(e) Reporting required.

(1) Each owner or operator of an organic solvent evaporative source who has purchased or used materials containing volatile organic compounds or hazardous air pollutants, or both, shall report in writing to the department the amount of materials purchased or used during the previous four

consecutive calendar quarters if, at the end of any calendar quarter, the actual amount of materials purchased or used by the source contain volatile organic compounds and hazardous air pollutants exceeding any of the following levels:

(A) A total of 76.5 or more tons of volatile organic compounds;

(B) a total of 19.1 or more tons of any combination of hazardous air pollutants; or

(C) a total of 7.7 or more tons of each single hazardous air pollutant.

(2) The actual amount purchased or used shall be reported in the units specified in subsection (b) of this regulation.

(3) The report shall be submitted to the department within 45 days of the last day of the last calendar quarter that is the subject of the reporting requirements of this subsection.

(f) Notice of exceedance required.

(1) If at any time an organic solvent evaporative source that the owner or operator has elected to operate pursuant to this regulation exceeds the operational limitations specified in subsection (b) of this regulation, the owner or operator shall notify the department in writing by mailing or delivering the notice on or before the first working day following discovery of the exceedance.

(2) Within 60 days of the discovery of the exceedance of any limitations of subsection (b) of this regulation, the owner or operator shall submit to the department a written compliance plan identifying those actions being taken and to be taken by the owner or operator to ensure future compliance with the applicable requirements or to otherwise bring the source into compliance with this regulation, any other applicable Kansas air quality regulations, and the Kansas air quality statutes.

(3) The owner or operator shall file an application for any required operating permit within 180 days of discovery of an exceedance of the provisions of subsection (b) of this regulation.

(4) Compliance with the requirements of this subsection shall not shield the owner or operator from any enforcement action for exceeding any applicable requirement or for other violations of the Kansas air quality act or regulations.

(5) The timeliness of the required notifications, compliance plan submittals, and applications shall be determined by the postmark, if submitted by mail.

(g) Other applicable requirements. Each source that the owner or operator elects to operate in accordance with this regulation shall continue to be

subject to all other applicable requirements of the Kansas air quality statutes and regulations. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3007 and 65-3008; effective Jan. 23, 1995; amended Feb. 20, 1998; amended Sept. 23, 2005.)

28-19-563. Class II operating permits; permit-by-rule; hot mix asphalt facilities.

(a) Definition. For purposes of this regulation, "hot mix asphalt facility" shall mean a facility that meets both of the following conditions:

(1) The facility is used to manufacture hot mix asphalt by heating and drying aggregate and mixing the aggregate with asphalt cement.

(2) The facility does not contain other emission sources that, alone or in combination with the hot mix asphalt facility, would require the owner or operator of the source to obtain a class I operating permit solely because of the facility's potential-to-emit.

(b) Applicability. The requirements of this regulation shall apply to each hot mix asphalt facility that uses venturi scrubbers, a baghouse, or equivalent particulate emission controls to limit particulate emissions to no more than 0.04 grains per dry standard cubic foot of exhaust gas.

(c) Operating conditions. In lieu of obtaining a class I permit under K.A.R. 28-19-500 or a class II permit under K.A.R. 28-19-540, each owner or operator of a hot mix asphalt facility who elects to operate pursuant to this regulation and K.A.R. 28-19-542 shall meet all of the following requirements:

(1) Limit production at the facility to not more than 250,000 tons of hot mix asphalt during any consecutive 12-month period;

(2) maintain records demonstrating that the production restrictions and particulate emission limits specified in this regulation have not been exceeded;

(3) update the records monthly, not later than the last day of the month following the month to which the records relate;

(4) retain the records on-site for at least two years following the date of record, unless an alternative record storage location is authorized by the secretary in writing; and

(5) submit an annual emission report to the department as required by K.A.R. 28-19-546.

(d) Reporting required.

(1) If at the end of any calendar quarter, a facility has produced hot mix asphalt during the previous four consecutive calendar quarters in an

amount that exceeds 85% of any production restriction specified in paragraph (c)(1) of this regulation, the owner or operator of the facility shall report in writing to the department the actual production during the previous four consecutive calendar quarters.

(2) The actual production shall be reported in the units specified in paragraph (c)(1) of this regulation.

(3) The report shall be submitted to the department within 45 days of the last day of the last calendar quarter that is the subject of the reporting requirements of this subsection.

(e) Notice of exceedance required.

(1) If at any time a hot mix asphalt facility that the owner or operator has elected to operate pursuant to this regulation exceeds the operational limitations of paragraph (c)(1) of this regulation, the owner or operator shall notify the department in writing by mailing or delivering the notice on or before the first working day following discovery of the exceedance.

(2) Within 60 days of the discovery of the exceedance of any limitations of paragraph (c)(1) of this regulation, the owner or operator shall submit to the department a written compliance plan identifying those actions being taken and to be taken by the owner or operator to ensure future compliance with applicable requirements or to otherwise bring the source into compliance with this regulation, any other applicable Kansas air quality regulations, and the Kansas air quality statutes.

(3) The owner or operator shall also file an application for any required operating permit within 180 days of discovery of an exceedance of the provisions of paragraph (c)(1) of this regulation.

(4) Compliance with the requirements of this subsection shall not shield the owner or operator from enforcement action for exceeding any applicable requirement or for other violations of the Kansas air quality act or regulations.

(5) The timeliness of the required notifications, compliance plan submittals, and applications shall be determined by the postmark, if submitted by mail.

(f) Other applicable requirements. Each source that the owner or operator elects to operate in accordance with this regulation shall continue to be subject to all other applicable requirements of the Kansas air quality statutes and regulations. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3007 and 65-3008; effective Jan. 23, 1995; amended Feb. 20, 1998; amended Sept. 23, 2005.)

28-19-564. Class II operating permits; permits-by-rule; sources with actual emissions less than 50 percent of major source thresholds.

(a) Any stationary source, or group of stationary sources, that would be classified as a major source based on its potential-to-emit may operate according to this regulation in lieu of obtaining an individual class I or class II operating permit, if the source is operated in compliance with subsections (d), (e), (f), and (g) of this regulation, and with either subsection (b) or (c) of this regulation. Sources that are required to obtain a class I or class II permit based on criteria other than potential-to-emit shall not be eligible to operate under this regulation.

(b) Any stationary source or group of stationary sources that has actual emissions not exceeding 25 percent of the major source threshold, as defined in K.A.R. 28-19-200, may operate according to this subsection, if the source meets all of the following conditions:

(1) The stationary source is not otherwise required to obtain a class I operating permit.

(2) The owner or operator of the stationary source notifies the department, in writing, that it elects to operate the source under this regulation.

(3) The actual emissions of each regulated pollutant, for every consecutive 12-month period during which the stationary source is operated under this regulation, do not exceed 25 percent of the major source threshold.

(4) The owner or operator of the stationary source maintains records, as specified in subsection (h) of this regulation, that demonstrate compliance with the 25 percent actual emissions limitation.

(5) The owner or operator updates the records required by paragraph (b)(4) of this regulation at least monthly and maintains the records on-site for at least two years from the date of record.

(c) Any stationary source or group of stationary sources with actual emissions not exceeding 50 percent of the major source threshold, as defined in K.A.R. 28-19-200, may operate according to this subsection if the source meets all of the following conditions:

(1) The stationary source is not otherwise required to obtain a class I operating permit.

(2) The owner or operator of the stationary source has submitted to the department an application to operate under the terms of this regulation, with the appropriate fee, as defined in K.A.R. 28-19-545.

(3) The owner or operator of the stationary source has received notice from the secretary that the application submitted for the source has been approved.

(4) The actual emissions from the stationary source, for every consecutive 12-month period during which the stationary source is operated under this regulation, do not exceed 50 percent of the major source threshold.

(5) The owner or operator of the stationary source maintains records, as specified in subsection (h) of this regulation, that demonstrate compliance with the 50 percent actual emissions limitation.

(6) The owner or operator updates the records required by paragraph (c)(5) of this regulation at least monthly and maintains the records on-site for at least two years.

(d)(1) If at any time a stationary source operating according to this regulation exceeds the emissions level of either paragraph (b)(3) or (c)(4) of this regulation, whichever is applicable to the source based on its election to operate according to this regulation, the owner or operator shall notify the secretary in writing.

(2) The owner or operator shall mail or deliver the notice to the secretary on the first working day after the discovery of the failure to comply.

(3) Within 60 days of the discovery of a failure to comply with an applicable requirement of this regulation, the owner or operator shall submit to the secretary an interim compliance plan and schedule identifying those actions being taken by the owner or operator to ensure compliance with applicable requirements until the appropriate class I or class II operating permit is issued according to paragraph (d)(5) of this regulation.

(4) Submittal of and compliance with the compliance plan and schedule shall not shield the owner or operator from enforcement action by the department.

(5) The owner or operator shall also file an application for the appropriate class I or class II operating permit within 180 days of discovery of the exceedance of the limits of either paragraph (b)(3) or (c)(4) of this regulation, whichever is applicable to the source based on its election to operate according to this regulation, unless otherwise exempt.

(e) Each owner or operator of a stationary source shall submit to the department, by February 15 of each year, a summary of the monthly records required by paragraph (b)(4) or (c)(5) of

this regulation, whichever is applicable, for the previous calendar year in lieu of submitting an annual emissions inventory for the stationary source as otherwise required by K.A.R. 28-19-546(a).

(f) Compliance with this regulation shall not shield the owner or operator from enforcement action for exceeding any applicable restrictions, or for any other violations of the Kansas air quality act or the Kansas air quality regulations.

(g) Each owner or operator of a stationary source operated according to this regulation shall continue to be subject to all other applicable requirements of the Kansas air quality act and the Kansas air quality regulations.

(h)(1) The following records specified in this subsection shall be presumed to be sufficient to determine compliance with the recordkeeping requirements of this regulation:

(A) For coating and solvent emission units, the following:

(i) A current list of all coatings, solvents, inks, and adhesives in use, including VOC and hazardous air pollutant content;

(ii) a description of any equipment used for coating or solvent application, including type, make, and model, and maximum design process rate or throughput;

(iii) a monthly log of the consumption of each coating, ink, adhesive, and solvent, including solvents used in cleanup and surface preparation; and

(iv) purchase orders, invoices, and other documents to support information in the monthly log;

(B) for organic liquid storage units, the following:

(i) A monthly log identifying the liquid stored and monthly throughput; and

(ii) information on the tank design and specifications, including emissions control equipment;

(C) for combustion emission units, the following:

(i) Information on equipment type, make, and model; maximum design process rate or maximum power input and output; minimum operating temperature for thermal oxidizers; capacity; and all source test information; and

(ii) a monthly log of fuel type, fuel usage, fuel heating value, and percent sulfur for fuel oil and coal;

(D) for any emission control device for which emission reductions are being claimed, the following:

(i) Information on the control device type, including description, make, and model, and emission units served by the control device;

(ii) information on the control device design including, if applicable, the pollutant or pollutants being controlled, control device efficiency and capture efficiency, maximum design or rated capacity, and other design data as appropriate, including any available source test information; and

(iii) a monthly log of hours of operation, including notation of any control equipment breakdowns, upsets, repairs, maintenance, and any other deviations from design parameters; and

(E) for other emission units, the following:

(i) Information on the process and equipment, including equipment type, description, make, model;

(ii) maximum design process rate or throughput;

(iii) a monthly log of operating hours and each raw material used and its amount; and

(iv) purchase orders, invoices, or other documents to support the information in the monthly log.

(2) Each owner or operator relying on other documentation to demonstrate compliance with this regulation shall establish that the documentation relied upon demonstrates compliance with the recordkeeping requirements of this regulation.

(i) During the first 12 months of operation under this permit-by-rule, each owner or operator of the processes affected by this permit-by-rule shall operate in a manner that will not exceed any of the permit limitation requirements contained within this regulation at any time during the initial 12-month period.

(j) Within six months of EPA's approval of this regulation into the Kansas state implementation plan, any entity operating under the "general class II air emission source air operating permit for facilities that have actual emissions below 50 percent of major source thresholds" shall apply to operate under this regulation or other applicable operating permit. (Authorized by K.S.A. 2001 Supp. 65-3005; implementing K.S.A. 2001 Supp. 65-3008; effective May 15, 1998; amended Oct. 4, 2002.)

28-19-575. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995; revoked Sept. 23, 2005.)

28-19-576. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995; revoked Sept. 23, 2005.)

28-19-577. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995; revoked Sept. 23, 2005.)

28-19-578. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995; revoked Sept. 23, 2005.)

OPEN BURNING RESTRICTIONS

28-19-645. Open burning prohibited. A person shall not cause or permit the open burning of any wastes, structures, vegetation, or any other materials on any premises except as authorized by K.A.R. 28-19-647 and K.A.R. 28-19-648. (Authorized by K.S.A. 1994 Supp. 65-3005; implementing K.S.A. 1994 Supp. 65-3005, K.S.A. 65-3010; effective March 1, 1996.)

28-19-645a. Restrictions on open burning operations for certain counties during the month of April. This regulation shall supersede K.A.R. 28-19-645 during the month of April for the counties listed in subsection (a) below.

(a) A person shall not cause or permit open burning operations of any waste, including vegetation and wood waste, structures, or any other materials on any premises during the month of April in Butler, Chase, Chautauqua, Cowley, Elk, Geary, Greenwood, Johnson, Lyon, Marion, Morris, Pottawatomie, Riley, Sedgwick, Wabaunsee, and Wyandotte counties, except as authorized by subsections (b) through (d).

(b) The following activities shall be exempt from the prohibition in subsection (a):

(1) Open burning operations for the purpose of range or pasture management and conservation reserve program (CRP) burning activities meeting the requirements in K.A.R. 28-19-648 (a)(1) through (a)(4); and

(2) open burning operations listed in K.A.R. 28-19-647 (a)(1) and (a)(2).

(c) A person may obtain approval by the secretary to conduct an open burning operation that is not otherwise exempt if the conditions and requirements of the following are met:

- (1) K.A.R. 28-19-647 (b)(1) through (b)(3); and
- (2) K.A.R. 28-19-647 (d) and (e).

(d) Open burning operations that shall require approval by the secretary and are deemed necessary and in the public interest shall include the open burning operations listed in K.A.R. 28-19-

647 (c)(1) through (c)(3).

(e) In Johnson, Wyandotte, and Sedgwick counties, the open burning operations listed in K.A.R. 28-19-647 (c)(4) and (c)(5) shall require approval by the local authority.

(f) Nothing in this regulation shall restrict the authority of local jurisdictions to adopt more restrictive ordinances or resolutions governing agricultural open burning operations. (Authorized by K.S.A. 2010 Supp. 65-3005; implementing K.S.A. 2010 Supp. 65-3005 and K.S.A. 65-3010; effective, T-28-3-1-11, March 1, 2011; effective Sept. 9, 2011.)

28-19-646. Responsibility for open burning. It shall be prima facie evidence that the person who owns or controls property on which open burning occurs has caused or permitted the open burning. (Authorized by K.S.A. 1994 Supp. 65-3005; implementing K.S.A. 1994 Supp. 65-3005, K.S.A. 65-3010; effective March 1, 1996.)

28-19-647. Exceptions to prohibition on open burning. (a) The following open burning operations shall be exempt from the prohibition on the open burning of any materials imposed by K.A.R. 28-19-645:

(1) open burning carried out on a residential premise containing five or less dwelling units and incidental to the normal habitation of the dwelling units, unless prohibited by any local authority with jurisdiction over the premises;

(2) open burning for cooking or ceremonial purposes, on public or private lands regularly used for recreational purposes;

(3) open burning for the purpose of crop, range, pasture, wildlife or watershed management in accordance with K.A.R. 28-19-648; or

(4) open burning approved by the department pursuant to paragraph (b).

(b) A person may obtain an approval from the department to conduct an open burning operation that is not otherwise exempt from the prohibition imposed by K.A.R. 28-19-645 if it is demonstrated that the open burning is:

(1) necessary, which in the case of burning for the purpose of disposal of any materials, shall mean that there is no other practical means of disposal;

(2) in the public interest; and

(3) is not prohibited by any local government or local fire authority.

(c) Open burning operations for which an ap-

approval is required but which are deemed to be necessary and in the public interest include the following:

- (1) the use of safety flares for disposal of flammable gases;
- (2) fires related to the training of government or industrial personnel in fire fighting procedures;
- (3) fires set for the removal of dangerous or hazardous liquid materials;
- (4) open burning of trees and brush from non-agricultural land clearing operations; and
- (5) open burning of clean wood waste from construction projects carried out at the construction site.

(d) Each person seeking an approval to conduct an open burning operation pursuant to this regulation shall submit a written request to the department containing the following information:

- (1) the location of the proposed open burning and the name, address and telephone number of the person responsible for the open burning;
- (2) a description of the open burning including:
 - (A) the estimated amount and nature of material to be burned;
 - (B) the proposed frequency, duration and schedule of the burning;
 - (C) the size of the area to which the burning will be confined;
 - (D) the method of igniting the material;
 - (E) the location of any public roadways within 1,000 feet of the proposed burn;
 - (F) the number of occupied dwellings within 1,000 feet of the proposed burn; and
 - (G) evidence that the open burning has been approved by appropriate fire control authority having jurisdiction over the area; and
- (3) the reason why the proposed open burning is necessary and in the public interest if the activity is not listed in subsection (c) of this regulation.

(e) Each open burning operation for which the department issues an approval pursuant to paragraph (b) shall be subject to the following conditions, except as provided in paragraph (f):

- (1) The person conducting the burning shall stockpile the material to be burned, dry it to the extent possible before it is burned, and assure that it is free of matter that will inhibit good combustion.
- (2) A person shall not burn heavy smoke-producing materials including heavy oils, tires, and tarpaper.
- (3) A person shall not initiate burning during the nighttime, which for the purposes of this reg-

ulation is defined as the period from two hours before sunset until one hour after sunrise. A person shall not add material to a fire after two hours before sunset.

(4) A person shall not burn during inclement or foggy conditions or on very cloudy days, which are defined as days with more than 0.7 cloud cover and with a ceiling of less than 2,000 feet.

(5) A person shall not burn during periods when surface wind speed is less than 5 mph or more than 15 mph.

(6) A person shall not burn within 1,000 feet of any occupied dwelling, unless the occupant of that dwelling has been notified before the burn.

(7) A person shall not conduct a burn that creates a traffic or other safety hazard. If burning is to take place within 1,000 feet of a roadway, the person conducting the burn shall notify the highway patrol, sheriff's office, or other appropriate state or local traffic authority before the burning begins. If burning is to take place within one mile of an airport, the person conducting the burn shall notify the airport authority before the burning begins.

(8) The person conducting the burn shall insure that the burning is supervised until the fire is extinguished.

(9) The department may revoke any approval upon 30 days notice.

(10) A person shall conduct an open burning operation under such additional conditions as the department may deem necessary to prevent emissions which:

- (A) may be injurious to human health, animal or plant life, or property; or
- (B) may unreasonably interfere with the enjoyment of life or property.

(f) The department may issue an approval for an open burning operation that does not meet the conditions set forth in subsection (e) upon a clear demonstration that the proposed burning:

- (1) is necessary and in the public interest;
- (2) can be conducted in a manner that will not result in emissions which:
 - (A) may be injurious to human health, animal or plant life, or property; or
 - (B) may unreasonably interfere with the enjoyment of life or property; and
- (3) will be conducted in accordance with such conditions as the department deems necessary. (Authorized by K.S.A. 1994 Supp. 65-3005; implementing K.S.A. 1994 Supp. 65-3005, K.S.A. 65-3010; effective March 1, 1996.)

28-19-648. Agricultural open burning.

(a) Open burning of vegetation such as grass, woody species, crop residue, and other dry plant growth for the purpose of crop, range, pasture, wildlife or watershed management shall be exempt from the prohibition on the open burning of any materials imposed by K.A.R. 28-19-645, provided that the following conditions are met:

(1) the person conducting the burn shall notify the local fire control authority with jurisdiction over the area before the burning begins, unless the appropriate local governing body has established a policy that notification is not required;

(2) a person shall not conduct a burn that creates a traffic safety hazard. If conditions exist that may result in smoke blowing toward a public roadway, the person conducting the burn shall give adequate notification to the highway patrol, sheriff's office or other appropriate state or local traffic control authorities before burning;

(3) a person shall not conduct a burn that creates an airport safety hazard. If smoke may affect visibility at an airport, the person conducting the burn shall give adequate notification to the appropriate airport authorities before burning; and

(4) the person conducting the burn shall insure that the burning is supervised until the fire is extinguished.

(b) Nothing in this regulation shall restrict the authority of local jurisdictions to adopt more restrictive ordinances or resolutions governing agricultural open burning operations. (Authorized by K.S.A. 1994 Supp. 65-3005; implementing K.S.A. 1994 Supp. 65-3005, K.S.A. 65-3010; effective March 1, 1996.)

OPACITY RESTRICTIONS

28-19-650. Emissions opacity limits. (a) Except as otherwise provided in K.A.R. 28-19-9, K.A.R. 28-19-11, or K.A.R. 28-19-31, in subsections (b) and (c) of this regulation, or in other applicable air quality regulations, opacity of visible air emissions from any emission unit shall not exceed the following limits:

(1) 40 percent opacity for any portable source existing on or before January 1, 1971;

(2) 40 percent opacity for any emission unit, other than a portable source, that existed on or before January 1, 1971 and that has not been relocated after January 1, 1971; and

(3) 20 percent opacity for any other emission unit.

(b) Special opacity limits, Wyandotte county. Air emissions within Wyandotte county from

any processing of materials or other uses of the premises within the county shall not exceed 20 percent opacity.

(c) Exceptions. Air emissions opacity levels that exceed the specified limits in subsections (a) and (b) of this regulation shall not be considered a violation of this regulation if the owner or operator of the emission unit demonstrates to the satisfaction of the department that the opacity exceedance is due solely to the presence of uncombined water in the plume.

(d) Method. The determination of opacity of air emissions shall be made either by 40 C.F.R. Part 60, appendix A, method 9, as adopted in K.A.R. 28-19-720, or by another method approved in advance by the department. (Authorized by K.S.A. 1997 Supp. 65-3005 and K.S.A. 1997 Supp. 65-3007; implementing K.S.A. 1997 Supp. 65-3005, K.S.A. 65-3006, and 65-3010; effective Jan. 29, 1999.)

IDLE REDUCTION

28-19-712. Definitions. The following terms shall apply to K.A.R. 28-19-712 through K.A.R. 28-19-712d.

(a) "Auxiliary power unit" means an integrated system that provides heat, air conditioning, engine warming, or electricity to components of a heavy-duty diesel vehicle and is certified by the administrator of the USEPA under 40 C.F.R. part 89 as meeting applicable emission standards.

(b) "Commercial vehicle" means any motor vehicle, other than a passenger vehicle, and any trailer, semitrailer, or pole trailer drawn by the motor vehicle that is designed, used, and maintained for the transportation of persons or property for hire, compensation, or profit or in the furtherance of a commercial enterprise.

(c) "Gross vehicle weight rating" means the weight specified by the manufacturer as the load-carrying weight of a single vehicle.

(d) "Heavy-duty diesel vehicle" means any motor vehicle that meets the following conditions:

(1) Has a gross vehicle weight rating of more than 14,001 pounds;

(2) is powered by a diesel engine; and

(3) is designed primarily for transporting persons or property on a public street or highway.

(e) "Idling" means the operation of an engine in the operating mode during either of the following situations:

(1) When the engine is not in gear; or

(2) when the engine operates at the revolutions per minute specified by the engine or vehicle

manufacturer, the accelerator is fully released, and there is no load on the engine.

(f) "Institutional vehicle" means any motor vehicle, other than a passenger vehicle, and any trailer, semitrailer, or pole trailer drawn by the motor vehicle that is designed, used, and maintained for the transportation of persons or property for an organization, establishment, foundation, or society.

(g) "Load or unload location" means any site where a driver idles a heavy-duty diesel vehicle while waiting to load or unload. This term shall include the following:

- (1) Distribution centers;
- (2) warehouses;
- (3) retail stores;
- (4) railroad facilities; and
- (5) ports.

(h) "Passenger vehicle" means any motor vehicle designed for carrying not more than 10 passengers and used for the transportation of persons.

(i) "Public vehicle" means any motor vehicle, other than a passenger vehicle, and any trailer, semitrailer, or pole trailer drawn by the motor vehicle that is designed, used, and maintained for the transportation of persons or property at the public expense and under public control. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 25, 2010.)

28-19-712a. Applicability. K.A.R. 28-19-712 through K.A.R. 28-19-712d shall apply only in Johnson and Wyandotte counties to any person who owns or operates either of the following:

(a) Any heavy-duty diesel vehicle that is also a commercial vehicle, institutional vehicle, or public vehicle; or

(b) any load or unload location. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 25, 2010.)

28-19-712b. General requirement for heavy-duty diesel vehicles. No person who owns or operates a heavy-duty diesel vehicle specified in K.A.R. 28-19-712a(a) shall cause that vehicle to idle for more than five minutes in any 60-minute period, except as provided in K.A.R. 28-19-712c and K.A.R. 28-19-712d. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 25, 2010.)

28-19-712c. General requirement for load or unload locations. No person who owns or operates a load or unload location for freight

shall cause any heavy-duty diesel vehicle that is also a commercial vehicle to idle for a period longer than 30 minutes in any 60-minute period while waiting to load or unload at that location. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 25, 2010.)

28-19-712d. Exemptions. K.A.R. 28-19-712b shall not apply to the following:

(a) Any heavy-duty diesel vehicle specified in K.A.R. 28-19-712a(a) that idles in any of the following conditions:

(1) While forced to remain motionless because of road traffic or an official traffic control device or signal or at the direction of a law enforcement official;

(2) when operating defrosters, heaters, air conditioners, safety lights, or other equipment solely for safety or health reasons and not as part of a rest period;

(3) during a state or federal inspection to verify that all equipment is in good working order, if idling is required as part of the inspection; or

(4) during mechanical difficulties over which the driver has no control;

(b) a police, fire, ambulance, military, utility, emergency, or law enforcement vehicle or any vehicle being used in an emergency capacity that idles while in an emergency or training mode and not for the convenience of the vehicle operator;

(c) an armored vehicle that idles when a person remains inside the vehicle to guard the contents or while the vehicle is being loaded or unloaded;

(d) an occupied vehicle with a sleeper berth compartment that idles for purposes of air conditioning or heating during government-mandated rest periods;

(e) a vehicle that is used exclusively for agricultural operations and only incidentally operated or moved upon the highway;

(f) a primary propulsion engine that idles for maintenance, servicing, repairing, or diagnostic purposes if idling is necessary for the activity;

(g) a primary propulsion engine that idles when necessary to power mechanical or electrical operations other than propulsion, including mixing, refrigerating, or processing cargo, or the operation of a hydraulic lift. This exemption shall not apply when idling for cabin comfort or operating nonessential onboard equipment;

(h) an auxiliary power unit or generator that is operated as an alternative to idling the main engine; and

(i) a bus that is also a commercial vehicle, institutional vehicle, or public vehicle that idles a maximum of 15 minutes in any 60-minute period to maintain passenger comfort while nondriver passengers are on board. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 25, 2010.)

NITROGEN OXIDES EMISSIONS REDUCTION

28-19-713. Applicability. K.A.R. 28-19-713 through K.A.R. 28-19-713d shall apply to the owner or operator of each stationary source located in Wyandotte or Johnson county that annually emits at least 1,000 tons of nitrogen oxides from the entire facility, based on an average of the total emissions for the 2005, 2006, and 2007 calendar years. The total emissions shall be the sum of the actual emissions and the potential-to-emit emissions for each calendar year. The actual emissions shall be calculated pursuant to K.A.R. 28-19-210. If the actual emissions are more than 1,000 tons of nitrogen oxides for each calendar year, the potential-to-emit emissions may be excluded from the total emissions calculation. The potential-to-emit emissions shall be used for periods exceeding two weeks of operational inactivity due to maintenance, construction, or modification. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 25, 2010.)

28-19-713a. Emission limitation requirements. No owner or operator subject to K.A.R. 28-19-713 shall allow any emission unit to emit nitrogen oxides in excess of the following emission limitations based on a 30-day rolling average:

(a) From electric generating units, for the purposes of K.A.R. 28-19-713 through K.A.R. 28-19-713d, the following:

(1) 0.26 pounds per million British thermal units (lbs/MMBtu) for unit 1, a turbo wall-fired Riley Stoker boiler located at the Nearman Creek power station in Kansas City, Kansas; and

(2) 0.20 lbs/MMBtu for unit 2, a wall-fired Riley Stoker boiler located at the Quindaro power station in Kansas City, Kansas; and

(b) from flat glass furnaces, 7.0 pounds per ton of glass produced. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 25, 2010.)

28-19-713b. Alternate emissions limit. Each owner or operator of an emission unit subject to an emissions limit for nitrogen oxides specified

in K.A.R. 28-19-713a(a) that is also subject to a more stringent Kansas or USEPA emissions limit for nitrogen oxides shall comply with the more stringent emissions limit for that emission unit. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 25, 2010.)

28-19-713c. Control measures and equipment. Each owner or operator of any emission unit subject to an emissions limit specified in K.A.R. 28-19-713a or K.A.R. 28-19-713b shall implement control measures and install, operate, and maintain equipment necessary to achieve these limits no later than 18 months after the effective date of this regulation. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 25, 2010.)

28-19-713d. Compliance demonstration, monitoring, and reporting requirements. No later than 24 months after the effective date of this regulation, each owner or operator of any emission unit subject to the nitrogen oxide emission limits specified in K.A.R. 28-19-713a or K.A.R. 28-19-713b shall meet the following requirements:

(a) Demonstrate compliance with the applicable emissions limit by performing an emissions test in accordance with 40 C.F.R. 60.8, as adopted by reference in K.A.R. 28-19-720, and either of the following:

(1) Test method 7, 7A, 7C, 7D, or 7E in appendix A-4 to 40 C.F.R. part 60, as adopted by reference in K.A.R. 28-19-720; or

(2) any other USEPA test method approved by the department;

(b) ensure continuous compliance with the applicable emissions limit by installing, calibrating, maintaining, and operating a continuous emission monitoring system (CEMS) for nitrogen oxides that meets the requirements of 40 C.F.R. 60.13 and performance specification 2 in appendix B to 40 C.F.R. part 60, as adopted by reference in K.A.R. 28-19-720;

(c) certify the CEMS at least three months before the compliance demonstration required by subsection (a) pursuant to either of the following:

(1) The quality assurance procedures in appendix F to 40 C.F.R. part 60, as adopted by reference in K.A.R. 28-19-720; or

(2) an equivalent quality assurance procedure approved by the department; and

(d) document compliance by continuously monitoring and maintaining records of nitrogen oxide

emissions. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 25, 2010.)

VOLATILE ORGANIC COMPOUND EMISSIONS

28-19-714. Solvent metal cleaning. (a) The provisions of this regulation shall apply to cold cleaning, open-top vapor degreasing, and conveyorized degreasing operations located in Johnson and Wyandotte counties, and to the sale of cold cleaner solvents for use within either Johnson or Wyandotte county, or both.

(b) Definitions. The following terms, when used in this regulation, shall have the following meanings:

(1) "Airless cleaning system" means a degreasing system that operates automatically and that seals at a differential pressure not greater than 0.475 pounds per square inch gauge (psig) before the introduction of solvent vapor into the cleaning chamber and maintains a differential pressure under vacuum during all cleaning and drying cycles.

(2) "Airtight cleaning system" means a degreasing system that is operated automatically and that seals at a differential pressure not greater than 0.5 psig during all cleaning and drying cycles.

(3) "Aqueous solvent" means a solvent that consists of 60 percent or more by volume of water with a flashpoint greater than 199°Fahrenheit (F) and that is miscible with water.

(4) "Electronic component" means any portion of an electronic assembly, including circuit board assemblies, printed wire assemblies, printed circuit boards, soldered joints, grounded wires, bus bars, and associated electronic component manufacturing equipment, including screens and filters.

(5) "Medical device" means any instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar article, including any component or accessory that meets one of the following conditions:

(A) It is intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease.

(B) It is intended to affect the structure or any function of the body.

(C) It is defined in the "national formulary" or the "United States pharmacopoeia," or any supplement to them.

(c) Except as specified in paragraph (c)(13) of this regulation, the owner or operator of each affected cold cleaning operation shall assure that the following requirements are met.

(1) After August 31, 2002 and through April 30, 2003, one of the following requirements shall be met:

(A) Except as otherwise required in paragraph (c)(1)(B), only cold cleaning solvents with a vapor pressure less than 2.0 millimeters of mercury (mm Hg) at 68°F shall be used.

(B) Only cold cleaning solvents with a vapor pressure less than 7.0 mm Hg at 68°F shall be used for each cold cleaning operation that is used for cleaning carburetors.

(2) Beginning on May 1, 2003, one of the following requirements shall be met:

(A) Except as otherwise required in paragraph (c)(2)(B), only cold cleaning solvents with a vapor pressure less than 1.0 mm Hg at 68°F shall be used.

(B) Only cold cleaning solvents with a vapor pressure less than 5.0 mm Hg at 68°F shall be used for each cold cleaning operation that is used for cleaning carburetors.

(3) An alternate method for reducing cold cleaning emissions may be used if the owner or operator demonstrates to the satisfaction of the department that the level of emission control is equivalent to or greater than the applicable requirements in paragraphs (c)(1) and (c)(2).

(4) Each cold solvent cleaner shall be equipped with a cover to minimize evaporation of the solvent while in the closed position, or with an enclosed reservoir to limit the escape of solvent vapors from the solvent bath if parts are not being processed in the cleaner.

(5) If one or more of the following conditions exist, the solvent cleaner cover required in paragraph (c)(4) shall be designed to be operated with one hand so that minimal displacement of the solvent vapors occurs:

(A) The solvent vapor pressure is greater than 15.5 mm Hg when measured at 100°F.

(B) The solvent is agitated.

(C) The solvent is heated.

For solvent cleaner covers larger than 10 square feet, either mechanical or power-assisted systems shall be used to aid in the operation of the cover.

(6) The cover of the cold solvent cleaner shall be closed whenever parts are not being handled in the cleaner.

(7) Each cold solvent cleaner shall be equipped with either of the following:

(A) An internal drainage facility that enables the cleaned parts to be enclosed under the cover while the cleaned parts are draining; or

(B) if the internal drainage facility cannot fit into the cleaning system and the solvent volatility is less than 31.0 mm Hg at 100°F, an external drainage system that allows the solvent to drain from the cleaned parts to an enclosed solvent reservoir.

(8) Cleaned parts shall be drained for at least 15 seconds or until dripping ceases.

(9) One of the following control methods shall be applied if the solvent vapor pressure is greater than 31.0 mm Hg measured at 100°F or if the solvent is heated above 120°F:

(A) Maintaining a freeboard height that gives a freeboard ratio greater than or equal to 0.75;

(B) using a water cover for solvents that are insoluble in, and heavier than, water; or

(C) using other systems of control, including a refrigerated chiller or carbon adsorption with a VOC emissions reduction efficiency demonstrated to the satisfaction of the department to be 65 percent or greater.

(10) A permanent, conspicuous label shall be attached to the cleaner near the operator's position summarizing the operating requirements of the equipment.

(11) Waste solvent shall be stored in covered containers and shall not be disposed of or transferred to another party in a manner that allows waste solvent to evaporate into the atmosphere.

(12) If a solvent spray is used, the spray shall be a solid fluid stream with an operating pressure of 10 psig or less and shall not be an atomized or shower-type spray.

(13) The following activities and uses shall be exempt from the provisions of paragraphs (c)(1), (c)(2), and (c)(3):

(A) Janitorial and institutional cleaning;

(B) the cleaning of electronic components;

(C) cold solvent cleaning operations that meet the emission control requirements of K.A.R. 28-19-63, 28-19-71, 28-19-73, or 28-19-76;

(D) cold solvent cleaners using aqueous solvents;

(E) cold solvent cleaners using solvents regulated under any federal national emission standard for hazardous air pollutants according to K.A.R. 28-19-735 and K.A.R. 28-19-750;

(F) any cold solvent cleaner with a liquid surface area of one square foot or less or with a maximum capacity of one gallon or less;

(G) the cleaning of medical devices;

(H) airtight or airless cleaning systems, if all of the following requirements are met:

(i) The equipment shall be operated in accordance with the manufacturer's specifications and

operated with a door or other pressure-sealing apparatus that is in place during all cleaning and drying cycles;

(ii) all waste solvents shall be stored in properly identified and sealed containers and, if applicable, shall be managed in compliance with article 31 of these regulations, the Kansas hazardous waste management standards and regulations. The associated pressure relief devices shall not allow liquid solvents to drain out;

(iii) spills that occur during solvent transfer shall be cleaned up immediately and, if applicable, shall be managed in compliance with article 31 of these regulations, the Kansas hazardous waste management standards and regulations. The used absorbent material shall be stored in closed containers; and

(iv) a differential pressure gauge shall be installed to indicate the sealed chamber pressure; and

(I) paint spray gun and nozzle cleaning if the cold solvent cleaner container or container system does not exceed 16 gallons in size and is kept tightly covered at all times except when access to the container is required.

(d) Except as specified in paragraph (d)(5) of this regulation, the suppliers of cold cleaning solvents for use in affected cold cleaners located in Johnson and Wyandotte counties shall meet the following requirements.

(1) Except as required in paragraph (d)(2), after August 31, 2002 and through April 30, 2003, each supplier of cold cleaning solvents shall sell or offer for sale only cold cleaning solvents with a vapor pressure less than 2.0 mm Hg at 68°F.

(2) After August 31, 2002 and through April 30, 2003, each supplier of cold cleaning solvents shall sell or offer for sale for the purpose of carburetor cleaning only cold cleaning solvents with a vapor pressure less than 7.0 mm Hg at 68°F.

(3) Except as required in paragraph (d)(4), beginning on May 1, 2003, each supplier of cold cleaning solvents shall sell or offer for sale only cold cleaning solvents with a vapor pressure less than 1.0 mm Hg at 68°F.

(4) Beginning on May 1, 2003, each supplier of cold cleaning solvents shall sell or offer for sale for the purpose of carburetor cleaning only cold cleaning solvents with a vapor pressure less than 5.0 mm Hg at 68°F.

(5) Sales of cold cleaning solvents in quantities of five gallons or less shall be exempt from the requirements of paragraphs (d)(1), (d)(2), (d)(3), and (d)(4).

(e) The owner or operator of an open-top vapor degreaser shall assure that all of the following requirements are met:

(1) The vapor degreaser shall be equipped with a cover that can be opened and closed easily without disturbing the vapor zone.

(2) The following safety switches and devices shall be provided:

(A) A condenser coolant flow and high level thermostat switch that shuts off the pump heat if the condenser coolant either is not circulating or is too warm;

(B) a spray safety switch that shuts off the spray pump if the vapor level drops more than four inches;

(C) a solvent level control;

(D) a sump thermostat; and

(E) a vapor level control thermostat that shuts off the pump heat when the vapor level rises above the recommended level.

(3) One of the following devices or systems shall be provided to control VOC emissions:

(A) A powered cover, if the freeboard ratio is greater than or equal to 0.75 and the degreaser opening is greater than 10.75 square feet;

(B) a refrigerated chiller;

(C) an enclosed design in which the cover or door opens only when the dry part is actually entering or exiting the degreaser;

(D) a carbon adsorption system, providing ventilation greater than or equal to 50 cubic feet per minute per square foot of degreaser opening during degreaser operation and exhausting less than 25 parts per million by volume of solvent when averaged over one complete adsorption cycle; or

(E) a vapor processing system, demonstrated to the satisfaction of the department to have an overall emissions control reduction efficiency of 65 percent or greater.

(4) The cover shall be kept closed at all times except when processing workloads through the degreaser.

(5) Solvent carryout shall be minimized by all of the following practices:

(A) Racking parts to allow complete drainage;

(B) moving parts in and out of the degreaser at less than 11 feet per minute;

(C) holding the parts in the vapor zone at least 30 seconds or until condensation ceases;

(D) draining any pools of solvent on the cleaned parts before removal from the vapor zone; and

(E) allowing parts to dry within the degreaser for at least 15 seconds or until visually dry.

(6) Porous or absorbent materials, including cloth, leather, wood, and rope, shall not be degreased.

(7) More than half of the degreaser's open-top area shall not be occupied with workload.

(8) The degreaser shall not be loaded to the point at which the solvent level would drop more than four inches when the workload is removed from the vapor zone.

(9) Spray shall always be below the vapor level.

(10) Solvent leaks shall be repaired immediately, or the degreaser shall be shut down until repairs are made.

(11) Waste solvent shall be stored in covered containers, and waste solvent shall not be disposed of or transferred to another party in a manner allowing the waste solvent to evaporate into the atmosphere.

(12) The cleaner shall not be operated so as to allow water to be visually detectable in solvent exiting the water separator.

(13) Ventilation fans shall not be used near the degreaser opening, nor shall exhaust ventilation exceed 65 cubic feet per minute per square foot of degreaser open area, unless necessary to meet OSHA regulations.

(14) A permanent, conspicuous label summarizing the operating procedures described in paragraphs (e)(4) through (e)(12) of this regulation shall be attached to the cleaner near the operator's position.

(f) Except as specified in paragraph (f)(12) of this regulation, the owner or operator of each conveyORIZED degreaser shall assure that all of the following requirements are met:

(1) Workplace fans shall not be used near the degreaser opening, nor shall exhaust ventilation exceed 65 cubic feet per minute per square foot of degreaser opening, unless the owner or operator documents that this ventilation is necessary to meet OSHA regulations.

(2) One of the following control devices or systems shall be installed:

(A) A refrigerated chiller;

(B) a carbon adsorption system, providing ventilation greater than or equal to 50 cubic feet per minute per square foot of air-vapor area during operation of degreaser and exhausting less than 25 parts per million of solvent by volume when averaged over a complete adsorption cycle; or

(C) a vapor processing system demonstrated to have an overall VOC emissions control reduction efficiency demonstrated to the satisfaction of the department to be 65 percent or greater.

(3) The cleaner shall be equipped with equipment, including a drying tunnel or a rotating or tumbling basket, that prevents cleaned parts from carrying out solvent liquid or vapor.

(4) The following safety switches and devices shall be provided:

(A) A condenser coolant flow and high-level thermostat switch that shuts off the pump heat if the condenser coolant either is not circulating or is above the recommended posted temperature;

(B) a spray safety switch that shuts off the spray pump or the conveyor if the vapor level drops more than four inches;

(C) a vapor level control thermostat that shuts off the pump heat when the vapor level rises above the recommended level;

(D) solvent level control; and

(E) sump thermostat.

(5) Openings during operation shall be minimized so that entrances and exits silhouette workloads with an average clearance between the parts and the edge of the degreaser opening of less than four inches or less than 10 percent of the width of the opening.

(6) Covers for closing off the entrance and exit during non-degreasing operations shall be installed and operated.

(7) Carryout emissions shall be minimized by the following:

(A) Racking parts for best drainage; and

(B) maintaining the conveyor speed at less than 11 feet per minute.

(8) Waste solvent shall be stored in covered containers, and waste solvent shall not be disposed of or transferred to another party in a manner allowing the waste solvent to evaporate into the atmosphere.

(9) Solvent leaks shall be repaired immediately, or the degreaser shall be shut down until these repairs are made.

(10) The cleaner shall not be operated so as to allow water to be visually detectable in solvent leaving the water separator.

(11) Covers shall be installed over entrances and exits of conveyorized degreasers, and the covers shall be closed when degreasing is not being conducted.

(12) The requirements of paragraph (f)(2) shall not apply to each affected degreaser that has less than 21.75 square feet of air vapor interface.

(g) Records of the following information shall be maintained. These records shall be kept on-site for a minimum of two years from the date of record:

(1) Each owner or operator of each solvent metal cleaning operation subject to this regulation shall keep the following records for affected degreasers:

(A) The amount and type of solvents used per month in affected degreasers; and

(B) all records pertaining to the maintenance of the affected degreasers and any associated emission control equipment.

(2) After August 31, 2002, each owner or operator of a facility subject to the requirements of paragraphs (c)(1) and (c)(2) of this regulation shall keep the following additional records for affected degreasers:

(A) The name and address of the solvent supplier;

(B) the date of each solvent purchase for affected degreasers; and

(C) the quantity and vapor pressure of each affected solvent purchased in units of mm Hg at 68°F.

(3) After August 31, 2002, each solvent supplier subject to the provisions of subsection (d) of this regulation shall keep the following records regarding the sale of each cold cleaning solvent subject to this regulation:

(A) The name and address of the solvent purchaser;

(B) the date of the solvent sale;

(C) the total volume of solvent sold; and

(D) the vapor pressure of each solvent sold in units of mm Hg at 68°F.

(4) Further recordkeeping may be required by the director, if necessary to adequately demonstrate compliance with this regulation.

(h) A stationary source subject to this regulation shall not be required to obtain a class III operating permit according to the terms of K.A.R. 28-19-500(d) if the only emission limitations or standards applicable to the source are the requirements of this regulation.

(i) This regulation shall be effective on and after September 1, 2002. (Authorized by K.S.A. 2001 Supp. 65-3005; implementing K.S.A. 65-3010; effective Sept. 1, 2002.)

28-19-717. Control of volatile organic compound (VOC) emissions from commercial bakery ovens in Johnson and Wyandotte counties. (a) Definitions. The following terms shall have the meanings provided below for the purposes of this regulation.

(1) "Baker's percent" means, for a given ingredi-

ent, the weight of that ingredient per 100 pounds of flour, expressed as a percentage.

(2) "Commercial bakery oven facility" means an establishment that is primarily engaged in the manufacture, for sale at wholesale or retail, of fresh or frozen bread, bread-type rolls, or dry bakery products, including biscuits, crackers, or cookies, in which the products are made using yeast leavening.

(3) "Spike yeast" means any yeast added to the dough beyond the initial yeast added to the dough.

(4) "Spiking time" means the elapsed time between the addition of the spike yeast to the dough and the placement of the dough into the oven.

(5) "Yeast action time" means the elapsed time between the initial addition of the yeast and the placement of the dough into the oven.

(b) Applicability. This regulation shall apply to each new, modified, or existing commercial bakery oven facility that meets these conditions:

(1) Is operating in either Johnson or Wyandotte county, or both; and

(2) has bakery ovens with a total potential-to-emit for volatile organic compounds (VOCs) equal to or greater than 100 tons per year.

(c) (1) Determination of commercial bakery oven facility potential-to-emit. The owner or operator of each commercial bakery oven facility operating in, or proposed for construction or modification in, the area defined in paragraph (1) of subsection (b) shall calculate the facility's total potential-to-emit (PTE) for VOCs in tons per year, using either the following equation and the presumptions in paragraph (2) of this subsection, or an EPA administrator-approved alternative method if the use of that alternative method is approved in writing by the department for this purpose:

$$PTE_{\text{Facility}} \text{ (in tons/year)} = \text{Sum of } PTE_{\text{VOC}} \text{ for all ovens (in tons/year)}$$

Where: $PTE_{\text{VOC}} = P_A \times EF_{\text{VOC}}$ (in pounds of VOC/ton of baked bread \times 1 ton/2000 pounds)

P_A = maximum annual production rate for the yeast-leavened finished bakery product (in tons/year)

EF_{VOC} = VOC emission factor for the yeast-leavened finished bakery product having the highest emission potential (in pounds of VOC/ton of baked bread)

$$EF_{\text{VOC}} = 0.95Y_i + 0.195t_i - 0.51S - 0.86t_s + 1.90$$

Where: Y_i = initial baker's percent of yeast to the nearest tenth of a percent;

t_i = total yeast action time in hours to the nearest tenth of an hour;

S = final (spike) baker's percent of yeast to the nearest tenth of a percent; and

t_s = spiking time in hours to the nearest tenth of an hour.

(2) The owner or operator shall presume for purposes of calculating the potential-to-emit that both of the following conditions apply:

(A) Each facility production line is operating 8,760 hours per year at maximum capacity.

(B) Each facility production line is producing the product with the highest level of VOC emissions of those products that it may produce.

(d) Control requirements. Each commercial bakery oven facility subject to this regulation shall install and operate VOC emissions control devices for each bakery oven to achieve at least an 80% total removal efficiency on the combined VOC emissions of all baking ovens, calculated as the capture efficiency times the control device efficiency.

(e) Time for compliance testing.

(1) The owner or operator of each existing bakery oven facility subject to this regulation shall demonstrate compliance with this regulation within one year from the effective date of this regulation by testing in accordance with the methods and procedures specified in subsection (f) of this regulation.

(2) Each new or modified bakery oven facility subject to this regulation shall demonstrate compliance with this regulation within 180 days of start-up by the testing of control equipment in accordance with the methods and procedures specified in subsection (f) of this regulation.

(3) Additional testing of the control equipment may be required by the department to demonstrate continued compliance in accordance with the methods and procedures specified in subsection (f) of this regulation.

(f) Testing requirements. The testing required under subsection (e) of this regulation shall be conducted in accordance with the following requirements:

(1) The testing shall be conducted at the owner's or operator's expense.

(2) The testing shall be conducted in accordance with a test plan submitted by the owner or operator to the department and approved by the department before the scheduled test date.

(3) The test plan shall specify the following elements of the test:

(A) The name of the entity performing the testing;

(B) the testing dates;

(C) the sampling location or locations;

(D) the sampling equipment to be used;

(E) the sampling procedures to be followed;

(F) the sample recovery methods; and

(G) any other information requested by the department pertaining to the facility and the test procedure.

(4) Testing procedures shall be conducted in accordance with the following requirements:

(A) For the purpose of determining control device efficiency, the owner or operator shall use USEPA test methods 18, 25, or 25A at 40 C.F.R. Part 60, as adopted by reference in K.A.R. 28-19-720.

(B) For the purpose of determining the capture efficiency of the air pollution control device, the owner or operator shall use the methods specified by the USEPA's February 7, 1995 memorandum titled "revised capture efficiency guidance for control of volatile organic compound emissions," and USEPA's technical document titled "guidelines for determining capture efficiency," dated January 9, 1994, both of which documents are hereby adopted by reference.

(C) Each owner or operator who demonstrates that the bakery oven or ovens are totally enclosed and operate under negative pressure with all venting through the air pollution control device may preclude, upon approval by the department, the need for the capture efficiency determination for those ovens so operated. The owner or operator seeking to demonstrate that the ovens operate under negative pressure shall do so by using the protocol titled "negative pressure enclosure qualitative test method for bakery ovens," as approved by EPA by letter of March 20, 1997, which protocol is hereby adopted by reference.

(D) Methods 204, 204A, 204B, 204C, 204D, 204E, and 204F of Appendix M of 40 C.F.R. Part 51, as in effect on July 1, 1999, are hereby adopted by reference.

(g) Compliance plan.

(1) Each owner or operator of an existing commercial bakery oven facility subject to this regulation shall submit a compliance plan to the department within three months of the effective date of this regulation.

(2) The compliance plan shall include the following information:

(A) The control device description;

(B) the testing methods and procedures; and

(C) the operating and maintenance plan for the control devices.

(3) The compliance plan shall identify the steps and processes to be taken to assure that the facility is in compliance by the date required for compliance.

(4) Each owner or operator of a new or modified commercial bakery oven facility subject to this regulation shall submit to the department an operation and maintenance plan for control devices before start-up.

(h) Monitoring and inspection.

(1) The owner or operator of each commercial bakery oven facility subject to this regulation shall continuously monitor and record data, as provided in paragraph (2) of this subsection, for emissions control devices and for operational parameters while the bakery oven is in operation.

(2) Each owner or operator required to monitor under paragraph (1) of this subsection shall continuously monitor and record the following parameters:

(A) The exhaust temperatures of all combustion devices, if used;

(B) the temperature rise across a catalytic oxidation bed, if used;

(C) the exit stream temperature on all condensers, if used;

(D) the volumetric flow rate; and

(E) any other monitoring parameter that the department may require the owner or operator to monitor.

(3) While operating the facility, the owner or operator of the facility shall maintain the parameters listed in paragraphs (2)(A) through (E) of this subsection within the baseline operational data established during the initial compliance test.

(4) (A) The owner or operator shall inspect control devices and monitoring equipment to assure that the control equipment is operating properly in accordance with the operating and maintenance plan prepared under either paragraph (g)(2)(C) or (g)(4) of this regulation, and that no leaks or malfunctions have occurred or are occurring.

(B) Inspections shall be made at the frequency defined by the equipment manufacturer, or as otherwise appropriate for each unit, component, or operation, but not less than monthly.

(C) The owner or operator shall record the results of each inspection in a permanent log to be retained on-site, and shall make the log available for inspection by a department representative upon request.

(i) Recordkeeping.

(1) The owner or operator of each commercial bakery oven facility subject to this regulation shall keep the records required by this regulation on-site for at least five years following the date of record.

(2) The owner or operator of each commercial bakery facility shall make the records required by this regulation available for inspection by a department representative upon request.

(3) Daily records of the following operational data shall be kept:

- (A) The amount of raw product processed;
- (B) the baker's percent of yeast used;
- (C) the fermentation time;
- (D) the type of product baked;
- (E) the amount of product baked;
- (F) the monitoring and inspection records specified in subsection (h) of this regulation; and
- (G) any other information that the department may determine to be necessary for determining that the facility is operated in continuous compliance with this regulation.

(4) The owner or operator shall calculate monthly emissions and shall record the emission factor used for each product, including citation of the source of the emission factor and the results of the calculations for the facility's ovens. (Authorized by K.S.A. 1999 Supp. 65-3005; implementing K.S.A. 1999 Supp. 65-3005, K.S.A. 1999 Supp. 65-3007, and K.S.A. 65-3010; effective Dec. 22, 2000.)

(5) The owner or operator shall calculate monthly emissions and shall record the emission factor used for each product, including citation of the source of the emission factor and the results of the calculations for the facility's ovens. (Authorized by K.S.A. 1999 Supp. 65-3005; implementing K.S.A. 65-3010; effective April 27, 2001; revoked Dec. 11, 2020.)

28-19-719. (Authorized by K.S.A. 1999 Supp. 65-3005; implementing K.S.A. 65-3010; effective April 27, 2001; revoked Dec. 11, 2020.)

NEW SOURCE PERFORMANCE STANDARDS

28-19-720. New source performance standards. (a) 40 C.F.R. part 60 and its appendices, as revised on July 1, 2017, are hereby adopted by reference except for the following:

(1) Provisions that are not delegable by the USEPA to the state or for which only the USEPA administrator retains authority, including the subparts, sections, and paragraphs containing any of the following:

- (A) Alternative methods of compliance approvable only by the USEPA administrator;
- (B) emission guidelines;
- (C) delegation of authority;
- (D) hearing and appeal procedures;
- (E) requirements regulating any stationary source located outside of Kansas; or

(F) requirements regulating any geographic area located outside of Kansas; and

(2) provisions no longer in effect on the effective date of this regulation.

(b) The definitions adopted by reference in subsection (a) shall apply only to this regulation. Unless the context clearly indicates otherwise, the following meanings shall be given to these terms as they appear in the portions of 40 C.F.R. part 60 adopted by reference in subsection (a):

(1) The term "administrator" shall mean the secretary or the secretary's authorized representative.

(2) The term "United States environmental protection agency" and any term referring to the United States environmental protection agency shall mean the department.

(3) The term "state" shall mean the state of Kansas.

(c) The owner or operator of each source that is subject to this regulation shall submit to the department any required annual reports specified in 40 C.F.R. part 60 within 180 days of the last day of the year for which the report is required, unless the owner or operator is required in this article of the department's regulations to submit annual reports on a different schedule. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3008 and K.S.A. 65-3010; effective Jan. 23, 1995; amended June 6, 1997; amended June 11, 1999; amended Dec. 3, 2004; amended June 15, 2007; amended Nov. 5, 2010; amended Nov. 14, 2014; amended Dec. 11, 2020.)

EMISSIONS GUIDELINES FOR EXISTING SOURCES

28-19-721. Existing municipal solid waste landfills; definitions. (a) The definitions at 40 CFR §60.751, as in effect on July 1, 1996, are adopted by reference for the purposes of K.A.R. 28-19-721 through 28-19-727.

(b) The definition of "municipal solid waste landfill" or "MSW landfill" is as defined in K.A.R. 28-19-200.

(c) Unless the context clearly indicates otherwise, the following meanings shall be given to these terms as they appear in 40 CFR part 60.

(1) The term "administrator" shall mean the secretary or the secretary's authorized representative.

(2) The term "United States environmental protection agency" or any term referring to the United States environmental protection agency shall mean the department.

(3) The term "state" shall mean the state of Kansas. (Authorized by K.S.A. 1996 Supp. 65-3005; implementing K.S.A. 1996 Supp. 65-3008; effective Nov. 14, 1997.)

28-19-722. Existing municipal solid waste landfills; applicability, permits. (a) Except as otherwise provided in subsection (b) of this regulation, the provisions of K.A.R. 28-19-721 through 28-19-727 apply to each existing municipal solid waste landfill that meets all of the following criteria.

(1) Construction, reconstruction, or modification of the MSW landfill commenced before May 30, 1991.

(2) The MSW landfill has accepted waste at any time since November 8, 1987, or has additional design capacity available for future waste deposition.

(3) The MSW landfill has a design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters as determined using the methods provided in 40 CFR §60.754(a)(1), as in effect on July 1, 1996, which is adopted by reference for the purposes of K.A.R. 28-19-721 through 28-19-727.

(b) The provisions of K.A.R. 28-19-721 through 28-19-727 shall not apply to any existing MSW landfill that has accepted fewer than 20 tons of municipal solid waste per day and that has received certification of closure from the department before the effective date of this regulation.

(c) In applying the criteria of subsection (a) of this regulation, physical changes or operational changes made to an existing MSW landfill solely to comply with an emission guideline shall not be considered a modification or reconstruction and shall not subject an existing MSW landfill to the requirements of the new source performance standards for MSW landfills, 40 CFR part 60, subpart WWW, as adopted by K.A.R. 28-19-720.

(d) The owner or operator of each existing MSW landfill that meets the criteria of K.A.R. 28-19-722(a) shall be subject to the operating permit requirements at K.A.R. 28-19-510 et seq. (Authorized by K.S.A. 1996 Supp. 65-3005; implementing K.S.A. 1996 Supp. 65-3008; effective Nov. 14, 1997.)

28-19-723. Existing municipal solid waste landfills; initial and periodic reporting.

(a) The owner or operator of an existing MSW landfill that meets the criteria of K.A.R. 28-19-722(a) shall prepare and submit to the department an

initial design capacity report within 90 days of the effective date of this regulation. The report shall be prepared in accordance with the requirements of 40 CFR §60.757(a)(2), as in effect on July 1, 1996, which is hereby adopted by reference.

(b) The owner or operator of an existing MSW landfill that meets the criteria of K.A.R. 28-19-722(a) shall prepare and submit to the department amended design capacity reports in accordance with the requirements of 40 CFR §60.757(a)(3), as in effect on July 1, 1996, which is hereby adopted by reference.

(c) In meeting the requirements of this regulation, the owner or operator may calculate design capacity as required in subsections (a) and (b) of this regulation in either megagrams or cubic meters for comparison with the corresponding exemption values. Any density conversions and any assumptions made shall be documented and submitted with the initial design capacity report.

(d) If the landfill is permanently closed, a closure notification shall be submitted to the department as provided for in 40 CFR §60.757(d), as adopted by K.A.R. 28-19-726. (Authorized by K.S.A. 1996 Supp. 65-3005; implementing K.S.A. 1996 Supp. 65-3008; effective Nov. 14, 1997.)

28-19-724. Existing municipal solid waste landfills; NMOC test methods and procedures.

(a) The owner or operator of an existing MSW landfill that meets the criteria of K.A.R. 28-19-722(a) shall calculate the nonmethane organic compound (NMOC) emissions from the landfill using the test methods and procedures contained in 40 CFR §60.754(a)(1), as adopted by K.A.R. 28-19-722.

(b) If the initial calculated NMOC emission rate is less than 50 megagrams per year, the owner or operator shall meet these requirements:

(1) recalculate the emission rate annually using the procedures specified in 40 CFR §60.754(a)(1) as adopted by K.A.R. 28-19-722, until such time as the calculated NMOC emission rate is equal to or greater than 50 megagrams per year, or the landfill is closed; and

(2) submit an annual emission report to the department, except as provided for in 40 CFR §60.757(b)(1)(ii), as adopted by K.A.R. 28-19-726.

(c) If the recalculated emission rate conducted pursuant to paragraph (b)(1) of this regulation is greater than or equal to 50 megagrams per year, the owner or operator shall comply with the provisions of 40 CFR §60.754(a)(2) through (d), as in effect on July 1, 1996, which is hereby adopted by reference.

(d) The owner or operator of an existing MSW landfill that meets the criteria of K.A.R. 28-19-722(a) and has NMOC emissions greater than or equal to 50 megagrams per year calculated in accordance with the provisions of subsection (a) of this regulation shall comply with the requirements of 40 CFR §60.754(a)(2) through (d), as adopted by K.A.R. 28-19-724. (Authorized by K.S.A. 1996 Supp. 65-3005; implementing K.S.A. 1996 Supp. 65-3008; effective Nov. 14, 1997.)

28-19-725. Existing municipal solid waste landfills; collection and control systems. (a) Gas collection and control. The owner or operator of an existing MSW landfill required to install gas collection and control equipment based on the determination made pursuant to K.A.R. 28-19-724 shall be required to meet these provisions:

(1) submit to the department a collection and control system design plan that meets the requirements of 40 CFR § 60.752(b)(2)(i), as in effect on July 1, 1996, which is hereby adopted by reference;

(2) install a collection and control system that meets the requirements of 40 CFR §60.752(b)(2)(ii), as in effect on July 1, 1996, which is hereby adopted by reference;

(3) route all collected gas to a control system that complies with the requirements of 40 CFR §60.752(b)(2)(iii), as in effect on July 1, 1996, which is hereby adopted by reference; and

(4) comply with the collection and control system capping and removal requirements of 40 CFR §60.752(b)(2)(v), as in effect on July 1, 1996, which is hereby adopted by reference.

(b) Operational standards. Each existing MSW landfill shall operate the MSW landfill collection and control system in accordance with the provisions of 40 CFR §60.753, as in effect on July 1, 1996, which is hereby adopted by reference.

(c) Compliance. The owner or operator of each existing MSW landfill with a collection and control system shall determine whether or not the gas collection system complies with the requirements of these regulations according to the provisions of 40 CFR §60.755, as in effect on July 1, 1996, which is hereby adopted by reference.

(d) Monitoring. The owner or operator of each existing MSW landfill with a collection and control system shall monitor operations in accordance with the requirements of 40 CFR §60.756, as in effect on July 1, 1996, which is hereby adopted by reference.

(e) Active gas collection. Any active gas collection system installed to meet the requirements of these regulations shall meet the active collection systems standards for the systems contained in 40 CFR 60.759, as in effect on July 1, 1996, which is hereby adopted by reference. (Authorized by K.S.A. 1996 Supp. 65-3005; implementing K.S.A. 1996 Supp. 65-3008; effective Nov. 14, 1997.)

28-19-726. Existing MSW landfills; record-keeping and reporting. (a) The owner or operator of an existing municipal solid waste landfill subject to the requirements of K.A.R. 28-19-721 through 28-19-727 shall comply with the record-keeping requirements contained in 40 CFR § 60.758, as in effect on July 1, 1996, which is hereby adopted by reference.

(b) Each owner or operator of an existing municipal solid waste landfill subject to the requirements of K.A.R. 28-19-722(a) shall comply with the reporting requirements of 40 CFR §60.757 (b) through (g), as in effect on July 1, 1996, which is hereby adopted by reference. (Authorized by K.S.A. 1996 Supp. 65-3005; implementing K.S.A. 1996 Supp. 65-3008; effective Nov. 14, 1997.)

28-19-727. Existing MSW landfills; time for compliance. (a) Except as provided in subsection (b) of this regulation, the planning, awarding of contracts, and installation of MSW landfill air emissions collection and control systems shall be accomplished within 30 months of the effective date of these regulations.

(b) Each existing landfill that meets the criteria of K.A.R. 28-19-722(a), but that has an NMOC emission rate of fewer than 50 megagrams per year on the effective date of these municipal solid waste landfill air emissions regulations shall accomplish the planning, awarding of contracts, and installation of collection and control equipment within 30 months of the date when the criterion of an NMOC emissions rate greater than or equal to 50 megagrams per year is first met. This determination shall be made pursuant to the requirements of K.A.R. 28-19-724. (Authorized by K.S.A. 1996 Supp. 65-3005; implementing K.S.A. 1996 Supp. 65-3008; effective Nov. 14, 1997.)

MERCURY

28-19-728 through 28-19-728e. (Authorized by K.S.A. 2006 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 15, 2007; revoked Nov. 5, 2010.)

28-19-728f. (Authorized by K.S.A. 2006 Supp. 65-3005 and K.S.A. 65-3007; implementing K.S.A. 65-3007 and 65-3010; effective June 15, 2007; revoked Nov. 5, 2010.)

**STANDARDS FOR HOSPITAL/MEDICAL/
INFECTIOUS WASTE INCINERATORS**

28-19-729. Standards for “hospital/medical/infectious waste incinerators.” (a) Applicability. Except as otherwise provided in subsection (b) of this regulation, the requirements of the “hospital/medical/infectious waste incinerators” regulations, K.A.R. 28-19-729 through K.A.R. 28-19-729h, shall apply to each individual “hospital/medical/infectious waste incinerator,” or “HMIWI,” as defined in K.A.R. 28-19-729a, for which construction commenced on or before June 20, 1996.

(b) Exceptions.

(1) The requirements of K.A.R. 28-19-729 through 28-19-729h shall not apply to HMIWI during periods when the HMIWI is burning only pathological waste, low-level radioactive waste, or chemotherapeutic wastes, as defined in K.A.R. 28-19-729a, or any combination of only these waste types, under all of the following conditions:

(A) The owner or operator of the HMIWI notifies the department in writing of an exemption claim under this subsection.

(B) The owner or operator of the HMIWI keeps records, on a calendar quarter basis, of the times, including start and ending times, when only pathological, low-level radioactive, or chemotherapeutic wastes, or a combination of only these wastes, are burned.

(C) The owner or operator of the HMIWI maintains the records for agency inspections in accordance with the provisions of K.A.R. 28-19-729h.

(2) A co-fired combustor, as defined in K.A.R. 28-19-729a, shall not be subject to these regulations if the owner or operator of the combustor does the following:

(A) Notifies the department of the exemption claim;

(B) provides to the department an estimate of the relative weights of “hospital or medical/infectious wastes,” fuels, and other wastes to be burned; and

(C) keeps records on a calendar quarter basis of the weight of the “hospital or medical/infectious wastes” and the weight of all other fuels and wastes burned in the device.

(3) Pyrolysis units, as defined in K.A.R. 28-19-729a, and cement kilns burning “hospital or med-

ical/infectious wastes” shall not be subject to the requirements of these regulations.

(4) Incinerators, boilers, or industrial furnaces subject to the hazardous waste facility permitting requirements of section 3005 of the federal solid waste disposal act, 42 U.S.C. §6925, shall not be subject to these regulations.

(5) Incinerators subject to 40 C.F.R. Part 60, Subparts Cb, Ea, or Eb for municipal waste combustors shall not be subject to these HMIWI regulations.

(c) Incinerators subject to the requirements of K.A.R. 28-19-729 through 28-19-729h shall not be subject to the requirements of K.A.R. 28-19-40 through 28-19-43. (Authorized by K.S.A. 1998 Supp. 65-3005; implementing K.S.A. 1998 Supp. 65-3005, K.S.A. 1998 Supp. 65-3007, and K.S.A. 65-3010; effective May 5, 2000.)

28-19-729a. “Hospital/medical/infectious waste incinerators”; definitions. (a) The definitions in 40 C.F.R. 60.51c, as in effect on July 1, 1998, are adopted by reference.

(b) “HMIWI” or “hospital/medical/infectious waste incinerator” is defined in 40 C.F.R. 60.51c.

(c) “Small rural hospital/medical/infectious waste incinerator” means a small HMIWI, as defined in 40 C.F.R. 60.51c, that burns less than 2,000 pounds of “hospital or medical/infectious waste” per week and is located more than 50 miles from the boundary of the nearest standard metropolitan statistical area (SMSA).

(d) “Standard metropolitan statistical area” (SMSA) means, for the purposes of these HMIWI regulations, the following:

(1) In Kansas:

(A) The Topeka SMSA comprised of Shawnee county;

(B) the Lawrence SMSA comprised of Douglas county;

(C) the Wichita SMSA comprised of Butler, Harvey, and Sedgwick counties; and

(D) the Kansas City SMSA comprised of Johnson, Leavenworth, Miami, and Wyandotte counties;

(2) in Missouri:

(A) The Joplin SMSA comprised of Jasper county; and

(B) the St. Joseph SMSA comprised of Buchanan county;

(3) in Oklahoma:

(A) The Enid SMSA comprised of Garfield county; and

(B) the Tulsa SMSA comprised of Creek, Osage,

Rogers, Tulsa, and Wagoner counties in Oklahoma; and

(4) the Lincoln SMSA comprised of Lancaster county in Nebraska. (Authorized by and implementing K.S.A. 1998 Supp. 65-3005; effective May 5, 2000.)

28-19-729b. “Hospital/medical/infectious waste incinerators”; emission standards. (a)

(1) The owner or operator of a “hospital/medical/infectious waste incinerator,” or HMIWI, subject to these HMIWI regulations shall not cause or permit emissions from the HMIWI to exceed a visible contaminant emission greater than 10 percent opacity during a six-minute block average, measured as specified in 40 C.F.R. 60.56c as adopted in K.A.R. 28-19-729g.

(2) The owner or operator of any HMIWI subject to these regulations shall not cause or permit emissions from the HMIWI of any pollutants to exceed the emission limits listed in Table 1 of this regulation, measured as specified in 40 C.F.R. 60.56c, as adopted in K.A.R. 28-19-729g.

(b) Exceptions. Air emissions opacity levels that exceed the specified limits in paragraph (a) (1) of this regulation shall not be considered a violation of this regulation if the owner or operator of the emission unit demonstrates to the satisfaction of the department that the opacity exceedence is due solely to the presence of uncombined water in the plume. (Authorized by and implementing K.S.A. 1998 Supp. 65-3005; effective May 5, 2000.)

**Table 1
Emission Limits for HMIWI**

Pollutant	Units	Emission Limits (7% oxygen, dry basis)			
		HMIWI Size			
		Small Rural	Small	Medium	Large
Particulate Matter (PM)	Milligrams per dry standard cubic meter (mg/dscm)	197	115	69	34
Carbon Monoxide (CO)	Parts per million by volume (ppmv)	40	40	40	40
Dioxins/furans	Nanograms per dscm total dioxins/furans, or Nanograms per dscm TEQ*	800 total 15 TEQ	125 total 2.3 TEQ	125 total 2.3 TEQ	125 total 2.3 TEQ
Hydrogen Chloride (HCl)	ppmv, or percent (%) reduction	3,100 ppmv	100 ppmv 93%	100 ppmv 93%	100 ppmv 93%
Sulfur Dioxide (SO ₂)	ppmv	55	55	55	55
Nitrogen Oxides (NO _x)	ppmv	250	250	250	250
Lead (Pb)	mg/dscm, or percent (%) reduction	10 mg/dscm	1.2 mg/dscm 70%	1.2 mg/dscm 70%	1.2 mg/dscm 70%
Cadmium (Cd)	mg/dscm, or percent (%) reduction	4 mg/dscm	0.16 mg/dscm 65%	0.16 mg/dscm 65%	0.16 mg/dscm 65%
Mercury (Hg)	mg/dscm, or percent (%) reduction	7.5 mg/dscm	0.55 mg/dscm 85%	0.55 mg/dscm 85%	0.55 mg/dscm 85%

* TEQ is used to abbreviate “Toxic Equivalent.” See 40 CFR 60.51c as adopted in K.A.R. 28-19-729a.

28-19-729c. Standards for “hospital/medical/infectious waste incinerators”; compliance schedule. (a) Except as otherwise provided in subsection (b) of this regulation, the owner or operator of each HMIWI subject to the emission limits in K.A.R. 28-19-729b shall comply with all of the applicable requirements of K.A.R. 28-19-729 through 28-19-729h on or before the

date one year after the effective date of EPA’s approval of the state’s HMIWI plan.

(b) (1) The owner or operator of an HMIWI may petition the department for an extension to the compliance date specified in subsection (a) of this regulation. This petition shall be prepared in accordance with the provisions of subsection (c) of this regulation.

(2) The compliance date for each HMIWI for which a compliance date extension petition is approved shall be no later than September 15, 2002.

(c) Each petition for a compliance date extension shall be submitted to the department within 180 days after the effective date of EPA's approval of the state's HMIWI emission guidelines implementation plan, and shall include the following components:

(1) Documentation and analysis to support the need for an extension, including an evaluation of the option to transport the waste off-site to a commercial medical waste treatment and disposal facility on a temporary or permanent basis;

(2) submittal of an emissions control plan, describing the air pollution controls or process modifications, or both, that are to be used to comply with the emission limits in K.A.R. 28-19-729b;

(3) a compliance schedule, with dates, for the following steps:

(i) The awarding of contracts for air pollution control systems, process modifications, or orders for purchase of components;

(ii) the initiation of on-site construction or installation of air pollution control equipment, process modifications, or both;

(iii) the completion of on-site construction or installation of air pollution control equipment, process modifications, or both; and

(iv) the conduct of performance testing, and final compliance with the applicable requirements of K.A.R. 28-19-729b through 28-19-729h.

(d) The owner or operator of an HMIWI for which a timely and complete compliance date extension petition has been submitted to the department may continue to operate the HMIWI until the petition has been approved or disapproved, if the owner or operator adheres to the compliance schedule outlined in the submitted petition. (Authorized by and implementing K.S.A. 1998 Supp. 65-3005; effective May 5, 2000.)

28-19-729d. "Hospital/medical/infectious waste incinerators"; operation, operator training, and qualification standards. (a)(1) For the purposes of these regulations, a "trained and qualified HMIWI operator" or "HMIWI operator" means a person who has completed the requirements of subsections (b) and (c) of this regulation, and who maintains the qualifications in accordance with the requirements of subsection (e) as required.

(2) A trained and qualified HMIWI operator either shall be at the HMIWI facility at all times

or shall be generally able to reach the facility within one hour at all times the incinerator is in operation.

(3) Any HMIWI subject to these regulations shall be operated only by a trained and qualified HMIWI operator, or by a person or persons working under the direct supervision of a trained and qualified HMIWI operator.

(b) The HMIWI operator training shall be obtained by completing an HMIWI operator training course that includes, at a minimum, the following elements:

(1) Training on the following subjects:

(A) Environmental concerns, including pathogen destruction and types of emissions;

(B) basic combustion principles, including products of combustion;

(C) operation of the type of incinerator to be used by the operator, including proper startup, waste charging, and shutdown procedures;

(D) combustion controls and monitoring;

(E) operation of air pollution control equipment and factors affecting performance, if applicable;

(F) methods to monitor pollutants, including continuous emission monitoring systems and monitoring of HMIWI and air pollution control device operating parameters, and equipment calibration procedures, where applicable;

(G) inspection and maintenance of the HMIWI, air pollution control devices, and continuous emission monitoring systems;

(H) actions to correct malfunctions or conditions that may lead to malfunction;

(I) bottom and fly ash characteristics and handling procedures;

(J) applicable federal, state, and local regulations;

(K) work safety procedures;

(L) pre-startup inspections; and

(M) recordkeeping requirements;

(2) an examination designed and administered by the instructor of the training course; and

(3) reference material distributed to the attendees covering the course topics.

(c) HMIWI operator qualification shall be obtained by the following:

(1) Completion of a training course that satisfies the criteria listed in paragraph (b)(1) of this regulation; and

(2) six months of experience as an HMIWI operator, six months of experience as a direct supervisor of an HMIWI operator, or completion of at least two burn cycles under the observation of a qualified HMIWI operator.

(d) HMIWI operator qualification shall be valid from the date on which the examination is passed or the completion of the required experience, whichever is later.

(e) To maintain qualification, the trained and qualified HMIWI operator shall complete an annual review or refresher course covering the following:

- (1) Update of regulations;
- (2) incinerator operation, including startup and shutdown procedures;
- (3) inspection and maintenance;
- (4) responses to malfunctions or conditions that may lead to malfunction; and
- (5) discussion of operating problems encountered by attendees.

(f) A lapsed qualification shall be renewed by one of the following procedures:

(1) For a lapse of less than three years, the HMIWI operator shall complete and pass a standard annual refresher course described in subsection (e) of this regulation.

(2) For a lapse of three years or more, the HMIWI operator shall complete and pass a training course with the minimum criteria described in paragraph (b)(1) of this regulation.

(g) The owner or operator of an HMIWI subject to these regulations shall maintain documentation at the facility that addresses the following:

- (1) A summary of the applicable standards under this regulation;
- (2) a description of basic combustion theory applicable to HMIWI;
- (3) procedures for receiving, handling, and charging waste;
- (4) HMIWI startup, shutdown, and malfunction procedures;
- (5) procedures for maintaining proper combustion air supply levels;
- (6) procedures for operating the HMIWI and associated air pollution control systems within the standards established under this regulation;
- (7) procedures for responding to periodic malfunction or conditions that may lead to malfunction;
- (8) procedures for monitoring HMIWI emissions;
- (9) reporting and recordkeeping procedures; and
- (10) procedures for handling ash.

(h) The owner or operator of a HMIWI subject to these regulations shall review with each HMIWI operator the information listed in subsection (g) of this regulation.

(1) The initial review of the information listed in subsection (g) of this regulation shall be conducted within one year of the date of EPA approval of the state's HMIWI plan, or before the assumption of responsibilities affecting HMIWI operation, whichever date is later.

(2) Subsequent reviews of the information listed in subsection (g) of this regulation shall be conducted annually. (Authorized by and implementing K.S.A. 1998 Supp. 65-3005; effective May 5, 2000.)

28-19-729e. "Hospital/medical/infectious waste incinerators"; waste management plan. The owner or operator of the HMIWI facility shall prepare a waste management plan in accordance with 40 C.F.R. 60.55c, as in effect on July 1, 1998, which is hereby adopted by reference. (Authorized by and implementing K.S.A. 1998 Supp. 65-3005; effective May 5, 2000.)

28-19-729f. "Hospital/medical/infectious waste incinerators"; inspections. (a) The owner or operator of each small rural HMIWI subject to this regulation, as defined in K.A.R. 28-19-729a(c), shall conduct an initial equipment inspection of the HMIWI within one year from the date the department receives EPA approval of the state's HMIWI plan.

(b) At a minimum, the owner or operator shall perform the following:

- (1) Inspect all burners, pilot assemblies, and pilot sensing devices for proper operation, and clean the pilot flame sensor, as necessary;
- (2) ensure proper adjustment of primary and secondary chamber combustion air, and adjust as necessary;
- (3) inspect hinges and door latches, and lubricate as necessary;
- (4) inspect dampers, fans, and blowers for proper operation;
- (5) inspect HMIWI door and door gaskets for proper sealing;
- (6) inspect motors for proper operation;
- (7) inspect primary chamber refractory lining, and clean and repair or replace the lining as necessary;
- (8) inspect the incinerator shell for corrosion and hot spots;
- (9) inspect the secondary and tertiary chambers and stack, and clean as necessary;
- (10) inspect the mechanical loader, including limit switches, for proper operation, if applicable;

(11) visually inspect the waste bed grates, and repair or seal, or both, as appropriate;

(12) for the burn cycle that follows the inspection, document that the incinerator is operating properly and make any necessary adjustments;

(13) inspect air pollution control devices for proper operation, if applicable;

(14) inspect waste heat boiler systems to ensure proper operation, if applicable;

(15) inspect bypass stack components;

(16) ensure proper calibration of thermocouples, sorbent feed systems, and any other monitoring equipment; and

(17) generally observe that the equipment is maintained in good operating condition.

(c)(1) Within 10 operating days following an equipment inspection, all necessary repairs shall be completed, unless the owner or operator obtains a written approval from the department, extending the time allowed for the necessary repairs.

(2) All approvals for time extensions to this requirement shall establish the date by which all necessary repairs are to be completed.

(d) Each small rural HMIWI subject to the emission limits specified in K.A.R. 28-19-729b shall undergo an equipment inspection annually, no later than 12 months following the previous annual equipment inspection, which shall include the inspection elements in subsections (b) and (c) of this regulation. (Authorized by and implementing K.S.A. 1998 Supp. 65-3005; effective May 5, 2000.)

28-19-729g. “Hospital/medical/infectious waste incinerators”; compliance, performance testing, and monitoring guidelines.

(a) (1) Except as provided in subsection (b) of this regulation, each individual HMIWI subject to these regulations shall meet the compliance and performance testing requirements in 40 C.F.R. 60.56c, as in effect on July 1, 1998, which is adopted by reference except for the fugitive emissions testing requirements in 40 C.F.R. 60.56c(b)(12) and (c)(3).

(2) To meet the testing requirements of paragraph (a)(1) of this regulation, the operator or owner of each HMIWI shall use the appropriate test methods listed in 40 C.F.R. 60.56c and adopted in K.A.R. 28-19-720.

(b) Each small rural HMIWI subject to these regulations, as defined in K.A.R. 28-19-729a(c), shall meet the following compliance and performance testing requirements:

(1) (A) The owner or operator of the small rural HMIWI shall conduct the performance testing in accordance with the requirements in 40 C.F.R. 60.56c(a), (b)(1) through (b)(9), (b)(11) for mercury (Hg) only, and (c)(1).

(B) The 2,000 pounds per week limitation in K.A.R. 28-19-729a(c) shall not apply during these performance tests.

(2) The owner or operator of the small rural HMIWI shall establish a maximum charge rate and minimum secondary chamber temperature as site-specific operating parameters during the initial performance test to determine compliance with applicable emission limits.

(3) (A) Following the date on which the initial performance test is completed, the owner or operator of the small rural HMIWI shall ensure that the HMIWI does not operate above the maximum charge rate or below the minimum secondary chamber temperature, measured as three-hour rolling averages, calculated each hour as the average of the previous three hours, or as the average of the burn cycle if the burn cycle is less than three hours, at all times except during periods of startup, shutdown, and malfunction.

(B) Operating parameter limits shall not apply during performance tests.

(C) Operation either above the maximum charge rate or below the minimum secondary chamber temperature shall constitute a violation of the established operating parameters.

(4) Except as provided in paragraph (b)(5) of this regulation, operation of the HMIWI above the maximum charge rate and below the minimum secondary chamber temperature, each measured on a three-hour rolling average or as the average of the burn cycle if the burn cycle is less than three hours, simultaneously shall constitute a violation of the particulate matter, carbon monoxide, and “dioxin/furan” emission limits.

(5) (A) The owner or operator of the small rural HMIWI may conduct a repeat performance test within 30 days of violation of an applicable operating parameter to demonstrate that the designated facility is not in violation of the applicable emission limit.

(B) Repeat performance tests conducted pursuant to this subsection shall be conducted under operating parameters equivalent to the operating conditions that indicated a violation under paragraph (b)(4) of this regulation.

(c) Except as specified in subsection (d) of this regulation, each HMIWI subject to these regu-

lations shall meet the monitoring requirements of 40 C.F.R. 60.57c, as in effect on July 1, 1998, which is hereby adopted by reference.

(d) The owner or operator of each small rural HMIWI subject to these regulations, as defined in K.A.R. 28-19-729a, shall meet the following monitoring requirements:

(1) Install, calibrate to the manufacturer's specifications, maintain, and operate a device for measuring and recording the temperature of the secondary chamber on a continuous basis, the output of which shall be recorded, at a minimum frequency of once every minute throughout operation.

(2) The owner or operator of the small rural HMIWI shall install, calibrate to the manufacturer's specifications, maintain, and operate a device that automatically measures and records the date, time, and weight of each charge of waste fed to the HMIWI.

(3) (A) The owner or operator of a small rural HMIWI subject to these regulations shall obtain the monitoring data required by paragraphs (d)(1) and (d)(2) of this regulation at all times during HMIWI operation, except during periods of monitoring equipment malfunction, calibration, or repair.

(B) The owner or operator shall obtain and record valid monitoring data for not less than 75 percent of the operating hours per day, and for not less than 90 percent of the operating hours per calendar quarter that the HMIWI is combusting "hospital or medical/infectious waste." (Authorized by K.S.A. 1999 Supp. 65-3005; implementing K.S.A. 1999 Supp. 65-3005 and K.S.A. 1999 Supp. 65-3007; effective May 5, 2000.)

28-19-729h. "Hospital/medical/infectious waste incinerators"; reporting and recordkeeping. (a) Except as otherwise provided in subsection (b) of this regulation, the owner or operator of an HMIWI that is subject to these regulations shall meet the reporting and recordkeeping requirements listed in 40 C.F.R. 60.58c(b), (c), (d), (e), and (f), as in effect on July 1, 1998 and hereby adopted by reference, excluding 40 C.F.R. 60.58c(b)(2)(ii), fugitive emissions, and (b)(7), siting.

(b) The owner or operator of each small rural HMIWI subject to the emission limits in K.A.R. 28-19-729b shall comply with the following reporting and recordkeeping requirements:

(1) The owner or operator of the small rural HMIWI shall maintain records of the an-

nual equipment inspections, any required maintenance, and any repairs not completed within 10 days of an inspection or the time frame established by the department pursuant to K.A.R. 28-19-729f(c).

(2) The owner or operator of the small rural HMIWI shall submit an annual report, signed by the facility manager, containing information recorded in accordance with paragraph (b)(1) of this regulation no later than March 1 following the calendar year in which data were collected.

(3) The owner or operator shall send subsequent annual reports no later than 12 calendar months following the previous report.

(4) Once the unit is subject to the department's class I air operating permit program, the owner or operator shall submit these reports semiannually. (Authorized by K.S.A. 1998 Supp. 65-3005; implementing K.S.A. 1998 Supp. 65-3005 and K.S.A. 1998 Supp. 65-3007; effective May 5, 2000.)

NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAP)

28-19-735. National emission standards for hazardous air pollutants. (a) 40 C.F.R. part 61 and its appendices, as in effect on July 1, 2010, are adopted by reference except for the following:

(1) The following sections in subpart A:

- (A) 61.04;
- (B) 61.16; and
- (C) 61.17;
- (2) subpart B;
- (3) subpart H;
- (4) subpart I;
- (5) subpart K;
- (6) subpart Q;
- (7) subpart R;
- (8) subpart T; and
- (9) subpart W.

(b) Unless the context clearly indicates otherwise, the following meanings shall be given to these terms as they appear in 40 C.F.R. part 61:

(1) The term "administrator" shall mean the secretary or the secretary's authorized representative.

(2) The term "United States environmental protection agency" and any term referring to the United States environmental protection agency shall mean the department.

(3) The term "state" shall mean the state of Kansas. (Authorized by K.S.A. 2011 Supp. 65-3005; implementing K.S.A. 65-3008 and 65-3010; effective Jan. 23, 1995; amended June 6, 1997;

amended June 11, 1999; amended Dec. 3, 2004; amended June 15, 2007; amended Nov. 5, 2010; amended Dec. 28, 2012.)

**NATIONAL EMISSION STANDARDS FOR
HAZARDOUS AIR POLLUTANTS (MACT)**

28-19-750. Hazardous air pollutants; maximum achievable control technology. (a) 40 C.F.R. part 63 and its appendices, as in effect on July 1, 2010, are adopted by reference, except for the following:

- (1) The following sections in subpart A:
 - (A) 63.6(f)(1), (g), (h)(1), and (h)(9);
 - (B) 63.7(e)(2)(ii) and (f);
 - (C) 63.8(f);
 - (D) 63.10(f);
 - (E) 63.12;
 - (F) 63.13;
 - (G) in 63.14(b)(27), the phrase “and table 5 to subpart DDDDD of this part”;
 - (H) 63.14(b)(35), (39) through (53), and (55) through (62);
 - (I) in 63.14(i)(1), the phrase “table 5 to subpart DDDDD of this part”; and
 - (J) 63.15;
 - (2) subpart B;
 - (3) subpart C;
 - (4) subpart D;
 - (5) subpart E;
 - (6) subpart ZZZZ;
 - (7) subpart DDDDD;
 - (8) subpart JJJJJ;
 - (9) subpart KKKKK.
- (b) 40 C.F.R. part 63, subpart ZZZZ, as in effect on July 1, 2012 and as amended by 78 fed. reg. 6700-6724 (2013) and 78 fed. reg. 14457 (2013), is adopted by reference.

(c) Unless the context clearly indicates otherwise, the following meanings shall be given to these terms as they appear in the portions of 40 C.F.R. part 63 adopted by reference in this regulation:

(1) The term “administrator” shall mean the secretary or the secretary’s authorized representative.

(2) The term “United States environmental protection agency” and any term referring to the United States environmental protection agency shall mean the department.

(3) The term “state” shall mean the state of Kansas. (Authorized by K.S.A. 2014 Supp. 65-3005; implementing K.S.A. 2014 Supp. 65-3008 and K.S.A. 65-3010; effective Jan. 23, 1995; amended June 6, 1997; amended June 11, 1999; amended

Dec. 3, 2004; amended June 15, 2007; amended Nov. 5, 2010; amended Dec. 28, 2012; amended Nov. 14, 2014.)

28-19-750a. Consolidated federal air regulations; synthetic organic chemical manufacturing industry. (a) 40 C.F.R. part 65 and its appendices, as in effect on July 1, 2010, are adopted by reference except for the following sections in subpart A:

- (1) 65.9;
 - (2) 65.10; and
 - (3) 65.14.
- (b) Unless the context clearly indicates otherwise, the following meanings shall be given to these terms as they appear in 40 C.F.R. part 65:

(1) The term “administrator” shall mean the secretary or the secretary’s authorized representative.

(2) The term “United States environmental protection agency” and any term referring to the United States environmental protection agency shall mean the department.

(3) The term “state” shall mean the state of Kansas. (Authorized by K.S.A. 2011 Supp. 65-3005; implementing K.S.A. 65-3008 and 65-3010; effective Dec. 3, 2004; amended Nov. 5, 2010; amended Dec. 28, 2012.)

28-19-751. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995; revoked Aug. 13, 1999.)

28-19-752. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995; revoked Aug. 13, 1999.)

28-19-752a. Hazardous air pollutants; limitations applicable to construction of new major sources or reconstruction of existing major sources. (a) Applicability.

(1) For the purposes of this regulation, 40 C.F.R. §63.40, as in effect as of July 1, 1997 is adopted by reference.

(2) Except as otherwise provided by 40 C.F.R. §63.40(c), (e), and (f), this regulation shall apply to the owner or operator of each proposed new major source of hazardous air pollutants (HAPs) and the owner or operator of each existing major source of hazardous air pollutants for which reconstruction is proposed.

(b) Definitions.

(1) For the purposes of this regulation, 40 C.F.R. §63.41, as in effect as of July 1, 1997, is adopted by reference.

(2) “Case-by-case MACT determination” means a determination pursuant to the provisions of subsection (d) of this regulation so that emissions of HAPs from the constructed or reconstructed source will be controlled to a level no less stringent than the maximum achievable control technology, or “MACT”, emission limitation for new sources.

(c) Prohibition. After the effective date of this regulation, the owner or operator shall not begin actual construction or reconstruction of a major source of HAP unless the conditions of both paragraphs (1) and (2) of this subsection are met:

(1) The owner or operator has fully complied with all requirements of the construction permit program, K.A.R. 28-19-300, et seq. for preconstruction review, including applicable requirements of section (d) of this regulation, and of subpart A of 40 C.F.R. part 63 as adopted by K.A.R. 28-19-750.

(2) (A) The major source category has been specifically regulated or exempted from regulation under a standard issued in 40 C.F.R. part 63 pursuant to 42 U.S.C. §7412(d), 42 U.S.C. §7412(h), or 42 U.S.C. §7412(j); or

(B) The owner or operator of the source has applied to the department through the preconstruction review process of K.A.R. 28-19-300, et seq., as required by paragraph (1) of this subsection for, and received from the department a final and effective case-by-case MACT determination pursuant to the provisions of subsection (d) of this regulation so that emissions of HAPs from the constructed or reconstructed source will be controlled to a level no less stringent than the maximum achievable control technology emission limitation for new sources.

(d) Requirements. The owner or operator of a source subject to this regulation shall apply for the construction permit under 28-19-300, et seq. and comply with the provisions of 40 C.F.R. §63.43, as in effect as of July 1, 1997, which are adopted by reference, except for the following subsections of 40 C.F.R. §63.43:

- (1) 40 C.F.R. §63.43(h)(1); and
- (2) 40 C.F.R. §63.43(i).

(e) Requirements for constructed or reconstructed major sources subject to subsequently adopted MACT standard or MACT requirement. The owner or operator of each major source sub-

ject to this regulation shall comply with the applicable provisions of 40 C.F.R. §63.44, in effect as of July 1, 1997, which is adopted by reference. (Authorized by K.S.A. 1998 Supp. 65-3005; implementing K.S.A. 1998 Supp. 65-3008; effective Aug. 13, 1999.)

28-19-753. Hazardous air pollutants; limitations applicable to sources for which the USEPA fails to meet certain deadlines.

(a) This regulation shall be applicable to a source only if the USEPA fails to promulgate an emission standard for the category or subcategory applicable to the source within the time-frame scheduled by the USEPA at 58 FR 63941, December 3, 1993.

(b) Within 18 months after the date the emission limitation was to be promulgated by the USEPA, the owner or operator of a major source to which the emission limitation would apply, shall file with the department an application to modify the operating permit of the major source. As part of the application to modify the operating permit, the owner or operator shall:

- (1) determine the applicable emission limitation for the source pursuant to subsection (c) of this regulation;
- (2) specify how the applicable emission limitation was determined;
- (3) specify the manner in which the emissions unit or stationary source will meet the applicable emission limitation; and
- (4) commit to test methods and procedures to demonstrate compliance with the applicable emission limitation.

(c) The applicable emission limitation shall be either:

(1) for stationary sources within a category or subcategory listed at 57 FR 31576, July 16, 1992, with 30 or more sources. The average emission limitation achieved by the best performing 12 percent of the existing sources, for which the administrator of the USEPA has emissions information, in such category or subcategory; or

(2) for stationary sources within a category or subcategory listed at 57 FR 31576, July 16, 1992, with fewer than 30 sources, the average emission limitation achieved by the best performing 5 sources, for which the administrator of the USEPA has or could reasonably obtain emissions information, in such category or subcategory.

(d) If the USEPA promulgates an emission standard pursuant to section 112(d) of the federal

clean air act that is applicable to the major source prior to the date on which a permit application is approved, the emission limitation in the operating permit shall reflect the promulgated standard rather than the emission limitation proposed in the application, provided that the source shall have the compliance period provided at section 112(i) of the federal clean air act.

(e) If, after a permit is issued approving the application to modify the major source filed pursuant to this regulation, the USEPA promulgates an emissions standard pursuant to section 112(d) of the federal clean air act that would be applicable to the major source in lieu of the emission limitation established in the permit, the operating permit of the major source shall be revised upon the next renewal to reflect the standard promulgated by the USEPA. The renewed permit shall also provide the owner or operator of the major source a reasonable time to comply with the applicable standard promulgated by the USEPA, which shall be no longer than eight years after such standard is promulgated or eight years after the date on which the source is first required to comply with the emissions limitations established under this regulation, whichever is earlier.

(f) Each application for a permit modification under this regulation shall be:

- (1) subject to the provisions of K.A.R. 28-19-518;
- (2) submitted on forms provided or approved by the department; and
- (3) considered significant permit modifications subject to the provisions of K.A.R. 28-19-513. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

TRANSPORTATION CONFORMITY

28-19-800. General conformity of federal actions. (a) 40 CFR part 93, subpart B, as promulgated on November 30, 1993, is adopted by reference, except for 40 CFR 93.151 and 40 CFR 93.160(f) which are deleted.

(b) Unless the context clearly indicates otherwise:

- (1) the term "state" shall mean the state of Kansas; and
- (2) the terms "applicable implementation plan" or "applicable SIP" shall refer to the Kansas state air implementation plan. (Authorized by and implementing K.S.A. 1995 Supp. 65-3005; effective March 15, 1996.)

28-19-801. Transportation conformity.

(a) The provisions of this regulation shall apply:

(1) to areas of the state which have been identified as not meeting the national primary ambient air quality standard for ozone in the manner prescribed by the provisions of section 107(d) of the federal clean air act, 42 U.S.C. §7407, as promulgated at 40 CFR part 81, as in effect July 1, 1986 and amended at 51 Fed. Reg. 25,202, July 11, 1986; and

(2) with respect to emissions of ozone precursors.

(b) Applicable provisions of the federal transportation conformity rule.

(1) The following sections of 40 CFR part 93, subpart A, entitled "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," promulgated by the U.S. environmental protection agency on November 24, 1993, are adopted by reference: §§93.100, 93.103, 93.104, 93.106, 93.107, 93.108, 93.109, 93.110, 93.111, 93.113, 93.114, 93.115, 93.118, 93.119, 93.120, 93.122, 93.123, 93.124, 93.129, 93.132, 93.134, and 93.135.

(2) 40 CFR §93.102, as promulgated on November 24, 1993, is adopted by reference except that subparagraphs (b)(1), (b)(2), (b)(3)(ii) and (b)(3)(iii) are deleted.

(3) 40 CFR §93.128, as promulgated on November 24, 1993, is adopted by reference, except that subparagraph (e)(2) is deleted.

(4) 40 CFR §93.130, as promulgated on November 24, 1993, is adopted by reference with the following modifications:

(A) subparagraph (b)(5) of 40 CFR §93.130 is renumbered as subparagraph (a)(6);

(B) the reference in subparagraph (b) of 40 CFR 93.130 to "paragraphs (b)(1) through (5) of this section" shall read "paragraphs (b)(1) through (4) of this section";

(C) references in subparagraph (c)(1) of 40 CFR §93.130 to "paragraph (a) of this section" shall read "paragraph (b) of this section";

(D) any references made to 40 CFR §93.130 in any of the sections of 40 CFR part 93, subpart A, adopted by reference pursuant to subparagraph (b)(1) of this regulation shall be deemed to refer to this subparagraph (b)(4);

(E) any references in 40 CFR §93.130 to 40 CFR §93.127 are deleted; and

(F) subparagraph (e) of 40 CFR §93.130 is deleted.

(5) 40 CFR §93.136, as promulgated on November 24, 1993, is adopted by reference except that:

(A) subparagraphs (a)(1), (a)(6), and (a)(7) are deleted; and

(B) any reference made to 40 CFR §93.136 in any of the sections of 40 CFR, part 93, subpart A, adopted by reference pursuant to subparagraph (b)(1) of this regulation, shall be deemed to refer to this subparagraph (b)(5).

(6) The following is adopted in lieu of adoption by reference of 40 CFR §93.133, as promulgated on November 24, 1993, parts of which are inapplicable to the areas of the state identified in paragraph (a) of this regulation:

(A) Before a conformity determination is made, enforceable written commitments must be obtained from project sponsors for any project-level mitigation or control measures which are either:

(i) conditions of the conformity determination for a transportation plan or transportation improvement program; or

(ii) included in the project design concept and scope that is used in the regional emissions analysis required by 40 CFR §93.118 through §93.120 and 40 CFR §93.122 through §93.124.

(B) During the control strategy and maintenance periods, if the metropolitan planning organization or project sponsor believes the mitigation or control measures are no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measures if:

(i) it can demonstrate that the requirements of 40 CFR §93.118 and 40 CFR §93.119 are satisfied without the mitigation or control measures; and

(ii) it so notifies the agencies involved in the interagency consultation process required under paragraph (d) of this regulation. The metropolitan planning organization and the U.S. department of transportation shall confirm that the transportation plan and transportation improvement program still satisfy the requirements of 40 CFR §93.118 and 40 CFR §93.119 and that the conformity determinations for the transportation plan, transportation improvement program, and project are still valid without implementation of the mitigation or control measures.

(C) The reference to 40 CFR §93.133(a) in 40 CFR §93.115, which is adopted by reference pursuant to subparagraph (b)(1) of this regulation, shall be deemed to refer to this subparagraph (b)(6).

(7) Any reference to federal regulations in 23 CFR part 450 in any of the sections of 40 CFR part 93 adopted by reference pursuant to this regulation, is to 23 CFR part 450 as in effect on the date of adoption of this regulation.

(8) Any reference to 40 CFR §93.105, consultation, in any of the sections of 40 CFR part 93 adopted by reference, shall be deemed to refer to paragraph (d) of this regulation.

(c) Definitions.

(1) 40 CFR §93.101, definitions, as promulgated on November 24, 1993, is adopted by reference.

(2) For the purposes of this rule the term “Kansas consulting agencies” shall mean:

(A) the Kansas department of health and environment;

(B) the Kansas department of transportation;

(C) the Wyandotte county health department; and

(D) the Johnson county environmental department.

(d) Interagency consultation requirements.

(1) Consultation pursuant to this section shall take place during all periods identified in 40 CFR § 93.109, which is adopted by reference pursuant to paragraph (b) of this regulation.

(2) The Kansas consulting agencies shall participate in a consultation process with representatives of:

(A) the Missouri department of natural resources, division of environmental quality, and Missouri local air agencies that elect to participate in the consultation process;

(B) the Missouri department of transportation and Missouri local transportation agencies;

(C) the federal highway administration of the U.S. department of transportation, the federal transit administration of the U.S. department of transportation, and the U.S. environmental protection agency; and

(D) the Mid-America regional council, in its capacity as the lead planning agency for the Kansas City air quality region certified by the state of Kansas under section 174 of the federal clean air act, 42 U.S.C. §7504, and in its capacity as the metropolitan planning organization for the Kansas City metropolitan area, designated by the governor of the state of Kansas as responsible for transportation planning under section 134 of Title 23 U.S.C.

(3) Consultation shall be required for:

(A) any conformity determination pertaining to transportation plan, programs, and projects required pursuant to section 176(c)(4) of the federal

clean air act, 42 U.S.C. §7506(c)(4), and 40 CFR part 93, subpart A, as promulgated on November 24, 1993; and

(B) all matters listed at 40 CFR §93.105(c), as promulgated on November 24, 1993, which is hereby adopted by reference, with the following modifications:

(i) subparagraph (1)(v) of 40 CFR §93.105(c) is deleted; and

(ii) the reference in subparagraph (5) of 40 CFR §93.105(c) to 40 CFR §93.130 shall be deemed to refer to subparagraph (b)(4) of this regulation. (Authorized by and implementing K.S.A. 1995 Supp. 65-3005; effective March 15, 1996.)

**Article 20.—HUMAN BODIES;
PREPARATION AND TRANSPORTATION
OF DEAD HUMAN BODIES AND
BURIAL IN MAUSOLEUM**

28-20-1. (Authorized by K.S.A. 65-102, 65-1638, 65-1639; effective Jan. 1, 1966; amended Jan. 1, 1969; revoked May 1, 1981.)

28-20-2. (Authorized by K.S.A. 65-102, K.S.A. 1968 Supp. 65-128; effective Jan. 1, 1966; revoked Jan. 1, 1969.)

28-20-2a. (Authorized by K.S.A. 65-102, 65-128; effective Jan. 1, 1969; revoked May 1, 1981.)

28-20-3. (Authorized by K.S.A. 65-102; effective Jan. 1, 1966; revoked Jan. 1, 1969.)

28-20-3a. (Authorized by K.S.A. 65-101, 65-102, 65-128, 65-2426; effective Jan. 1, 1969; amended Jan. 1, 1972; amended May 1, 1976; revoked May 1, 1981.)

28-20-4. (Authorized by K.S.A. 65-101, 65-102, 65-128; effective Jan. 1, 1966; amended Jan. 1, 1969; amended May 1, 1976; revoked May 1, 1981.)

28-20-5. (Authorized by K.S.A. 65-102, 65-128; effective Jan. 1, 1966; amended Jan. 1, 1969; revoked May 1, 1981.)

28-20-6. (Authorized by K.S.A. 65-102; effective Jan. 1, 1966; revoked May 1, 1981.)

28-20-7. (Authorized by K.S.A. 65-102, 65-128; effective Jan. 1, 1966; amended Jan. 1, 1969; revoked May 1, 1981.)

28-20-8. (Authorized by K.S.A. 65-102; effective Jan. 1, 1966; revoked May 1, 1981.)

**Article 21.—FOOD, DRUGS
AND COSMETICS**

A. GENERAL REGULATIONS

28-21-1. (Authorized by K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966; revoked June 4, 2010.)

28-21-2. (Authorized by K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966; revoked Feb. 8, 2013.)

28-21-3. (Authorized by K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966; revoked May 10, 1996.)

28-21-4 and 28-21-5. (Authorized by K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966; revoked Feb. 8, 2013.)

28-21-6. (Authorized by K.S.A. 65-665 (e), K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966; revoked June 4, 2010.)

28-21-7. (Authorized by K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966; revoked June 4, 2010.)

28-21-8. (Authorized by K.S.A. 65-663, K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966; revoked June 4, 2010.)

28-21-9. (Authorized by K.S.A. 65-665 (i)(2), K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966; revoked June 4, 2010.)

28-21-10. (Authorized by K.S.A. 65-665 (j), K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966; revoked June 4, 2010.)

28-21-11. (Authorized by K.S.A. 65-665 (k), K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966; revoked June 4, 2010.)

B. WHEAT FLOUR AND RELATED PRODUCTS

28-21-20. (Authorized by K.S.A. 1979 Supp. 65-663, 65-673; effective Jan. 1, 1966; revoked May 1, 1980.)

28-21-20a. (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

28-21-21. (Authorized by K.S.A. 1979 Supp. 65-663, 65-673; effective Jan. 1, 1966; revoked May 1, 1980.)

28-21-40a. (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

28-21-41. (Authorized by K.S.A. 1979 Supp. 65-663, 65-673; effective Jan. 1, 1966; revoked May 1, 1980.)

28-21-41a. (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

28-21-42. (Authorized by K.S.A. 1979 Supp. 65-663, 65-673; effective Jan. 1, 1966; revoked May 1, 1980.)

28-21-42a. (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

28-21-43. (Authorized by K.S.A. 1979 Supp. 65-663, 65-673; effective Jan. 1, 1966; revoked May 1, 1980.)

28-21-43a. (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

28-21-44. (Authorized by K.S.A. 1979 Supp. 65-663, 65-673; effective Jan. 1, 1966; revoked May 1, 1980.)

28-21-44a. (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

D. MACARONI AND NOODLE PRODUCTS

28-21-50. (Authorized by K.S.A. 1979 Supp. 65-663, 65-673; effective Jan. 1, 1966; revoked May 1, 1980.)

28-21-50a. (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

28-21-51. (Authorized by K.S.A. 1979 Supp. 65-663, 65-673; effective Jan. 1, 1966; revoked May 1, 1980.)

28-21-51a. (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

28-21-52. (Authorized by K.S.A. 1979 Supp. 65-663, 65-673; effective Jan. 1, 1966; revoked May 1, 1980.)

28-21-52a. (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

28-21-53. (Authorized by K.S.A. 1979 Supp. 65-663, 65-673; effective Jan. 1, 1966; revoked May 1, 1980.)

28-21-53a. (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

28-21-54. (Authorized by K.S.A. 1979 Supp. 65-663, 65-673; effective Jan. 1, 1966; revoked May 1, 1980.)

28-21-54a. (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

28-21-55. (Authorized by K.S.A. 1979 Supp. 65-663, 65-673; effective Jan. 1, 1966; revoked May 1, 1980.)

28-21-55a. (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

28-21-56. (Authorized by K.S.A. 1979 Supp. 65-663, 65-673; effective Jan. 1, 1966; revoked May 1, 1980.)

28-21-56a. (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

28-21-57. (Authorized by K.S.A. 1979 Supp. 65-663, 65-673; effective Jan. 1, 1966; revoked May 1, 1980.)

28-21-57a. (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

28-21-58. (Authorized by K.S.A. 1979 Supp. 65-663, 65-673; effective Jan. 1, 1966; revoked May 1, 1980.)

28-21-58a. (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

28-21-59. (Authorized by K.S.A. 1979 Supp. 65-663, 65-673; effective Jan. 1, 1966; revoked May 1, 1980.)

28-21-59a. (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

E. FRUIT BUTTERS, JELLIES AND PRESERVES

28-21-60. (Authorized by K.S.A. 1979 Supp. 65-663, 65-673; effective Jan. 1, 1966; revoked May 1, 1980.)

28-21-60a. (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

28-21-61. (Authorized by K.S.A. 1979 Supp. 65-663, 65-673; effective Jan. 1, 1966; revoked May 1, 1980.)

28-21-61a. (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

28-21-62. (Authorized by K.S.A. 1979 Supp. 65-663, 65-673; effective Jan. 1, 1966; revoked May 1, 1980.)

28-21-62a. (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

28-21-63 and 28-21-64. (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

F. DRESSINGS FOR FOODS

28-21-70. (Authorized by K.S.A. 1979 Supp. 65-663, 65-673; effective Jan. 1, 1966; revoked May 1, 1980.)

28-21-70a. (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

28-21-71. (Authorized by K.S.A. 1979 Supp. 65-663, 65-673; effective Jan. 1, 1966; revoked May 1, 1980.)

28-21-71a. (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

28-21-72. (Authorized by K.S.A. 1979 Supp. 65-663, 65-673; effective Jan. 1, 1966; revoked May 1, 1980.)

28-21-72a. (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

G. HAMBURGER AND PORK SAUSAGE

28-21-80. Authorized by K.S.A. 65-663, K.S.A. 1972 Supp. 65-673; effective Jan. 1, 1966; revoked Jan. 1, 1973.)

28-21-81. (Authorized by K.S.A. 65-663, K.S.A. 1972 Supp. 65-673; effective Jan. 1, 1966; revoked Jan. 1, 1973.)

28-21-82 through 28-21-85. (Authorized by K.S.A. 65-663, K.S.A. 1972 Supp. 65-673; effective Jan. 1, 1973; revoked June 4, 2010.)

H. MILK AND MILK PRODUCTS

28-21-90. (Authorized by K.S.A. 1979 Supp. 65-663, 65-673; effective Jan. 1, 1966; revoked May 1, 1980.)

28-21-90a. (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked May 10, 1996.)

28-21-91. (Authorized by K.S.A. 1979 Supp. 65-663, 65-673; effective Jan. 1, 1966; revoked May 1, 1980.)

28-21-91a to 28-21-91b. (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked May 10, 1996.)

28-21-92. (Authorized by K.S.A. 1979 Supp. 65-663, 65-673; effective Jan. 1, 1966; revoked May 1, 1980.)

28-21-92a. (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked May 10, 1996.)

28-21-93. (Authorized by K.S.A. 1979 Supp. 65-663, 65-673; effective Jan. 1, 1966; revoked May 1, 1980.)

28-21-93a. (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked May 10, 1996.)

28-21-94. (Authorized by K.S.A. 1979 Supp. 65-663, 65-673; effective Jan. 1, 1966; revoked May 1, 1980.)

28-21-94a. (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked May 10, 1996.)

28-21-95 and 28-21-96. (Authorized by K.S.A. 1979 Supp. 65-663, 65-673; effective Jan. 1, 1966; revoked May 1, 1980.)

28-21-96a. (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked May 10, 1996.)

28-21-97 and 28-21-98. (Authorized by K.S.A. 1979 Supp. 65-663, 65-673; effective Jan. 1, 1966; revoked May 1, 1980.)

28-21-98a. (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked May 10, 1996.)

28-21-99. (Authorized by K.S.A. 1979 Supp. 65-663, 65-673; effective Jan. 1, 1966; revoked May 1, 1980.)

28-21-99a. (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked May 10, 1996.)

28-21-100 and 28-21-101. (Authorized by K.S.A. 1979 Supp. 65-663, 65-673; effective Jan. 1, 1966; revoked May 1, 1980.)

28-21-102 to 28-21-107. (Authorized by K.S.A. 65-663, K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966; revoked May 10, 1996.)

28-21-108. (Authorized by K.S.A. 1968 Supp. 65-673; effective Jan. 1, 1969; revoked May 10, 1996.)

28-21-109 to 28-21-111. (Authorized by K.S.A. 1968 Supp. 65-673; effective Jan. 1, 1969; revoked May 10, 1996.)

28-21-112. (Authorized by K.S.A. 1968 Supp. 65-673; effective Jan. 1, 1969; revoked May 10, 1996.)

I. DRUGS AND THERAPEUTIC DEVICES

28-21-200. Drugs; name. (a) The name by which a drug is designated shall be clearly distinguishing and differentiating from any name recognized in an official compendium unless such drug complies in identity with the identity prescribed in an official compendium under such recognized name.

(b) The term "drug defined in an official compendium" means a drug having the identity prescribed for a drug in an official compendium.

(c) A statement that a drug defined in an official compendium differs in strength, quality, or purity from the standard of strength, quality, or purity set forth for such drug in an official compendium shall show all the respects in which such drug so differs, and the extent of each such difference. (Authorized by K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966.)

28-21-201. Drugs and devices; labeling, misbranding. (a) Among representations in the labeling of a drug or device which render such drug or device misbranded is a false or misleading representation with respect to another drug or device or a food or cosmetic.

(b) The labeling of a drug which contains two or more ingredients may be misleading by reason (among other reasons) of the designation of such drug in such labeling by a name which includes or suggests the name of one or more but not all such ingredients, even though the names of all such ingredients are stated elsewhere in the labeling. (Authorized by K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966.)

28-21-202. Drugs and devices; labeling requirements. (a) If a drug or device is not manufactured by the person whose name appears on the label, the name shall be qualified by a phrase which reveals the connection such person has with such drug or device, such as "Manufactured for and Packed by _____," "Distributed by _____," or other similar phrase which expresses the facts.

(b) The statement of the place of business shall include the street address, if any, of such place, unless such street address is shown in a current city directory or telephone directory.

(c) Where a person manufactures, packs, or distributes a drug or device at a place other than his principal place of business, the label may state the principal place of business in lieu of the actual place where each package of such drug or device was manufactured or packed or is to be distributed, if such statement is not misleading in any particular.

(d) The requirement that the label shall contain the name and place of business of the manufacturer, packer, or distributor shall not be considered to relieve any drug or device from the requirement that its label shall not be misleading in any particular.

(e)(1) The statement of the quantity of the contents of a package of a drug shall reveal the quantity of such drug in the package, exclusive of wrappers and other material packed with such drug.

(2) The statement shall be expressed in the terms of weight, measure, numerical count, or a combination of numerical count and weight or measure, which are generally used by consumers and users of such drug to express quantity thereof and which give accurate information as to such

quantity. But if no general usage in expressing accurate information as to the quantity of such drug exists among consumers and users thereof, the statement of the quantity of a drug which is not in tablet, capsule, ampul, or other unit form shall be in terms of weight if the drug is solid, semisolid, or viscous, or in terms of measure if the drug is liquid; the statement of the quantity of a drug which is in such unit form shall be in terms of the numerical count of such units, supplemented, when necessary to give accurate information as to the quantity of such drug in the package, by such statement (in such terms, manner, and form as are not misleading) of the weight or measure of such units, or of the quantity of each active ingredient in each such unit, as will give such information.

(3) The statement of the quantity of a device shall be expressed in terms of numerical count.

(f) A statement of weight shall be in terms of the avoirdupois pound, ounce, and grain, or of the kilogram, gram, and milligram. A statement of liquid measure shall be in terms of the United States gallon of 231 cubic inches and quart, pint, fluid ounce, and fluid dram subdivisions thereof, or of the liter, milliliter, or cubic centimeter, and shall express the volume at 68°Fahrenheit (20°Centigrade).

(g) Statements of the quantity of a drug shall contain only such fractions as are generally used in expressing the quantity of such drug. A common fraction shall be reduced to its lowest terms; a decimal fraction shall not be carried out to more than three places, except in the case of a statement of the quantity of an active ingredient in a unit of a drug.

(h)(1) Unless made in accordance with the provisions of subparagraph (2) of this paragraph, a statement of the quantity of a drug, in the terms of weight or measure applicable to such drug under the provisions of paragraph (e)(2) of this section, shall express the number of the largest unit specified in paragraph (f) of this section which is contained in the package (for example, the statement of the label of a package which contains one pint of a drug shall be "1 pint," and not "16 fluid ounces"). Where such number is a whole number and a fraction, there may be substituted for the fraction its equivalent in smaller units, if any smaller is specified in such paragraph (f) (for example, 1¼ pounds may be expressed as "1 pound 4 ounces"). The stated number of any unit which is smaller than the largest unit (specified in such paragraph (f)) contained in the package shall not equal or ex-

ceed the number of such smaller units in the next larger unit so specified (for example, instead of "1 quart 16 fluid ounces" the statement shall be "1½ quarts" or "1 quart 1 pint").

(2) In the case of a drug with respect to which there exists an established custom of stating the quantity of the contents as a fraction of a unit, which unit is larger than the quantity contained in the package, or as units smaller than the largest unit contained therein, the statement may be made in accordance with such custom if it is informative to consumers.

(i) The statement of the quantity of a drug or device shall express the minimum quantity, or the average quantity, of the contents of the packages. If the statement is not so qualified as to show definitely that the quantity expressed is the minimum quantity, the statement, except in the case of ampuls, shall be considered to express the average quantity. The statement of the quantity of a drug in ampuls shall be considered to express the minimum quantity.

(j) Where the statement expresses the minimum quantity, no variation below the stated minimum shall be permitted except variations below the stated weight or measure of a drug caused by ordinary and customary exposure, after such drug is introduced into commerce, to conditions which normally occur in good distribution practice and which unavoidably result in decreased weight or measure. Variations above the stated minimum shall not be unreasonably large. In the case of a liquid drug in ampuls the variation above the stated measure shall comply with the excess volume prescribed by the national formulary for filling of ampuls.

(k) Where the statement does not express the minimum quantity:

(1) Variations from the stated weight or measure of a drug shall be permitted when caused by ordinary and customary exposure, after such drug is introduced into commerce, to conditions which normally occur in good distribution practice and which unavoidably result in change of weight or measure;

(2) Variations from the stated weight, measure, or numerical count of a drug or device shall be permitted when caused by unavoidable deviations in weighing, measuring, or counting the contents of individual packages which occur in good packing practice. But under subparagraph (2) of this paragraph variations shall not be permitted to such extent that the average of the quantities in

the packages comprising a shipment or other delivery of the drug or device is below the quantity stated and no unreasonable shortage in any package shall be permitted, even though overages in other packages in the same shipment or delivery compensate for such shortage.

(l) The extent of variations from the stated quantity of the contents permissible under paragraphs (j) and (k) of this regulation in the case of each shipment or under delivery shall be determined by the facts in such case.

(m) A drug or device shall be exempt from compliance with the requirements of clause (2) of K.S.A. 65-669(b):

(1) The statement of the quantity of the contents, as expressed in terms applicable to such drug or device under the provisions of paragraph (e)(2) of this section, together with all other words, statements, and information required by or under authority of the act to appear on the label of such drug or device, cannot, because of insufficient label space, be so placed on the label as to comply with the requirements of K.S.A. 65-669(c) and regulations promulgated thereunder, or

(2) The quantity of the contents of the package, as expressed in terms of the numerical count in compliance with paragraph (e)(2) or (3) of this section, is less than six units, and such units can be easily counted without opening the package, or

(3) It is an ointment, is labeled "Sample" or "Physician's Sample," or with a substantially similar statement, and the contents of the package do not weigh more than 8 grams. (Authorized by K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966.)

28-21-203. Drugs and devices; forms of making required statements. (a) A word, statement, or other information required by or under authority of the Act to appear on the label may lack that prominence and conspicuousness required by K.S.A. 65-669(c) by reason (among other reasons) of:

(1) The failure of such word, statement, or information to appear on the part or panel of the label which is presented or displayed under customary conditions of purchase;

(2) The failure of such word, statement, or information to appear on two or more parts or panels of the label, each of which has sufficient space therefor, and each of which is so designed as to render it likely to be, under customary conditions of purchase, the part or panel displayed;

(3) The failure of the label to extend over the area of the container or package available for such extension, so as to provide sufficient label space for the prominent placing of such word, statement, or information;

(4) Insufficiency of label space (for the prominent placing of such word, statement, or information) resulting from the use of label space for any word, statement, design, or device which is not required by or under authority of the act to appear on the label;

(5) Insufficiency of label space (for the prominent placing of such word, statement, or information) resulting from the use of label space to give materially greater conspicuousness to any other word, statement, or information, or to any design or device; or

(6) Smallness or style of type in which such word, statement, or information appears, insufficient background contrast, obscuring designs or vignettes, or crowding with other written, printed, or graphic matter.

(b) No exemption depending on insufficiency of label space, as prescribed in regulations promulgated under K.S.A. 65-669(b) or (e) shall apply if such insufficiency is caused by:

(1) The use of label space for any word, statement, design, or device which is not required by or under authority of the act to appear on the label;

(2) The use of label space to give greater conspicuousness to any word, statement, or other information than is required by K.S.A. 65-669(c); or

(3) The use of label space for any representation in a foreign language.

(c)(1) All words, statements, and other information required by or under authority of the act to appear on the label or labeling shall appear thereon in the English language.

(2) If the label contains any representation in a foreign language, all words, statements, and other information required by or under authority of the act to appear on the label shall appear thereon in the foreign language.

(3) If the labeling contains any representation in a foreign language, all words, statements, and other information required by or under authority of the act to appear on the label or labeling shall appear on the labeling in the foreign language. (Authorized by K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966.)

28-21-204. Habit-forming drugs; label requirements. (a)(1) The name of a substance

or derivative required to be borne on the label of a drug by K.S.A. 65-669(d) shall be the common or usual name of such substance or derivative, unless it is designated solely by a name recognized in an official compendium and such designation complies with the provisions of K.S.A. 65-669(c).

(2) A statement on the label of a drug of the name of a constituent, which constituent is a chemical derivative of a substance named in K.S.A. 65-669(d), shall show the substance from which such constituent is derived and that such constituent is a derivative thereof.

(b) If the drug is in tablet, capsule, ampul, or other unit form, the statement of the quantity or proportion of such substance or derivative contained therein shall express the weight or measure of such substance or derivative in each such unit. If the drug is not in such unit form the statement shall express the weight or measure of such substance or derivative in a specified unit of weight or measure of the drug. Such statement shall be in terms which are informative to the ordinary consumer and user of the drug.

(c) The names and quantities or proportions of all such substances and derivatives, and the statement "Warning—May be habit forming," shall immediately follow (without intervening written, printed, or graphic matter) the name by which such drug is titled in the part or panel of the label thereof which is presented or displayed under customary conditions of purchase.

(d) A drug shall not be considered to be misbranded by reason of failure of its label to bear the statement "Warning—May be habit forming":

(1) If such drug is not suitable for internal use, and is distributed and sold exclusively for such external use as involves no possibility of habit formation; or

(2) If the only substance or derivative subject to K.S.A. 65-669(d) contained in such drug is chlorobutanol, which is present solely as a preservative and in a quantity not more than 0.5 percent by weight, and such drug is for parenteral use only; or

(3) If the only substance or derivative subject to K.S.A. 65-669 (d) contained in such drug is chlorobutanol, which is present as an analgesic or as an analgesic and a preservative in a quantity not more than 3.0 percent, and such drug contains one or more other active ingredients and is for parenteral use only. (Authorized by K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966.)

28-21-205. Drugs; statement of ingredients and proportion.

(a)(1) The name of an ingredient, substance, derivative, or preparation required by K.S.A. 65-669(e)(1)(ii) to be borne on the label of a drug shall be the name thereof, which is listed in K.S.A. 65-669(e)(1)(ii), or, if not so listed, shall be a specific name and not a collective name. But if an ingredient is an article the name of which is recognized in an official compendium and such article complies with the specifications set forth therefor in such compendium, such ingredient may be designated on the label of such drug by the common or usual name under which such specifications are so set forth.

(2) Where an ingredient contains a substance the quantity or proportion of which is required by K.S.A. 65-669(e)(1)(ii) to appear on the label, and such ingredient is not a derivative or preparation of such substance as defined in paragraph (b)(1) of this section, the label shall bear, in conjunction with the name of the ingredient, a statement of the quantity or proportion of such substance in such drug.

(3) An abbreviation or chemical formula shall not be considered to be a common or usual name. The name "acetophenetidin" shall be considered to be the same as the name "acetphenetidn," "aminopyrine" the same as "amidopyrine." The name "alcohol" without qualification, means ethyl alcohol.

(b)(1) A derivative or preparation of a substance named in K.S.A. 65-669(e)(1)(ii) is an article which is derived or prepared from such substance by any method, including actual or theoretical chemical action.

(2) A statement on the label of a drug of the name of an ingredient thereof, which ingredient is a derivative or preparation of a substance named in K.S.A. 65-669(e)(1)(ii), shall show the substance from which such ingredient is derived or prepared and that such ingredient is a derivative or preparation thereof.

(c)(1) If the drug is in tablet, capsule, ampul, or other unit form, the statement of the quantity or proportion of a substance, derivative, or preparation contained therein shall express the weight or measure of such substance, derivative, or preparation in each such unit. If the drug is not in such unit form the statement shall express the weight or measure of such substance, derivative, or preparation in a specified unit of weight or measure of the drug, or the percentage of such substance, derivative, or preparation in such drug. Such statement

shall be in terms which are informative to the ordinary consumer and user of the drug.

(2) A statement of the percentage of alcohol shall express the percentage of absolute alcohol at 60° Fahrenheit (15.56° Centigrade). A statement of the percentage of a substance, derivative, or preparation other than alcohol shall express the percentage by weight; except that if both the substance, derivative, or preparation and the drug containing it are liquid, the statement may express the percentage by volume at 68° Fahrenheit (20° Centigrade), but in such case the statement shall be so qualified as to show definitely that the percentage is expressed by volume.

(d) In case a statement of the quantity or proportion of a derivative or preparation in a drug is not as informative, to consumers or users of such drug, of the activity or consequences of use thereof as a statement of the quantity or proportion of the substance from which such derivative or preparation is derived or prepared, the quantity or proportion of such substance shall also be stated on the label of such drug.

(e) A label of a drug may be misleading by reason (among other reasons) of:

(1) The order in which the names of ingredients, substances, derivatives, or preparations appear thereon, or the relative prominence otherwise given such names; or

(2) Its failure to reveal the proportion of, or other fact with respect to, an ingredient, substance, derivative, or preparation, when such proportion or other fact is material in the light of the representation that such ingredient, substance, derivative, or preparation is a constituent of such drug.

(f)(1) A drug shall be exempt from the requirements of clause (1)(ii) of K.S.A. 65-669 (e) if all words, statements, and other information required by or under authority of the act to appear on the label of such drug, cannot, because of insufficient label space, be so placed on the label as to comply with the requirements of K.S.A. 65-669(c) and regulations promulgated thereunder. But such exemption shall be on the condition that, if the omission from the label of the statement of the quantity of the contents affords sufficient space to state legibly thereon all the information required by such clause (1)(ii), such statement of the quantity of the contents shall be omitted as authorized by paragraph (m) of regulation 28-21-202 and the information required by such clause (1)(ii) shall be so stated as prominently as practicable even though the statement is not of such conspicuousness as to render it

likely to be read by the ordinary individual under customary conditions of purchase.

(2) A drug shall be exempt from the requirements of clause (1)(ii) of K.S.A. 65-669(e) with respect to the alkaloids atropine, hyoscyne or hyoscyamine contained in such drug, if such alkaloid is contained therein as a constituent of belladonna, hyoscyamus, scopolia, stramonium, or other plant material, or any preparation thereof, which was used as an ingredient of such drug, and no practical and accurate method of analysis exists for the quantitative determination of each such alkaloid in such ingredient. But such exemptions shall be on the condition that the label of such drug shall state the quantity or proportion of total alkaloids contained therein as constituents of such ingredient. (Authorized by K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966.)

28-21-206. Drugs and devices; directions for use. (a) *Adequate directions for use.* "Adequate directions for use" means directions under which the layman can use a drug or device safely and for the purposes for which it is intended. Directions for use may be inadequate because (among other reasons) of omission, in whole or in part, or incorrect specifications of:

(1) Statements of all conditions, purposes, or uses for which such drug or device is intended, including conditions, purposes, or uses for which it is prescribed, recommended, or suggested in its oral, written, printed, or graphic advertising, and conditions, purposes, or uses for which the drug or device is commonly used; except that such statements shall not refer to conditions, uses, or purposes for which the drug or device can be safely used only under the supervision of a practitioner licensed by law and for which it is advertised solely to such practitioner.

(2) Quantity of dose (including usual quantities for each of the uses for which it is intended and usual quantities for persons of different ages and different physical conditions).

(3) Frequency of administration or application.

(4) Duration of administration or application.

(5) Time of administration or application (in relation to time of meals, time of onset of symptoms, or other time factors).

(6) Route or method of administration or application.

(7) Preparation for use (shaking, dilution, adjustment of temperature, or other manipulation or process).

(b) *Exemption for prescription drugs.* A drug subject to the requirements of K.S.A. 65-669(q) shall be exempt from K.S.A. 65-669(f)(1) if all the following conditions are met:

(1) The drug is: (I) in the possession of a person (or his agents or employees) regularly and lawfully engaged in the manufacture, transportation, storage, or wholesale distribution of prescription drugs; or (II) in the possession of a retail, hospital, or clinic pharmacy, or a public health agency, regularly and lawfully engaged in dispensing prescription drugs; and is to be dispensed in accordance with K.S.A. 65-669(q).

(2) The label of the drug bears: (I) The statement "Caution: Federal law prohibits dispensing without prescription;" and (II) the recommended or usual dosage; and (III) the route of administration, if it is not for oral use; and (IV) if it is fabricated from two or more ingredients and is not designated conspicuously by a name recognized in an official compendium, the quantity or proportion of each active ingredient, and if it is not for oral use the names of all other ingredients. *Provided, however,* That the information referred to in subdivisions (II), (III), and (IV) of this subparagraph may be contained in the labeling on or within the package from which it is to be dispensed, and, in the case of ampuls too small or otherwise unable to accommodate a label but which are packaged in a container from which they are withdrawn for dispensing or use, the information referred to in subdivision (I) of this subparagraph may be placed on the outside container only.

(3) The labeling of the drug (which may include brochures readily available to licensed practitioners) bears information as to the use of the drug by practitioners licensed by law to administer it: *Provided, however,* That such information may be omitted from the labeling if it is contained in scientific literature widely disseminated among practitioners licensed by law to administer the drug.

(c) *Exemption for veterinary drugs.* A drug intended solely for veterinary use which, because of toxicity or other potentiality for harmful effect, or the method of its use, is not safe for animal use except under the supervision of a licensed veterinarian, and hence for which "adequate directions for use" cannot be prepared, shall be exempt from K.S.A. 65-669 (f)(1) if all the following conditions are met:

(1) The drug is in the possession of a person (or his agents or employees) regularly and lawfully engaged in the manufacture, transportation, storage,

or wholesale or retail distribution of veterinary drugs and is to be sold only to or on the prescription or other order of a licensed veterinarian for use in the course of his professional practice.

(2) The label of a drug bears: (I) The statement "Caution: Federal law restricts this drug to sale by or on the order of a licensed veterinarian"; and (II) the recommended or usual dosage; and (III) the route of administration, if it is not for oral use; and (IV) the quantity or proportion of each active ingredient if it is fabricated from two or more ingredients and is not designated conspicuously by a name recognized in an official compendium. *Provided, however,* That the information referred to in subdivisions (II), (III), and (IV) of this subparagraph may be contained in the labeling on or within the package from which it is to be dispensed.

(3) The labeling of the drug (which may include brochures readily available to licensed veterinarians) bears information as to use of the drug by licensed veterinarians: *Provided, however,* That such information may be omitted from the labeling if it is contained in scientific literature widely disseminated among veterinarians licensed by law to administer such drug.

(d) *Exemption for prescription devices.* A device which, because of any potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe except under the supervision of a practitioner licensed by law to direct the use of such device, and hence for which "adequate directions for use" cannot be prepared, shall be exempt from K.S.A. 65-669(f) (1) if all the following conditions are met:

(1) The device is in the possession of a person (or his agents or employees) regularly and lawfully engaged in the manufacture, transportation, storage, or wholesale or retail distribution of such device and is to be sold only to or on the prescription or other order of such practitioner for use in the course of his professional practice.

(2) The label of the device (other than surgical instruments) bears: (I) The statement "Caution: Federal law restricts this device to sale by or on the order of a _____," the blank to be filled with the word "physician," "dentist," "veterinarian," or with the descriptive designation of any other practitioner licensed by the law of Kansas; and (II) the method of its application or use.

(3) The labeling of the device (which may include brochures readily available to licensed practitioners) bears information as to the use of the device by practitioners licensed by law to use it

or direct its use: *Provided, however*, That such information may be omitted from the labeling if it is contained in scientific literature widely disseminated among practitioners licensed by law to use or order the use of such device.

(e) *Exemptions for drugs and devices shipped directly to licensed practitioners, hospitals, clinics, or public-health agencies for professional use.* Except as provided in paragraph (g) of this section, a drug or device shipped directly to or in the possession of a practitioner licensed by law to administer the drug or to use or direct the use of the device, or shipped directly to or in the possession of a hospital, clinic, or public-health agency, for use in the course of the professional practice of such a licensed practitioner, shall be exempt from K.S.A. 65-669(f)(1) if it meets the conditions of paragraphs (b)(2) and (3), (c)(2) and (3), or (d)(2) and (3) of this section.

(f) *Retail exemption for veterinary drug and prescription devices.* A drug or device subject to paragraph (c) or (d) of this section shall be exempt at the time of delivery to the ultimate purchaser or user from K.S.A. 65-669(f)(1) if it is delivered by a licensed practitioner in the course of his professional practice or upon a prescription or other order lawfully issued in the course of his professional practice, with labeling bearing the name and address of such licensed practitioner and the directions for use and cautionary statements, if any, contained in such order.

(g) *Exemption for new drugs.* A new drug shall be exempt from K.S.A. 65-669(f)(1):

(1) To the extent to which such exemption is claimed in an effective application with respect to such drug under section 505 of the federal act; or

(2) If no application under section 505 of the federal act is effective with respect to such drug but it complies with section 505 (i) and regulations thereunder.

No exemption shall apply to any other drug which would be a new drug if its labeling bore representations for its intended uses.

(h) *Exemption for drugs or devices when directions are commonly known.* A drug or device shall be exempt from K.S.A. 65-669(f)(1) insofar as adequate directions for common uses thereof are known to the ordinary individual.

(i) *Exemptions for inactive ingredients.* A harmless drug that is ordinarily used as an inactive ingredient, such as a coloring, emulsifier, excipient, flavoring, lubricant, preservative, or solvent, in the preparation of other drugs shall be exempt from

K.S.A. 65-669(f)(1). This exemption shall not apply to any substance intended for a use which results in the preparation of a new drug, unless an effective new-drug application provides for such use.

(j) *Exemption for diagnostic reagents.* A drug intended solely for use in the professional diagnosis of disease and which is generally recognized by qualified experts as useful for that purpose shall be exempt from K.S.A. 65-669(f)(1) if its label bears the statement “diagnostic reagent—for professional use only.”

(k) *Exemption for prescription chemicals and other prescription components.* A drug prepared, packaged, and primarily sold as a prescription chemical or other component for use by registered pharmacists in compounding prescriptions or for dispensing in dosage unit form upon prescriptions shall be exempt from K.S.A. 65-669 (f)(1) if all the following conditions are met:

(1) The drug is an official liquid acid or official liquid alkali, or is not a liquid solution, emulsion, suspension, tablet, capsule, or other dosage unit form; and

(2) The label of the drug bears: (I) The statement “for prescription compounding;” and (II) if in substantially all dosage forms in which it may be dispensed it is subject to K.S.A. 65-669(q)(A), the statement “Caution: Federal law prohibits dispensing without prescription;” or (III) if it is not subject to K.S.A. 65-669(q)(A) and is by custom among retail pharmacists sold in or from the package for use by consumers, “adequate directions for use” in the conditions for which it is so sold. *Provided, however*, That the information referred to in subdivision (III) of this subparagraph may be contained in the labeling on or within the package from which it is to be dispensed.

(3) This exemption shall not apply to any substance intended for use in compounding which results in a new drug, unless an effective new-drug application covers such use of the drug in compounding prescriptions.

(l) *Exemption for processing, repacking, or manufacture.* A drug in a bulk package (except tablets, capsules, or other dosage unit forms) or a device intended for processing, repacking, or use in the manufacture of another drug or device shall be exempt from K.S.A. 65-669(f)(1) if its label bears the statement “Caution: For manufacturing, processing, or repacking;” and, if in substantially all dosage forms in which it may be dispensed it is subject to section 15(k)(1) of the act, the statement “Caution: Federal law prohib-

its dispensing without prescription.” This exemption and the exemption under paragraph (k) of this section may be claimed for the same article. But the exemption shall not apply to a substance intended for a use in manufacture, processing, or repacking which causes the finished article to be a new drug, unless:

(1) An effective new-drug application held by the person preparing the dosage form or drug for dispensing covers the production and delivery to him of such substance; or

(2) If no application is effective with respect to such new drug, the label statement “Caution: For manufacturing, processing, or repacking” is immediately supplemented by the words “in the preparation of a new drug limited by federal law to investigational use,” and the delivery is made for use only in the manufacture of such new drug limited to investigational use as provided in federal regulation 1.114.

(m) *Exemption for drugs and devices for use in teaching, research, and analysis.* A drug or device subject to paragraph (b), (c), or (d) of this section shall be exempt from K.S.A. 65-669(f)(1) if shipped or sold to, or in the possession of, persons regularly and lawfully engaged in instruction in pharmacy, chemistry, or medicine not involving clinical use, or engaged in research not involving clinical use, or in chemical analysis, or physical testing, and is to be used only for such instruction, research, analysis, or testing.

(n) *Expiration of exemptions.* (1) If a shipment or delivery, or any part thereof, of a drug or device which is exempt under the regulations in this section is made to a person in whose possession the article is not exempt, or is made for any purpose other than those specified, such exemption shall expire, with respect to such shipment or delivery or part thereof, at the beginning of that shipment or delivery. The causing of an exemption to expire shall be considered an act which results in such drug or device being misbranded unless it is disposed of under circumstances in which it ceases to be a drug or device.

(2) The exemptions conferred by paragraphs (i), (j), (k), (l), and (m) of this section shall continue until the drugs or devices are used for the purposes for which they are exempted, or until they are relabeled to comply with K.S.A. 65-669 (f)(1). If, however, the drug is converted, compounded, or manufactured into a dosage form limited to prescription dispensing, no exemption shall thereafter apply to the article unless the dosage form is

labeled as required by K.S.A. 65-669 (q) and paragraph (b), (c), or (d) of this section.

(o) *Intended uses.* The words “intended uses” or words of similar import in paragraphs (a), (g), (i), (j), and (l) of this section refer to the objective intent of the persons legally responsible for the labeling of drugs and devices. The intent is determined by such persons’ expressions or may be shown by the circumstances surrounding the distribution of the article. This objective intent may, for example, be shown by labeling claims, advertising matter, or oral or written statements by such persons or their representatives. It may be shown by the circumstance that the article is, with the knowledge of such persons or their representatives, offered and used for a purpose for which it is neither labeled nor advertised. The intended uses of an article may change after it has been introduced into commerce by its manufacturer. If, for example, a packer, distributor, or seller intends an article for different uses than those intended by the person from whom he received the drug or device, such packer, distributor, or seller is required to supply adequate labeling in accordance with the new intended uses. But if a manufacturer knows, or has knowledge of facts that would give him notice, that a drug or device introduced into commerce by him is to be used for conditions, purposes, or uses other than the ones for which he offers it, he is required to provide adequate labeling for such a drug or device which accords with such other uses to which the article is to be put. (Authorized by K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966.)

J. MANUFACTURE AND USE OF LAETRILE

28-21-250. Definitions. (a) The term “laetrile” (with a small l) is a generic term which is used interchangeably with “Laetrile,” “nitriloxide,” “amygdalin,” “vitamin B-17” and related compounds of unknown number. The term is also used to include a number of these compounds, in which case it may appear as “laetriles.”

(b) “Laetrile” (with a capital L) is a specific chemical entity with a specific chemical formula of 1-mandelonitrile-beta-glucuronic acid. This is a registered trade name.

(c) “Amygdalin” is a specific chemical entity having a specific chemical formula of D-mandelonitrile-beta-D-glucoside-6-beta-D-glucoside. Mandelonitrile is a chemical in which cyanide is combined with benzaldehyde. Amygdalin is a laetrile compound but is not “Laetrile.” Only amygdalin (la-

etrile) has been authorized to be manufactured and used in the state of Kansas and is hereafter referred to in these regulations.

(d) The term "component" means any ingredient intended for use in the manufacture of amygdalin (laetrile) in dosage form, including those that may not appear in the finished product.

(e) The term "batch" means a specific quantity of amygdalin (laetrile) that has uniform character and quality, within specified limits, and is produced according to a single manufacturing order during the same cycle of manufacture.

(f) The term "lot" means a batch or any portion of a batch of amygdalin (laetrile) or, in the case of amygdalin (laetrile) produced by a continuous process, an amount of the substance produced in a unit of time or quantity in a manner that assures its uniformity, and in either case which is identified by a distinctive lot number and has uniform character and quality within specified limits.

(g) The terms "lot number" or "control number" means any distinctive combination of letters, or numbers, or both, from which the complete history of the manufacture, control, packaging, and distribution of a batch or lot of amygdalin (laetrile) can be determined.

(h) The term "active ingredient" means any component which is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease or to affect the structure or any function of the body of man or other animals. The term shall include those components which may undergo chemical change in the manufacture of amygdalin (laetrile) and be present in the finished product in a modified form intended to furnish the specified activity or effect.

(i) The term "inactive ingredient" means any component other than an "active ingredient" present in the product.

(j) The term "materials approval unit" means any organizational element having the authority and responsibility to approve or reject components, in-process materials, packaging components, and final products.

(k) The term "strength" means the concentration of the amygdalin (laetrile).

(l) The term "potency" means the therapeutic activity of amygdalin (laetrile) as indicated by appropriate laboratory tests or by adequately developed and controlled clinical data. (Authorized by K.S.A. 1978 Supp. 65-6b06 and 65-6b07; effective May 1, 1979.)

28-21-251. Manufacturing practice. (a) The criteria in each section of this regulation shall apply in determining whether the methods used in, or the facilities or controls used for, the manufacture, processing, packing, or holding of the product conform to or are operated or administered in conformity with current good manufacturing practice to assure that the product meets the requirements as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess.

(b) The regulations in this part permit the use of precision automatic, mechanical, or electronic equipment in the production and control of amygdalin (laetrile) when adequate inspection and checking procedures are used to assure proper performance. (Authorized by K.S.A. 1978 Supp. 65-6b06 and 65-6b07; effective May 1, 1979.)

28-21-252. Personnel. (a) The personnel responsible for directing the manufacture and control of amygdalin (laetrile) shall be adequate in number and background of education, training and experience, or combination thereof, to assure that the product has the safety, identity, strength, quality, and purity that it purports to possess. All personnel shall have capabilities commensurate with their assigned functions, a thorough understanding of the manufacturing or control operations they perform, the necessary training or experience, and adequate information concerning the reason for application of pertinent provisions of this part to their respective functions.

(b) Any person shown at any time (either by medical examination or supervisory observation) to have an apparent illness or open lesions that may adversely affect the safety or quality of the product shall be excluded from direct contact with the product until the condition is corrected. All employees shall be instructed to report to supervisory personnel any condition that may have such an adverse effect on the product. (Authorized by K.S.A. 1978 Supp. 65-6b06 and 65-6b07; effective May 1, 1979.)

28-21-253. Buildings or facilities. (a) Buildings shall be maintained in a clean and orderly manner and shall be of suitable size, construction, and location to facilitate adequate cleaning, maintenance, and proper operations in the manufacturing, processing, packing, labeling, or holding of amygdalin (laetrile). The buildings shall: (1) Provide adequate space for: (A) Orderly placement of equipment and materials to mini-

mize any risk of mixups between different drugs, drug components, in-process materials, packaging materials, or labeling, and to minimize the possibility of contamination.

(B) The receipt, storage, and withholding from use of components pending sampling, identification, and testing prior to release by the materials approval unit for manufacturing or packaging.

(C) The holdings of rejected components prior to disposition to preclude the possibility of their use in manufacturing or packaging procedures for which they are unsuitable.

(D) The storage of components, containers, packaging materials, and labeling.

(E) Any manufacturing and processing operations performed.

(F) Any packaging or labeling operations.

(G) Storage of finished products.

(H) Control and production-laboratory operations.

(2) Provide adequate lighting, ventilation, and screening and, when necessary for the intended production or control purposes, provide facilities for adequate air-pressure, micro-biological, dust, humidity, and temperature controls to: (A) Minimize contamination of products by extraneous adulterants, including cross-contamination of one product by dust or particles of ingredients arising from the manufacture, storage, or handling of another product.

(B) Minimize dissemination of micro-organisms from one (1) area to another.

(C) Provide suitable storage conditions for drug components, in-process materials, and finished product in conformance with adequate stability.

(3) Provide adequate locker facilities and hot and cold water washing facilities, including soap or detergent, air drier or single service towels, and clean toilet facilities near working areas.

(4) Provide an adequate supply of potable water under continuous positive pressure in a plumbing system free of defects that could cause or contribute to contamination of product. Drains shall be of adequate size and, where connected directly to a sewer, shall be equipped with traps to prevent back-siphonage.

(5) Provide suitable housing and space for care of all laboratory animals.

(6) Provide for safe and sanitary disposal of sewage, trash, and other refuse within and from the buildings and immediate premises. (Authorized by K.S.A. 1978 Supp. 65-6b06 and 65-6b07; effective May 1, 1979.)

28-21-254. Equipment. (a) Equipment used for the manufacture, processing, packing, labeling, holding, testing, or control of amygdalin (laetrile) shall be maintained in a clean and orderly manner and shall be of suitable design, size, construction, and location to facilitate cleaning, maintenance, and operation for its intended purpose. The equipment shall: (1) Be so constructed that all surfaces that come into contact with the product shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of amygdalin (laetrile) or its components beyond the official or other established requirements.

(2) Be so constructed that any substances required for operation of the equipment, such as lubricants or coolants, do not contact the product so as to alter the safety, identity, strength, quality, or purity of the substance or its components beyond the official or other established requirements.

(3) Be constructed and installed to facilitate adjustment, disassembly, cleaning and maintenance to assure the reliability of control procedures, uniformity of production, and exclusion from the product of contaminants from previous and current operations that might affect the safety, identity, strength, quality, or purity of amygdalin (laetrile) beyond the official or other established requirements. (Authorized by K.S.A. 1978 Supp. 65-6b06 and 65-6b07; effective May 1, 1979.)

28-21-255. Production and control procedures. (a) Production and control procedures shall include all reasonable precautions, including the following, to assure that the amygdalin (laetrile) produced has the safety, identity, strength, quality, and purity it purports to possess:

(1) Each significant step in the process, such as the selection, weighing, and measuring of components, the addition of ingredients during the process, weighing and measuring during various stages of the processing, and the determination of the finished yield, shall be performed by a competent and responsible individual and checked by a second competent and responsible individual; or if such steps in the processing are controlled by precision automatic, mechanical, or electronic equipment, their proper performance is adequately checked by one (1) or more competent individuals. The written record of the significant steps in the process shall be identified by the individual performing these tests and by the individual charged with checking these steps. Such

identifications shall be recorded immediately following completion of such steps.

(2) All containers and equipment used during the production of a batch of amygdalin (laetrile) shall be properly identified at all times to accurately and completely indicate their contents and, when necessary, the stage of processing of the batch.

(3) To minimize contamination and prevent mixups, equipment, utensils, and containers shall be thoroughly and appropriately cleaned and properly stored and have previous batch identification removed or obliterated between batches or at suitable intervals in continuous production operations.

(4) Appropriate precautions shall be taken to minimize microbiological and other contamination in the production of amygdalin (laetrile) purporting to be sterile or which by virtue of its intended use should be free from objectionable microorganisms.

(5) Appropriate procedures shall be established to minimize the hazard of cross-contamination of the product while being manufactured or stored.

(6) To assure the uniformity and integrity of the product, there shall be adequate in-process controls, such as checking the weights and disintegration times of tablets, the adequacy of mixing, the homogeneity of suspensions, and the clarity of solutions. In-process sampling shall be done at appropriate intervals using suitable equipment.

(7) Representative samples of all dosage forms of amygdalin (laetrile) shall be tested to determine their conformance with the specifications for the product before distribution.

(8) Procedures shall be instituted whereby review and approval of all production and control records, including packaging and labeling, shall be made prior to the release or distribution of a batch. A thorough investigation of any unexplained discrepancy or the failure of a batch to meet any of its specifications shall be undertaken whether or not the batch has already been distributed. This investigation shall be undertaken by a competent and responsible individual and shall extend to other batches of the same product and other ingredients that may have been associated with the specific failure. A written record of the investigation shall be made and shall include the conclusions and followup.

(9) Returned goods shall be identified as such and held. If the conditions under which returned goods have been held, stored, or shipped prior to

or during their return, or the condition of the product, its container, carton, or labeling as a result of storage or shipping, cast doubt on the safety, identity, strength, quality, or purity of the amygdalin (laetrile), the returned goods shall be destroyed or subjected to adequate examination or testing to assure that the material meets all appropriate standards or specifications before being returned to stock for warehouse distribution or repacking. If the product is neither destroyed nor returned to stock, it may be reprocessed provided the final product meets all its standards and specifications. Records of returned goods shall be maintained and shall indicate the quantity returned, date, and actual disposition of the product. If the reason for returned goods implicates associated batches, an appropriate investigation shall be made with the requirements of paragraph (8) of this section.

(10) Filters used in the manufacture, processing, or packaging of components of amygdalin (laetrile) for parenteral injection in humans shall not release fibers into such products. No asbestos-containing or other fiber-releasing filter may be used in the manufacture, processing, or packaging of such products. Filtration, as needed, shall be through a non-fiber-releasing filter. For the purpose of this regulation a non-fiber-releasing filter is defined as non-asbestos filter that, after any appropriate pre-treatment such as washing or flushing, will not continue to release fibers into the drug product or component that is being filtered. A fiber is defined as any particle with length at least three (3) times greater than its width. (Authorized by K.S.A. 1978 Supp. 65-6b06 and 65-6b07; effective May 1, 1979.)

28-21-256. Components. (a) All components and other materials used in the manufacture, processing, and packaging of amygdalin (laetrile), and materials necessary for building and equipment maintenance, upon receipt shall be stored and handled in a safe, sanitary, and orderly manner. Adequate measures shall be taken to prevent mixups and cross-contamination affecting the components and final product. Components shall be withheld from use until they have been identified, sampled, and tested for conformance with established specifications and are released by a materials approval unit. Control of components shall include the following: (1) Each container of component shall be examined visually for damage or contamination prior to use, including examination for breakage of seals when indicated.

(2) An adequate number of samples shall be taken from a representative number of component containers from each lot and shall be subjected to one (1) or more tests to establish the specific identity.

(3) Representative samples of components liable to contamination with filth, insect infestation, or other extraneous contaminants shall be appropriately examined.

(4) Representative samples of all components intended for use as active ingredients shall be tested to determine their strength in order to assure conformance with appropriate specifications.

(5) Representative samples of components liable to microbiological contamination shall be subjected to microbiological tests prior to use. Such components shall not contain microorganisms that are objectionable in view of their intended use.

(6) Approved components shall be appropriately identified and retested as necessary to assure that they conform to appropriate specifications of identity, strength, quality, and purity at time of use. This requires the following: (A) Approved components shall be handled and stored to guard against contaminating or being contaminated by other drugs or components.

(B) Approved components shall be rotated in such a manner that the oldest stock is used first.

(C) Rejected components shall be identified and held to preclude their use in manufacturing or processing procedures for which they are unsuitable.

(7) Appropriate records shall be maintained, including the following:

(A) The identity and quantity of the component, the name of the supplier, the supplier's lot number, and the date of receipt.

(B) Examinations and tests performed and rejected components and their disposition.

(C) An individual inventory and record for each component used in each batch of amygdalin (laetrile) manufactured or processed.

(8) An appropriately identified reserve sample of all active ingredients consisting of at least twice the quantity necessary for all required tests, except those for sterility and determination of the presence of pyrogens, shall be retained for at least two (2) years after distribution of the last lot incorporating the component has been completed or one (1) year after the expiration date of this last lot, whichever is longer. (Authorized by K.S.A. 1978 Supp. 65-6b06 and 65-6b07; effective May 1, 1979.)

28-21-257. Product containers and their packaging materials. (a) Suitable specifications, test methods, cleaning procedures, and, when indicated, sterilization procedures shall be used to assure that containers, closures, and other component parts of packages are suitable for their intended use. Product containers for amygdalin (laetrile) shall be cleansed with water which has been filtered through a non-fiber-releasing filter. Product containers and their components shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of the product or its components beyond the official or established requirements and shall provide adequate protection against external factors that can cause deterioration or contamination of the product. (Authorized by K.S.A. 1978 Supp. 65-6b06 and 65-6b07; effective May 1, 1979.)

28-21-258. Laboratory controls. (a) Laboratory controls shall include the establishment of scientifically sound and appropriate specifications, standards, and test procedures to assure that components, in-processed drugs, and finished products conform to appropriate standards of identity, strength, quality and purity. Laboratory controls shall include:

(1) The establishment of master records containing appropriate specifications for the acceptance of each lot of the components, product containers, and their components used in the production and packaging and description of the sampling and testing procedures used for them. Said samples shall be representative and adequately identified. Such record shall also provide for appropriate retesting of the components, product containers, and their components subject to deterioration.

(2) A reserve sample of all active ingredients is required.

(3) The establishment of master records, when needed, containing specifications and a description of sampling and testing procedures for in-process amygdalin (laetrile) preparations. Such samples shall be adequately representative and properly identified.

(4) The establishment of master records containing a description of sampling procedures and appropriate specifications for finished products. Such shall be adequately representative and properly identified.

(5) Adequate provisions for checking the identity and strength of amygdalin (laetrile) for all active ingredients and for assuring:

(A) Sterility of amygdalin (laetrile) purported to be sterile and freedom from objectionable micro-organisms for those products which should be so by virtue of their intended use.

(B) The absence of pyrogens for those products purporting to be pyrogen-free.

(C) That the release pattern of sustained release products is tested by laboratory methods to assure conformance to the release specifications.

(6) Adequate provision for auditing the reliability, accuracy, precision, and performance of laboratory test procedures and laboratory instruments used.

(7) A properly identified reserve sample of the finished product (stored in the same immediate container-closure system in which the product is marketed) consisting of at least twice the quantity necessary to perform all the required tests, except those for sterility and determination of the absence of pyrogens, and stored under conditions consistent with product labeling shall be retained for at least two (2) years after distribution has been completed or one (1) year after the product's expiration date, whichever is longer.

(8) Provision for retaining complete records of all laboratory data relating to each batch or lot of amygdalin (laetrile) to which they apply. Such records shall be retained for at least two (2) years after distribution has been completed or one (1) year after the product's expiration date, whichever is longer.

(9) Provision that animals shall be maintained and controlled in a manner that assures suitability for their intended use. They shall be identified and appropriate records maintained to determine the history of use.

(10) Provision that firms which manufacture non-penicillin products (including certifiable antibiotic products) on the same premises or use the same equipment as that used for manufacturing penicillin products, or that operate under any circumstances that may reasonably be regarded as conducive to contamination of other products by penicillin, shall test such non-penicillin products to determine whether any have become cross-contaminated by penicillin. Such products shall not be marketed if intended for use in man and the product is contaminated with an amount of penicillin equivalent to 0.05 (five one hundredths) unit or more of penicillin G per maximum single dose recommended in the labeling of a product intended for parenteral administration, or an amount of penicillin equivalent to 0.5 (five one tenth) unit

or more of penicillin G per maximum single dose recommended in the labeling of a product intended for oral use. (Authorized by K.S.A. 1978 Supp. 65-6b06 and 65-6b07; effective May 1, 1979.)

28-21-259. Stability. (a) There shall be assurance of the stability of finished amygdalin (laetrile) products. This stability shall be:

(1) Determined by reliable, meaningful, and specific test methods.

(2) Determined on products in the same container-closure system in which they are marketed.

(3) Determined on any dry drug product that is to be reconstituted at the time of dispensing (as directed in its labeling), as well as on the reconstituted product.

(4) Recorded and maintained in such manner that the stability data may be utilized in establishing product expiration dates. (Authorized by K.S.A. 1978 Supp. 65-6b06 and 65-6b07; effective May 1, 1979.)

28-21-260. Expiration dating. (a) To assure that amygdalin (laetrile) products liable to deterioration meet appropriate standards of identity, strength, quality, and purity at the time of use, the label of all such products shall have suitable expiration dates which relate to stability tests performed on them.

(1) Expiration dates appearing on the labeling shall be justified by readily available data from stability studies.

(2) Expiration dates shall be related to appropriate storage conditions stated on the labeling wherever the expiration date appears.

(3) When amygdalin (laetrile) is marketed in the dry state, for use in preparing a liquid product, the labeling shall bear expiration information for the reconstituted product as well as an expiration date for the dry product. (Authorized by K.S.A. 1978 Supp. 65-6b06 and 65-6b07; effective May 1, 1979.)

28-21-261. Packaging and labeling. (a) Packaging and labeling operations shall be adequately controlled, to assure that only those products that have met the standards and specifications established in their master production and control records shall be distributed; to prevent mixups between products during filling, packaging, and labeling operations; to assure that correct labels and labeling are employed for the product; and to identify the finished product with a lot or control

number that permits determination of the history of the manufacture and control of the batch. An hour, day, or shift code is appropriate as a lot or control number for all products manufactured or processed in continuous production equipment. Packaging and labeling operations shall: (1) Be separated (physically or spatially) from operations on other drugs in a manner adequate to avoid mixups and minimize cross-contamination. Two (2) or more packaging or labeling operations having amygdalin (laetrile) and other drugs, containers, or labeling similar in appearance shall not be in process simultaneously on adjacent or nearby lines unless these operations are separated either physically or spatially.

(2) Provide for an inspection of the facilities prior to use to assure that all drugs and previously used packaging and labeling materials have been removed.

(3) Include the following labeling controls: (A) The holding of labels and package labeling upon receipt pending review and proofing against an approved final copy by a competent and responsible individual to assure that they are accurate regarding identity, content, and conformity with the approved copy before release to inventory.

(B) The maintenance and storage of each type of label and package labeling representing different products, strength, dosage forms, or quantity of contents in such manner as to prevent mixups and provide proper identification.

(C) A suitable system for assuring that only current labels and package labeling are retained and that stocks of obsolete labels and package labeling are destroyed.

(D) Restriction of access to labels and package labeling to authorized personnel.

(E) Avoidance of gang printing of cut labels, cartons, or inserts when the labels, cartons, or inserts are for different products or different strengths of the same products or are of the same size and have identical or similar format or color schemes. If gang printing is employed, packaging and labeling operations shall provide for added control procedures. These added controls should consider sheet layout, stacking, cutting, and handling during and after printing.

(4) Provide strict control of the package labeling issued for use with amygdalin (laetrile). Such issue shall be carefully checked by a competent and responsible person for identity and conformity to the labeling specified in the batch production record. Said record shall identify the labeling and

the quantities issued and used and shall reasonably reconcile any discrepancy between the quantity of amygdalin (laetrile) finished and the quantities of labeling issued. All excess package labeling bearing lot or control numbers shall be destroyed. In event of any significant unexplained discrepancy, an investigation should be carried out.

(5) Provide for adequate examination or laboratory testing of representative samples of finished products after packaging and labeling to safeguard against any errors in the finishing operations and to prevent distribution of any batch until all specified tests have been met. (Authorized by K.S.A. 1978 Supp. 65-6b06 and 65-6b07; effective May 1, 1979.)

28-21-262. Master production and control records. (a) Batch production and control records. (1) To assure uniformity from batch to batch, a master production and control record for each drug product and each batch size of amygdalin (laetrile) shall be prepared, dated, and signed or initialed by a competent and responsible individual and shall be independently checked, reconciled, dated, and signed or initialed by a second competent and responsible individual. The master production and control record shall include:

(A) The name of the product, description of the dosage form, and a specimen or copy of each label and all other labeling associated with the retail or bulk unit, including copies of such labeling signed or initialed and dated by the person or persons responsible for approval of such labeling.

(B) The name and weight or measure of each active ingredient per dosage unit or per unit of weight or measure of the finished product and a statement of the total weight or measure of any dosage unit.

(C) A complete list of ingredients designated by names or codes sufficiently specific to indicate any special quality characteristic; an accurate statement of the weight or measure of each ingredient regardless of whether it appears in the finished product, except that reasonable variations may be permitted in the amount of components necessary in the preparation in dosage form provided that provisions for such variations are included in the master production and control record; an appropriate statement concerning any calculated excess of an ingredient; an appropriate statement of theoretical weight or measure at various stages of processing; and a statement of the theoretical yield.

(D) A description of the containers, closures, and packaging and finishing materials.

(E) Manufacturing and control instructions, procedures, specifications, special notations, and precautions to be followed.

(2) The batch production and control record shall be prepared for each batch of amygdalin (laetrile) produced and shall include complete information relating to the production and control of each batch. These records shall be retained for at least two (2) years after the batch distribution is complete, or at least one (1) year after the batch expiration date, whichever is longer. These records shall identify the specific labeling and lot or control numbers used on the batch and shall be readily available during such retention period. The batch record shall include: (A) An accurate reproduction of the appropriate master formula checked, dated, and signed or initialed by a competent and responsible individual.

(B) A record of each significant step in the manufacturing, processing, packaging, labeling, testing, and controlling of the batch, including: Dates; individual major equipment and lines employed; specific identification of each batch of components used; weights and measures of components and products used in the course of processing; in-process and laboratory control results; and identifications of the individual(s) actively performing and the individual(s) directly supervising or checking each significant step in the operation.

(C) A batch number that identified all the production and control documents relating to the history of the batch and all lot or control numbers associated with the batch.

(D) A record of any investigation made. (Authorized by K.S.A. 1978 Supp. 65-6b06 and 65-6b07; effective May 1, 1979.)

28-21-263. Distribution records. (a) Finished goods warehouse control and distribution procedures shall include a system by which the distribution of each lot of amygdalin (laetrile) can be readily determined to facilitate its recall if necessary. Records within the system shall contain the name and address of the consignee, date and quantity shipped, and lot or control number of the product. Records shall be retained for at least two (2) years after the distribution of the product has been completed or one (1) year after the expiration date of the product, whichever is longer.

(b) To assure the quality of the product, finished goods warehouse control shall also include a sys-

tem whereby the oldest approved stock is distributed whenever possible. (Authorized by K.S.A. 1978 Supp. 65-6b06 and 65-6b07; effective May 1, 1979.)

28-21-264. Complaint files. Records shall be maintained of all written and oral complaints regarding each product. An investigation of each complaint shall be made. The record of each investigation shall be maintained for at least two (2) years after distribution of the product has been completed or one (1) year after the expiration date of the product, whichever is longer. (Authorized by K.S.A. 1978 Supp. 65-6b06 and 65-6b07; effective May 1, 1979.)

28-21-265. Reference laboratory control. (a) Manufacturers of amygdalin (laetrile) shall submit to the state department of health and environmental laboratories, prior to release of any lot number of amygdalin (laetrile) to wholesalers or physicians, 10 (ten) ampules or vials of injectable amygdalin (laetrile) and 25 (twenty-five) tablets and capsules of each dosage size produced from each lot number of amygdalin (laetrile) produced.

(b) Manufacturers of amygdalin (laetrile) shall certify in writing which shall accompany control samples of each lot number submitted to the state department of health and environmental laboratories that the product is free of bacterial and fungal contamination, pyrogenic agents, and all adulterants including but not limited to isopropyl and methyl alcohols. Autoclaving which causes stereochemical inversion of the mandelonitrile portion of amygdalin shall not be permitted.

(c) Any lot number of amygdalin (laetrile) found to contain impurities, microbial or fungal contamination, pyrogens, or other toxic substances shall be destroyed immediately. No lot number of amygdalin (laetrile) shall be released for distribution and use until approved and certified by the secretary of health and environment. (Authorized by K.S.A. 1978 Supp. 65-6b06 and 65-6b07; effective May 1, 1979.)

28-21-266. Special packaging requirements. Each vial or ampule of injectable amygdalin and each vial or container of tablets or capsules shall contain a package insert with complete description of the product including potency, adverse reactions, contra-indications, dosage recommendations, mode of administration, and other information as may be required. In packag-

ing amygdalin (laetrile) for direct patient usage, a patient package insert must also be enclosed which summarizes the potential risks of the product. All tablets or capsules shall be packaged in child-proof containers. A precautionary label shall be attached to all packaging of injectable amygdalin (laetrile) warning patients against taking the parenteral preparation by mouth, since the high concentration can be rapidly fatal. (Authorized by K.S.A. 1978 Supp. 65-6b06 and 65-6b07; effective May 1, 1979.)

28-21-267. Registration and renewal of registration. (a) Any pharmaceutical firm desiring to manufacture amygdalin (laetrile) in the state of Kansas shall file an application for a permit with the secretary of health and environment. Such application shall be accompanied by a fee of \$2,500 (two thousand five hundred dollars) for the purpose of paying for the costs involved in administering this program. The permit shall be effective for one (1) year after the date of its issuance and may be renewed annually by the permit holder for a fee of \$1,000 (one thousand dollars). No permits or renewal of permits shall be issued unless such fees have been collected. In addition to the permit fee the manufacturer shall be responsible for all costs incurred by the state department of health and environment for laboratory analysis and testing of each lot number of amygdalin (laetrile) submitted to the department for its approval and certification by the secretary of health and environment.

(b) The secretary of health and environment, after giving notice and holding a hearing, may revoke, suspend, or refuse to renew the permit of any person who violates any rule or regulation adopted by the secretary of health and environment or who is subject to applicable civil or criminal sanctions under the federal food, drug, and cosmetic act.

(c) No person, other than a physician, may sell, offer for sale, distribute, or dispense to the public within this state amygdalin (laetrile) unless said person is currently licensed to dispense by the Kansas board of pharmacy and first obtains a permit from the secretary of health and environment authorizing the permit holder to sell, offer for sale, distribute, or dispense amygdalin (laetrile) to the public. Selling, offering for sale, or distributing amygdalin (laetrile) to the public without a valid prescription of a physician to do so shall constitute a class B misdemeanor.

(d) Application for a permit to sell, offer for sale, or dispense amygdalin (laetrile) to the public must be filed with the secretary of health and environment and shall be accompanied by a fee of \$10 (ten dollars) for the purpose of paying for the costs in administering this program. The permit shall be effective for one (1) year after the date of its issuance and may be renewed annually by the permit holder for a fee of \$10 (ten dollars). No permits or renewal of permits shall be issued unless such fees have been collected.

(e) Any person who sells, dispenses, or administers amygdalin (laetrile) to the public shall maintain complete records of same on forms provided by the secretary of health and environment. (Authorized by K.S.A. 1978 Supp. 65-6b06 and 65-6b07; effective May 1, 1979.)

28-21-268. Price and fee control. (a) The maximum reasonable price at which amygdalin (laetrile) may be sold to a pharmacist or direct to a physician licensed in the state of Kansas shall be based on cost of production for the product plus 25% (twenty-five percent). A cost of production analysis report which has been approved by a certified public accountant shall be submitted to the secretary of health and environment prior to establishment of the wholesale cost of the product.

(b) No increase over and above the wholesale or retail cost of amygdalin (laetrile) may be made by a physician who administers or prescribes this product. The physician may charge a fee only for his professional services in prescribing or administering amygdalin (laetrile). (Authorized by K.S.A. 1978 Supp. 65-6b06 and 65-6b07; effective May 1, 1979.)

Article 22.—ENRICHMENT OF FLOUR AND BREAD

28-22-1. Enriched flour labeling. All enriched flour shall be labeled as “enriched flour.” (Authorized by K.S.A. 1965 Supp. 65-2305; effective Jan. 1, 1966.)

28-22-2. Labeling of flour limited. When any reference is made on the labeling of flour to the kinds and amounts of enriching ingredients which have been added, such reference shall be limited to show the proportion of the average adult's daily requirements of such substances. (Authorized by K.S.A. 1965 Supp. 65-2305; effective Jan. 1, 1966.)

28-22-3. Labeling of flour to contain no claims for effects. Enriched flour labels shall not contain claims regarding physiological or therapeutic effects of enriching ingredients nor information concerning other minerals or vitamins. (Authorized by K.S.A. 1965 Supp. 65-2305; effective Jan. 1, 1966.)

28-22-4. Certificate of intent. A certificate of intent as provided for in section 2 of the enrichment law shall be in one of the two following forms:

(a) A continuing certificate covering all purchases for any time which shall be in the following general form:

CERTIFICATE OF INTENT

In compliance with the provisions of section 2 of the Kansas enrichment law, it is hereby certified by

(Purchaser)
that all unenriched flour purchased from

(Seller)
after _____ will be used only in the manufacture,
(Date)

mixing, or compounding of white bread or rolls enriched to meet the requirements of the Kansas enrichment act or of products other than flour, white bread, or rolls.

This certificate shall be cancelled only by written notice by the purchaser.

Date Agent of purchaser

(b) A certificate covering a single purchase order, in which case the certificate shall specify the exact quantity of flour covered by the certificate, the trade or brand names or other identifying marks on the flour containers, and any other information needed to identify the flour covered by the certificate. This type of certificate may be made a part of any regular purchase order form used by either the purchaser or seller, provided that the certificate of intent is placed on the face of the purchase order and the order is signed by an authorized agent of the purchaser. (Authorized by K.S.A. 1965 Supp. 65-2305; effective Jan. 1, 1966.)

28-22-5. Certificate of intent available. A copy of each certificate of intent shall be retained by the purchaser and one copy kept by the seller. These certificates shall be available for examination of the duly qualified officers of the Kansas state board of health at any reasonable time. (Authorized by K.S.A. 1965 Supp. 65-2305; effective Jan. 1, 1966.)

28-22-6. Enriched bread, labeling. All enriched bread when wrapped shall be labeled "enriched bread." (Authorized by K.S.A. 1965 Supp. 65-2305; effective Jan. 1, 1966.)

28-22-7. Labeling of bread limited. When any reference is made on the labeling of bread to the kinds and amounts of enriching ingredients which have been added, such reference shall be limited to show the proportion of the average adult's daily requirements of such substance. (Authorized by K.S.A. 1965 Supp. 65-2305; effective Jan. 1, 1966.)

28-22-8. Labeling of bread to contain no claims for effects. Enriched bread labels shall not bear claims regarding physiological or therapeutic effects of enriching ingredients nor information concerning other minerals or vitamins. (Authorized by K.S.A. 1965 Supp. 65-2305; effective Jan. 1, 1966.)

Article 23.—SANITATION; FOOD AND DRUG ESTABLISHMENTS

A. GENERAL PROVISIONS

28-23-1 through 28-23-3. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked Feb. 8, 2013.)

28-23-4. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked June 4, 2010.)

28-23-5. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked May 10, 1996.)

28-23-6. (Authorized by K.S.A. 65-625, K.S.A. 1979 Supp. 65-626; effective Jan. 1, 1966; amended May 1, 1980; revoked Feb. 8, 2013.)

28-23-7. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked Feb. 8, 2013.)

28-23-8. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked May 10, 1996.)

28-23-9. (Authorized by K.S.A. 65-625, K.S.A. 1979 Supp. 65-626; effective Jan. 1, 1966; amended May 1, 1980; revoked June 4, 2010.)

28-23-10. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked June 4, 2010.)

28-23-11 through 28-23-13. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked Feb. 8, 2013.)

28-23-14 to 28-23-15. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked May 10, 1996.)

28-23-16. (Authorized by K.S.A. 65-626; effective, E-68-9, March 11, 1968; effective Jan. 1, 1969; amended Jan. 1, 1970; revoked Feb. 29, 2008.)

B. BAKERIES

28-23-20 through 28-23-24. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked June 4, 2010.)

28-23-25. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked May 10, 1996.)

28-23-26 through 28-23-32. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked June 4, 2010.)

28-23-33. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked May 10, 1996.)

28-23-34 through 28-23-36. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked June 4, 2010.)

C. MANUFACTURE AND HANDLING; SODA WATER

28-23-40. (Authorized by K.S.A. 1968 Supp. 65-626; effective Jan. 1, 1966; revoked Jan. 1, 1969.)

28-23-41. (Authorized by K.S.A. 65-663, K.S.A. 1968 Supp. 65-673; effective Jan. 1, 1969; revoked June 4, 2010.)

28-23-42 through 28-23-55. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked June 4, 2010.)

D. FOOD AND DRINK STANDS; FAIRS AND PUBLIC GATHERINGS

28-23-60 to 28-23-66. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked May 10, 1996.)

28-23-67 and 28-23-68. (Authorized by K.S.A. 1979 Supp. 65-626; effective Jan. 1, 1966; revoked May 1, 1980.)

28-23-69. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked May 10, 1996.)

E. FROZEN FOOD LOCKER PLANTS

28-23-70 and 28-23-71. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked June 4, 2010.)

28-23-72. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked May 10, 1996.)

28-23-73. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked June 4, 2010.)

28-23-74. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked May 10, 1996.)

28-23-75. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked June 4, 2010.)

28-23-76 to 28-23-77. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked May 10, 1996.)

28-23-78 through 28-23-80. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked June 4, 2010.)

28-23-81. (Authorized by K.S.A. 65-626; implementing K.S.A. 1984 Supp. 65-673; effective May 1, 1986; revoked Aug. 13, 1999.)

28-23-82. (Authorized by K.S.A. 65-626; implementing K.S.A. 65-673; effective May 1, 1986; amended Aug. 23, 1993; revoked Aug. 13, 1999.)

28-23-83. (Authorized by K.S.A. 65-626; implementing K.S.A. 1984 Supp. 65-673; effective May 1, 1986; revoked Aug. 13, 1999.)

28-23-84 to 28-23-87. (Authorized by K.S.A. 65-626; implementing K.S.A. 1984 Supp. 65-673; effective May 1, 1986; revoked Aug. 13, 1999.)

28-23-88. (Authorized by K.S.A. 65-626; implementing K.S.A. 65-673; effective May 1, 1986; amended, T-87-36, Nov. 19, 1986; amended May 1, 1987; revoked Aug. 13, 1999.)

28-23-89. (Authorized by K.S.A. 65-626; implementing K.S.A. 1984 Supp. 65-673; effective May 1, 1986; revoked Aug. 13, 1999.)

F. SERVING OF MILK

28-23-90 and 28-23-91. (Authorized by K.S.A. 1979 Supp. 65-626; effective Jan. 1, 1966; revoked May 1, 1980.)

**Article 24.—SANITARY REGULATIONS
FOR THE PRACTICE OF
COSMETOLOGY, NAIL TECHNOLOGY,
ELECTROLOGY, OR ESTHETICS**

28-24-1. Definitions. As used in this article of the department's regulations, each of the following terms shall have the meaning specified in this regulation:

(a) "Bleach solution" means chlorine bleach used for disinfection purposes. Bleach solution shall be mixed, stored, and used according to manufacturer's instructions.

(b) "Board" means the Kansas board of cosmetology.

(c) "Clean" means free of visible or surface debris through washing with soap and water or with detergent and water. Clean shall not mean disinfected.

(d) "Communicable disease or condition" means a disease or condition that is diagnosed by a licensed health care professional as being contagious or transmissible and that can be transmitted during the practice of cosmetology, nail technology, electrology, or esthetics.

(e) "Consumer" means any individual who receives cosmetology, electrology, nail technology, or esthetic services.

(f) "Disinfect" means to use a disinfectant on a clean, nonporous item or surface to kill bacteria, viruses, and fungi.

(g) "Disinfectant" means an EPA-registered disinfecting solution that is bactericidal, virucidal, and fungicidal. Disinfectants can be in the form of a liquid concentrate, wipe, spray, or foam.

(h) "EPA" means the United States environmental protection agency.

(i) "Establishment" means any place where cosmetology, nail technology, electrology, or esthetics is practiced, other than a school.

(j) "FDA" means the food and drug administration of the United States department of health and human services.

(k) "Mobile establishment" means a self-contained, enclosed mobile unit licensed for the practice of one or more of the following:

(1) Cosmetology;

(2) nail technology;

(3) esthetics; or

(4) electrology.

(l) "Noninvasive," when used to describe procedures or services, means the procedures or services confined to the nonliving cells of the epidermis found in the stratum corneum layer of the skin. The practice of cosmetology, nail technology, or esthetics shall not alter, cut, or damage any living cells.

(m) "Practitioner" means an individual who practices cosmetology, nail technology, electrology, or esthetics.

(n) "Product" means any substance used on a consumer in the practice of cosmetology, electrology, nail technology, or esthetics.

(o) "Protective gloves" means single-use gloves made of nitrile, vinyl, or latex.

(p) "Safety data sheet" and "SDS" mean written or printed material concerning a hazardous chemical that is prepared in accordance with 29 C.F.R. 1910.1200(g).

(q) "School" means any place where cosmetology, esthetics, nail technology, or electrology is taught.

(r) "Single-use," when used to describe an item used in the practice of cosmetology, nail technology, electrology, or esthetics, means that the item is porous and cannot be disinfected, regardless of manufacturer designation.

(s) "Sterilization" means the process used to render an instrument free of all forms of living microorganisms by use of a steam autoclave sterilizer or dry-heat sterilizer. The use of ultraviolet light shall not be an acceptable form of sterilization. (Authorized by and implementing K.S.A. 65-1,148; effective Jan. 4, 1993; amended Oct. 5, 2007; amended April 10, 2020.)

28-24-2. Personal cleanliness. Each practitioner shall clean that individual's hands or use an alcohol-based hand sanitizer before and after each consumer service. (Authorized by and implementing K.S.A. 65-1,148; effective Jan. 4, 1993; amended Jan. 2, 1998; amended Oct. 5, 2007; amended April 10, 2020.)

28-24-3. Communicable diseases or conditions. (a) No practitioner shall provide either of the following:

(1) Any service to a consumer who has pediculosis, open sores, inflamed tissue suggesting a communicable disease or condition, fungus, lice,

including head, body, or pubic, or ringworm, until the consumer furnishes to the practitioner a statement signed by a licensed physician stating that the communicable disease or condition is not in an infectious, contagious, or communicable stage; or

(2) any service while having pediculosis, open sores, or inflamed tissue suggesting a communicable disease or condition, fungus, lice, including head, body, or pubic, or ringworm, until the practitioner obtains a statement signed by a licensed physician stating that the communicable disease or condition is not in an infectious, contagious, or communicable stage.

(b) If a service has been started and a practitioner discovers that a consumer has pediculosis, open sores, inflamed tissue suggesting a communicable disease or condition, fungus, lice, including head, body, or pubic, or ringworm, the practitioner shall perform the following:

(1) Stop services immediately in a safe manner;
 (2) inform the consumer why the service was stopped; and

(3) clean and disinfect all affected tools, work areas, and waiting areas.

(c) If there is a likelihood of exposure to blood or body fluids while practicing cosmetology, nail technology, esthetics, or electrolysis, the practitioner shall wear single-use protective gloves, and each contaminated single-use item shall be double-bagged, sealed, and disposed of in a closed waste receptacle.

(d) If a blood exposure occurs, the practitioner shall perform all of the following procedures:

(1) Stop service immediately;
 (2) put on protective gloves;
 (3) clean the injured area with an antiseptic solution and cover the wound with a sterile bandage to prevent further blood exposure;

(4) clean and disinfect all equipment, instruments, and surfaces that came in contact with blood; and

(5) double-bag all contaminated items, including gloves, and dispose of the contaminated items in a closed waste receptacle. (Authorized by and implementing K.S.A. 65-1,148; effective Jan. 4, 1993; amended Oct. 5, 2007; amended April 10, 2020.)

28-24-4. Linens and capes. (a) After each service, each practitioner shall place all used linens, including towels, robes, and sheets, in a closed and labeled container or an enclosed stor-

age area, including closets and cabinets. The practitioner shall not use these linens again until each item has been cleaned in a washing machine with detergent and hot water. After being cleaned, the linens shall be dried until no moisture remains in the fabric.

(b) Each cape shall be cleaned or disinfected after each service.

(c) All clean linens and capes shall be stored in a closed and labeled container or an enclosed storage area. (Authorized by and implementing K.S.A. 65-1,148; effective Jan. 4, 1993; amended Jan. 2, 1998; amended Oct. 5, 2007; amended April 10, 2020.)

28-24-5. Surfaces and treatment tables.

(a) Each practitioner shall daily disinfect any surface that came into contact with a consumer during services, including shampoo bowls, chairs, headrests, and treatment tables.

(b) Each treatment table shall be covered with a clean sheet of examination paper, paper towels, or linen before providing services to each consumer. (Authorized by and implementing K.S.A. 65-1,148; effective Jan. 4, 1993; amended Oct. 5, 2007; amended April 10, 2020.)

28-24-6. Products and containers. (a) All products shall be kept in labeled and closed containers. Each container shall be kept clean so that the label is legible. Each container shall be closed when not in use.

(b) If only a portion of a product is to be used on a consumer, each practitioner shall remove the product from its container in a way that does not contaminate the unused portion in the container. Each practitioner shall discard any remaining portion that was removed from the container but was not used during that consumer's service in a covered waste receptacle immediately after use. If cosmetic pencils are used, each pencil shall be sharpened before each use and the sharpener shall be cleaned and disinfected before being used again. (Authorized by and implementing K.S.A. 65-1,148; effective Jan. 4, 1993; amended Oct. 5, 2007; amended April 10, 2020.)

28-24-7. Waxing. (a) Each practitioner shall maintain all wax and sugar paste at a temperature specified by the manufacturer's instructions.

(b) No applicators shall be left standing in the wax or sugar paste at any time.

(c) Each roll-on wax cartridge shall be considered a single-use item and shall be disposed of in

a covered waste receptacle after the service. (Authorized by and implementing K.S.A. 65-1,148; effective Jan. 4, 1993; amended Oct. 5, 2007; amended April 10, 2020.)

28-24-8. Single-use items. (a) Each practitioner shall store all single-use items separately in a clean, labeled, and covered container or in the manufacturer's original packaging.

(b) Each practitioner shall dispose of any used single-use item in a covered waste receptacle immediately after use. All razors and other sharp items shall be disposed of in a sharps container following the service.

(c) Each sanding band used on an electric file shall be a single-use item. Each practitioner shall dispose of each sanding band in a covered waste receptacle immediately after the sanding band is used. (Authorized by and implementing K.S.A. 65-1,148; effective Jan. 4, 1993; amended Oct. 5, 2007; amended April 10, 2020.)

28-24-9. Pedicure equipment. For the purposes of this regulation, the term "pedicure equipment" shall mean any apparatus that holds water for the purpose of pedicure service.

(a) Each practitioner shall perform the following immediately after each pedicure service:

(1) Drain the pedicure equipment of all water, remove all debris from the equipment, and remove all removable parts;

(2) if a pedicure liner was used during the pedicure service, dispose of the pedicure liner in a covered waste receptacle;

(3) clean all removable parts and the surfaces and walls of the pedicure equipment, including the inlet and all debris trapped behind any removable parts, with soap or detergent, rinse with warm potable water, and disinfect with a liquid disinfectant used according to the manufacturer's instructions;

(4) replace all clean removable parts;

(5) if a pedicure liner was not used during the pedicure service, perform one of the following:

(A) If the pedicure equipment is circulating, fill the pedicure equipment with potable water and circulate a bleach solution or a liquid disinfectant used according to the manufacturer's instructions through the pedicure equipment for 10 minutes and then drain and rinse the pedicure equipment with potable water; or

(B) if the pedicure equipment is noncirculating, allow the bleach solution or liquid disinfectant to

stand for 10 minutes and then drain and rinse the pedicure equipment with potable water; and

(6) wipe the pedicure equipment dry with a clean towel.

(b) Each practitioner shall ensure that all pedicure equipment remains in a clean and disinfected condition, even if the pedicure equipment is not in service or not able to be used in a service. (Authorized by and implementing K.S.A. 65-1,148; effective Jan. 4, 1993; amended Oct. 5, 2007; amended April 10, 2020.)

28-24-10. Cleaning and disinfecting non-electrical instruments and equipment. (a) Each practitioner shall perform the following after each service as applicable:

(1) Clean each nonelectrical instrument or non-electrical piece of equipment;

(2) rinse the instrument or equipment with potable water; and

(3) use one of the following disinfection methods:

(A) For instruments and equipment other than shears and makeup brushes, perform one of the following:

(i) Totally immerse the instrument or equipment in a disinfectant and disinfect according to the manufacturer's instructions and then rinse the instrument or equipment with potable water; or

(ii) totally immerse the instrument or equipment in bleach solution for 10 minutes and then rinse the instrument or equipment with potable water;

(B) for shears, use a concentrate, spray, wipe, or foam disinfectant according to the manufacturer's instructions; and

(C) for makeup brushes, use a concentrate, spray, or foam disinfectant according to the manufacturer's instructions.

(b) Each practitioner shall ensure that the disinfectant or bleach solution specified in subsection (a) is prepared, available for use, and covered at all times. Disinfectants and bleach solutions shall be changed daily or more often if the disinfectant or bleach solution becomes visibly cloudy or dirty.

(c) For each disinfectant used as specified in subsection (a), the following shall be available at all times in the establishment or school and shall be provided upon request to the board or the board's designee:

(1) The SDS; and

(2) the manufacturer-labeled container with sufficient disinfectant or bleach solution to ensure safe services.

(d) Each nonelectrical instrument and each nonelectrical piece of equipment that has been used on a consumer or soiled in any manner shall be placed in a labeled, covered container until the instrument or piece of equipment is cleaned and disinfected.

(e) All disinfected nonelectrical instruments and all disinfected nonelectrical pieces of equipment shall be stored in a labeled and clean, enclosed cabinet, drawer, or covered container reserved for clean instruments only.

(f) The electrolysis instruments and pieces of equipment that are sterilized in accordance with K.A.R. 28-24-12 shall not be subject to the requirements of this regulation. (Authorized by and implementing K.S.A. 65-1,148; effective Jan. 4, 1993; amended Jan. 2, 1998; amended Oct. 5, 2007; amended April 10, 2020.)

28-24-11. Disinfecting electrical instruments. (a) Each practitioner shall disinfect each electrical instrument after each service, as follows:

(1) Remove all debris from the electrical instrument; and

(2) completely saturate the portion of the electrical instrument that came in contact with the consumer with a bleach solution or with a disinfectant used according to the manufacturer's instructions.

(b) Each disinfected electrical instrument shall be stored in a clean area on a stand or hook or on a clean towel, covered by a clean towel or in a labeled, clean, closed container or drawer reserved for clean instruments only.

(c) At the end of each day, all towels remaining in a towel warmer shall be removed. The towels shall not be reused until properly laundered. Each towel warmer shall be disinfected daily according to the manufacturer's instructions.

(d) Each practitioner shall clean and disinfect each metal bit and mandrel for an electric file after each use on a consumer and then shall store the bit and mandrel in a clean, closed, and labeled container until the next use. (Authorized by and implementing K.S.A. 65-1,148; effective Jan. 4, 1993; amended Oct. 5, 2007; amended April 10, 2020.)

28-24-12. Electrolysis instruments, equipment, and practices. Each practitioner shall use only single-use electrolysis instruments or sterilized electrolysis equipment on a consumer.

(a) Each practitioner shall immerse non-single-use electrolysis instruments in an ultrasonic unit

that is operated in accordance with the manufacturer's instructions and that contains potable water and an enzyme detergent after each use and before sterilization.

(b) Each practitioner shall ensure that all electrolysis instruments and equipment are sterilized as follows:

(1) By placing electrolysis instruments in glass test tubes or sterilization bags with color strip indicators and then placing the test tubes or bags in a steam autoclave sterilizer or a dry-heat sterilizer that is approved and listed by the FDA and that is used, cleaned, and maintained according to the manufacturer's directions; or

(2) by using single-use, prepackaged, sterilized instruments or equipment obtained from suppliers or manufacturers.

(c) Each steam autoclave sterilizer and each dry-heat sterilizer shall meet the following requirements:

(1) Be approved by the FDA;

(2) contain visible physical indicators, including a thermometer and a timer, necessary to ensure that the steam autoclave sterilizer is functioning properly during sterilization cycles;

(3) be used with chemical indicators that change color after exposure to the sterilization process, to ensure that all sterilization requirements are met; and

(4) be cleaned, used, and maintained according to the manufacturer's instructions.

(d) Each cleaned electrolysis instrument or piece of equipment shall be sterilized in accordance with the manufacturer's instructions for each specific sterilizer and by utilizing one of the following:

(1) Steam autoclave sterilizer. If a steam autoclave sterilizer is used, the instruments or equipment shall be sterilized for 15 to 20 minutes at 250 degrees Fahrenheit, and the pressure shall consist of 15 to 20 pounds per square inch (psi).

(2) Dry-heat sterilizer. If a dry-heat sterilizer is used, the instruments and equipment shall be sterilized for either 60 minutes at 340 degrees Fahrenheit or 120 minutes at 320 degrees Fahrenheit.

(e) The owner of each establishment shall use a sterilization-monitoring service or laboratory using commercially prepared spores at least monthly to ensure that all microorganisms have been destroyed and sterilization has been achieved.

(1) The owner of each establishment shall maintain a log at the establishment with the date and results of each monthly test for at least three years

and shall make the records available for review at any time by the board or the board's designee.

(2) A copy of the manufacturer's procedural manual for operation of the steam autoclave sterilizer or dry-heat sterilizer shall be available for inspection by the board or the board's designee.

(f) Each practitioner shall place only the single-use instrument or sterilized equipment to be used for each consumer on a clean nonporous surface and shall replace the clean surface with a new clean surface after each service.

(g) Each practitioner shall dispose of all needles and any other sharp items in a sharps container following the service.

(h) The surface of each counter, each treatment table, and each piece of equipment in each area where a consumer is served shall be made of smooth, nonporous materials. Each practitioner shall disinfect all nonporous surfaces, including counters, treatment tables, and pieces of equipment, after each service by using either a disinfectant according to the manufacturer's instructions or a bleach solution. (Authorized by and implementing K.S.A. 65-1,148; effective Jan. 4, 1993; amended Oct. 5, 2007; amended April 10, 2020.)

28-24-13. Physical facilities. Each owner of a school, an establishment, or a mobile establishment shall ensure that the applicable requirements of this regulation are met.

(a) Each school or establishment shall be well lit and well ventilated by natural or mechanical methods that remove or exhaust fumes, vapor, or dust to prevent hazardous conditions from occurring and to allow the free flow of air in a room in proportion to the size and the capacity of the room. The floors, walls, ceilings, furniture, and fixtures shall be clean and in good repair at all times.

(b)(1) If a room used for residential purposes is adjacent to a room used for the practice of cosmetology, nail technology, esthetics, or electrology, a solid partition shall separate the portion of the premises used for residential purposes from the licensed area. The partition may contain a door if it remains closed, except for entering and leaving.

(2) Each establishment that has an initial license issued on or after December 31, 2007 and that is located in a residence shall have a separate, outside entrance to the establishment.

(c) If a room used for nonlicensed business purposes is also used for or is adjacent to a room used for the practice of cosmetology, nail technology,

esthetics, or electrology and if the board, upon consultation with the secretary of health and environment, determines that the proximity of the licensed or nonlicensed activities poses a possible threat to the health of the employees, the consumers, or the public, the owner of the school or establishment shall mitigate the risk as directed by the board, including by meeting one or both of the following requirements:

(1) A solid partition shall separate the portion of the premises used for nonlicensed business purposes from the licensed area. The partition may contain a door if it remains closed, except for entering and leaving.

(2) A separate, outside entrance shall be provided for the school or establishment.

(d) Each school or establishment shall have plumbing that provides hot and cold running, potable water at all times and that provides for the disposal of used water.

(e)(1) Each establishment shall have at least one restroom. Each school shall have at least two restrooms. Each restroom shall be in the building in which the establishment or school is located.

(2) Each restroom shall include at least one working toilet and one hand-washing sink with hot and cold running water, a liquid soap dispenser, and either disposable towels or an air dryer. Each restroom shall be kept in a sanitary condition.

(3) A restroom sink shall not be used for services or for cleaning instruments or equipment.

(f)(1) Each establishment that provides cosmetology services shall have a shampoo bowl with a sprayer and hot and cold running water that is separate from the restroom.

(2) Each establishment that provides nail technology, esthetics, or electrology services shall have a hand-washing sink with hot and cold running water that is separate from the restroom.

(g) The following requirements shall apply to each mobile establishment:

(1) All equipment shall be securely anchored to the mobile establishment.

(2) No services shall be performed while the mobile establishment is in motion.

(3) Each mobile establishment shall have the following:

(A) A hand-washing sink that has hot and cold running water;

(B) a self-contained supply of potable water. The water tank shall have a capacity of at least 20 gallons, and the holding tanks shall have at least the same capacity; and

(C) one or more self-contained, recirculating, flush chemical toilets with a holding tank. (Authorized by and implementing K.S.A. 65-1,148; effective Jan. 4, 1993; amended Jan. 2, 1998; amended Oct. 5, 2007; amended April 10, 2020.)

28-24-14. Prohibitions. (a) The following shall be prohibited in each establishment or school:

(1) Smoking or preparing food in the service area;

(2) using neck dusters and nail dusters;

(3) possessing any animal. This prohibition shall not apply to any assistance dog, as defined in K.S.A. 39-1113 and amendments thereto;

(4) using razor-type devices to remove calluses or skin blemishes;

(5) using invasive skin-removal techniques, products, and practices that remove viable cells that are deeper than the stratum corneum;

(6) placing waste in open waste receptacles;

(7) possessing methyl methacrylate monomer (MMA); and

(8) using any product banned or restricted by the board for use in cosmetology, nail technology, esthetics, or electrology.

(b) No practitioner shall carry any instrument or supplies in or on a garment or uniform, including an instrument belt and an instrument organizer.

(c) The owner of a school or establishment shall not permit excessive amounts of waste, refuse, or any other items that could cause a hazard to accumulate on the premises of the school or establishment. (Authorized by and implementing K.S.A. 65-1,148; effective Jan. 4, 1993; amended Jan. 2, 1998; amended Oct. 5, 2007; amended April 10, 2020.)

28-24-15. (Authorized by and implementing K.S.A. 1991 Supp. 65-1,148; effective Jan. 4, 1993; revoked Oct. 5, 2007.)

28-24-16. (Authorized by and implementing K.S.A. 1991 Supp. 65-1,148; effective Jan. 4, 1993; revoked Oct. 5, 2007.)

Article 24a.—SANITARY REGULATIONS FOR TANNING FACILITIES

28-24a-1. Definitions. (a) “Consumer” has the meaning specified in K.A.R. 69-12-1.

(b) “EPA” means the United States environmental protection agency.

(c) “FDA” means the United States food and drug administration.

(d) “Person” means an individual, association, corporation, or other legal entity.

(e) “Protective eyewear” means any device designed to be worn by users to reduce exposure of the eyes to the radiation emitted by the tanning device.

(f) “Tanning device operator” means an individual who controls operation of a tanning device and instructs and assists the consumer in the proper operation of the tanning device.

(g) “Tanning facility operator” means the person who is licensed to operate a tanning facility. (Authorized by and implementing K.S.A. 65-1,148 and 65-1925; effective Oct. 5, 2007.)

28-24a-2. Facility standards and practices. (a) After each use of a tanning device, a tanning device operator shall disinfect the tanning device using an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, tuberculocidal, and virucidal activity when used according to the manufacturer’s instructions.

(b) Each tanning device operator shall ensure that each towel distributed to a consumer or any other individual is, upon its return, deposited in a closed receptacle and not used again until laundered and sanitized.

(c) Each tanning facility operator shall ensure that the tanning facility is well lighted, well ventilated, and sanitary. (Authorized by and implementing K.S.A. 65-1,148 and 65-1925; effective Oct. 5, 2007.)

28-24a-3. Protective eyewear. Each tanning device operator shall disinfect the protective eyewear before each use. If single-use protective eyewear is used, the eyewear shall be disposed of in a covered waste receptacle immediately after use. (Authorized by and implementing K.S.A. 65-1,148 and 65-1925; effective Oct. 5, 2007.)

Article 25.—SANITARY REGULATIONS FOR BARBERS

28-25-1. Definitions. (a) “EPA” means the United States environmental protection agency.

(b) “Shop” means any place where barbering is practiced, other than a barbering school.

(c) “Licensee” means any person licensed as a barber.

(d) “School” means any place licensed by the board of barbering for the training of barbers.

(e) “Student” means a person receiving training in a school. (Authorized by and implementing K.S.A. 1991 Supp. 65-1,148; effective Aug. 23, 1993.)

28-25-2. Personal cleanliness. (a) The person and the uniform or attire worn by an individual serving a patron shall at all times be clean.

(b) Each person shall thoroughly wash his or her hands with soap and water or any equally effective cleansing solution before serving each patron. (Authorized by and implementing K.S.A. 1991 Supp. 65-1,148; effective Aug. 23, 1993.)

28-25-3. Infectious disease. (a) No person afflicted with an infectious or communicable disease, which may be transmitted during the performance of the acts of barbering shall be permitted to work or train in a school or shop.

(b) No school or shop shall require or permit a student or licensee, knowingly, to work upon a person suffering from any infectious or communicable disease which may be transmitted during the performance of the acts of barbering. (Authorized by and implementing K.S.A. 1991 Supp. 65-1,148; effective Aug. 23, 1993.)

28-25-4. Towels. (a) After a towel has once been used, it shall be deposited in a closed receptacle, and shall not again be used until properly laundered and sanitized.

(b) Used towels shall be laundered either by regular commercial laundering or by a noncommercial laundering process which includes immersion in water at 140 degrees F for not less than fifteen minutes during the washing or rinsing operation.

(c) All clean towels are to be stored in a closed cabinet or container. (Authorized by and implementing K.S.A. 1991 Supp. 65-1,148; effective Aug. 23, 1993.)

28-25-5. Headrests and shampoo bowls. (a) Clean cloth or clean tissue shall be placed on headrests before serving each patron. When the headrest is not in use, it shall be kept in a clean place, free from dust and dirt.

(b) A shampoo bowl or sink with hot and cold running water shall be near each station at which a barber is working. The water shall be supplied from an approved public water supply, with drain connected to an approved sewer system.

(c) A soap dispenser and disposable towels shall be provided near each sink or shampoo bowl.

(d) The shampoo bowl or sink shall be kept in good repair and in a clean and sanitary condition at all times. (Authorized by and implementing K.S.A. 1991 Supp. 65-1,148; effective Aug. 23, 1993.)

28-25-6. Bottles and containers. All bottles and containers in use shall be distinctly and correctly labeled to disclose their contents. All bottles containing poisonous or caustic substances shall be additionally and distinctly marked as such. (Authorized by and implementing K.S.A. 1991 Supp. 65-1,148; effective Aug. 23, 1993.)

28-25-7. Liquids, creams, powders and other preparations. (a) All liquids, creams, and other preparations shall be kept in properly labeled, clean and closed containers. Powders shall be kept in a clean shaker.

(b) When only a portion of a preparation is to be used on a patron, it shall be removed from the container in such a way as not to contaminate the remaining portion. (Authorized by and implementing K.S.A. 1991 Supp. 65-1,148; effective Aug. 23, 1993.)

28-25-8. Neck strips. The hair cloth shall never be permitted to come in direct contact with the neck of the patron. Sanitary neck strips or towels must be used at all times to prevent such contacts. (Authorized by and implementing K.S.A. 1991 Supp. 65-1,148; effective Aug. 23, 1993.)

28-25-9. Instruments and supplies. (a) All supplies and instruments which come in direct contact with a patron and cannot be disinfected shall be disposed of in a covered waste receptacle immediately after use.

(b) No person training or working in a school or establishment shall be permitted to carry any instrument or supplies in or on a garment or uniform. (Authorized by and implementing K.S.A. 1991 Supp. 65-1,148; effective Aug. 23, 1993.)

28-25-10. Disinfecting non-electrical instruments and equipment. (a) Before use upon a patron, all non-electrical instruments and equipment shall be disinfected in the following manner: clean with soap or detergent and water and then totally immerse in either an EPA-registered product that contains one of the following terms on its label: sterilant; or bactericide, fungicide and virucide; or disinfectant, fungicide and virucide; or germicide, fungicide and virucide used according to manufacturer's instructions or 70% isopropyl alcohol for at least ten minutes.

(b) The disinfectant solutions specified in section (a) shall remain covered at all times and shall be changed at least once per week and/or whenever visibly cloudy or dirty.

(c) All non-disinfected instruments that have been used on a patron or soiled in any manner shall be placed in a properly labeled covered receptacle.

(d) All disinfected instruments shall be stored in a clean enclosed cabinet or covered container reserved for instruments only. (Authorized by and implementing K.S.A. 65-1,148; effective Aug. 23, 1993.)

28-25-11. Disinfecting electrical instruments. (a) Clippers, vibrators, and other electrical instruments shall be disinfected prior to each use by:

(1) First removing all foreign matter; and

(2) Disinfecting with an EPA-registered product that contains one of the following terms on its label: sterilant; or bactericide, fungicide and virucide; or disinfectant, fungicide and virucide; or germicide, fungicide and virucide used according to manufacturer's instructions.

(b) All disinfected electrical instruments shall be stored in a clean, covered place. (Authorized by and implementing K.S.A. 65-1,148; effective Aug. 23, 1993.)

28-25-12. Physical facilities. (a) The school or shop shall be kept well lighted, well ventilated, and in a sanitary condition. Floors, walls, ceilings, furniture and other fixtures and apparatus and all other exposed surfaces in each school or shop shall be kept clean, free from dust, hair and other debris, and in good repair at all time. All curtains shall be kept carefully laundered or chemically cleaned.

(b) If a room or rooms used for residential or non-barbering business purposes are in the same room or adjacent to a room used for the practice of barbering, then a solid partition shall separate the premises used for residential or business purposes from the barbering area. The partition may contain a door, provided it remains closed except for entering and leaving.

(c) A separate outside entrance shall be provided for the school or shop.

(d) All schools or shops shall be supplied with sanitary drinking water facilities. (Authorized by and implementing K.S.A. 1991 Supp. 65-1,148; effective Aug. 23, 1993.)

28-25-13. Prohibitions. (a) The use of cuspidors or other receptacles for sputum is prohibited. No person shall expectorate in any shop or school.

(b) The use of shaving mugs and lather brushes is prohibited.

(c) The use of lump alum, styptic sticks or pencils, powder puffs, and sponge, finger or towel bowls is prohibited.

(d) Neck dusters are prohibited.

(e) No person shall bring any animal into, or permit any animal to be brought into, or permit any animal to remain in a school or shop. Trained animals accompanying sightless or hearing impaired persons shall be exempt from this section.

(f) No school or shop shall permit an accumulation of waste or refuse.

(g) All open waste containers are prohibited. (Authorized by and implementing K.S.A. 1991 Supp. 65-1,148; effective Aug. 23, 1993.)

28-25-14. Rules and licenses posted. (a) Each school or shop shall keep a copy of the sanitation regulations adopted by the Kansas department of health and environment, the inspection report for the school or shop, and the license of the school or shop posted in a conspicuous place.

(b) Each employee or student shall post their personal license at their work station. (Authorized by and implementing K.S.A. 1991 Supp. 65-1,148; effective Aug. 23, 1993.)

28-25-15. Enforcement. (a) The holder or holders of a shop or school license and the person in charge of any such shop or school shall be liable for implementing and maintaining all applicable sanitary regulations individually and jointly with all persons employed by or working in or on the premises. All students and licensees shall be held individually liable for implementation and maintenance of all applicable sanitary regulations.

(b) Refusal to permit, or interference with, an inspection by an authorized representative of the board of barbering during any time the instruction or practice of barbering is being conducted shall constitute a cause for disciplinary action. (Authorized by and implementing K.S.A. 1991 Supp. 65-1,148; effective Aug. 23, 1993.)

Article 26.—MEAT AND POULTRY

A. SLAUGHTERHOUSES; PACKING, SAUSAGE AND OTHER PROCESSING PLANTS

28-26-1 to 28-26-19. (Authorized by K.S.A. 65-6a03; effective Jan. 1, 1966; revoked May 1, 1980.)

B. POULTRY DRESSING AND PACKING PLANTS

28-26-30 to 28-26-49. (Authorized by K.S.A. 65-6a03; effective Jan. 1, 1966; revoked May 1, 1980.)

C. STATE INSPECTION; MEAT AND POULTRY

28-26-60 to 28-26-70. (Authorized by K.S.A. 65-6a03, 65-6a07; effective Jan. 1, 1966; revoked May 1, 1980.)

D. LABELING IMPORTED MEAT AND POULTRY

28-26-80 to 28-26-87. (Authorized by K.S.A. 1965 Supp. 65-6a15; effective Jan. 1, 1966; revoked May 10, 1996.)

E. LUNGS IN FOOD PRODUCTS

28-26-90. (Authorized by K.S.A. 65-603, 65-6a03; effective Jan. 1, 1966; revoked May 1, 1980.)

28-26-90a. (Authorized by K.S.A. 1979 Supp. 65-673; effective May 1, 1980; revoked May 10, 1996.)

Article 27.—HAZARDOUS HOUSEHOLD ARTICLES

A. GENERAL REGULATIONS

28-27-1. Definitions. (a) The term “hazardous substance” as used in these regulations shall mean any substance or mixture of substances which:

- (1) is toxic,
- (2) is corrosive,
- (3) is an irritant,
- (4) is flammable,
- (5) is radioactive, or
- (6) generates pressure through decomposition, heat or other means, if such substance may cause substantial personal injury or illness during any customary or reasonably anticipated handling or use.

(b) The term “toxic” shall apply to any substance which has the inherent capacity to produce bodily injury through ingestion, inhalation, or absorption through the skin.

(c) (1) The term “poison” means any toxic substance which falls within any of the following categories:

(A) produces death within forty-eight hours in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, at a single dose of fifty milligrams or less per kilogram of body weight, when orally administered; or

(B) produces death within forty-eight hours in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, when inhaled continuously for a period of one hour or less at an atmospheric concentration of two milligrams or less per liter of gas, vapor, mist, or dust: *Provided*, Such concentration is likely to be encountered by man when the substance is used in any reasonably foreseeable manner; or

(C) produces death within forty-eight hours in half or more than half of a group of ten or more rabbits tested in a dosage of two hundred milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for twenty-four hours or less.

(2) If available data on experience with either mature or immature humans with any substance in the above named concentrations indicate results different from those obtained on animals, the human data shall take precedence.

(d) The term “corrosive” means any substance which in contact with living tissue will cause substantial destruction of tissue by chemical action; but shall not refer to action on inanimate surfaces.

(e) The term “irritant” means any substance, not corrosive within the meaning of subsection (d) of this section, which in contact with normal living tissue will induce a severe local tissue reaction.

(f) The term “flammable” shall apply to any substance which has a flash point of eighty degrees Fahrenheit, or below, as determined by the Tagliabue open cup tester.

(g) The term “radioactive” shall apply to any substance which as a result of disintegration of unstable atomic nuclei emits energy.

(h) The term “label” means a display of written, printed, or graphic matter upon the immediate container of any substance; and a requirement, made by or under authority of this act, that any word, statement, or other information appear on the label, shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such substance, or is easily legible through the outside container or wrapper. (Authorized by K.S.A. 1965 Supp. 65-2703; effective Jan. 1, 1966.)

28-27-2. Labeling. Every retail package of a hazardous substance intended for household use which is offered for sale in this state, except those for which specific regulations are hereinafter pro-

vided, shall bear a label containing the following information:

(a) The name and place of business of the manufacturer, packer or distributor;

(b) The common or usual name, or the chemical name (if there be no common or usual name), or the recognized generic name (not trade name only) of the hazardous substance or of each component which contributes substantially to its hazard;

(c) One of the following signal words: "Danger," "warning," or "caution;"

(d) When necessary, an affirmative statement of the principal hazard or hazards, such as, "flammable," "vapor harmful," "causes burns," "absorbed through skin," or similar wording descriptive of the hazard.

(e) Precautionary measures describing the appropriate action to be followed or avoided;

(f) Instructions, when necessary, for first aid treatment in case of contact or exposure if the substance is hazardous through contact or exposure;

(g) The word "poison" for any substance which is defined as poisonous in these regulations;

(h) Instructions for handling and storage of packages which require special care in handling or storage;

(i) The statement "keep out of the reach of children," or its practical equivalent. (Authorized by K.S.A. 1965 Supp. 65-2703; effective Jan. 1, 1966.)

28-27-3. Prominence of required information. All statements required in these regulations to appear on the labels of household products shall be located prominently thereon and shall be printed in English in legible type in contrast by typography, layout, or color with other printed material on the label. (Authorized by K.S.A. 1965 Supp. 65-2703; effective Jan. 1, 1966.)

28-27-4. Small package exemptions. On labels of packages where the size of the container makes it impractical to include all of the subject matter required by 28-27-2, the statement of precautionary measures describing action to be followed or avoided may be abbreviated and the instructions for handling and storage of package may be deleted. In other cases, including substances presenting only minor hazards, application to vary from the prescribed labeling requirements in 28-27-2 shall be made to the Kansas state board of health. (Authorized by K.S.A. 1965 Supp. 65-2703; effective Jan. 1, 1966.)

28-27-5. Practical equivalent of wording permitted. Use of language on labels which is the practical equivalent of that suggested in 28-27-2 shall constitute compliance with these regulations, except that no words shall be regarded as the practical equivalent of the word "POISON" or "POISONOUS." (Authorized by K.S.A. 1965 Supp. 65-2703; effective Jan. 1, 1966.)

B. PAINTS, VARNISHES AND SIMILAR PRODUCTS

28-27-10. Articles containing toxic metal compounds. Paints, varnishes and similar products containing not more than one percent of lead as metal (Pb), and not containing compounds of antimony, arsenic, cadmium, mercury, selenium, or barium (when soluble by stirring for 10 minutes with 5 percent hydrochloric acid at room temperature) introduced as such in the formulation of these products, and flashing below 150°F., shall bear the following cautionary labeling printed in type of sufficient size and prominence and in such contrast as to be easily readable under the normal conditions of sale and use:

(a) For products with a flash point above 80°F., and which are toxic by inhalation, ingestion or skin contact:

CAUTION! COMBUSTIBLE

Keep away from heat and open flame. Use with adequate ventilation. Avoid prolonged or repeated contact with skin. Avoid prolonged breathing of vapor or spray mist. Keep container closed when not in use.

(b) For products with a flash point above 20°F. and not higher than 80°F., and which are toxic by inhalation, ingestion or skin contact:

WARNING! FLAMMABLE

Keep away from heat, sparks, and open flame. Use with adequate ventilation. Avoid prolonged or repeated contact with skin. Avoid prolonged breathing of vapor or spray mist. Keep container closed when not in use.

(c) For products with flash point of 20°F. or lower, and which are toxic by inhalation, ingestion or skin contact:

DANGER! EXTREMELY FLAMMABLE

Keep away from heat, sparks, and open flame. Use with adequate ventilation. Avoid prolonged or repeated contact with skin. Avoid prolonged breathing of vapor or spray mist. Keep container closed when not in use.

(Authorized by K.S.A. 1965 Supp. 65-2703; effective Jan. 1, 1966.)

28-27-11. Articles marked "do not take internally." The words "do not take internally" may be omitted from the labeling of articles de-

scribed in 28-27-10 except in the case of clear liquids, such as thinners. Regardless of flash point, these clear liquids shall bear appropriate labeling as indicated in 28-27-10 plus the warning "do not take internally." (Authorized by K.S.A. 1965 Supp. 65-2703; effective Jan. 1, 1966.)

28-27-12. Flash point, definition. "Flash point" shall mean, for the purposes of these regulations, the flash point as determined by the Tagliabue open cup method, as specified in the American society for testing materials method D1310-55T. The percentage of lead shall be determined as lead metal (Pb) based on the total solids of the product. (Authorized by K.S.A. 1965 Supp. 65-2703; effective Jan. 1, 1966.)

28-27-13. Odorless solvents. Products described in 28-27-10 which contain "odorless" solvents shall be labeled with appropriate cautionary statements specified in 28-27-10, but the words "use with adequate ventilation" shall be in type two points larger than the type used for the rest of the cautionary labeling. (Authorized by K.S.A. 1965 Supp. 65-2703; effective Jan. 1, 1966.)

28-27-14. Articles containing toxic metal compounds. Paints, varnishes, and similar products containing more than one percent of lead as metal (Pb) in compound, or containing a compound of antimony, arsenic, cadmium, mercury, selenium or barium (when soluble by stirring for 10 minutes with 5 percent hydrochloric acid at room temperature) introduced as such in the formulation of the products, and a solvent flashing below 150°F., shall bear the following cautionary labeling printed in type of sufficient size and prominence and in such contrast as to be easily readable under the normal conditions of sale and use.

(a) For products with flash point above 80°F.:

CAUTION! COMBUSTIBLE

Keep Away From Heat and Open Flame
CONTAINS LEAD OR OTHER
COMPOUNDS HARMFUL IF EATEN

Do not apply to toys, furniture or interior surfaces which might be chewed by children. Use with adequate ventilation. Avoid breathing vapor or spray mist. Avoid prolonged contact with skin. Wash thoroughly after handling and before eating or smoking. Keep container closed when not in use.

(b) For products with flash point above 20°F. and not higher than 80°F.:

WARNING! FLAMMABLE

Keep Away From Heat, Sparks, and Open Flame

CONTAINS LEAD OR OTHER
COMPOUNDS HARMFUL IF EATEN

Do not apply to toys, furniture or interior surfaces which might be chewed by children. Use with adequate ventilation. Avoid breathing vapor or spray mist. Avoid prolonged contact with skin. Wash thoroughly after handling and before eating or smoking. Keep container closed when not in use.

(c) For products with flash point below 20°F.:

DANGER! EXTREMELY FLAMMABLE

Keep Away From Heat, Sparks, and Open Flame
CONTAINS LEAD OR OTHER
COMPOUNDS HARMFUL IF EATEN

Do not apply to toys, furniture or interior surfaces which might be chewed by children. Use with adequate ventilation. Avoid breathing vapor or spray mist. Avoid prolonged contact with skin. Wash thoroughly after handling and before eating or smoking. Keep container closed when not in use.

(Authorized by K.S.A. 1965 Supp. 65-2703; effective Jan. 1, 1966.)

28-27-15. Articles containing lead; labeling. When more than one percent of lead is the only harmful compound used in a product described in 28-27-14 the words "contains lead or other compounds harmful if eaten" may be changed to "contains more than one percent lead (Pb) harmful if eaten." (Authorized by K.S.A. 1965 Supp. 65-2703; effective Jan. 1, 1966.)

28-27-16. Articles containing harmful solvents. Paints, varnishes, paint removers and similar products, not described in 28-27-14 containing significant amounts of materials or solvents which may be harmful shall bear cautionary statements warning the user of hazards existing in their use. Manufacturers shall be guided in the labeling of this class of products by the principles set forth in manufacturing chemists association manual L-1 warning labels applying to the specific hazardous chemicals involved. (Authorized by K.S.A. 1965 Supp. 65-2703; effective Jan. 1, 1966.)

C. TOYS

28-27-20. Toys bearing toxic paints prohibited. The sale of any toy is prohibited if it is coated with paints and lacquers containing compounds of lead of which the lead content (calculated as Pb), is in excess of 1 percent of the total weight of the contained solids (including pigments and drier), or soluble compounds of antimony, arsenic, cadmium, mercury, selenium or barium, introduced as such. Compounds are considered soluble if quantities in excess of 0.1 percent are

dissolved by 5 percent hydrochloric acid after stirring for 10 minutes at room temperature. (Authorized by K.S.A. 1965 Supp. 65-2703; effective Jan. 1, 1966.)

28-27-21. Toys made of toxic plastics prohibited. The sale of any toy made in whole or in part of a plastic containing leachable toxic constituents is prohibited. (Authorized by K.S.A. 1965 Supp. 65-2703; effective Jan. 1, 1966.)

28-27-22. Toys filled with toxic fluids prohibited. The sale of any toy filled with any toxic fluid which might be injurious upon breakage or leakage is prohibited. (Authorized by K.S.A. 1965 Supp. 65-2703; effective Jan. 1, 1966.)

28-27-23. Bubble forming materials to be non-toxic. Materials intended for blowing bubbles, whether aqueous or plastic, shall be composed only of materials which are non-toxic by ingestion, inhalation, absorption through the skin or through the eyes. (Authorized by K.S.A. 1965 Supp. 65-2703; effective Jan. 1, 1966.)

28-27-24. Fuels for toys and models, labeling. Fuels for use in toys or models shall bear all the labeling information required under 28-27-2. (Authorized by K.S.A. 1965 Supp. 65-2703; effective Jan. 1, 1966.)

28-27-25. Pigments, solvents or bodies in certain toys to be non-toxic. Pigments, solvents or bodies used in such toys as crayons, chalks, modeling clays, doughs, etc. shall be non-toxic. (Authorized by K.S.A. 1965 Supp. 65-2703; effective Jan. 1, 1966.)

D. INSECTICIDE VAPORIZING DEVICES

28-27-30. Devices for vaporizing chlorinated hydrocarbons prohibited. No person, corporate or natural, shall advertise or label any device, intended for household use which is designed and intended to vaporize by heat any chlorinated hydrocarbon insecticide, in such a manner as to suggest, imply, or recommend that the device is to be used while any person occupies the premises where such use takes place, nor shall any person advertise or label such device so as to suggest, imply, or recommend that it be used in living quarters for any period in excess of eight (8) hours or more frequently than at fourteen (14) day intervals.

The term "label" as used in this regulation refers to any written, printed or graphic matter appearing on or accompanying the retail wrapper

or package of the devices described herein. The term "advertise" refers to the making of any representation, disseminated in any manner or by any means other than by a label, for the purpose of inducing, or which is likely to induce directly or indirectly, the purchase of insecticide vaporizing devices.

The sale, offering for sale or holding for sale of any vaporizing devices which are advertised or labeled in violation of this regulation is prohibited; *Provided, however,* That no person shall be held in violation for advertising unless he shall in some way have disseminated or aided in dissemination of such advertising. (Authorized by K.S.A. 1965 Supp. 65-2703; effective Jan. 1, 1966.)

E. CYANIDE METAL POLISHES; PROHIBITED

28-27-31. Metal polishes containing cyanides prohibited. The sale, offering for sale, or holding for sale in Kansas of any metal polish intended for household use which contains any cyanides or substances which may react to produce the cyanide radical (CN) is prohibited. (Authorized by K.S.A. 1965 Supp. 65-2703; effective Jan. 1, 1966.)

Article 28.—HYPNOTIC, SOMNIFACIENT OR STIMULATING DRUGS

28-28-1 to 28-28-2. (Authorized by K.S.A. 65-2606; effective Jan. 1, 1967; revoked May 10, 1996.)

Article 29.—SOLID WASTE MANAGEMENT

PART 1. DEFINITIONS AND ADMINISTRATION PROCEDURES

28-29-1. (Authorized by and implementing K.S.A. 1981 Supp. 65-3406; effective Jan. 1, 1972; amended, E-79-22, Sept. 1, 1978; amended May 1, 1979; amended May 1, 1982; revoked May 10, 1996.)

28-29-1a. Modification of obsolete references and text. The following modifications shall be made to article 29:

(a) In K.A.R. 28-29-23(t), "K.A.R. 28-31-3" shall be replaced with "K.A.R. 28-31-261."

(b) In K.A.R. 28-29-23a(c)(8), the phrase "K.A.R. 28-31-3 and K.A.R. 28-29-4" shall be replaced with "K.A.R. 28-31-261."

(c) In K.A.R. 28-29-27(g)(3), "K.A.R. 28-31-9" shall be replaced with "K.A.R. 28-31-270."

(d) In K.A.R. 28-29-102, the following modifications shall be made:

(1) In paragraph (1)(2)(A), “K.A.R. 28-15-11” shall be replaced with “K.A.R. 28-16-28b(fff).”

(2) In paragraph (1)(2)(B), “K.A.R. 28-15-11” shall be replaced with “K.S.A. 65-162a, and amendments thereto.”

(e) In K.A.R. 28-29-108, the following modifications shall be made:

(1) In subsection (a), the phrase “K.A.R. 28-31-3 and K.A.R. 28-31-4” shall be replaced with “K.A.R. 28-31-261.”

(2) In paragraph (h)(1), “K.A.R. 28-19-47” shall be replaced with “K.A.R. 28-19-647.”

(f) In K.A.R. 28-29-109(b)(6) and (7)(B)(i), “K.A.R. 28-31-3” shall be replaced with “K.A.R. 28-31-261.”

(g) In K.A.R. 28-29-300(a)(5), “K.A.R. 28-31-4” shall be replaced with “K.A.R. 28-31-261.”

(h) In K.A.R. 28-29-1100, the following modifications shall be made:

(1) In paragraph (b)(1), “K.A.R. 28-31-4 (b)” shall be replaced with “K.A.R. 28-31-261.”

(2) In paragraph (b)(3), the following modifications shall be made:

(A) “ ‘Small quantity generator’ ” shall be replaced with “ ‘Conditionally exempt small quantity generator.’ ”

(B) “K.A.R. 28-31-2” shall be replaced with “K.A.R. 28-31-260a.”

(3) In paragraph (b)(4), the phrase “defined by the United States department of transportation and adopted by reference in K.A.R. 28-31-4 (e)” shall be replaced with “as listed in 49 CFR 173.2, as in effect on October 1, 2009, which is hereby adopted by reference.”

(4) In subsection (c), each occurrence of the term “K.A.R. 28-31-16” shall be replaced with “K.A.R. 28-31-279 and K.A.R. 28-31-279a.”

(5) In subsection (d), “[s]mall quantity generator” shall be replaced with “Conditionally exempt small quantity generator.”

(6) In subsections (d) and (e), each occurrence of the term “SQG” shall be replaced with “CESQG.”

(i) In K.A.R. 28-29-1102, the following modifications shall be made:

(1) Paragraphs (b)(2)(C), (b)(2)(C)(i), and (b)(2)(C)(ii) shall be replaced with the following text: “All HHW that is transferred for treatment, storage, or disposal shall be manifested as hazardous waste. All applicable hazardous waste codes for each waste shall be listed on the manifest, using

all available information. HHW facilities shall not be required to submit samples for laboratory testing in order to determine hazardous waste codes.”

(2) In paragraph (b)(2)(D), “K.A.R. 28-31-14” shall be replaced with “K.A.R. 28-31-268.”

(3) Paragraph (b)(2)(E) shall be replaced with the following text: “All HHW that is transferred for treatment, storage, or disposal shall be prepared for transportation off-site as hazardous waste.”

(4) In paragraph (b)(2)(F)(i), “K.A.R. 28-31-15” shall be replaced with “K.A.R. 28-31-273.”

(j) In K.A.R. 28-29-1103(c), the phrase “meeting the USDOT manufacturing and testing specifications for transportation of hazardous materials, as adopted by reference in K.A.R. 28-31-4 (e)” shall be replaced with “that are compatible with the waste.”

(k) In K.A.R. 28-29-1107(a)(2)(D), “small quantity generator” shall be replaced with “conditionally exempt small quantity generator.” (Authorized by and implementing K.S.A. 65-3406; effective Nov. 28, 2011.)

28-29-2. Variances. (a) General Procedure. If exceptional circumstances make strict conformity with these regulations impractical or not feasible, a person may submit a written request for a variance from these regulations. The department may grant a variance from these regulations and stipulate conditions and time limitations as necessary to comply with the intent of all applicable state and federal laws. The department shall review the variance request and notify the person within ninety (90) days of receipt that the application is approved, denied, or requires modification.

(b) *Experimental operations.* Variances may be granted to facilitate experimental operations intended to develop new methods or technology. Variances for experimental operations shall be considered only where significant health, safety, environmental hazards, or nuisances will not be created, and when a detailed proposal is submitted and accepted which sets forth the objectives, procedures, controls, monitoring, reporting, time frame, and other data regarding the experiment.

(c) *Restrictions.* Variances for experimental operations shall be limited to a maximum of two (2) years; however, the department may renew the variance for one or more additional two-year periods upon a showing by the person that the need for a variance continues to be valid. (Authorized by and implementing K.S.A. 1981 Supp. 65-3406;

effective Jan. 1, 1972; amended, E-79-22, Sept. 1, 1978; amended May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982.)

28-29-3. Definitions. (a) "Active area" means any solid waste disposal area that has received solid waste and has fewer than 12 inches of soil cover.

(b) "Agricultural waste" means solid waste resulting from the production of farm or agricultural products.

(c) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is, or tends significantly to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property.

(d) "Aquifer" means saturated soils and geologic materials that are capable of recharging a well within 24 hours and whose boundaries can be identified and mapped from hydrogeologic data. This term shall include all hydraulically connected aquifers.

(e) "Backyard composting" means a composting operation that does not distribute the finished compost for use off-site and that meets one of the following conditions:

(1) The materials are all compostable and are generated by no more than four single residences, or the equivalent of four single residences.

(2) The material being composted consists entirely of yard waste, and the volume of material being composted is less than 10 cubic yards.

(f) "Bulky waste" means items of refuse too large to be placed in refuse storage containers, including appliances, furniture, tires, large auto parts, motor vehicles, trees, branches, and stumps.

(g) "By-product" means a material produced without separate commercial intent during the manufacture or processing of other materials or mixtures.

(h) "Commercial waste" means all solid waste emanating from establishments engaged in business, including solid waste originating in stores, markets, office buildings, restaurants, shopping centers, and theaters.

(i) "Composting" means a controlled process of microbial degradation of organic material into a stable, nuisance-free, humus-like product. This term shall not include the following:

(1) Manure storage piles, whether turned to stabilize or not turned; and

(2) yard waste directly applied to agricultural land.

(j) "Composting area" means the area used for receiving, processing, curing, and storing compostable materials and compost.

(k) "Design period" means the period consisting of the operating life of the solid waste landfill facility and the postclosure care period.

(l) "Detection monitoring system" means a network of wells established to detect any releases of contaminants from a landfill unit.

(m) "Director" means the director of the division of environment, Kansas department of health and environment.

(n) "Discarded material" means one of the following:

(1) Material that has been abandoned or disposed of; or

(2) a by-product or residual, when it is either in treatment or in storage or when it is used in a manner that constitutes disposal.

(o) "Disease vector" means rodents, flies, mosquitos, or other pests capable of transmitting disease to humans.

(p) "Disturbed area" means those areas within a facility that have been physically altered during waste disposal operations or during the construction of any part of the facility.

(q) "Existing unit" means a municipal solid waste disposal unit that is completely constructed and receiving waste before the appropriate date specified in K.A.R. 28-29-100.

(r) "Facility" means a site and all equipment and fixtures on a site used to process or dispose of solid waste. A facility consists of the entire solid waste processing or disposal operation. All structures used in connection with the waste processing or disposal operation, including any structures used to facilitate the processing or disposal, shall be considered a part of the facility, including the following:

(1) Solid waste disposal units;

(2) buildings;

(3) treatment systems;

(4) processing and storage operations; and

(5) monitoring stations.

(s) "Garbage" means the animal and vegetable waste resulting from the handling, processing, storage, packaging, preparation, sale, cooking, or serving of meat, produce, or other foods and shall include unclean containers.

(t) "Gas collection system" means a system of wells, trenches, pipes, and other related ancillary

structures, including manholes, compressor housings, and monitoring installations, that collect and transport the gas produced in a solid waste landfill to one or more gas processing points. The flow of gas through such a system can be produced by naturally occurring gas pressure gradients or can be aided by an induced draft generated by mechanical means.

(u) "Gas venting system" means a system of wells, trenches, pipes, and other related structures that vents the gas produced in a solid waste landfill to the atmosphere.

(v) "Geomembrane" means a membrane with a very low permeability, which means approximately 1×10^{-12} cm/sec, that is used with a foundation of soil, rock, earth, or any other geotechnical, engineering-related material as an integral part of a human-made structure or system designed to limit the movement of liquid or gas in the system.

(w) "Geotextile" means any permeable textile used with soil, rock, earth, or any other geotechnical, engineering-related material as an integral part of a human-made structure or system designed to perform functions including any of the following:

- (1) Provide planar flow for drainage;
- (2) filter particulates from a liquid; or
- (3) serve as a cushion to protect geomembranes.

(x) "Groundwater" means that part of subsurface water in the ground that is in the zone of saturation.

(y) "Incineration" means the controlled process of burning solid, liquid, and gaseous combustible wastes for volume and weight reduction in facilities designed for that use.

(z) "Incinerator" means any device or structure used for the destruction or volume reduction of solid waste by combustion pursuant to disposal or salvaging operations.

(aa) "Land surveyor" means a person who has received a license to practice land surveying from the state board of technical professions pursuant to K.S.A. 74-7001 et seq., and amendments thereto.

(bb) "Leachate" means liquid that has been or is in direct contact with solid waste or the active area of a solid waste disposal unit.

(cc) "Licensed geologist" means a person who has received a license to practice geology from the Kansas state board of technical professions pursuant to K.S.A. 74-7001 et seq., and amendments thereto.

(dd) "Lift" means an accumulation of waste that is compacted into a unit and over which daily cover material is normally placed.

(ee) "Long-term care" means the maintenance of all appurtenances and systems installed or used in the containment of solid wastes and the maintenance of the effective performance of leachate or gas collection, treatment, and disposal systems installed for use during the postclosure care period at a solid waste disposal area or a solid waste processing facility.

(ff) "Mixed refuse" means a mixture of solid wastes containing both putrescible and nonputrescible materials.

(gg) "Monofill" means a landfill in which 90 percent or more of the waste disposed is restricted to one specified waste.

(1) All other waste disposed of in a monofill shall meet both of the following requirements:

(A) The waste shall be associated with the process that produced the specified waste.

(B) The waste shall have characteristics similar to those of the specified waste and shall have similar and limited potential hazards to human health and the environment.

(2) Clean rubble, as defined in K.S.A. 65-3402 and amendments thereto, may be disposed of in any monofill and shall not be considered in calculating the percentage of specified waste in the monofill.

(hh) "National pollutant discharge elimination system" and "NPDES" shall have the meaning specified in K.A.R. 28-16-58.

(ii) "New facility" and "new unit" mean a municipal solid waste landfill (MSWLF), as defined in K.S.A. 65-3402 and amendments thereto, or a unit at a facility for which either of the following conditions applies:

(1) The MSWLF or unit is a permitted or unpermitted MSWLF or unit that has not accepted any waste before October 9, 1993.

(2) The MSWLF or unit is an existing MSWLF or unit whose lateral boundaries are increased after the effective date specified in K.A.R. 28-29-100.

(jj) "Nuisance" means either of the following situations, if caused by or a result of the management of solid wastes in violation of the solid waste statutes in chapter 65, article 34, or the solid waste regulations in article 29 of these regulations:

(1) A situation that is injurious to health or offensive to the senses or that obstructs the free use of property in a manner that interferes with the comfortable enjoyment of life or property; or

(2) a situation that adversely affects the entire community or neighborhood, or any substantial number of persons, even though the extent of the

annoyance or damage inflicted on individuals is unequal.

(kk) "Official plan" means a comprehensive plan submitted to and approved by the secretary as provided in K.S.A. 65-3405, and amendments thereto.

(ll) "100-year, 24-hour storm" means a precipitation event of 24-hour duration with a one percent probability of occurring in any given year.

(mm) "On-site" means on the premises where solid waste generation occurs, including two or more pieces of property that are divided only by public or private rights-of-way and that are otherwise contiguous.

(nn) "Open burning" means the burning of any materials without all of the following characteristics:

(1) Control of combustion air to maintain adequate temperature for efficient combustion;

(2) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(3) control of emission of the gaseous combustion products.

(oo) "Operating record" means a compilation of reports, plans, specifications, monitoring data, and other information concerning facility operations. The operating record shall be kept on-site or at an alternate, secure location specified in the operating plan, in accordance with these regulations.

(pp) "Operator" means the person or persons responsible for the operation and maintenance of a facility or part of a facility.

(qq) "Owner" means the person or persons who own a facility or part of a facility.

(rr) "Permit" means a written permit issued by the secretary that by its conditions may authorize the permittee to construct, install, modify, or operate a specified solid waste disposal area or solid waste processing facility.

(ss) "Permit area" and "permitted area" mean the entire approved horizontal and vertical area occupied by a permitted solid waste processing or disposal facility.

(tt) "Point of compliance" means a specified horizontal distance from the edge of a disposal unit's planned design. The point of compliance shall be the point at which an owner or operator demonstrates compliance with the liner performance standard, if applicable, and with the groundwater protection standard.

(uu) "Processing of wastes" means the extraction of materials, transfer, volume reduction,

conversion to energy, or other separation and preparation of solid waste for reuse or disposal.

(vv) "Professional engineer" means a person who has registered with and obtained a license to practice engineering from the state board of technical professions pursuant to K.S.A. 74-7001 et seq., and amendments thereto.

(ww) "Publicly owned treatment works (POTW)" means a treatment works that is owned by the United States of America, the state of Kansas, or a unit of local government. This definition shall include any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastewater. The definition shall include sewers, pipes, and other conveyances only if they convey wastewater to a POTW.

(xx) "Putrescible wastes" means solid waste that contains organic matter capable of being decomposed by microorganisms and that is capable of attracting or providing food for birds and disease vectors.

(yy) "Qualified groundwater scientist" means a licensed geologist or professional engineer who has sufficient training and experience in groundwater hydrology and related fields. Sufficient training may be demonstrated by a professional certification or by the completion of an accredited university program that enables the individual to make sound professional judgments regarding groundwater monitoring, contaminant fate and transport, and corrective action.

(zz) "Resource recovery" means the recovery of material or energy from solid waste.

(aaa) "Run-off" means water resulting from precipitation that flows overland from any part of a facility, except active areas, before the water enters a defined stream channel, and any portion of the overland flow that infiltrates into the ground before the water reaches the stream channel.

(bbb) "Run-on" means any rainwater or surface water that flows onto any part of a facility.

(ccc) "Salvaging" means the controlled removal of reusable materials from solid waste.

(ddd) "Sanitary landfill" means a method of disposing of solid wastes on land without creating nuisances or hazards to the public health or safety or the environment at a permitted solid waste disposal area that meets the standards specified in K.A.R. 28-29-23.

(eee) "Scavenging" means the removal of materials from a facility or unit that is not salvaging.

(fff) "Significant modifications" means substantial alterations, changes, additions, or de-

letions to a facility, facility operations, facility ownership, or facility financial status that occur after permit issuance.

(ggg) “Small landfill” and “small arid landfill” mean a municipal solid waste landfill that has been granted an exemption from the design requirements in K.A.R. 28-29-104, in accordance with K.A.R. 28-29-103.

(hhh) “Source-separated organic waste” means organic material that has been separated from noncompostable material at the point of generation and shall include the following wastes:

- (1) Vegetative food waste;
- (2) soiled or unrecyclable paper;
- (3) sewage sludge;
- (4) other wastes with similar properties, as determined by the department; and
- (5) yard waste in combination with these materials.

(iii) “Special waste” means any solid waste that, because of physical, chemical, or biological characteristics, requires special management standards due to concerns for owner or operator safety regarding handling, management, or disposal.

(jjj) “Static safety factor” means the ratio between resisting forces or moments in a slope and the driving forces or moments that can cause a massive slope failure.

(kkk) “Storage” means the containment of solid wastes in a manner that shall not constitute disposal or processing, under one of the following conditions:

(1) Precollection. Storage by the generator, on or adjacent to the premises, before initial collection. Under these regulations, precollection storage shall not require a processing facility permit.

(2) Postcollection. Storage by the processor or a collector, while the waste is awaiting processing or transfer to a disposal or recovery facility. Under these regulations, postcollection storage shall require a processing facility permit.

(lll) “Surface impoundment” means a natural topographic depression, a man-made excavation, or a diked area into which flowing wastes, including liquid wastes and wastes containing free liquids, are placed. For the purposes of these solid waste regulations, a surface impoundment shall not be considered a landfill.

(mmm) “25-year, 24-hour storm” means a precipitation event of 24-hour duration with a four percent probability of occurring in any given year.

(nnn) “Unit” and “disposal unit” mean a discrete area at a permitted landfill that is used for

the final disposal of solid waste. These terms shall include the following means of disposal:

- (1) Trench;
- (2) area fill; and
- (3) cut and cover.

(ooo) “Uppermost aquifer” means the first aquifer likely to be impacted by contamination from the facility. This term shall include the migration pathway to the aquifer and shall extend to the first demonstrated aquiclude. This term shall also include perched water tables, which are locally elevated water tables above a discontinuous low-permeability layer that is within a relatively higher-permeability layer.

(ppp) “Vegetative food waste” means food waste and food processing waste from materials including fruits, vegetables, and grains. Vegetative food waste shall not refer to animal products or by-products, including dairy products, animal fat, bones, and meat.

(qqq) “Vertical expansion” means an increase in the design capacity of an existing unit by increasing the final elevation limit of the unit.

(rrr) “Water pollution” means contamination or alteration of the physical, chemical, or biological properties of any waters of the state that creates a nuisance or that renders these waters harmful to public health, safety, or welfare; harmful to the plant, animal, or aquatic life of the state; or unsuitable for beneficial uses.

(sss) “Working face” means any part of a solid waste disposal area where waste is being disposed of.

(ttt) “Yard waste” means vegetative waste generated from ordinary yard maintenance, including grass clippings, leaves, branches less than 0.5 inches in diameter, wood chips and ground wood less than 0.5 inches in diameter, and garden wastes. (Authorized by and implementing K.S.A. 65-3406; effective Jan. 1, 1972; amended, E-79-22, Sept. 1, 1978; amended May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982; amended Oct. 1, 1999; amended May 30, 2003.)

28-29-4. (Authorized by K.S.A. 65-3406; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; revoked May 1, 1982.)

28-29-5. (Authorized by K.S.A. 65-3406; effective Jan. 1, 1972; amended, E-79-22, Sept. 1, 1978; amended May 1, 1979; revoked, E-82-8, April 10, 1981; revoked May 1, 1982.)

28-29-6. Permits and engineering plans.

(a) *Application for permits.* Every person desiring to obtain a permit shall file an application for a permit for the proposed solid waste disposal area or processing facility with the department at least thirty (30) days before the date the person wishes to start construction, alteration, or operation of the disposal area or processing facility. The application shall be on forms furnished by the department.

(b) *Design plans and engineering reports.*

(1) Design and closure plans and engineering reports required under these regulations shall bear the seal and signature of a professional engineer licensed to practice in Kansas.

(2) *Waiver.* Plans, designs, and relevant data for the construction of the following solid waste disposal areas and processing facilities, need not be prepared by a professional engineer provided that a review of these plans is conducted by a professional engineer licensed to practice in Kansas:

(A) Solid waste processing facilities when the equipment is originally manufactured for those purposes and installation is supervised by the vendor, or when the equipment requires only fencing, buildings, and connection to utility lines to be operational;

(B) Construction and demolition landfills; and

(C) Solid waste disposal areas considered by the department to be located in secure geological formations, which are a part of a solid waste management system established pursuant to K.S.A. 65-3401 *et seq.*, and which are expected to receive less than one hundred (100) tons of solid waste annually.

(c) *Permit considerations.* Any permit issued by the secretary shall, where appropriate, be reviewed with respect to all responsibilities within the department.

(d) *Transfer of permits.* Before any assignment, sale, conveyance, or transfer of all or any part of the property upon which a solid waste processing facility, or solid waste disposal area is or has been located, and before any change in the responsibility of operating a processing facility or disposal area is made, the permittee shall notify the department, in writing, of the intent to transfer title or operating responsibility, at least thirty (30) days in advance of the date of transfer. The person to whom the transfer is to be made shall not operate the solid waste processing facility or disposal area until the secretary issues a permit to that person. The person to whom the transfer is to be made shall submit the following:

(1) A permit application and plans, maps, and data as required by subsection (a) of this regulation;

(2) Plans satisfactory to the department for correcting any existing permit violations; and

(3) Substantiation in writing that the applicant has copies of all approved maps, plans, and specifications relating to the solid waste processing facility or disposal area.

(e) *Conformity with official plan.* Permits shall not be issued by the secretary until the applicant has secured, from the board of county commissioners or from the mayor of an incorporated city having an official plan, certification that the proposed facility is consistent with the official plan. This approval shall not be required when the official plan does not provide for management of the solid waste(s) to be processed or disposed.

(f) *Reopening closed sites or facilities.* Any person proposing to reopen, excavate, disrupt, or remove any solid waste from any solid waste disposal area where operations have been terminated shall secure a new permit as specified in paragraph (a) of this regulation. Applications for a permit shall include, where applicable, an operational plan stating the area involved, lines and grades defining limits of excavation, estimated number of cubic yards of material to be excavated, location where excavated solid waste is to be deposited, the estimated time required for excavation, and a plan for restoring the site.

(g) *Emergency provisions.* In emergency situations involving solid waste which requires storage, transportation, or disposal on a one-time basis or other special cases where strict adherence to these regulations would result in undue hardships or unnecessary delays, the department can prescribe on a case-by-case basis, the procedures and conditions necessary for the safe and effective management of the wastes. The generator shall not take action in these cases except as immediately necessary for the protection of human health or the environment, until the action is approved by the department. (Authorized by K.S.A. 1981 Supp. 65-3406; implementing K.S.A. 1981 Supp. 65-3406, 65-3407; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982.)

28-29-6a. Public notice of permit actions, public comment period, and public hearings.

(a) Public notice and comment period.

(1) Scope and timing. A public notice shall be given by the department when a municipal solid

waste landfill permit action has been proposed under K.A.R. 28-29-6 or when a public hearing has been scheduled pursuant to subsection (b) of this regulation.

(A) Public notice shall be required for a draft permit or any proposed significant modifications to a permit by the department.

(B) Public notice shall be required for any public hearing on a permit action.

(C) A public notice shall not be required when suspension, denial or revocation, or non-significant modification of a permit is proposed by the department.

(D) A public notice may describe more than one permit action or hearing.

(E) Each public notice shall be published not less than 30 days prior to the hearing or proposed action.

(2) Procedures.

(A) Each public notice shall be published in the Kansas register.

(B) Where a proposed action or hearing may generate significant local interest, a public notice shall also be published in a newspaper having major circulation in the vicinity of the proposed action or hearing.

(3) Contents of public notice. Each public notice issued under this regulation shall contain the following information:

(A) The name and address of the office processing the permit action for which notice is being given;

(B) the name and location of the facility for which the permit action is proposed;

(C) a map of the facility for which the permit action is proposed;

(D) a brief description of the activity to be conducted at the facility for which the permit action is proposed;

(E) the name, address, and telephone number of the person from whom interested persons may obtain or review additional information;

(F) the time and place of any hearing that will be held; and

(G) a brief description of the comment procedures outlined in subsections (b) and (c) of this regulation.

(b) Public comments. During the public comment period provided in subsection (a) of this regulation, any interested person may submit written comments. All comments, except those concerning determinations by local government units that the proposed permit action conforms with the

official plan, shall become a part of the permit record and shall be considered in making a final decision on the proposed permit action.

(c) Public hearings. If the department determines there is sufficient local interest in a proposed permit action, a public hearing may be scheduled. All written and verbal comments received during a public hearing provided in subsection (a) of this regulation shall become a part of the permit record and be considered in making a final decision on the proposed permit action.

(d) Response to comments. A response to comments shall be issued at the time any final permit decision is issued. The response shall be available to the public and shall:

(1) Specify what, if any, changes were made to the proposed action as a result of public comment; and

(2) briefly respond to any significant comments received during the public comment period. (Authorized by K.S.A. 65-3406; amended by L. 1993, Ch. 274, Sec. 2; implementing K.S.A. 65-3401; effective March 21, 1994.)

28-29-7. Conditions of permits. (a) When granting a permit, the secretary shall consider and stipulate: the types of solid wastes which may be accepted or disposed, special operating conditions, procedures, and changes necessary to comply with these and other state or federal laws and regulations.

(b) When the department determines that a solid waste has or may have value as a recoverable resource, a permit may require or may be modified to require segregation of the materials, processing, separate disposal, and marking to allow future retrieval of the materials.

(c) The department may specify conditions or a date upon which each permit will expire. (Authorized by K.S.A. 1981 Supp. 65-3406; implementing K.S.A. 1981 Supp. 65-3406, 65-3407; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982.)

28-29-8. Modifications of permits. (a) The permittee shall notify the department in writing at least thirty (30) days before any proposed modification of operation or construction from that described in the plan of operation or permit. The permittee shall not proceed with the modification until the department provides written approval.

(b) The department may at any time modify a permit or any term or condition of a permit to in-

clude: special conditions required to comply with the requirements of these regulations; to avoid hazards to public health or the environment or to abate a public nuisance; or to include modifications proposed by the permittee and approved by the department. Permits may be modified when:

(1) The permittee is not able to comply with the terms or conditions of the permit due to an act of God, a strike against someone other than the permittee, material shortage, or other conditions over which the permittee has little or no control; or

(2) New technology that can provide significantly better protection for health and environmental resources of the state becomes available.

(c) The permittee shall take prompt action to comply with the new special conditions, or within fifteen (15) days of receipt of notification of the new special conditions, request a hearing before the secretary in accordance with K.S.A. 65-3412. (Authorized by and implementing K.S.A. 1981 Supp. 65-3406; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982.)

28-29-9. Suspension of permits. (a) A permit shall be suspended by the department when in the opinion of the secretary this action is necessary to protect the public health or welfare, or the environment. The secretary shall notify the permittee of the suspension and the effective date. At the time of giving this notice, the secretary shall identify items of noncompliance with the requirements of these regulations or with conditions of the permit and shall specify deficiencies which the permittee shall correct, actions which the permittee shall perform, and the date or dates by which the permittee shall submit a plan detailing corrective action taken or to be taken in order to achieve compliance.

(b) The suspension shall remain in effect until the deficiencies are corrected to the satisfaction of the secretary or until the secretary makes a final determination based on the outcome of a hearing requested by the permittee under the provision of K.S.A. 65-3412 or amendments of that statute. The determination may result in termination of the suspension, continuation of the suspension, or modification or revocation of the permit.

(c) Permits shall be suspended for failure to pay the permit fee required by K.S.A. 65-3407 or amendments of that statute. (Authorized by K.S.A. 1981 Supp. 65-3406; implementing K.S.A. 1981 Supp. 65-3406, 65-3407; effective, E-79-22,

Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982.)

28-29-10. Denial or revocation of permits. (a) A permit may be denied or revoked for any of the following reasons:

(1) Misrepresentation or omission of a significant fact by the permittee either in the application for the permit or in information subsequently reported to the department;

(2) Improper functioning or operation of the processing facility or the disposal area that causes pollution or degradation of the environment or the creation of a public health hazard or a nuisance;

(3) Violation of any provision of K.S.A. 65-3401 *et seq.* or these rules and regulations or other restrictions set forth in the permit or in a variance;

(4) Failure to comply with the official plan; or

(5) Failure to comply with an order or a modification to a permit issued by the secretary.

(b) Any person aggrieved by the denial or revocation of a permit may request a hearing under the provision of K.S.A. 65-3412 or amendments of that statute. (Authorized by K.S.A. 1981 Supp. 65-3406; implementing K.S.A. 1981 Supp. 65-3406, 65-3407; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982.)

28-29-11. (Authorized by K.S.A. 65-3406; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; revoked, E-82-8, April 10, 1981; revoked May 1, 1982.)

28-29-12. Notification of closure, closure plans, and long-term care. (a) Notification of closure. All permittees shall notify the department in writing at least 60 days before closure.

(b) Closure plans. Persons desiring to obtain a permit shall file a site closure plan at the time a permit application is submitted. The closure plan shall delineate the finished construction of the processing facility or disposal area after closure. Closure plans for disposal areas shall also provide for long-term care when wastes are to remain at the area after closure. The plan shall be updated at the time of permit renewal or at the time notice of modification is submitted in accordance with K.A.R. 28-29-8(a), or at the time the notice of closure is submitted.

(c) If wastes are to remain at the disposal area after closure, the closure plan may be required by the department to be prepared by a professional engineer licensed to practice in Kansas.

Upon completion of all the procedures provided for in the closure plan, the engineer shall certify that the disposal area was closed in accordance with the plan.

(d) Closure plan contents. The closure plan shall include the following when determined applicable by the secretary:

(1) Plans for the final contours, type and depth of cover material, landscaping, and access control;

(2) final surface water drainage patterns and runoff retention basins;

(3) plans for the construction of liners, leachate collection and treatment systems, gas migration barriers or other gas controls;

(4) cross sections of the site that delineate the disposal or storage locations of wastes. The cross sections shall depict liners, leachate collection systems, the waste cover, and other applicable details;

(5) plans for the post-closure operation and maintenance of liners, leachate and gas collection and treatment systems, cover material, runoff retention basins, landscaping, and access control;

(6) removal of all solid wastes from processing facilities;

(7) plans for monitoring and surveillance activities after closure;

(8) recording of a detailed site description, including a plot plan, with the department. The plot plan shall include the summaries of the logs or ledgers of waste in each cell, depth of fill in each cell, and existing conditions;

(9) a financial plan for utilization of the surety bond or cash bond required by K.S.A. 65-3407; and

(10) an estimate of the annual post-closure and maintenance costs.

(e) Long-term care. The owner of a solid waste disposal area, where the wastes are not removed as a part of the closure plan, shall provide long-term care for a period of at least 30 years following approval by the department of completion of the procedures specified in the closure plan. At the time of application for, or at the time of closure of, a solid waste disposal area permit, additional periods of long-term care may be specified by the secretary as the secretary deems necessary to protect public health or welfare, or the environment. (Authorized by K.S.A. 1996 Supp. 65-3406, as amended by L. 1997, Ch. 139, Sec. 1; implementing K.S.A. 1996 Supp. 65-3406, as amended by L. 1997, Ch. 139, Sec. 1, and 65-3407, as amended by L. 1997, Ch. 140, Sec. 4; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended,

E-82-8, April 10, 1981; amended May 1, 1982; amended July 10, 1998.)

28-29-13. (Authorized by K.S.A. 65-3406; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; revoked, E-82-8, April 10, 1981; revoked May 1, 1982.)

28-29-14. (Authorized by K.S.A. 65-3406; effective Jan. 1, 1972; amended, E-79-22, Sept. 1, 1978; amended May 1, 1979; revoked, E-82-8, April 10, 1981; revoked May 1, 1982.)

28-29-15. (Authorized by K.S.A. 65-3406, 65-3407; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; revoked May 1, 1982.)

28-29-16. Inspections. (a) The secretary or any duly authorized representative of the secretary, at any reasonable hour of the day, having identified themselves and giving notice of their purpose, may:

(1) Enter a factory, plant, construction site, solid waste disposal area, solid waste processing facility, or any environment where solid wastes are generated, stored, handled, processed, or disposed, and inspect the premises and gather information of existing conditions and procedures;

(2) Obtain samples of solid waste from any person or from the property of any person, including samples from any vehicle in which solid wastes are being transported;

(3) Drill test wells on the affected property of any person holding a permit or liable for a permit under K.S.A. 65-3407 or amendments of that statute and obtain samples from the wells;

(4) Conduct tests, analyses, and evaluations of solid waste to determine whether the requirements of these regulations are otherwise applicable to, or violated by, the situation observed during the inspection;

(5) Obtain samples of any containers or labels; and

(6) Inspect and copy any records, reports, information, or test results relating to wastes generated, stored, transported, processed, or disposed.

(b) If during the inspection, unidentified or unpermitted waste storage or handling procedures are discovered, the department's representative may instruct the operator of the facility to retain and properly store solid or hazardous wastes, pertinent records, samples, and other items. These materials shall be retained by the operator until

the identification and handling of the waste is approved by the department.

(c) When obtaining samples, the department's representative shall allow the facility operator to collect duplicate samples for separate analysis. Analytical data that might reveal trade secrets shall be treated as confidential by the department, when requested by the owner. (Authorized by and implementing K.S.A. 1981 Supp. 65-3406; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982.)

28-29-17. (Authorized by K.S.A. 65-3406; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; revoked, E-82-8, April 10, 1981; revoked May 1, 1982.)

28-29-17a. This regulation shall be revoked on and after February 24, 2000. (Authorized by K.S.A. 1983 Supp. 65-3406; implementing K.S.A. 1983 Supp. 65-3406, 65-3407; effective, E-82-8, April 10, 1981; effective May 1, 1982; amended, T-84-41, Dec. 21, 1983; amended May 1, 1984; revoked Feb. 24, 2000.)

28-29-17b. This regulation shall be revoked on and after February 24, 2000. (Authorized by K.S.A. 1983 Supp. 65-3406; implementing K.S.A. 1983 Supp. 65-3406, 65-3407; effective May 1, 1982; amended, T-84-41, Dec. 21, 1983; amended May 1, 1984; revoked Feb. 24, 2000.)

28-29-18. (Authorized by K.S.A. 1983 Supp. 65-3406; implementing K.S.A. 1983 Supp. 65-3406, 65-3407; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982; amended, T-84-41, Dec. 21, 1983; amended May 1, 1984; revoked March 22, 2002.)

28-29-19. Monitoring required. As a condition for issuing a permit, the secretary may require the approval, installation, and operation of environmental quality monitoring systems before the acceptance of solid wastes for storage, processing, or disposal. Approval of the monitoring system(s) will be based on the following:

(a) The location of monitoring wells, air monitoring stations, and other required sampling points;

(b) Plans and specifications for the construction of the monitoring systems;

(c) Frequency of sampling; and

(d) Analyses to be performed. (Authorized by K.S.A. 1981 Supp. 65-3406; implementing K.S.A.

1981 Supp. 65-3406, 65-3407; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982.)

28-29-20. Restrictive covenants and easements.

(a) Permitted solid waste disposal areas. Each owner of a solid waste disposal area that is required to have a permit and where wastes will remain at the solid waste disposal area after closure may be required by the secretary to execute a restrictive covenant or easement, or both. The restrictive covenant with the register of deeds' stamp or the easement, or both, shall be submitted to the department before the permit is issued.

(b) Solid waste disposal areas without a permit. Each owner of a solid waste disposal area approved by the secretary under K.S.A. 65-3407c, and amendments thereto, may be required by the secretary to execute a restrictive covenant.

(c) Restrictive covenant. If required, the owner shall execute and file with the county register of deeds a restrictive covenant to run with the land that fulfills the following requirements:

(1) Covers all areas that have been or will be used for waste disposal;

(2) specifies the location of the solid waste disposal area. Acceptable methods to determine the location shall include the following:

(A) Obtaining a legal description by measuring from the property boundaries;

(B) obtaining a legal description by measuring from a permanent survey marker or benchmark; and

(C) obtaining the latitude and longitude, accurate to within five meters, using a global positioning system;

(3) specifies the uses that may be made of the solid waste disposal area after closure;

(4) requires that use of the property after closure be conducted in a manner that preserves the integrity of waste containment systems designed, installed, and used during operation of the solid waste disposal areas, or installed or used during the postclosure maintenance period;

(5) requires the owner or tenant to preserve and protect all permanent survey markers and benchmarks installed at the solid waste disposal area;

(6) requires the owner or tenant to preserve and protect all environmental monitoring stations installed at the solid waste disposal area;

(7) requires subsequent property owners or tenants to consult with the department during planning of any improvement to the site and to re-

ceive approval from the department before commencing any of the following:

- (A) Excavation or construction of permanent structures;
- (B) construction of drainage ditches;
- (C) alteration of contours;
- (D) removal of waste materials stored on the site;
- (E) changes in vegetation grown on areas used for waste disposal;
- (F) production, use, or sale of food chain crops grown on land used for waste disposal; or
- (G) removal of security fencing, signs, or other devices installed or used to restrict public access to waste storage or solid waste disposal areas; and
- (8) provides terms whereby modifications to the restrictive covenant or other land uses may be initiated or proposed by property owners.

(d) Easement. If required, the owner shall execute an easement allowing the secretary, or the secretary's designee, to enter the premises to perform any of the following:

- (1) Complete items of work specified in the site closure plan;
- (2) perform any item of work necessary to maintain or monitor the area during the postclosure period; or
- (3) sample, repair, or reconstruct environmental monitoring stations constructed as part of the site operating or postclosure requirements.

(e) Conveyance of easement, title, or other interest to real estate. Each offer or contract for the conveyance of easement, title, or other interest to real estate used for the long-term storage or disposal of solid waste shall contain a complete disclosure of all terms, conditions, and provisions for long-term care and subsequent land uses that are imposed by these solid waste regulations or the solid waste disposal area permit. The conveyance of title, easement, or other interest in the property shall not be consummated without adequate and complete provisions for the continued maintenance of waste containment and monitoring systems.

(f) Permanence. All covenants, easements, and other documents related to this regulation shall be permanent, unless extinguished by agreement between the property owner and the secretary.

(g) Fees. All document-recording fees shall be paid by the property owner.

(h) Federal government applicants and owners.

(1) For federal government applicants and owners, the term "restrictive covenant" shall be

replaced with "notice of restrictions" throughout this regulation.

(2) The restrictions shall be recorded in the base master plans or similar documents.

(3) If property that is owned by the federal government and that has a notice of restrictions filed according to this regulation is transferred to an entity other than the federal government, at the time of transfer the owner shall file a restrictive covenant that meets the requirements of this regulation. (Authorized by K.S.A. 65-3406; implementing K.S.A. 65-3406, 65-3407; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982; amended May 30, 2003.)

28-29-20a. Laboratory certification. All monitoring analyses required under K.A.R. 28-29-19, and amendments to it, shall be conducted by a laboratory certified or approved by the department to perform these analyses. Laboratories desiring to be certified to perform these analyses shall comply with all conditions, procedures, standards, and fee requirements specified in K.A.R. 28-15-35 and 28-15-37, and amendments to them. (Authorized by and implementing K.S.A. 1981 Supp. 65-3406; effective, E-82-8, April 10, 1981; effective May 1, 1982.)

PART 2. STANDARDS FOR MANAGEMENT OF SOLID WASTES/COMPOSTING

28-29-21. Storage of solid wastes. (a) *General.* The owner or occupant or both of any premise, business establishment, or industrial plant shall provide sanitary storage for all solid waste not classified as hazardous wastes produced on his or her property which meets standards set forth in these regulations and the official plan for the area. All solid waste shall be stored so that it: does not attract disease vectors; does not provide shelter or a breeding place for disease vectors; does not create a health or safety hazard; is not unsightly; and the production of offensive odors is minimized. Each premise shall be provided with a sufficient number of acceptable containers to accommodate all solid waste materials other than bulky wastes that accumulate on the premises between scheduled removals of these materials. On premises where the quantity of solid wastes generated is sufficient to make the use of individual storage containers impractical, bulk containers may be used for storage of refuse. The bulk container may be equipped with compaction equip-

ment and shall be a size, design, and capacity compatible with the collection equipment. Containers shall be constructed of durable metal or plastic material, be easily cleaned, and be equipped with tight-fitting lids or doors that can be easily closed and opened.

(b) *Specific storage standards.*

(1) Garbage and putrescible wastes shall be stored in:

(A) Rigid containers that are durable, rust resistant, nonabsorbent, water tight, and rodent proof. The container shall be easily cleaned, fixed with close-fitting lids, fly-tight covers, and provided with suitable handles or bails to facilitate handling;

(B) Rigid containers equipped with disposable liners made of reinforced kraft paper or polyethylene or other similar material designed for storage of garbage;

(C) Nonrigid disposable bags designed for storage of garbage. The bag shall be provided with a wallhung or free standing holder which supports and seals the bag; prevents insects, rodents, and animals from access to the contents; and prevents rain and snow from falling into the bag; or

(D) Other types of containers meeting the requirements of 16 Code of Federal Regulations Chapter II Subchapter B, part 1301 in effect June 13, 1977, and paragraph (a) of this regulation and that are acceptable to the collection agency.

(2) Mixed refuse. When putrescible wastes and nonputrescible refuse are stored together, the container shall meet the standards and requirements of paragraph (b)(1) of this regulation.

(3) Nonputrescible bulky wastes. The wastes shall be stored temporarily in any manner that does not create a health hazard, fire hazard, rodent harborage, or permit any unsightly conditions to develop, and is in accordance with any locally adopted regulations. (Authorized by and implementing K.S.A. 1981 Supp. 65-3406; effective Jan. 1, 1972; amended, E-79-22, Sept. 1, 1978; amended May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982.)

28-29-22. Standards for collection and transportation of solid wastes.

(a) Frequency of collection. Solid waste, excluding bulky wastes, shall be removed from the storage containers on residential premises and places of public gathering in accordance with these regulations at least once each week. Garbage and putrescible materials shall be removed from commercial or industrial properties as often as necessary to prevent nuisance conditions but at least once a week. Trash and other combustible materials, free of putrescible material, shall be removed from commercial and industrial properties as often as is necessary to prevent overfilling of the storage facilities or the creation of fire hazards. Bulky wastes, free of putrescible wastes, shall be removed from properties as often as necessary to prevent nuisance conditions from occurring.

(b) Collection equipment. All vehicles and equipment used for collection and transportation of solid waste shall be designed, constructed, maintained, and operated in a manner that will prevent the escape of any solid, semi-liquid, or liquid wastes from the vehicle or container. Collection vehicles shall be maintained and serviced periodically, and should receive periodic safety checks. Safety defects in a vehicle shall be repaired before the vehicle is used.

(c) Solid waste shall not be stored after collection in a collection vehicle for more than 12 hours unless the vehicle is parked in an area in which the land use is predominately industrial or light industrial. Solid wastes shall not be stored overnight in a collection vehicle parked in an area in which the land use is predominately residential.

(d) Solid wastes shall not be unloaded from any collection vehicle unless the collection vehicle is a satellite vehicle unloading into a larger vehicle or the unloading point is a permitted processing facility, transfer station or disposal area, except the unloading may be done to facilitate repairs, to extinguish a fire, or for other emergency. When a vehicle is unloaded due to an emergency situation solid waste shall be reloaded and removed promptly, after the emergency no longer exists.

(e) The person operating the collection system shall provide for prompt cleanup of all spillages caused by the collection operation.

(f) The person operating the collection system shall provide for prompt collection of any waste materials lost from the collection vehicles along the route to a disposal area or processing facility. (Authorized by and implementing K.S.A. 1981 Supp. 65-3406; effective Jan. 1, 1972; amended, E-79-22, Sept. 1, 1978; amended May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982.)

28-29-23. Standards for solid waste processing facilities and disposal areas. All solid waste disposal areas and solid waste processing facilities shall be located, designed, operated, and maintained in conformity with the following stan-

dards: (a) *Acceptable methods of disposal*. Non-hazardous solid wastes, industrial solid wastes, and residues from solid waste processing facilities shall be disposed of in a sanitary landfill. Nonputrescible rubble and demolition waste material, such as brick, mortar, broken concrete, and similar materials produced in connection with the construction or demolition of buildings or other structures, may be disposed of at a construction and demolition landfill.

(b) *Acceptable methods for processing*. Combustible solid wastes may be burned in incinerators that conform with the provisions of the air quality control act, K.S.A. 65-3001 *et seq.* and the regulations adopted under those statutes. Solid wastes may be shredded, separated, and consolidated at shredding, separation, and transfer stations for which a permit has been issued by the secretary. Animal manures, sludges, and solid wastes with high organic content may be processed into compost at an approved composting plant for which a permit has been issued by the secretary.

(c) *Planning and design*. Planning, design, and operation of any solid waste processing facility or disposal area, including, but not limited to, sanitary landfills, incinerators, compost plants, transfer stations, and other solid waste disposal areas or processing facilities, shall conform with appropriate design and operation standards of the department.

(d) *Location*. Location of all solid waste disposal areas and solid waste processing facilities shall conform to applicable state laws, and county or city zoning regulations and ordinances. All locations for solid waste disposal areas and processing facilities shall be reviewed and approved by the department before any site development is started. Solid waste disposal areas or processing facilities shall not result in the destruction or adverse modification of the critical habitat of endangered or threatened species or cause or contribute to the taking of any endangered or threatened species as defined by K.S.A. 35-501 *et seq.* and K.A.R. 23-17-2. Sites disposing of putrescible wastes shall not be located in areas where the attraction of birds can cause a significant bird hazard to low flying aircraft. A minimum separation of twenty-five (25) feet shall be maintained between a disposal operation and any pipeline, underground utility, or electrical transmission line easement. Sanitary landfills shall not be located within the one hundred (100) year frequency floodplain unless protected by flood control levees and other ap-

purtenances designed to prevent washout of solid waste from the site.

(e) *Access roads*. Access roads to the disposal area or processing facility shall be of all-weather construction and negotiable at all times by trucks and other vehicles. Load limits on bridges and access roads shall be sufficient to support all traffic loads which will be generated by use of the area or facility.

(f) *Reports required*. Operators of all solid waste disposal areas and processing facilities shall maintain suitable records of volumes or tonnage of solid wastes received, land area used, population served, area served, and any other information required by the conditions of the permit. All information shall be summarized and reported to the department on forms furnished by the department.

(g) *Air quality*. The operator of every solid waste disposal area or solid waste processing facility shall conform to all applicable provisions of K.S.A. 65-3001 *et seq.*, any regulations adopted under those statutes, and any local regulations pertaining to air quality.

(h) *Communication*. Two-way communications shall be available to all solid waste processing facilities or disposal areas.

(i) *Fire protection*. Arrangements shall be made for fire protection services when a fire protection district or other public fire protection service is available. When this service is not available, practical alternate arrangements shall be provided at all sites. In case of accidental fires at the site, the operator shall be responsible for initiating and continuing appropriate fire fighting methods until all smoldering, smoking, and burning ceases. All disruption of finished grades, or covered or completed surfaces, shall be covered and regraded upon completion of fire fighting activities.

(j) *Limited access*. Access to a solid waste disposal area or processing facility shall be limited to hours when an attendant or operating personnel are at the site. A gate or barrier and fencing approved by the department shall be erected to prevent access to the solid waste disposal area or processing facility during hours when the area or facility is closed. Access by unauthorized vehicles or pedestrians shall be prohibited.

(k) *Hours of operation*. Hours of operation and other limitations shall be prominently posted at the entrance of the disposal area or processing facility.

(l) *Salvage*. Salvage or reclamation of materials shall be permitted only when facilities specifically designed for salvaging or processing solid wastes

are provided, and when the salvage materials are controlled to prevent interference with prompt, sanitary disposal of solid wastes. All salvage operations shall be conducted in a manner that will not create a nuisance.

(m) *Safety.* An operational safety program approved by the department shall be provided for employees at solid waste processing facilities and disposal areas.

(n) *Disease vector control.* Solid waste processing facilities and disposal areas shall be operated in a manner which will prevent the harborage or breeding of insects or rodents. Whenever supplemental disease vector control measures are necessary, these measures shall be promptly carried out.

(o) *Aesthetics.* Odors and particulates, including dust and litter, shall be controlled by daily application of cover material, sight screening or other means to prevent damage or nuisance. Construction and demolition landfills or other solid waste disposal areas receiving only nonputrescible waste materials may apply cover material at a less frequent rate if approved by the department.

(p) *Gas control.* The concentration of explosive gasses generated by the decomposition of solid waste disposed of on the site shall not exceed 25 percent of the lower explosive limit in on site structures (excluding gas control or recovery system components) or at facility property line. As used in this section "lower explosive limit" means the lowest percent by volume of a mixture of methane which will propagate a flame in air at 25°C and atmospheric pressure. Toxic or asphyxiating gases in concentrations harmful to humans, animals, or plant life shall not be allowed to migrate off site or accumulate in facility structures.

(q) *Water pollution.* Solid waste processing facilities and disposal areas, which include a point source of discharge of pollutants or solid wastes to off-site surface waters, shall comply with the terms of a permit issued under K.S.A. 65-164 *et seq.* Facilities shall be designed to prevent non-point source pollution discharges violating applicable legal requirements implementing the Kansas statewide water quality management plan in effect on November 1, 1981 approved under section 208 of Public Law 92-500 (the Clean Water Act) as amended. Solid waste disposal areas and processing facilities shall be designed and operated so as to prevent a discharge of dredge or fill material that is in violation of section 404 of PL 92-500 (the clean water act), as in effect on November 1, 1981. Solid waste shall not be placed

in unconfined waters which are subject to free movement on the surface, in the ground or within a larger body of water. If ground water which passes beneath a disposal facility is currently used as a public drinking water supply or is designated by the state of Kansas for future use as a drinking water supply, the naturally occurring ground water quality beyond the disposal site property boundary shall not be degraded. If ground water which passes beneath a disposal area or processing facility is currently used or designated by the state for purposes other than as a drinking water supply, the ground water beyond the disposal area property boundary shall be maintained at a quality as specified in the disposal area permit.

(r) *Maps required.* The operator shall maintain a log of commercial or industrial solid wastes received including sludges, liquids, or barreled wastes. The log shall indicate the source and quantity of waste and the disposal location. The areas used for disposal of these wastes and other large quantities of bulk wastes shall be clearly shown on a map and referenced to the boundaries of the tract or other permanent markings.

(s) *Disposal of sewage and industrial liquids or sludges.* Sewage or industrial solid waste liquids or sludges shall not be disposed in a sanitary landfill designed for the disposal of mixed refuse until the department has been notified and specific arrangements for handling the wastes have been approved by the department.

(t) *Disposal of hazardous waste.* Hazardous waste shall not be disposed of in a sanitary landfill. For the purposes of this subsection, "hazardous waste" means any waste determined by the secretary, under section 1 of chapter 251 of the 1981 session laws of Kansas, to be a hazardous waste and listed by the secretary as a hazardous waste in K.A.R. 28-31-3.

(u) The provisions of 40 Code of Federal Regulations Part 257.3-5 (application to land used for food chain crops), as in effect on September 23, 1981, and part 257.3-6 (disease), as in effect on September 23, 1981, are incorporated by reference. (Authorized by and implementing K.S.A. 1981 Supp. 65-3406; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982.)

28-29-23a. Standards for solid waste transfer stations. (a) *Applicability.* Each solid waste transfer station shall be subject to the requirements of this regulation.

- (b) Design requirements.
- (1) Each solid waste transfer station processing, tipping, sorting, storage and compaction area shall be subject to the following design requirements, unless an alternate design is approved by the director.
- (A) Each processing, tipping, sorting, storage and compaction area shall be located in an enclosed building or covered area.
- (B) Each unloading area shall be of adequate size and design to allow for:
- (i) efficient unloading from collection vehicles; and
 - (ii) unobstructed movement of vehicles.
- (C) Each unloading and loading area shall be constructed of concrete or asphalt paving material.
- (D) Each solid waste transfer station shall have sufficient capacity to store two days worth of solid waste in the event of an interruption in transportation or disposal service. The capacity of any trailer parked within the boundaries of the permitted site may be included as a part of the two day capacity.
- (E) Each solid waste transfer station shall be large enough to segregate special wastes, including medical waste and asbestos, if special wastes will be managed at the transfer station.
- (2) Each solid waste transfer station structure shall be subject to the following design requirements, unless an alternate design is approved by the director.
- (A) Each enclosed structure shall be equipped with an exhaust system capable of removing accumulations of noxious or flammable gases.
- (B) Each structure shall be constructed of materials that will not absorb odors or liquids from the waste.
- (C) Each structure shall have a main doorway and roof of sufficient height to allow trucks that will routinely utilize the transfer station to unload.
- (3) Each solid waste transfer station access road shall be subject to the following requirements.
- (A) Each access road shall be designed to accommodate expected traffic flow in a safe and efficient manner.
- (B) Each access road shall be constructed with a road base that is capable of withstanding expected loads.
- (C) Each on-site road shall be passable by loaded collection and transfer vehicles in all weather conditions.
- (4) Each solid waste transfer station shall be subject to the following general requirements.
- (A) The design of each transfer station shall minimize wind-blown litter.
- (B) Control of stormwater shall be provided.
- (C) Weighing or measuring capabilities shall be provided for all solid waste processed at the facility.
- (D) Each owner or operator of a solid waste transfer station shall evaluate the feasibility of constructing an area at the transfer station site so that the following activities could be conducted:
- (i) storage of white goods;
 - (ii) separation of materials for recycling;
 - (iii) separation of materials for composting; or
 - (iv) other solid waste management activities.
- (E) Water shall be provided in sufficient quantity and pressure to wash down the unloading, loading, and storage areas of the transfer station.
- (F) Collection of washdown water and stormwater contacting solid waste shall be provided.
- (G) The following amenities shall be provided for transfer station workers:
- (i) sanitary facilities;
 - (ii) drinking water; and
 - (iii) handwashing water.
- (c) Operating requirements. Each solid waste transfer station owner or operator shall comply with the following operating requirements.
- (1) Wastes accepted at the solid waste transfer station shall consist of residential waste and commercial waste.
- (2) The following wastes shall not be accepted at any solid waste transfer station unless handling plans have been specifically approved by the department:
- (A) medical waste;
 - (B) asbestos waste; or
 - (C) other special wastes.
- (3) Any solid waste passing through a solid waste transfer station shall be ultimately treated or disposed of at:
- (A) a solid waste management facility authorized by the department if the facility is located in Kansas; or
 - (B) a solid waste management facility authorized by the appropriate governmental agency if the facility is located in another state.
- (4) Each access point to a solid waste transfer station shall have a sign posted that states:
- (A) the hours of operation of the transfer station;
 - (B) the types of solid waste that shall be accepted at the transfer station;
 - (C) the types of wastes that shall not be accepted at the transfer station;

(D) the name, address and telephone number of the transfer station owner and operator; and

(E) the telephone number of an emergency contact person available during non-operating hours.

(5) Each time the solid waste transfer station is open, an attendant shall be on duty.

(6) Provisions shall be made to prevent vehicles from backing into the receiving pits while unloading.

(7) Access to the facility by unauthorized persons shall be limited each time the station is closed.

(8) Procedures for preventing unauthorized receipt of regulated hazardous wastes as defined pursuant to K.A.R. 28-31-3 and K.A.R. 28-29-4, polychlorinated biphenyl (PCB) wastes as defined in 40 CFR part 761 as in effect July 1, 1992, or other wastes not addressed in the transfer station operating plan shall be developed and implemented.

(9) Blowing litter at the solid waste transfer station shall be controlled.

(10) Vectors at the solid waste transfer station shall be controlled.

(11) Each solid waste transfer station shall be cleaned as necessary to:

- (A) minimize odors;
- (B) minimize vectors; and
- (C) provide a safe working environment.

(12) All drainage from wet cleaning of any solid waste transfer station shall be:

- (A) discharged to a sanitary sewer; or
- (B) managed by another method approved by the director.

(13) Each day that waste is received at any solid waste transfer station, the transfer station shall be cleaned by an appropriate method to minimize odors and nuisance conditions.

(14) All on-site roads at a solid waste transfer station site shall be maintained to minimize dust.

(15) Any solid waste received at a solid waste transfer station shall be loaded into a transfer vehicle by the next day of operation at the transfer station.

(16) Each transfer vehicle shall be removed from the transfer station site within 48 hours after being filled to capacity. Each transfer vehicle not filled to capacity in any seven day period shall be removed from the transfer station site before the end of the seven day period, unless weather, or other abnormal conditions prevent transportation of the transfer vehicle.

(17) Each solid waste transfer station shall be equipped with fire protection equipment that is:

- (A) available at all times; and
- (B) capable of extinguishing fire resulting from:
 - (i) hot ashes;
 - (ii) oxidizers; or
 - (iii) other fire sources.

(18) An on-site operating record shall be maintained by the transfer station owner or operator. Each record shall be maintained for a minimum of three years. The operating record shall contain the following information:

- (A) a daily log of the quantity of solid waste received;
- (B) a daily log of the quantity of solid waste transported;
- (C) a daily log of the destination of the solid waste transported;
- (D) a daily log of any special waste received;
- (E) a daily log of any special waste transported;
- (F) a copy of each special waste disposal authorization written to the transfer station owner or operator;
- (G) a copy of transfer station employee training records; and
- (H) a copy of the current facility permit, including the following:

- (i) all facility design plans; and
- (ii) the facility operating plan.

(19) Each owner or operator shall prepare and submit an annual report to the department by March 1 of each year. The report shall contain:

- (A) the weight or volume of solid waste received;
- (B) the destination of the solid waste transferred;
- (C) the weight or volume of each type of material recovered at the transfer station; and
- (D) any changes in the operation that have occurred in the previous year.

(20) Each owner or operator shall develop a contingency plan for the solid waste transfer station. The contingency plan shall:

- (A) specify any procedures that shall be initiated if the solid waste transfer station experiences:
 - (i) an equipment breakdown;
 - (ii) a fire;
 - (iii) a receipt of hazardous material;
 - (iv) a release of a regulated quantity of any waste; or
 - (v) any other incident that may cause an emergency or suspend operations at the transfer station; and

(B) be available at any time at the transfer station.

(21) Employee training.

(A) The owner or operator of each solid waste transfer station shall provide training to each transfer station employee on the contents of the contingency plan identified in paragraph (c)(20) of this regulation, and the facility operating plan.

(B) A record of employee training required in paragraph (c)(21)(A) of this regulation shall be maintained in the operating record identified in paragraph (c)(18) of this regulation. (Authorized by K.S.A. 1993 Supp. 65-3406; implementing K.S.A. 65-3401; effective Feb. 20, 1995.)

28-29-24. Construction and demolition landfills. (a) A permit to construct or operate a construction and demolition landfill shall not be required for a construction and demolition landfill operated on the same tract as, and in conjunction with, a permitted sanitary landfill.

(b) If a city or a county, by ordinance or resolution, has established standards equivalent to, or more stringent than, those of the department to control construction and demolition landfills, and demonstrates that it has an enforcing agency to ensure those standards are adhered to, the department will issue a permit to the person operating the site upon certification by the enforcement division of the city or county to the department that those standards will be followed. (Authorized by and implementing K.S.A. 1981 Supp. 65-3406; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982.)

28-29-25. Standards for solid waste processing facilities. (a) Incinerators. All incinerators used for combustion of solid wastes shall be designed and operated in conformity with K.S.A. 65-3001 *et seq.* and rules and regulations adopted under those statutes. All emission control devices, disposal of incinerator residues, and treatment of wastewater shall be approved by the department.

(b) Other methods of solid waste handling, processing, and disposal. Before any disposal area or processing facility, or any method of solid waste handling, processing, or disposal, not provided for in these regulations, is practiced or placed into operation, complete plans, specifications, design data, land-use plans, and proposed operation procedures shall be submitted to the department for review and permit issuance in accordance with K.A.R. 28-29-6. (Authorized by and implement-

ing K.S.A. 1981 Supp. 65-3406; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982.)

28-29-25a. Small yard waste composting sites. This regulation shall apply to each yard waste composting site that has a composting area of one-half acre or less, but this regulation shall not apply to backyard composting. Hay, straw, and manure may be added to yard waste only for the purpose of adjusting the carbon-to-nitrogen ratio of the compost mix. The additives shall not exceed 10 percent by volume of the total mixture without the written approval of the department. Other materials may be added to the yard waste only with the written approval of the department.

(a) Site design. The owner or operator of each yard waste composting site shall design and construct the composting site to meet all of the following requirements.

(1) Composting surface and drainage.

(A) Storm water run-on shall be prevented from entering the receiving, processing, curing, or storage areas by the use of berms or other physical barriers.

(B) The operation shall not cause a discharge of pollutants into waters of the state, in accordance with K.S.A. 65-164, and amendments thereto.

(2) Site access.

(A) At each site that composts yard waste that is brought in from off-site, the following information shall be posted on one or more signs:

(i) Site name;

(ii) site hours;

(iii) a list of the materials appropriate for composting; and

(iv) the name and telephone number of an emergency contact person.

(B) Unauthorized dumping shall be discouraged by access control.

(b) Site operations. The owner or operator of each yard waste composting site shall perform the following:

(1) Minimize odors;

(2) control disease vectors, dust, litter, and noise; and

(3) remove all finished compost within 18 months of the completion of the composting process.

(c) Site closure. The owner or operator of each yard waste composting site shall perform the following:

(1) Notify the department, in writing, at least 60 days before closure; and

(2) remove all materials from the site within six months of the last receipt of compostable material.

(d) Registration. Each owner or operator of a small yard waste composting site shall submit registration information to the department on a form provided by the department, unless the composting operation is located at a confined feeding facility that has a valid permit issued by the department. (Authorized by and implementing K.S.A. 1998 Supp. 65-3406; effective Oct. 1, 1999.)

28-29-25b. Yard waste composting facilities. This regulation shall apply to each facility that composts yard waste and has a composting area larger than one-half acre. Hay, straw, and manure may be added to yard waste only for the purpose of adjusting the carbon-to-nitrogen ratio of the compost mix. The additives shall not exceed 10 percent by volume of the total mixture without the written approval of the department. Other materials may be added to the yard waste only with the written approval of the department.

(a) Facility design. The owner or operator of each yard waste composting facility shall design and construct the facility to meet the following requirements.

(1) Composting surface and drainage.

(A) Storm water run-on shall be prevented from entering the receiving, processing, curing, or storage areas by the use of berms or other physical barriers.

(B) The facility shall not cause a discharge of pollutants into waters of the state, in accordance with K.S.A. 65-164, and amendments thereto.

(C) The composting area shall be graded to prevent ponding of liquids.

(D) The surface of the composting area shall be capable of supporting all equipment used.

(2) Facility access.

(A) At each facility that composts yard waste that is brought in from off-site, the following information shall be posted on one or more signs:

- (i) Facility name;
- (ii) permit number;
- (iii) site hours;
- (iv) traffic flow;

(v) a list of the materials appropriate for composting; and

(vi) the name and telephone number of an emergency contact person.

(B) Unauthorized dumping shall be discouraged by access control.

(C) Facility roads shall be constructed to allow access for managing the composting operation. Yard waste composting facilities shall be exempt from the all-weather access road requirement prescribed in K.A.R. 28-29-23(e).

(3) Capacity and storage. The composting facility shall have the capacity to store the following materials:

(A) Incoming materials waiting to be processed;

(B) the materials being processed; and

(C) the finished compost, not to exceed 18 months' production.

(b) Facility operations. The owner or operator of each yard waste composting facility shall be exempt from K.A.R. 28-29-23(j) and shall perform the following:

(1) Minimize odors;

(2) control disease vectors, dust, litter, and noise;

(3) segregate incoming waste from finished compost;

(4) inform the public of disposal sites for waste not acceptable for composting at the facility;

(5) begin processing incoming waste within one week of receipt; and

(6) remove all finished compost within 18 months of the completion of the composting process.

(c) Facility closure. The owner or operator of each yard waste composting facility shall perform the following:

(1) Notify the department, in writing, at least 60 days before closure; and

(2) remove all materials from the facility within six months of the last receipt of compostable material.

(d) Permit applications. The owner or operator of each yard waste composting facility shall submit a permit application to the department on a form provided by the department, unless the composting operation is located at a confined feeding facility that has a valid permit issued by the department. The applicant shall include the following items with the permit application.

(1) Facility design plan. This design plan shall not be required to bear the seal and signature of a professional engineer. The facility design plan shall contain all of the following items:

(A) A 7.5 minute topographic map of the area, as typically available from the U.S. geological survey, indicating the facility boundary and the property boundary;

(B) a soil map of the area, as typically available from the U.S. department of agriculture natural resources conservation services;

(C) a 100-year floodplain map of the area, as typically available from the federal emergency management agency; and

(D) a detailed drawing of the facility that indicates the location of all of the following features:

- (i) Roads;
- (ii) the existing and final grades and contours;
- (iii) storm water control;
- (iv) buildings and equipment to be installed;
- (v) utilities; and
- (vi) access control.

(2) Operations plan. The operations plan shall contain the following information:

(A) Job descriptions of persons responsible for operation, control, and maintenance of the facility;

(B) the anticipated annual quantity of waste to be received, and the seasonal variations of the quantity of waste to be received;

(C) the methods to control traffic and to expedite unloading;

(D) the methods for measuring incoming waste;

(E) the methods to control the types of waste received;

(F) the methods for removing noncompostable wastes from the incoming waste stream, including procedures for storage and disposal of these wastes;

(G) the location of disposal sites for noncompostable wastes;

(H) the method of composting;

(I) a list of equipment to be used;

(J) a description of any additives used in the process;

(K) a quality assurance and quality control plan that outlines the monitoring, sampling, and analysis plans for testing the compost process and product;

(L) the proposed end-use of the compost;

(M) the methods to minimize, manage, and monitor odors;

(N) disease vector, dust, litter, and noise control measures;

(O) leachate and storm water control measures; and

(P) a fire protection and control plan.

(3) Closure plan. The closure plan shall not be required to bear the seal and signature of a professional engineer. This plan shall include the following information:

(A) The steps necessary to close the facility;

(B) the final surface contours; and

(C) a closure cost estimate based on the third-party cost for removing and disposing of the maximum amount of wastes that may be con-

tained at the facility. (Authorized by and implementing K.S.A. 1998 Supp. 65-3406; effective Oct. 1, 1999.)

28-29-25c. Manure composting. For the purposes of this regulation, subsections (a), (b), (c), and (d) shall apply to each facility that composts manure and has a composting area of one-half acre or less. Subsections (a), (b), (c), and (e) of this regulation shall apply to each facility that composts manure and has a composting area larger than one-half acre. On-site storage of manure shall not be considered composting.

(a) Facility design. The owner or operator of each facility that composts manure shall design and construct the facility to meet the following requirements:

(1) Composting surface and drainage.

(A) Storm water run-on shall be prevented from entering the receiving, processing, curing, or storage areas by the use of berms or other physical barriers.

(B) The facility shall not cause a discharge of pollutants into waters of the state, in accordance with K.S.A. 65-164, and amendments thereto.

(C) Leachate control shall be provided wherever leachate is generated.

(D) The composting area shall be graded to prevent ponding of liquids.

(E) The surface of the composting area shall be capable of supporting all equipment used.

(2) Facility access.

(A) At each facility that composts manure that is brought in from off-site, the following information shall be posted on one or more signs:

(i) Facility name;

(ii) permit number;

(iii) site hours;

(iv) traffic flow;

(v) a list of the materials appropriate for composting; and

(vi) the name and telephone number of an emergency contact person.

(B) Unauthorized dumping shall be discouraged by access control.

(C) Facility roads shall be constructed to allow access for managing the composting operation. Manure composting facilities shall be exempt from the all-weather access road requirement prescribed in K.A.R. 28-29-23(e).

(3) Capacity and storage. The facility shall have the capacity to store the following materials:

(A) Incoming materials waiting to be processed;

(B) the materials being processed; and

(C) the finished compost, not to exceed 18 months' production.

(4) Separation distances. For the purposes of this regulation, "animal unit," "habitable structure," and "wildlife refuge" have the same meaning as set forth in K.S.A. 65-171d, and amendments thereto.

(A) Each facility that composts livestock manure, other than swine manure, shall meet or exceed the following separation distances from any habitable structure in existence when the facility begins operations:

(i) 1,320 feet for facilities composting manure from 300 to 999 animal units; and

(ii) 4,000 feet for facilities composting manure from 1,000 or more animal units.

(B) Each facility that composts swine manure shall meet or exceed the following separation distances from any habitable structure or city, county, state, or federal park in existence when the facility begins operations:

(i) 1,320 feet for facilities composting manure from 300 to 999 animal units;

(ii) 4,000 feet for facilities composting manure from 1,000 to 3,724 animal units; and

(iii) 5,000 feet for facilities composting manure from 3,725 or more animal units.

(C) Each facility that composts swine manure shall meet or exceed the following separation distances from any wildlife refuge:

(i) 10,000 feet for facilities composting manure from 1,000 to 3,724 animal units; and

(ii) 16,000 feet for facilities composting manure from 3,725 or more animal units.

(D) For each manure composting operation located at a confined feeding facility, the separation distances as set forth in K.S.A. 65-171d and amendments thereto shall apply.

(5) Exceptions to the separation distances.

(A) The separation distance requirements of paragraphs (a)(4)(A) and (B) of this regulation shall not apply if the owner or operator obtains written agreement from all owners of habitable structures that are within the separation distance, stating that the owners of the habitable structures are aware of the operation and have no objections to the operation. The written agreement shall be filed in the office of the register of deeds of the county in which the habitable structure is located.

(B) The separation distance requirements of paragraph (a)(4)(A) of this regulation may be re-

duced by the secretary if one of the following conditions applies:

(i) No substantial objection from owners of habitable structures within the separation distance is received in response to public notice.

(ii) The board of county commissioners of the county where the composting operation is located submits a written request seeking a reduction of the separation distances.

(C) The separation distance requirements of paragraphs (4)(B)(i) and (ii) of this regulation may be reduced by the secretary if one of the following conditions applies:

(i) No substantial objection is received in response to notice given by certified mail, return response requested, to owners of all habitable structures within the separation distance.

(ii) The board of county commissioners of the county where the composting operation is located submits a written request seeking a reduction of separation distances.

(iii) The secretary determines that technology exists that meets or exceeds the effect of the required separation distance and the composting operation will be using the technology.

(D) The separation distance requirements of paragraph (4)(B)(iii) of this regulation may be reduced by the secretary if one of the following conditions applies:

(i) No substantial objection is received in response to notice given by certified mail, return response requested, to owners of all habitable structures within the separation distance.

(ii) The secretary determines that technology exists that meets or exceeds the effect of the required separation distance and the composting operation will be using the technology.

(E) For each manure composting operation located at a confined feeding facility, exceptions to the separation distances as set forth in K.S.A. 65-171d and amendments thereto shall apply.

(b) Facility operations. The owner or operator of each facility that composts manure shall perform the following:

(1) Minimize odors;

(2) control disease vectors, dust, litter, and noise;

(3) segregate incoming waste from finished compost;

(4) limit public access to hours when an attendant or any operating personnel are at the facility;

(5) begin processing incoming waste by the end of the working day; and

(6) remove all finished compost within 18 months of the completion of the composting process.

(c) Facility closure. The owner or operator of each facility that composts manure shall perform the following:

(1) Notify the department, in writing, at least 60 days before closure; and

(2) remove all materials from the facility within six months of the last receipt of compostable material.

(d) Registration. Each owner or operator of a facility that composts manure and has a composting area of one-half acre or less shall submit registration information to the department on a form provided by the department, unless the composting operation is located at a confined feeding facility that has a valid permit issued by the department.

(e) Permit applications. The owner or operator of each facility that composts manure and has a composting area larger than one-half acre shall submit a permit application to the department on a form provided by the department, unless the composting operation is located at a confined feeding facility that has a valid permit issued by the department. The applicant shall include the following items with the permit application:

(1) Facility design plan. The facility design plan shall contain all of the following items:

(A) A 7.5 minute topographic map of the area, as typically available from the U.S. geological survey indicating the facility boundary and the property boundary;

(B) a soil map of the area, as typically available from the U.S. department of agriculture natural resources conservation services;

(C) a 100-year floodplain map of the area, as typically available from the federal emergency management agency; and

(D) a detailed drawing of the facility that indicates the location of the following features:

- (i) Roads;
- (ii) the existing and final grades and contours;
- (iii) storm water control;
- (iv) buildings and equipment to be installed;
- (v) utilities;
- (vi) access control; and
- (vii) all other structures.

(2) Operations plan. The operations plan shall contain the following information:

(A) Job descriptions of persons responsible for operation, control, and maintenance of the facility;

(B) the anticipated annual quantity of waste to be received, and the seasonal variations of the quantity of waste to be received;

(C) the sources of waste to be received;

(D) the methods to control traffic and to expedite unloading;

(E) the methods for measuring incoming waste;

(F) the methods to control the types of waste received;

(G) the methods for removing noncompostable wastes from the incoming waste stream, including procedures for storage and disposal of these wastes;

(H) the location of disposal sites for noncompostable wastes;

(I) the method of composting;

(J) a list of equipment to be used;

(K) a description of additives used in the process;

(L) a quality assurance and quality control plan that outlines the monitoring, sampling, and analysis plans for testing the compost process and product;

(M) the proposed end use of product;

(N) the methods to minimize, manage, and monitor odors;

(O) disease vector, dust, litter, and noise control measures;

(P) leachate and national pollutant discharge elimination system storm water control measures;

(Q) the plans for operations during wind, heavy rain, snow, freezing temperatures, or other inclement weather conditions;

(R) a contingency plan for events including equipment failure, power outages, natural disasters, receipt of prohibited materials, or other similar interruptions of normal activities; and

(S) a fire protection and control plan.

(3) Closure plan. The closure plan shall include the following information:

(A) The steps necessary to close the facility;

(B) the final surface contours; and

(C) a closure cost estimate based on the third-party cost of removing and disposing of the maximum amount of wastes that may be contained at the facility. (Authorized by and implementing K.S.A. 1998 Supp. 65-3406; effective Oct. 1, 1999.)

28-29-25d. Livestock composting. For the purposes of this regulation, subsections (a), (b), (c), and (d) shall apply to each facility that composts livestock, including chickens and turkeys, and has a composting area of one-half acre or less. Subsections (a), (b), (c), and (e) of this reg-

ulation shall apply to each facility that composts livestock, including chickens and turkeys, and has a composting area larger than one-half acre.

(a) The owner or operator of each facility that composts livestock shall design and construct the facility to meet the following requirements.

(1) Composting surface and drainage.

(A) Storm water run-on shall be prevented from entering the receiving, processing, curing, or storage areas by the use of berms or other physical barriers.

(B) The facility shall not cause a discharge of pollutants into waters of the state, in accordance with K.S.A. 65-164, and amendments thereto.

(C) Leachate control shall be provided wherever leachate is generated.

(D) The composting area shall be graded to prevent ponding of liquids.

(E) The surface of the composting area shall be capable of supporting all equipment used.

(F) The facility shall be constructed with either a floor or a roof that meets one of the following requirements:

(i) The floor shall be composed of a layer of material that is at least one foot thick and has a hydraulic conductivity no greater than 10^{-7} cm/sec, or the facility shall be designed to provide the same level of protection to the groundwater; or

(ii) the receiving, processing, and curing areas shall be covered by a roof, or the facility shall be designed to provide the same level of protection from the weather.

(2) Facility access.

(A) At each facility that composts livestock that is brought in from off-site, the following information shall be posted on one or more signs:

(i) Facility name;

(ii) permit number;

(iii) site hours;

(iv) traffic flow;

(v) a list of the materials appropriate for composting; and

(vi) the name and telephone number of an emergency contact person.

(B) Unauthorized dumping shall be discouraged by access control.

(C) Facility roads shall be constructed to allow adequate access for managing the composting operation. Facilities that compost livestock shall be exempt from the all-weather access road requirement prescribed in K.A.R. 28-29-23(e).

(3) Capacity and storage. The facility shall have the capacity to store the following materials:

(A) Incoming materials waiting to be processed;

(B) the materials being processed; and

(C) the finished compost, not to exceed 18 months' production.

(4) Separation distances. For the purposes of this regulation, "animal unit," "animal unit capacity," "habitable structure," and "wildlife refuge" have the same meaning as set forth in K.S.A. 65-171d, and amendments thereto.

(A) Each facility that composts livestock from one or more confined feeding facilities, other than confined feeding facilities for swine, shall meet or exceed the following separation distances from any habitable structure in existence when the facility begins operations:

(i) 1,320 feet for facilities composting livestock from one or more confined feeding facilities with a combined animal unit capacity of 300 to 999; and

(ii) 4,000 feet for facilities composting livestock from one or more confined feeding facilities with a combined animal unit capacity of 1,000 or more.

(B) Each facility that composts livestock from one or more confined feeding facilities for swine shall meet or exceed the following separation distances from any habitable structure or city, county, state, or federal park in existence when the facility begins operations:

(i) 1,320 feet for facilities composting swine from one or more confined feeding facilities with a combined animal unit capacity of 300 to 999;

(ii) 4,000 feet for facilities composting swine from one or more confined feeding facilities with a combined animal unit capacity of 1,000 to 3,724; and

(iii) 5,000 feet for facilities composting swine from one or more confined feeding facilities with a combined animal unit capacity of 3,725 or more.

(C) Each facility that composts livestock from one or more confined feeding facilities for swine shall meet or exceed the following separation distances from any wildlife refuge:

(i) 10,000 feet for facilities composting swine from one or more confined feeding facilities with a combined animal unit capacity of 1,000 to 3,724; and

(ii) 16,000 feet for facilities composting swine from one or more confined feeding facilities with a combined animal unit capacity of 3,725 or more.

(D) Exceptions to the separation distances set forth in K.S.A. 65-171d, and amendments thereto, shall apply.

(b) Facility operations. The owner or operator of each facility that composts livestock shall perform the following:

- (1) Minimize odors;
- (2) control disease vectors, dust, litter, and noise;
- (3) ensure that dead animals are not visible from municipal roads or habitable structures;
- (4) protect the facility from scavenging by animals;
- (5) segregate incoming waste from finished compost;
- (6) begin processing incoming waste by the end of the working day;
- (7) limit public access to hours when an attendant or any operating personnel are at the facility; and
- (8) remove all finished compost within 18 months of the completion of the composting process.

(c) Facility closure. The owner or operator of each facility that composts livestock shall perform the following:

- (1) Notify the department, in writing, at least 60 days before closure;
- (2) remove all material from the facility within 10 days of ceasing operation; and
- (3) clean all containers, equipment, machines, floors, and site surfaces that have been in contact with dead animals or solid waste.

(d) Registration. Each owner or operator of a facility that composts livestock and has a composting area of one-half acre or less shall submit registration information to the department on a form provided by the department, unless the composting operation is located at a confined feeding facility that has a valid permit issued by the department.

(e) Permit applications. The owner or operator of each facility that composts livestock and has a composting area larger than one-half acre shall submit a permit application to the department on a form provided by the department, unless the composting operation is located at a confined feeding facility that has a valid permit issued by the department. The applicant shall include the following items with the permit application:

- (1) Facility design plan. The facility design plan shall contain the following items:
 - (A) A 7.5 minute topographic map of the area, as typically available from the U.S. geological survey, indicating the facility boundary and the property boundary;
 - (B) a soil map of the area, as typically available from the U.S. department of agriculture natural resources conservation services;

- (C) a 100-year floodplain map of the area, as typically available from the federal emergency management agency;

- (D) plan and profile views of the facility indicating the following features:

- (i) Roads;
- (ii) the existing and final grades and contours;
- (iii) storm water control;
- (iv) buildings and equipment to be installed;
- (v) utilities;
- (vi) access control; and
- (vii) all other structures; and

- (E) information on the permeability of the floor structure.

- (2) Operations plan. The operations plan shall contain the following information:

- (A) Job descriptions of persons responsible for operation, control, and maintenance of the facility;

- (B) the anticipated annual quantity of waste to be received, and the seasonal variations of the quantity of waste to be received;

- (C) the sources of waste to be received;

- (D) the methods to control traffic and to expedite unloading;

- (E) the methods for measuring incoming waste;

- (F) the methods to control the types of waste received;

- (G) the methods for removing non-compostable wastes from the incoming waste stream, including procedures for storage and disposal of these wastes;

- (H) the location of disposal sites for non-compostable wastes;

- (I) the method of composting;

- (J) a list of equipment to be used;

- (K) a description of any additives used in the process;

- (L) a quality assurance and quality control plan that outlines the monitoring, sampling, and analysis plans for testing the compost process and product;

- (M) the proposed end-use of compost;

- (N) the methods to minimize, manage, and monitor odors;

- (O) disease vector, dust, litter, and noise control measures;

- (P) leachate and national pollutant discharge elimination system storm water control measures;

- (Q) the plans for operations during wind, heavy rain, snow, freezing temperatures, or other inclement weather conditions;

- (R) a contingency plan for events including

equipment failure, power outages, natural disasters, fire, receipt of prohibited materials, or similar interruptions of normal activities; and

(S) a fire protection and control plan.

(3) Closure plan. The closure plan shall include the following information:

(A) The steps necessary to close the facility;

(B) the final surface contours; and

(C) a closure cost estimate based on the third-party cost of removing and disposing of the maximum amount of wastes that may be contained at the facility. (Authorized by and implementing K.S.A. 1997 Supp. 65-3406 and L. 1998, ch. 143, sec. 37; effective Jan. 8, 1999.)

28-29-25e. Source-separated organic waste composting. For the purposes of this regulation, subsections (a), (b), (c), and (d) shall apply to each facility that composts source-separated organic waste and has a composting area of one-half acre or less. Subsections (a), (b), (c), and (e) of this regulation shall apply to each facility that composts source-separated organic waste and has a composting area larger than one-half acre.

(a) Facility design. The owner or operator of each facility that composts source-separated organic waste shall design and construct the facility to meet the following requirements:

(1) Composting surface and drainage.

(A) Storm water run-on shall be prevented from entering the receiving, processing, curing, or storage areas by the use of berms or other physical barriers.

(B) The facility shall not cause a discharge of pollutants into waters of the state in accordance with K.S.A. 65-164, and amendments thereto.

(C) Leachate control shall be provided wherever leachate is generated.

(D) The composting area shall be graded to prevent ponding of liquids.

(E) The surface of the composting area shall be capable of supporting the equipment used.

(2) Facility access.

(A) At each facility that composts source-separated organic waste that is brought in from off-site, the following information shall be posted on one or more signs:

(i) Facility name;

(ii) permit number;

(iii) site hours;

(iv) traffic flow;

(v) a list of the materials appropriate for composting; and

(vi) the name and telephone number of an emergency contact person.

(B) Unauthorized dumping shall be discouraged by access control.

(C) Access roads shall be of all-weather construction and shall be negotiable at all times. Load limits on bridges and access roads shall be sufficient to support all traffic loads generated by the use of the facility.

(3) Capacity and storage. The facility shall have the capacity to store the following materials:

(A) Incoming materials waiting to be processed;

(B) the materials being processed; and

(C) the finished compost, not to exceed 18 months' production.

(b) Facility operations. The owner or operator of each facility that composts source-separated organic waste shall perform the following:

(1) Minimize odors;

(2) control disease vectors, dust, litter, and noise;

(3) protect the facility from scavenging by animals;

(4) segregate incoming waste from finished compost;

(5) inform the public of disposal sites for waste not acceptable for composting at the facility;

(6) limit public access to hours when an attendant or any operating personnel are at the facility;

(7) begin processing incoming waste within 24 hours of receipt;

(8) if sewage sludge is composted, comply with 40 CFR Part 503, as in effect on February 19, 1993; and

(9) remove all finished compost within 18 months of the completion of the composting process.

(c) Facility closure. The owner or operator of each facility that composts source-separated organic waste shall perform the following:

(1) Notify the department, in writing, at least 60 days before closure;

(2) remove all material from the facility within 10 days of ceasing operation; and

(3) clean all containers, equipment, machines, floors, and site surfaces that have been in contact with source-separated organic waste or solid waste.

(d) Registration. Each owner or operator of a facility that composts source-separated organic waste and has a composting area of one-half acre or less shall submit registration information to the department on a form provided by the department.

(e) Permit applications. The owner or operator of each facility that composts source-separated organic waste and has a composting area larger than one-half acre shall submit a permit application to the department on a form provided by the department. The applicant shall include the following items with the permit application:

(1) Facility design plan. The facility design plan shall contain the following items:

(A) A 7.5 minute topographic map of the area, as typically available from the U.S. geological survey, indicating the facility boundary and the property boundary;

(B) a soil map of the area, as typically available from the U.S. department of agriculture natural resources conservation services;

(C) a 100-year floodplain map of the area, as typically available from the federal emergency management agency; and

(D) plan and profile views of the facility indicating the following features:

- (i) Roads;
- (ii) the existing and final grades and contours;
- (iii) storm water control;
- (iv) buildings and equipment to be installed;
- (v) utilities;
- (vi) access control; and
- (vii) all other structures.

(2) Operations plan. The operations plan shall contain the following information:

(A) Job descriptions of persons responsible for operation, control, and maintenance of the facility;

(B) the anticipated annual quantity of waste to be received, and the seasonal variations of the quantity of waste to be received;

(C) the sources of waste to be received;

(D) the methods to control traffic and to expedite unloading;

(E) the methods for measuring incoming waste;

(F) the methods to control the types of waste received;

(G) the methods for removing noncompostable wastes from the incoming waste stream, including procedures for storage and disposal of these wastes;

(H) the location of disposal site for noncompostable wastes;

(I) the method of composting;

(J) a description of equipment proposed to be used in composting, including equipment specifications and manufacturer's performance standards. The proposed equipment shall be com-

patible with the proposed process and throughput;

(K) a description of any additives used in the process;

(L) the methods for managing biological conditions;

(M) a quality assurance and quality control plan that outlines the monitoring, sampling, and analysis plans for testing the compost process and product;

(N) the proposed end use of compost;

(O) the methods to minimize, manage, and monitor odors;

(P) disease vector, dust, litter, and noise control measures;

(Q) leachate and national pollutant discharge elimination system storm water control measures;

(R) the plans for operations during wind, heavy rain, snow, freezing temperatures, or other inclement weather conditions;

(S) a contingency plan for events including equipment failure, power outages, natural disasters, fire, receipt of prohibited materials, or similar interruptions of normal activities; and

(T) a fire protection and control plan.

(3) Closure plan. The closure plan shall include the following information:

(A) The steps necessary to close the facility;

(B) the final surface contours; and

(C) a closure cost estimate based on the third-party cost of removing and disposing of the maximum amount of wastes that may be contained at the facility. (Authorized by and implementing K.S.A. 1998 Supp. 65-3406; effective Oct. 1, 1999.)

28-29-25f. Solid waste composting. For the purposes of this regulation, subsections (a), (b), (c), and (d) shall apply to each facility that composts solid waste and has a composting area of one-half acre or less, except facilities that compost only yard waste, manure, dead animals, source-separated organic waste, or any combination of yard waste, manure, dead animals, and source-separated organic waste. Subsections (a), (b), (c), and (e) of this regulation shall apply to each facility that composts solid waste and has a composting area larger than one-half acre, except facilities that compost only yard waste, manure, dead animals, source-separated organic waste, or any combination of yard waste, manure, dead animals, and source-separated organic waste.

(a) Facility design. The owner or operator of each solid waste composting facility shall design

and construct the facility to meet the following requirements:

(1) Composting surface and drainage.

(A) Storm water run-on shall be prevented from entering the receiving, processing, curing, or storage areas by the use of berms or other physical barriers.

(B) The facility shall not cause a discharge of pollutants into waters of the state, in accordance with K.S.A. 65-164, and amendments thereto.

(C) Leachate control shall be provided wherever leachate is generated.

(D) The composting area shall be graded to prevent ponding of liquids.

(E) The surface of the composting area shall be capable of supporting the equipment used.

(F) The floor shall be composed of a layer of material that is at least one foot thick and has a hydraulic conductivity no greater than 10^{-7} cm/sec, or the facility shall be designed to provide the same level of protection to the groundwater.

(G) The receiving, processing, and curing areas shall be covered by a roof, or the facility shall be designed to provide the same level of protection from the weather.

(2) Facility access.

(A) At each facility that composts solid waste that is brought in from off-site, the following information shall be posted on one or more signs:

- (i) Facility name;
- (ii) permit number;
- (iii) site hours;
- (iv) traffic flow;

(v) a list of the materials appropriate for composting; and

(vi) the name and telephone number of an emergency contact person.

(B) Unauthorized dumping shall be discouraged by access control.

(C) Access roads shall be of all-weather construction and shall be negotiable at all times. Load limits on bridges and access roads shall be sufficient to support all traffic loads generated by the use of the facility.

(3) Capacity and storage. The facility shall have the capacity to store the following materials:

- (A) Incoming materials waiting to be processed;
- (B) the materials being processed; and
- (C) the finished compost, not to exceed 18 months' production.

(b) Facility operations. The owner or operator of each solid waste composting facility shall perform the following:

- (1) Minimize odors;
- (2) control disease vectors, dust, litter, and noise;
- (3) protect the facility from scavenging by animals;

(4) segregate incoming waste from finished compost;

(5) inform the public of disposal sites for waste not acceptable for composting at the facility;

(6) limit public access to hours when an attendant or any operating personnel are at the facility;

(7) begin processing incoming waste within 24 hours of receipt;

(8) use one of the following processes to further reduce pathogens (PFRP):

(A) Windrow composting method. When using this method, the following conditions shall be met:

(i) Aerobic conditions shall be maintained within the windrow;

(ii) the waste shall attain a temperature of 55°C, 131°F, or greater for at least 15 days during the composting period; and

(iii) the windrow shall be turned a minimum of five times during the high temperature period;

(B) Aerated static pile composting method. When using this method, the waste shall be covered with six to 12 inches of insulating material and maintained at a temperature of 55°C, 131°F, or greater for a minimum of three consecutive days;

(C) Enclosed-vessel composting method. When using this method, the waste shall be maintained at a temperature of 55°C, 131°F, or greater for a minimum of three consecutive days; or

(D) any other method approved by the department;

(9) record the following information:

(A) The temperature and moisture content of materials during the composting process, in accordance with the operating plan;

(B) the daily volume or weight of waste received;

(C) the source of waste;

(D) all laboratory analyses required by the permit; and

(E) the volume of recovered materials; and

(10) remove all finished compost within 18 months of the completion of the composting process.

(c) Facility closure. The owner or operator of each facility that composts solid waste shall perform the following:

(1) Notify the department, in writing, at least 60 days before closure;

(2) remove all material from the facility within 10 days of ceasing operation; and

(3) clean all containers, equipment, machines, floors, and site surfaces that have been in contact with solid waste.

(d) Registration. Each owner or operator of a facility that composts solid waste and has a composting area of one-half acre or less shall submit registration information to the department on a form provided by the department.

(e) Permit applications. The owner or operator of each facility that composts solid waste and has a composting area larger than one-half acre shall submit a permit application to the department on a form provided by the department. The applicant shall include the following items with the permit application:

(1) Facility design plan. The facility design plan shall contain the following items:

(A) A 7.5 minute topographic map of the area, as typically available from the U.S. geological survey, indicating the facility boundary and the property boundary;

(B) a soil map of the area, as typically available from the U.S. department of agriculture natural resources conservation services;

(C) a 100-year floodplain map of the area, as typically available from the federal emergency management agency;

(D) plan and profile views of the facility indicating the following features:

- (i) Roads;
- (ii) the existing and final grades and contours;
- (iii) storm water control;
- (iv) buildings and equipment to be installed;
- (v) utilities;
- (vi) access control; and
- (vii) all other structures;

(E) information on the permeability of the floor structure; and

(F) a flow diagram of the proposed processing steps involved in recovering recyclable materials and mixed organic material from solid waste, including a total mass balance.

(2) Operations plan. The operations plan shall contain the following information:

(A) Job descriptions of persons responsible for operation, control, and maintenance of the facility;

(B) the anticipated annual quantity of waste to be received, and the seasonal variations of the quantity of waste to be received;

(C) the sources of waste to be received;

(D) the methods to control traffic and to expedite unloading;

(E) the methods for measuring incoming waste;

(F) the methods to control the types of waste received;

(G) the methods for removing noncompostable wastes from the incoming waste stream, including procedures for storage and disposal of these wastes;

(H) the location of disposal sites for noncompostable wastes;

(I) the method of composting;

(J) a description of equipment proposed to be used in composting, including equipment specifications and manufacturer's performance standards. The proposed equipment shall be compatible with the proposed process and throughput;

(K) a description of any additives used in the process;

(L) the methods for managing biological conditions;

(M) a quality assurance and quality control plan that outlines the monitoring, sampling, and analysis plans for testing the compost process and product;

(N) the proposed end use of compost;

(O) the methods to minimize, manage, and monitor odors;

(P) disease vector, dust, litter, and noise control measures;

(Q) leachate and national pollutant discharge elimination system storm water control measures;

(R) the plans for operations during wind, heavy rain, snow, freezing temperatures, or other inclement weather conditions;

(S) a contingency plan for events including equipment failure, power outages, natural disasters, fire, receipt of prohibited materials, or similar interruptions of normal activities; and

(T) a fire protection and control plan.

(3) Closure plan. The closure plan shall include the following information:

(A) The steps necessary to close the facility;

(B) the final surface contours; and

(C) a closure cost estimate based on the third-party cost of removing and disposing of the maximum amount of wastes that may be contained at the facility. (Authorized by and implementing K.S.A. 1998 Supp. 65-3406; effective Oct. 1, 1999.)

28-29-26. (Authorized by and implementing K.S.A. 1983 Supp. 65-3406; effective May 1, 1982; amended, T-84-41, Dec. 21, 1983; amended May 1, 1984; revoked June 4, 1999.)

28-29-27. Medical services waste. (a) "Medical services waste" means those solid waste

materials that are potentially capable of causing disease or injury and are generated in connection with human or animal care through inpatient and outpatient services. Medical services waste shall not include any solid waste that has been classified by the secretary as a hazardous waste under K.S.A. 1996 Supp. 65-3431 and any amendments thereto, or that is radioactive treatment material licensed under K.S.A. 48-1607 and regulations adopted under that statute.

(b) Segregation. All medical services waste shall be segregated from other solid wastes at the point of origin.

(c) Storage. All medical services waste shall be stored in a manner and in a container that will prevent the transmission of disease or the causing of injury. Hypodermic needles and syringes, scalpel blades, suture needles, or other sharp objects shall be stored only in a rigid, puncture-resistant container that has been closed to prevent the escape of any material, including liquids or aerosols. All reusable containers used to store infectious waste shall be cleaned and disinfected before each use.

(d) Collection. Medical services wastes shall be collected at least daily from the point of origin for transport to a storage or disposal area or a processing facility. Personnel shall take precautions to prevent accidental contact with the waste during transfer.

(e) Transportation. All medical services wastes transported off-site shall be transported in a manner that will prevent the spread of disease or the causing of injury to persons.

(1) The waste transporter or disposal firm shall be notified of the types of waste.

(2) Containers of medical services waste transported off-site shall be labeled or color coded in accordance with 29 CFR 1910.1030(g)(1)(i), as in effect on July 1, 1996.

(f) Processing. In all processing of medical services waste, dispersal of aerosols and liquids shall be prevented through the use of proper coverings, seals, and ventilation. Personnel shall be protected against contact with the waste through the use of protective clothing and equipment. Medical services waste that has been processed may be combined with other solid waste. Where feasible, all medical services wastes shall be processed before transportation off-site by using either of the following methods:

(1) Sterilizing infectious wastes by autoclaving or chemical treatment, to destroy the disease-transmission potential; or

(2) grinding, melting, or pulverizing sharp objects to destroy the injury-producing potential.

(g) Disposal. Medical services waste shall be disposed of in a manner that minimizes the risk to health, safety, or the environment. The following shall be considered acceptable disposal methods:

(1) Discharge of liquids to a sanitary sewer connected to a secondary sewage treatment plant;

(2) incineration of combustible solids, followed by disposal of the ash in a sanitary landfill;

(3) disposal in a hazardous waste disposal facility that has a permit issued under K.A.R. 28-31-9; or

(4) disposal in a sanitary landfill in accordance with the provisions of K.A.R. 28-29-109. (Authorized by and implementing K.S.A. 1996 Supp. 65-3406, as amended by L. 1997, Ch. 139, Sec. 1; effective May 1, 1982; amended, T-84-41, Dec. 21, 1983; effective May 1, 1984; amended July 10, 1998.)

PART 3. STANDARDS FOR WASTE TIRE MANAGEMENT

28-29-28. Definitions. For the purposes of these regulations, the following terms shall be defined as follows.

(a) "Contaminated waste tire" shall have the meaning specified in K.S.A. 65-3424 and amendments thereto. A waste tire shall be deemed "substantially unsuitable for processing" if the volume of material with which the tire is coated or filled is estimated to be equal to or greater than 50% of the combined volume of the waste tire and contaminant. The determination that a waste tire is a contaminated waste tire shall be based on an inspection by the secretary or the secretary's designee.

(b) "Financial assurance" means a bond or other instrument that meets the requirements of K.A.R. 28-29-2101 through K.A.R. 28-29-2113.

(c) "Passenger tire equivalent" means 20 pounds of tires or processed waste tires.

(d) "Retreader" means a person engaged in the business of recapping tire casings to produce recapped tires for sale to the public.

(e) "Rick" means to stack tires securely by overlapping so that the center of a tire is offset from the center of the tire below it.

(f) "Waste tire monofill" means a permitted solid waste landfill or landfill cell in which only processed waste tires are placed.

(g) "Waste tire transporter" means a person who transports waste tires from a location in Kansas or to a location in Kansas. "Waste tire transporter"

shall not mean a person transporting waste tires through Kansas, if both the origin and the destination of the waste tires are outside of Kansas. (Authorized by K.S.A. 65-3424h; implementing K.S.A. 2006 Supp. 65-3424b; effective, T-28-4-27-92, April 27, 1992; effective June 8, 1992; amended Sept. 12, 1997; amended Oct. 26, 2007.)

28-29-28a. Establishing value of used tires. (a) Used tires at a waste tire collection center shall be considered to have value if the owner of the used tires demonstrates to the department, through sales and inventory records, that the used tires are being sold at a rate equal to or greater than 75% of the daily used tire inventory per year.

(b) Each owner of used tires at a waste tire collection center shall choose one of the following methods to determine the daily used tire inventory.

(1) The owner of the used tires shall count the used tires on the day of inspection by the department and shall use that number as the daily used tire inventory for the purpose of establishing the value of the used tires.

(2) The owner of the used tires shall inventory all the used tires at the waste tire collection center at least once every month and shall use the average (mean) of these monthly inventories to calculate the daily used tire inventory for the purpose of establishing the value of the used tires. The owner of the used tires shall maintain a record of each monthly inventory for at least 12 months after the monthly inventory and shall provide the department with the monthly inventory records on request.

(c) Each owner of used tires at a waste tire collection center shall maintain used tire sales records for at least 12 months after the sale and shall provide the department with the sales records on request.

(d) Any owner of used tires at a waste tire collection center who has fewer than 12 months of sales records available may use the following equation to calculate the sales rate, in terms of percent of the daily used tire inventory sold per year, as described in subsection (a) of this regulation:

$$\left(\frac{(\text{number of used tires sold within } x \text{ months}) \left(\frac{12}{x} \right)}{\text{daily used tire inventory}} \right) 100 = \%$$

“x” means the number of months for which sales records are available. (Authorized by K.S.A. 65-3424h; implementing K.S.A. 1996 Supp. 65-3424b; effective Sept. 12, 1997.)

28-29-29. Waste tire processing and disposal standards. (a) Any person may dispose of waste tires by landfilling, if the waste tires meet the criteria specified for the landfill disposal of waste tires in K.S.A. 65-3424a, and amendments thereto.

(b) The processing of waste tires for landfill disposal, as required by K.S.A. 65-3424a and amendments thereto, shall be accomplished by any of the following means:

- (1) Shredding;
- (2) cutting in half along the circumference;
- (3) cutting into at least four parts, with no part being greater than $\frac{1}{3}$ of the original tire size;
- (4) chipping;
- (5) crumbing;
- (6) baling in a manner that reduces the volume of the waste tires by at least 50%; or
- (7) using an equivalent volume-reduction process that has received prior approval, in writing, from the secretary.

(c) Any person may process waste tires by burning, incineration, or other combustion process, including use as an alternative fuel, if the person performs all of the following:

- (1) Obtains a waste tire processing facility permit or a mobile waste tire processor permit from the secretary;
- (2) conducts the burning, incineration, or other combustion process in compliance with the Kansas air quality act, K.S.A. 65-3001 et seq. and amendments thereto, and its implementing regulations in article 19; and
- (3) handles all residue from the burning, incineration, or other combustion process by either or both of the following means:

(A) Disposal at a landfill permitted for disposal of the residue; or

(B) recycling. (Authorized by K.S.A. 65-3424h; implementing K.S.A. 2006 Supp. 65-3424a; effective, T-28-4-27-92, April 27, 1992; effective June 8, 1992; amended Sept. 12, 1997; amended March 22, 2002; amended Oct. 26, 2007.)

28-29-29a. Beneficial use of waste tires. “Beneficial use” shall have the meaning specified in K.S.A. 65-3424, and amendments thereto.

(a) Approved beneficial use.

(1) Any person may use or store waste tires for a beneficial use if all of the following requirements are met:

(A) The use or storage is listed in the definition of “beneficial use” in K.S.A. 65-3424, and amendments thereto.

(B) The use or storage is conducted in accordance with subsections (b) and (c).

(C) The use or storage has no adverse impact on public health and safety and the environment.

(2) Each person that plans to use or store waste tires for a beneficial use that is not listed in the definition of "beneficial use" in K.S.A. 65-3424, and amendments thereto, shall submit an application for approval to the department, on a form provided by the department. The use or storage may be approved by the secretary if the use or storage meets the criteria specified in K.S.A. 65-3424, and amendments thereto.

(b) Management standards for all beneficial uses. The owner of the waste tires shall manage the waste tires in a manner that meets these requirements:

(1) Controls mosquitoes and other disease vectors, as specified in K.A.R. 28-29-29b; and

(2) minimizes the risk and impact of fire.

(c) Management standards for specific beneficial uses. The owner of waste tires used for any of the following beneficial uses shall meet the following requirements for that use:

(1) Windbreaks constructed of baled tires. The owner shall comply with the following requirements:

(A) Construct and maintain a stable base for the windbreak;

(B) construct the windbreak to be 200 feet or less in length;

(C) construct the windbreak to be three bales or less in height;

(D) repair all broken wires on the bales; and

(E) follow the fire control standards for the outdoor storage of tires specified in K.A.R. 28-29-31.

(2) Windbreaks constructed of waste tires that are not baled. The owner shall comply with the following requirements:

(A) Construct the windbreak to be 200 feet or less in length;

(B) construct the windbreak to be eight feet or less in height;

(C) place poles, either in the center of the waste tire stacks or next to the waste tire stacks, to stabilize the waste tires;

(D) fill each stack of waste tires with sand or soil; and

(E) follow the fire control standards for the outdoor storage of tires specified in K.A.R. 28-29-31.

(3) Erosion control on the face of an earthen dam. The owner shall comply with the following requirements:

(A) Place the waste tires in a secure manner that ensures the longevity of the project;

(B) fill each tire with rock or mortar that will not be washed out by wave action;

(C) offset the rows of waste tires for stability; and

(D) place the tires to extend below the normal water level.

(4) Stabilization of soil or sand blowouts caused by wind. The owner shall perform the following:

(A) Place the waste tires in a random pattern or in rows perpendicular to the prevailing wind direction;

(B) confine the tires to an area of one-half acre or less; and

(C) after a vegetative cover has been established, remove each waste tire from the site if both of the following conditions are met:

(i) Less than one-half of the tire is covered by sand; and

(ii) removing the tire will not damage the vegetative cover.

(d) Cessation of beneficial use. The owner shall manage all waste tires that have ceased to be of beneficial use in accordance with K.S.A. 65-3424 et seq., and amendments thereto, and the implementing regulations in article 29. (Authorized by K.S.A. 65-3424h; implementing K.S.A. 2006 Supp. 65-3424; effective Sept. 12, 1997; amended Oct. 26, 2007.)

28-29-29b. Pest control requirements for the storage of new tires, used tires, waste tires, and processed waste tires.

(a) Pest control requirements. The owner or operator of each site that contains an accumulation of new tires, used tires, waste tires, or processed waste tires, or any combination of these, shall operate and maintain the accumulation in a manner that controls mosquito breeding and other disease vectors. The determination that mosquitoes are breeding shall be based on the presence of mosquito larvae in the tires or processed waste tires.

(b) Pesticide application. Each person that applies pesticides shall comply with the Kansas pesticide act, K.S.A. 2-2438a et seq. and amendments thereto. (Authorized by K.S.A. 65-3424h; implementing K.S.A. 2006 Supp. 65-3424b; effective Oct. 26, 2007.)

28-29-30. Waste tire processing facility, waste tire collection center, and mobile waste tire processor permits.

(a) Submission

of application. Each person required to obtain a waste tire processing facility permit, a waste tire collection center permit, or a mobile waste tire processor permit, as specified in K.S.A. 65-3424b and amendments thereto, shall submit an application to the department.

(1) Each application shall be submitted on forms provided by the department.

(2) Each application shall be submitted to the department at least 90 days before operations are planned to begin.

(b) Waste tire processing facility and waste tire collection center permit applications. Each applicant for a waste tire processing facility or waste tire collection center permit shall include the following items in the application:

(1) Proof of consistency with zoning or land use requirements;

(2) a description of the land use within a radius of one-half mile of the facility, identifying all buildings and surface waters;

(3) the following maps:

(A) A site location map showing section, township, range, and site boundaries;

(B) a site layout drawing showing the size and location of all pertinent artificial and natural features of the site, including roads, fire lanes, ditches, berms, waste tire storage areas, structures, wetlands, floodways, and surface waters; and

(C) a topographic map that has a scale of no less than one inch equals 2,000 feet, and that has a contour interval of 10 feet or less;

(4) a design plan, including equipment placement and a process flow diagram;

(5) an operations plan for the processing facility or collection center that includes the following information:

(A) The storage capacity for waste tires and processed waste tires, in passenger tire equivalents;

(B) the procedures that the facility owner or operator proposes to use to meet the mosquito and rodent control requirements of K.A.R. 28-29-29b;

(C) for waste tire collection centers, the proposed methods and schedule for storage of the waste tires before removal from the site; and

(D) for waste tire processing facilities, the following information:

(i) The proposed methods and schedule for the processing or disposal of waste tires;

(ii) the procedures that the facility owner or operator proposes to use to meet the waste tire processing standards in K.A.R. 28-29-29; and

(iii) a description of all equipment to be used in the waste tire processing operation;

(6) a contingency plan to minimize damage from fire and other emergencies at the site, including procedures for the following:

(A) Minimizing the occurrence or spread of fires;

(B) reporting all environmental problems, including fires, to the department;

(C) remediating the site;

(D) operating the facility when equipment fails; and

(E) operating the facility during inclement weather;

(7) proof that the applicant owns the site or has a lease for the site that runs at least one year. The permit shall be valid only for the location specified on the permit application;

(8) a closure plan that includes the following information:

(A) A description of when and why the operator would suspend the receipt of waste tires at the facility;

(B) a description of how all waste tires and processed waste tires will be removed from the site or otherwise properly disposed of upon closure;

(C) a time schedule for completing the closure procedures; and

(D) a plan for site rehabilitation and remediation;

(9) a closure cost estimate based on the cost to close the facility following the requirements of K.A.R. 28-29-31 and K.A.R. 28-29-31a. The cost of removing processed waste tires from the site shall not be required to be included in the closure cost estimate if the permittee demonstrates to the department that the processed waste tires have a positive market value;

(10) documentation of financial assurance issued in favor of the department that meets the requirements of K.A.R. 28-29-2101 through K.A.R. 28-29-2113; and

(11) the applicable application fee specified in K.A.R. 28-29-2011.

(c) Mobile waste tire processor permit applications. Each applicant for a mobile waste tire processor permit shall include the following items in the application:

(1) A description of all equipment to be used in the mobile waste tire processing operation;

(2) documentation of financial assurance issued in favor of the department that meets the requirements of K.A.R. 28-29-2101 through K.A.R. 28-29-2113; and

(3) the application fee specified in K.A.R. 28-29-2011.

(d) Permit renewal. As specified in K.S.A. 65-3424b and amendments thereto, each waste tire processing facility permit, waste tire collection center permit, and mobile waste tire processor permit shall be issued for a one-year period. Any permittee may apply to the secretary for permit renewal by submitting the renewal application to the department at least 30 days before the permit expiration date. Each renewal application shall be submitted on forms provided by the department and shall include the following items:

(1) For each waste tire processing facility permit and each waste tire collection center permit, the following items:

(A) An annual operations report that summarizes the information required in K.A.R. 28-29-31a(c);

(B) an updated closure cost estimate;

(C) documentation of updated financial assurance that meets the financial assurance requirements in K.A.R. 28-29-2101 through K.A.R. 28-29-2113; and

(D) the applicable permit renewal fee specified in K.A.R. 28-29-2011; and

(2) for each mobile waste tire processor permit, the following items:

(A) An annual operations report that summarizes the information required in K.A.R. 28-29-31a(c);

(B) documentation of financial assurance that meets the financial assurance requirements in K.A.R. 28-29-2101 through K.A.R. 28-29-2113; and

(C) the permit renewal fee specified in K.A.R. 28-29-2011.

(e) Permit modifications. Any waste tire processing facility, waste tire collection center, or mobile waste tire processor permittee may request from the secretary a permit modification to modify the operations authorized in an unexpired permit. The procedure for modifying permits specified in K.A.R. 28-29-8 shall apply.

(f) Transfers of ownership. The permittee shall provide notice of plans to transfer ownership of any facility or business permitted under these regulations to the department at least 60 days before the transfer. Each permit shall be issued only for the person or persons and the premises or business named in the permit. As specified in K.S.A. 65-3424k and amendments thereto, permits shall not be transferable. (Authorized by K.S.A.

65-3424h; implementing K.S.A. 2006 Supp. 65-3424b; effective, T-28-4-27-92, April 27, 1992; effective June 8, 1992; amended Sept. 12, 1997; amended Oct. 26, 2007.)

28-29-31. Requirements for storage of waste tires, used tires, and processed waste tires. (a) Outdoor storage of waste tires, used tires, or both.

(1) The requirements in this regulation for outdoor storage of tires shall not apply to tires stored in trailers or covered containers.

(2) Each person storing the tires shall meet the pest control standards specified in K.A.R. 28-29-29b.

(b) Outdoor storage of more than 500 used tires, 500 waste tires, or 500 used and waste tires. Each person storing the tires shall meet the following requirements:

(1) Locate the tires outside all wetlands;

(2) store tires that have been or will be stored for more than 30 days by one or more of the following means:

(A) Ricking;

(B) storing in racks; or

(C) storing on tread; and

(3) limit the size of each storage area to less than the following dimensions:

(A) 50 feet in width;

(B) 5,000 square feet in area; and

(C) 10 feet in height.

(c) Outdoor storage of 1,500 or more used tires, waste tires, or used and waste tires. Each person storing the tires shall meet the requirements of subsection (b) of this regulation and the following requirements:

(1) Locate each storage area at least 60 feet from each building;

(2) provide access to each storage area for fire-fighting equipment by either of the following means:

(A) Developing a 50-foot wide fire lane around the perimeter of each storage area. The person storing the tires shall maintain the fire lane and an approach and access road to each storage area, which shall be passable for any fire-fighting vehicle at all times; or

(B) obtaining certification from the local fire department stating that there is adequate access to each storage area for fire-fighting equipment;

(3) prohibit all activities involving the use of open flames, smoking materials, and other ignition sources within 25 feet of each storage area;

(4) maintain all vegetation within 100 feet of each storage area in a manner that minimizes fire hazard.

(d) Outdoor storage of processed waste tires. The requirements in this regulation for the outdoor storage of processed waste tires shall not apply to processed waste tires stored in trailers or covered containers.

(1) Each person storing processed waste tires in an amount equal to or greater than the amount derived from 500 passenger tire equivalents shall store the processed waste tires according to the requirements in paragraphs (b)(1) and (b)(3) of this regulation, replacing the term "tire" with "processed waste tires."

(2) Each person storing processed waste tires in an amount equal to or greater than the amount derived from 1,500 passenger tire equivalents shall store the processed waste tires according to the requirements in paragraph (d)(1) and in paragraphs (c)(1) through (c)(4) of this regulation, replacing the term "tire" with "processed waste tires."

(e) Removal of contamination. If pyrolytic oil from a tire fire is released into the environment, each person storing the tires or the processed waste tires shall remove the oil and contaminated soil in accordance with the solid and hazardous waste regulations in articles 29 and 31 governing the removal, transportation, and disposal of the material.

(f) Closure of storage sites. When a storage site for waste tires, used tires, or processed waste tires closes, each person storing the tires or processed waste tires shall perform the following:

(1) Remove all waste tires and processed waste tires in accordance with the tire management standards of K.S.A. 65-3424 et seq., and amendments thereto, and the requirements of K.A.R. 28-29-28 through K.A.R. 28-29-33; and

(2) remove all other solid waste to a permitted solid waste disposal area. (Authorized by K.S.A. 65-3406 and 65-3424h; implementing K.S.A. 65-3406 and K.S.A. 2006 Supp. 65-3424b; effective, T-28-4-27-92, April 27, 1992; effective June 8, 1992; amended Sept. 12, 1997; amended Oct. 26, 2007.)

28-29-31a. Requirements for permitted waste tire processing facilities, waste tire collection centers, and mobile waste tire processors. (a) Access for fire-fighting equipment. Each permittee that obtains certification from the local fire department, as specified in K.A.R. 28-

29-31, shall submit a copy of the certification to the department.

(b) Site access. The permittee of each waste tire collection center and each waste tire processing facility shall perform the following:

(1) Control access to the site;

(2) post a sign at the entrance of the site stating the following information:

(A) The name of the site;

(B) the permit number;

(C) the site's telephone number, if there is one;

(D) the 24-hour emergency telephone number; and

(E) if the site is open to the public, the hours of operation; and

(3) have an attendant present at all times when the waste tire processing facility or waste tire collection center is open for business.

(c) Recordkeeping. Each permittee shall retain the records required by this subsection at the facility or business for a minimum of three years. All quantities of tires and processed waste tires shall be recorded in passenger tire equivalents.

(1) Mobile waste tire processors. The permittee shall maintain records of the following information for each site at which waste tires were processed:

(A) The address or legal description;

(B) the landowner's name and address;

(C) the dates of arrival and departure of the mobile waste tire processor; and

(D) the quantity of waste tires processed.

(2) Waste tire processing facilities and waste tire collection centers. The permittee shall maintain monthly records of the following information:

(A) The quantity of waste tires received;

(B) for waste tire processing facilities, the quantity of waste tires processed;

(C) the quantity of waste tires and processed waste tires removed from the site; and

(D) each location to which waste tires or processed waste tires have been taken for use or disposal.

(d) Closure of waste tire processing facilities and waste tire collection centers.

(1) The permittee of each waste tire processing facility and each waste tire collection center shall cease to accept waste tires and shall close the waste tire processing facility or waste tire collection center in compliance with these regulations and with any special closure conditions established in the facility permit, if any of the following conditions is met:

(A) The permittee informs the secretary that the site is closed.

(B) A departmental order to cease operations is issued.

(C) A permit compliance schedule specifying closure is to begin.

(D) The owner fails to renew the permit.

(E) The permit is revoked.

(2) If the waste tire processing facility or waste tire collection center closes, the permittee shall perform the following:

(A) Close public access to the waste tire site;

(B) post a notice at the site entrance indicating to the public that the site is closed and, if the site had accepted waste tires from the public, indicating the nearest site where waste tires can be lawfully deposited;

(C) notify the department and the local government having jurisdiction over the site of the closing of the permitted waste tire processing facility or waste tire collection center; and

(D) submit certification to the department that the closure has been completed in compliance with the closure plan.

(3) All financial assurance not needed for the closure or for other purposes under this subsection shall be released to the permittee by the secretary. (Authorized by K.S.A. 65-3424h; implementing K.S.A. 2006 Supp. 65-3424b; effective Oct. 26, 2007.)

28-29-32. Waste tire transporter permits. (a) Submission of application. Each person required to obtain a waste tire transporter permit, as specified in K.S.A. 65-3424b and amendments thereto, shall submit an application to the department. Each application shall be submitted on forms provided by the department.

(b) Waste tire transporter application. Each applicant for a waste tire transporter permit shall include the following items in the application:

(1) The address or legal description of each location where the waste tires will be transported for storage, processing, or disposal;

(2) an estimate of the number of tires that will be transported each month;

(3) a list of equipment that will be used;

(4) documentation of financial assurance issued in favor of the department that meets the requirements in K.A.R. 28-29-2101 through K.A.R. 28-29-2113; and

(5) the application fee listed in K.A.R. 28-29-2011.

(c) Permit renewal. Each waste tire transporter permit shall be issued for a one-year period. Any permitted waste tire transporter may apply to the secretary for permit renewal by submitting the renewal application to the department at least 30 days before the permit expiration date. Each permit renewal application shall be submitted on a form provided by the department and shall include the following items:

(1) An annual operations report that summarizes the information required in K.A.R. 28-29-33(b);

(2) an updated equipment list;

(3) documentation of updated financial assurance that meets the financial assurance requirements in K.A.R. 28-29-2101 through K.A.R. 28-29-2113; and

(4) the permit renewal fee listed in K.A.R. 28-29-2011.

(d) Multiple business locations. Any corporation that has more than one separate business location may submit one waste tire transporter permit application that provides for services to all of the corporation's locations.

(e) Permits that are no longer active. If a waste tire transporter permit is not renewed, or is revoked or suspended, the former permittee shall remove all copies of the waste tire transporter permit from its vehicles.

(1) The former permittee shall remove all copies of the waste tire transporter permit either on the renewal date or on the day on which the former permittee receives notification that the waste tire transporter permit is no longer active, whichever occurs first.

(2) Within 14 days after revocation, suspension, or the renewal date, the former permittee shall surrender the original permit to the department and notify the department, in writing, that all copies of the waste tire transporter permit have been removed from all vehicles. (Authorized by K.S.A. 65-3424h; implementing K.S.A. 2006 Supp. 65-3424b; effective, T-28-4-27-92, April 27, 1992; effective June 8, 1992; amended Sept. 12, 1997; amended Oct. 26, 2007.)

28-29-33. Requirements for permitted waste tire transporters. Each person required to obtain a waste tire transporter permit shall perform the following:

(a) Display a copy of the person's current waste tire transporter permit in each vehicle that transports waste tires;

(b) record and maintain for three years the following information regarding activities for each month of operation:

- (1) The number of waste tires transported;
- (2) the name of the previous owner of the waste tires and the address or legal description of the location from which the waste tires were collected; and
- (3) the name of the subsequent owner of the waste tires and the address or legal description of the location at which the waste tires were deposited; and

(c) transport waste tires only to a person or landfill authorized to receive waste tires, pursuant to K.S.A. 65-3424a and amendments thereto. (Authorized by K.S.A. 65-3424h; implementing K.S.A. 2006 Supp. 65-3424b; effective, T-28-4-27-92, April 27, 1992; effective June 8, 1992; amended Sept. 12, 1997; amended Oct. 26, 2007.)

28-29-34 to 28-29-36. (Authorized by K.S.A. 1991 Supp. 65-3424h; implementing K.S.A. 1991 Supp. 65-3424f; effective, T-28-4-27-92, April 27, 1992; effective June 8, 1992; revoked Sept. 12, 1997.)

PART 4. STANDARDS FOR MANAGEMENT OF HAZARDOUS WASTES

28-29-37 to 28-29-44. (Authorized by K.S.A. 65-3406; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; revoked, E-82-20, Nov. 4, 1981; revoked May 1, 1982.)

28-29-45. (Authorized by K.S.A. 65-3406, 65-3407; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; revoked, E-82-8, April 10, 1981; revoked May 1, 1982.)

28-29-46. (Authorized by K.S.A. 65-3406; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; revoked, E-82-20, Nov. 4, 1981; revoked May 1, 1982.)

28-29-47. (Authorized by K.S.A. 65-3406; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; revoked, E-82-8, April 10, 1981; revoked May 1, 1982.)

28-29-48 and 28-29-49. (Authorized by K.S.A. 65-3406; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; revoked, E-82-20, Nov. 4, 1981; revoked May 1, 1982.)

28-29-50. (Authorized by K.S.A. 65-3406; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; revoked, E-82-8, April 10, 1981; revoked May 1, 1982.)

28-29-51 to 28-29-53. (Authorized by K.S.A. 65-3406; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; revoked, E-82-20, Nov. 4, 1981; revoked May 1, 1982.)

28-29-54 to 28-29-56. (Authorized by K.S.A. 65-3406; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; revoked, E-82-8, April 10, 1981; revoked May 1, 1982.)

28-29-57 to 28-29-63. (Authorized by K.S.A. 65-3406; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; revoked, E-82-20, Nov. 4, 1981; revoked May 1, 1982.)

28-29-64. (Authorized by K.S.A. 65-3406; effective, E-82-8, April 10, 1981; revoked, E-82-20, Nov. 4, 1981.)

28-29-65. (Authorized by K.S.A. 65-3406; effective, E-82-8, April 10, 1981; revoked, E-82-20, Nov. 4, 1981; revoked May 1, 1982.)

PART 5. SOLID WASTE MANAGEMENT PLANS

28-29-75. Solid waste management (SWM) plans and committees; general provisions. (a) Each county shall prepare, adopt, and submit to the secretary an SWM plan as specified in K.S.A. 65-3405, and amendments thereto, and K.A.R. 28-29-75 through K.A.R. 28-29-82.

(b) Each county or group of counties shall establish an SWM committee, as specified in K.S.A. 65-3405 and amendments thereto. (Authorized by K.S.A. 65-3405 and K.S.A. 65-3406; implementing K.S.A. 65-3405; effective Jan. 1, 1972; amended, E-79-22, Sept. 1, 1978; amended May 1, 1979; amended March 5, 2004.)

28-29-76. The solid waste management (SWM) committee. Each county commission for counties planning individually, or the SWM committee on behalf of the county commissions of each county participating in a regional SWM plan, shall submit the following information to the department within the deadlines specified:

(a) Within 60 days after the SWM committee is formed, a list of the SWM committee members. The list, and each update to the list, shall include

the following information for each SWM committee member:

- (1) The name;
- (2) the political entity, business, or organization that the committee member represents; and
- (3) the address, telephone number, and if available, the e-mail address; and
- (b) within 60 days of the event, each change in the designation of the chairperson or the contact person of the SWM committee. (Authorized by K.S.A. 65-3405 and K.S.A. 65-3406; implementing K.S.A. 65-3405; effective Jan. 1, 1972; amended, E-79-22, Sept. 1, 1978; amended May 1, 1979; amended March 5, 2004.)

28-29-77. The SWM plan. (a) Each SWM committee shall establish an SWM plan that meets the requirements of K.S.A. 65-3405, and amendments thereto, and provides the following:

(1) Access for each person in the county or region to service providing for the disposal of all nonhazardous residential, commercial, and industrial solid waste; and

(2) a process for the orderly and systematic elimination of nuisances and pollution sources associated with the following solid waste management activities:

- (A) Storage;
- (B) collection;
- (C) transportation;
- (D) processing; and
- (E) disposal.

(b) Each SWM committee shall include in the SWM plan information, if available, from federal, state, and local sources pertaining to the following topics:

- (1) Present and projected population and densities;
- (2) present and anticipated industries;
- (3) utilities;
- (4) solid waste collection, transportation, processing, and disposal facilities;
- (5) present and anticipated land, air, and water usage;
- (6) present and projected transportation patterns;
- (7) present and projected sources of solid wastes;
- (8) assessed property values and the ability to fund the SWM system;
- (9) types of soil, geology, and hydrology;
- (10) air pollution, sewage, water resources, and public water supply; and

(11) local and regional land-use and development plans.

(c) Each SWM committee shall include in the SWM plan all information required by K.S.A. 65-3405, and amendments thereto, and the following information:

(1) A description of all sources of solid waste within the county or region or coming into the county or region;

(2) an estimate of solid waste storage, collection, transportation, processing, and disposal requirements for the area covered by the SWM plan for the next 10 years;

(3) a description of the projected demands and obstacles that could be caused by the existing solid waste storage, collection, transportation, processing, and disposal system;

(4) a description of the selected SWM system, including the following:

(A) Collection, transportation, processing, storage, and disposal methods;

(B) locations for disposal sites or processing facilities, or both; and

(C) plans for management of the wastes listed in K.S.A. 65-3405, and amendments thereto, and the following wastes:

- (i) Tires;
- (ii) industrial wastes;
- (iii) agricultural wastes;
- (iv) abandoned automobiles; and
- (v) other wastes that could require special handling, transportation, processing, or disposal;

(5) a description of options for development and implementation of recycling, composting, source reduction, and volume-based pricing in relationship to the selected SWM system;

(6) a 10-year timetable for the completion of all necessary steps required to implement the selected SWM system;

(7) a description of local provisions for regulation of storage, collection, transportation, disposal, and other SWM activities;

(8) a description of the responsibilities and actions required by each individual unit of government involved; and

(9) a method for financing each element of the selected SWM system based on cost estimates. Revenue financing, general obligation financing, and other financing methods may be analyzed individually or in combination.

(d) Each county that withdraws from a regional SWM plan shall prepare and submit to the department a new SWM plan meeting the requirements

of K.S.A. 65-3405, and amendments thereto, and this regulation.

(1) The county shall submit the new SWM plan to the department on or before the date of the next annual review or the date by which the five-year update of the regional plan is required to be submitted to the department, whichever is first.

(2) The county shall be subject to the conditions of the regional SWM plan until the new SWM plan for the county is approved by the secretary.

(e) A copy of the SWM plan shall be maintained in each county participating in the plan in a place accessible to the public. (Authorized by K.S.A. 65-3406; implementing K.S.A. 65-3405; effective Jan. 1, 1972; amended, E-79-22, Sept. 1, 1978; amended May 1, 1979; amended March 5, 2004.)

28-29-78. Review and adoption of a new SWM plan. (a) Each SWM committee shall develop a new SWM plan in accordance with the requirements of this regulation if any of the following occurs:

- (1) The dissolution of a region;
- (2) a change in the member counties of a region;
- (3) the withdrawal from a region of a county that elects to plan individually;
- (4) the formation of a new region; or
- (5) the transfer of planning responsibility either to or from a designated city.

(b) The SWM committee shall submit the new SWM plan for review to each official land-use planning agency and each official comprehensive planning agency within the area covered by the new SWM plan. The SWM committee may revise the new SWM plan based on comments received from one or more planning agencies.

(c) The SWM committee shall submit the new SWM plan for adoption to the county commission of each county or to the governing body of the designated city participating in the plan. All supporting information required by K.S.A. 65-3405, and amendments thereto, and by K.A.R. 28-29-77, including planning agency reviews, shall be submitted with the new SWM plan.

(d) Before adopting the new SWM plan, the county commission or governing body of a designated city shall hold a minimum of one public hearing on the plan. A notice of the public hearing, which shall specify the place and time of the hearing, shall be published at least once in the official newspaper of each county participating in the plan. The hearing shall be held at least 15 days and not more than 30 days after publication of the notice.

(e) The county commission or governing body of a designated city shall inform the SWM committee of the adoption of the plan. (Authorized by K.S.A. 65-3406; implementing K.S.A. 65-3405; effective Jan. 1, 1972; amended, E-79-22, Sept. 1, 1978; amended May 1, 1979; amended March 5, 2004.)

28-29-79. Approval of the SWM plan by the secretary. (a) After adoption of the SWM plan, the county commission, the governing body of the designated city, or the SWM committee shall submit the SWM plan to the secretary for consideration for approval as specified in K.S.A. 65-3405, and amendments thereto.

(b) The following documents shall accompany the SWM plan:

(1) A review from each official land-use planning agency and each official comprehensive planning agency within the area covered by the SWM plan; and

(2) a certification of adoption from the county commission of each county covered by the SWM plan.

(c) If an SWM plan is disapproved by the secretary, the county commission, governing body of the designated city, or SWM committee may revise and submit the SWM plan to the secretary. The revisions shall be made according to K.A.R. 28-29-82. (Authorized by K.S.A. 65-3406; implementing K.S.A. 65-3405; effective Jan. 1, 1972; amended, E-79-22, Sept. 1, 1978; amended May 1, 1979; amended March 5, 2004.)

28-29-80. Annual reviews of the SWM plan. (a) Review.

(1) Each SWM committee, except as specified in K.S.A. 65-3405 and amendments thereto, shall conduct an annual review of the SWM plan.

(2) The review shall identify all changes made to the SWM system of the county or region since adoption and approval of the SWM plan, the last annual update, or the last five-year review, whichever is most recent.

(b) Revision. If a revision of the SWM plan is required, the SWM committee, except as specified in K.S.A. 65-3405 and amendments thereto, shall follow the procedures specified in K.A.R. 28-29-82.

(c) Adoption. The county commission or governing body of the designated city shall inform the SWM committee of the adoption of the review.

(d) Submission.

(1) The results of the annual review shall be submitted to the secretary on or before the anniversary date of approval of the SWM plan or the last five-year review, whichever is more recent.

(2) One of the following groups shall submit the results of the annual review to the department:

(A) For individual county SWM plans without a designated city, the county commission;

(B) for SWM plans with a designated city, the governing body of the designated city; or

(C) for regional SWM plans, the SWM committee.

(3) The following documents shall be submitted to the department with the results of the annual review:

(A) A list of the current SWM committee members, as specified in K.A.R. 28-29-76; and

(B) a certification of adoption from the county commission of each county participating in the SWM plan. (Authorized by K.S.A. 65-3406; implementing K.S.A. 65-3405; effective Jan. 1, 1972; amended, E-79-22, Sept. 1, 1978; amended May 1, 1979; amended March 5, 2004.)

28-29-81. Five-year reviews of the SWM plan. (a) Review and revision. Each SWM committee shall review and revise the SWM plan within five years of the original SWM plan approval date or within five years of the previous five-year review approval date, whichever is more recent.

(1) The revision shall include, at a minimum, updates of the 10-year projections for SWM practices and needs and shall contain any changes in the SWM system according to the requirements specified in K.A.R. 28-29-77.

(2) The SWM committee shall revise the SWM plan according to the procedures specified in K.A.R. 28-29-82.

(b) Public hearing. One of the county commissions participating in the plan or the governing body of the designated city shall hold a public hearing in accordance with K.S.A. 65-3405 and amendments thereto.

(1) A notice of the public hearing, specifying the place and time of the hearing, shall be published at least once in the official newspaper of each designated city and each county participating in the plan.

(2) The hearing shall be held at least 15 days and not more than 30 days after publication of the notice.

(3) Any county commission or governing body of the designated city participating in the plan may hold additional public hearings.

(c) Submission of the SWM plan. Pursuant to K.S.A. 65-3405 and amendments thereto, one of the following shall submit the revised SWM plan to the secretary on or before the five-year anniversary date of approval of the SWM plan or the last five-year review, whichever is more recent:

(1) The county commission;

(2) the governing body of the designated city; or

(3) the SWM committee. (Authorized by K.S.A. 65-3406; implementing K.S.A. 65-3405; effective Jan. 1, 1972; amended, E-79-22, Sept. 1, 1978; amended May 1, 1979; amended March 5, 2004.)

28-29-82. Revisions to the SWM plan. (a) Each SWM committee shall revise the SWM plan if any of the following conditions is met:

(1) A waste management activity that is specifically required or precluded under the current SWM plan is proposed to be changed.

(2) Any of the following waste management activities has occurred:

(A) The availability of waste collection services within the planning area has been reduced or expanded for some or all waste generators.

(B) A solid waste facility that is subject to permitting requirements under K.S.A. 65-3407, and amendments thereto, has been added or eliminated.

(C) Non-permitted recycling services have been added or eliminated.

(3) One or more counties have been added to the plan.

(4) One or more counties have withdrawn from the plan.

(5) A change to the implementation schedule or financing methods specified in the SWM plan has occurred or will occur.

(6) Revisions are required as part of the five-year review to extend the planning horizon to 10 years.

(b) If the approved SWM plan does not meet the requirements of the solid waste management statutes or regulations, or both, a revision of the approved SWM plan may be required by the secretary. If a revision is required, written notice shall be provided by the secretary to each county commission, or the governing body of the designated city, covered by the SWM plan.

(c) Each revised SWM plan shall be reviewed by the official land-use planning agency and each official comprehensive planning agency within the area covered by the SWM plan.

(d) Each revised SWM plan shall be adopted according to the procedures specified in K.A.R. 28-29-78(b) and (d), except for regional SWM plans revised at unscheduled intervals, which shall be adopted in accordance with K.S.A. 65-3405 and amendments thereto. Adoption of the revised SWM plan by the county commission or commissions shall be conducted in an open meeting and shall provide an opportunity for public input.

(e) The county commission, the governing body of the designated city, or the SWM committee shall submit the revised SWM plan to the secretary for consideration for approval in accordance with K.A.R. 28-29-79.

(f) The county commission, or the governing body of the designated city, shall ensure that approved revisions of the SWM plan are incorporated in public copies of the plan maintained in accordance with K.A.R. 28-29-77. (Authorized by K.S.A. 65-3406; implementing K.S.A. 65-3405; effective Jan. 1, 1972; amended, E-79-22, Sept. 1, 1978; amended May 1, 1979; amended March 5, 2004.)

28-29-83. (Authorized by K.S.A. 1978 Supp. 65-3406; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; revoked May 10, 1996.)

PART 6. FINANCIAL REQUIREMENTS

28-29-84. Permit renewal; solid waste permit fees. (a) General provisions. Each permit issued by the department for any solid waste disposal facility or area, processing facility, incinerator, transfer station, composting plant or area and reclamation facility may be renewed on or before the anniversary date of the permit each year in the following manner.

(1) Each solid waste facility operating in Kansas pursuant to a valid existing permit shall submit to the department, on or before the anniversary date of the permit, a report of the permitted activities on forms provided by the department.

(2) The annual permit renewal fee shall accompany the report. Action to approve the renewals of the permit shall not begin until such time as a properly completed report and the appropriate annual permit renewal fee are received by the department.

(b) Failure to submit. Failure to submit a complete annual report and the annual permit renewal fee on or before the anniversary date of the permit each year may subject the permit holder to denial, revocation, or suspension of the permit.

(c) Fee schedule. The fee for a permit to oper-

ate a solid waste disposal area or facility shall be as follows.

(1) The fee for an application for a proposed facility for which no permit has previously been issued by the department, or for reapplication due to loss of the permit resulting from departmental action, including revocation, denial or suspension shall be:

Incinerator	\$5,000.00
Industrial solid waste disposal area	\$3,000.00
Municipal solid waste disposal area	\$5,000.00
Processing facility	\$2,000.00
Reclamation facility	\$2,000.00
Solid waste compost facility.....	\$250.00
Transfer station	\$1,000.00

(2) Each facility or disposal area operating pursuant to a valid, current permit issued by the department shall be required to pay an annual permit renewal fee. The annual permit renewal fees shall be:

Incinerator	\$1,000.00
Industrial solid waste disposal area	\$1,000.00
Municipal solid waste disposal area	\$2,000.00
Processing facility	\$1,000.00
Reclamation facility	\$1,000.00
Solid waste compost facility.....	\$250.00
Transfer station	\$500.00

(d) Construction and demolition landfills.

(1) The fee for an application for a proposed construction and demolition disposal facility for which no permit has previously been issued by the department or as otherwise set forth in these regulations shall be as follows:

(A) each facility whose permit application projects receipt of less than 1,000 tons annually: \$250.00;

(B) each facility whose permit application projects receipt of more than 1,000 and less than 10,000 tons annually: \$500.00; and

(C) each facility whose permit application projects receipt of more than 10,000 tons annually: \$1,000.00.

(2) Each facility operating pursuant to a valid, current permit issued by the department shall be required to pay an annual permit renewal fee. The annual permit renewal fee shall be as follows:

(A) for each facility receiving less than 1,000 tons annually: \$125.00;

(B) for each facility receiving more than 1,000 and less than 10,000 tons annually: \$250.00; and

(C) for each facility receiving more than 10,000 tons annually: \$500.00.

(3) Fees for each facility reapplying for a permit due to loss of the permit resulting from depart-

mental action, including revocation, denial or suspension shall be determined in accordance with paragraph (d)(1) of this regulation based on the tonnage received the 12 months prior to the revocation, denial or suspension of the permit.

(4) To determine the annual fee due, the construction and demolition disposal facility may determine the volume of waste received during the previous year and convert this volume to an equivalent weight basis using the following conversion factor: 1 cubic yard = 1,250 pounds.

(e) Multiple activities. Any person conducting more than one of the activities listed in K.A.R. 28-29-84(c)(1) at one location shall pay a single fee. This fee shall be in the amount specified for the activity having the highest fee of those conducted. (Authorized by K.S.A. 1993 Supp. 65-3406, as amended by L. 1994, Ch. 283, sec. 2; implementing K.S.A. 1993 Supp. 65-3407, as amended by L. 1994, Ch. 283, sec. 3; effective, T-28-3-15-93, March 15, 1993; effective May 17, 1993; amended Aug. 28, 1995.)

28-29-85. State solid waste tonnage fees.

(a) General provisions. The operator of each solid waste disposal area in Kansas shall pay to the department a tonnage fee for each ton or equivalent volume of solid waste received and disposed of at the facility during the preceding reporting period. The fee shall be paid each reporting period until the facility no longer receives waste and begins departmentally approved closure activities. Municipal solid waste disposal areas receiving 50,000 tons or more of solid waste annually shall file the reports required by subsection (b) of this regulation and pay their tonnage fee monthly, on or before the last day of the following month. Municipal solid waste disposal areas receiving less than 50,000 tons of solid waste annually, and all other solid waste disposal areas shall file reports and pay their tonnage fee quarterly, on or before the last day of April, July, October and January.

(b) Certification and late fees. The operator of each solid waste disposal area shall certify, on a form provided by the department, the amount, source and type of solid waste received, processed, recycled, and disposed of during the preceding reporting period. Any operator failing to remit the appropriate tonnage fee and submit the report within 45 days after each reporting period shall pay a late processing fee of one and one-half percent per month on the unpaid balance from the date the fee was due until paid.

(c) Determination of waste tonnages.

(1) Operator estimates. The operator of each municipal solid waste disposal area that receives 50,000 tons or more of solid waste annually shall use actual weight records. The operator of each municipal solid waste disposal area that receives less than 50,000 tons of solid waste annually shall, subject to department approval, use one of the following methods for determining the number of tons of waste disposed of at the solid waste disposal area.

(A) The operator may use actual weight records.

(B) The operator may use actual volume records based upon direct aerial and field survey techniques, using the conversion factor of 1,000 pounds per cubic yard less a department approved deduction for cover material.

(C) The operator may use actual volume records based upon daily logs which record the source, type and measurement or estimate of each load using the conversion factors as specified in subsection (d) of this regulation.

(D) The operator of a landfill serving one county or an identifiable population of less than 20,000 may use a per capita waste generation rate charge equivalent of .8 ton per person per year. This generation rate may only be used during calendar year 1993. This method may be used after December 31, 1993, only with specific departmental approval.

(2) Other disposal site estimates. All other solid waste disposal sites shall, subject to departmental approval, use one of the methods provided in paragraph (c)(1)(A), (c)(1)(B) or (c)(1)(C) of this regulation.

(3) Departmental estimates. The department may estimate the number of tons received at a solid waste disposal area. The estimate may be based upon the number of tons received and reported for the previous reporting period, or any other recognized method.

(d) Payment calculation. The solid waste tonnage fee of \$1.50 per ton shall be calculated on department forms. If volume records are used, the following volume to weight factors shall be used to calculate tonnage unless the operator demonstrates to the department that a different conversion factor is appropriate.

Municipal solid waste (as delivered)	
Residential/commercial	
loose	325 pounds/cubic yard
compacted	650 pounds/cubic yard
Industrial	
general	330 pounds/cubic yard
liquids/sludges	8.3 pounds/gallon
Construction demolition	1,250 pounds/cubic yard

(e) Exemptions. The state solid waste tonnage fee shall not apply to non-hazardous waste that is received at a solid waste disposal area, and recycled, reclaimed or reused. Such items include scrap and composted wastes. (Authorized by K.S.A. 1993 Supp. 65-3406, as amended by L. 1994, Ch. 283, sec. 2; implementing K.S.A. 1993 Supp. 65-3415b; effective, T-28-3-15-93, March 15, 1993; effective May 17, 1993; amended Aug. 28, 1995.)

28-29-98. This regulation shall be revoked on and after February 24, 2000. (Authorized by K.S.A. 1997 Supp. 65-3406; implementing K.S.A. 1997 Supp. 65-3401; effective, T-28-9-30-93, Sept. 30, 1993; effective Nov. 22, 1993; amended May 16, 1994; amended Aug. 22, 1994; amended April 9, 1996; amended April 9, 1997; amended July 24, 1998; revoked Feb. 24, 2000.)

28-29-99. (Authorized by K.S.A. 65-3406; amended by L. 1993, Ch. 274, Sec. 2; implementing K.S.A. 65-3401; effective, T-28-9-30-93, Sept. 30, 1993; effective Nov. 22, 1993; revoked May 16, 1994; revoked Aug. 22, 1994.)

PART 7. MUNICIPAL SOLID WASTE LANDFILLS

28-29-100. Applicability. (a) The provisions of K.A.R. 28-29-100 through K.A.R. 28-29-121 shall apply to all municipal landfills receiving waste on or after October 9, 1991. Facilities receiving waste after October 9, 1991, but that stop receiving waste before October 9, 1993 shall only be subject to the final cover requirements in K.A.R. 28-29-121.

(b) Each existing unit or lateral expansion receiving flood-related waste from federally-designated areas within the major disaster areas declared by the president during the summer of 1993 pursuant to 42 U.S.C. 5121 *et seq.*, shall be designated by the director of the division of environment in accordance with the following:

(1) If it is determined by the director of the division of environment that a unit is needed to receive flood-related waste from a federally-designated disaster area, as specified in this regulation, that unit may continue to accept waste prior to April 9, 1994 without being subject to the requirements of K.A.R. 28-29-100 through K.A.R. 28-29-121, except as provided in subsection (a) of this regulation.

(2) Any unit that receives an extension in accordance with paragraph (b)(1) of this regulation

may continue to accept waste for a maximum of six additional months beyond April 9, 1994 without being subject to the requirements of K.A.R. 28-29-101 through K.A.R. 28-29-121, except as provided in subsection (a) of this regulation, if it is determined by the director of the division of environment that the unit is still needed to receive flood-related waste from a federally-designated disaster area as specified in this regulation.

(3) Any unit receiving an extension under paragraphs (b)(1) or (b)(2) of this regulation which accepts waste under any circumstances on or after October 9, 1994 shall be subject to K.A.R. 28-29-101 through K.A.R. 28-29-121.

(c) Any unit that meets the small landfill requirements of K.A.R. 28-29-103 may accept waste on or before October 9, 1997 without being subject to the requirements of K.A.R. 28-29-100 through K.A.R. 28-29-121, except as provided in subsection (a) of this regulation.

(d) Any portions of K.A.R. 28-29-101 through 28-29-121 which contain requirements different from those contained in K.A.R. 28-29-23 shall supersede the requirements of K.A.R. 28-29-23. (Authorized by K.S.A. 1995 Supp. 65-3406; implementing K.S.A. 65-3401; effective Oct. 24, 1994; amended Dec. 13, 1996.)

28-29-101. (Authorized by K.S.A. 1993 Supp. 65-3406; implementing K.S.A. 65-3401; effective Oct. 24, 1994; revoked May 30, 2003.)

28-29-102. Location restrictions. (a) Airport safety.

(1) Each owner or operator of a new MSWLF unit and existing MSWLF unit which is located within 10,000 feet (3,048 meters) of any airport runway end used by turbojet aircraft or within 5,000 feet (1,524 meters) of any airport runway end used by only piston-type aircraft, shall demonstrate to the department that the unit is designed and operated so that the unit does not pose a bird hazard to aircraft.

(2) Each owner or operator proposing to site a new unit within a five-mile radius of any airport runway end used by turbojet or piston-type aircraft shall notify the affected airport and the federal aviation administration (FAA).

(3) The owner or operator shall place a copy of the demonstration in the operating record.

(4) For purposes of this subsection:

(A) "Airport" means public-use airport open to the public without prior permission and without

restrictions within the physical capacities of available facilities.

(B) "Bird hazard" means an increase in the likelihood of bird and aircraft collisions that may cause damage to the aircraft or injury to its occupants.

(b) Floodplains.

(1) Owners or operators of new MSWLF units and existing MSWLF units located in 100-year floodplains must demonstrate to the department that the unit will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment.

(2) The owner or operator shall place a copy of the demonstration in the operating record.

(3) For purposes of this subsection:

(A) "Floodplain" means the lowland and relatively flat areas adjoining inland waters, including flood-prone areas that are inundated by the 100-year flood.

(B) "100-year flood" means a flood that has a 1% or greater chance of recurring in any given year or a flood of a magnitude equalled or exceeded once in 100 years on the average over a significantly long period.

(C) "Washout" means the carrying away of solid waste by waters of the base flood.

(c) Wetlands.

(1) New MSWLF units shall not be located in wetlands, unless the owner or operator demonstrates to the department that:

(A) there is no practicable alternative to the proposed MSWLF that does not also involve wetlands;

(B) the construction and operation of the unit will not:

(i) cause or contribute to violations of any applicable Kansas water quality standard;

(ii) violate any applicable toxic effluent standard or prohibition under section 307 of the clean water act, 33 U.S.C. 1317;

(iii) jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the endangered species act of 1973; and

(iv) violate any requirement under the marine protection, research, and sanctuaries act of 1972 for the protection of a marine sanctuary;

(C) the unit will not cause or contribute to significant degradation of wetlands. The owner or

operator shall demonstrate the integrity of the unit and its ability to protect ecological resources by addressing the following factors:

(i) erosion, stability, and migration potential of native wetland soils, muds and deposits used to support the unit;

(ii) erosion, stability, and migration potential of dredged and fill materials used to support the unit;

(iii) the volume and chemical nature of the waste managed in the unit;

(iv) impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;

(v) the potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(vi) any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected;

(D) steps have been taken to attempt to achieve no net loss of wetlands, as defined by acreage and function, by first avoiding impacts to wetlands to the maximum extent practicable, then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions, including restoration of existing degraded wetlands or creation of man-made wetlands; and

(E) sufficient information is available to make a reasonable determination with respect to these demonstrations.

(2) The owner or operator shall place a copy of the demonstration in the operating record.

(3) For purposes of this subsection, "wetlands" means those areas that meet the definition provided in the "Corps of Engineers Wetlands Delineation Manual - Technical Report Y-87-1," as published January, 1987 by the Department of the Army Waterways Experiment Station, Corps of Engineers.

(d) Fault areas.

(1) New MSWLF units shall not be located within 60 meters (200 feet) of a fault that has had displacement in holocene time unless the owner or operator demonstrates to the department that an alternative setback distance of less than 60 meters (200 feet) will prevent damage to the structural integrity of the unit and will be protective of human health and the environment.

(2) The owner or operator shall place a copy of the demonstration in the operating record.

(3) For the purposes of this subsection:

(A) "Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

(B) "Displacement" means the relative movement of any two sides of a fault measured in any direction.

(C) "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene epoch to the present.

(e) Seismic impact zones.

(1) New MSWLF units shall not be located in seismic impact zones, unless the owner or operator demonstrates to the department that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

(2) The owner or operator shall place a copy of the demonstration in the operating record.

(3) For the purpose of this subsection the following definitions shall apply:

(A) "Seismic impact zone" means an area with a 10% or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in 250 years.

(B) "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90% or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

(C) "Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term shall not include human-made materials, including fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

(f) Unstable areas.

(1) Owners or operators of new MSWLF units and existing units located in an unstable area shall demonstrate to the department that engineering measures have been incorporated into the unit's design to ensure that the integrity of the structural components of the MSWLF unit will not be disrupted. The owner or operator shall consider the

following factors, at a minimum, when determining whether an area is unstable:

(A) on-site or local soil conditions that may result in significant differential settling;

(B) on-site or local geologic or geomorphologic features; and

(C) on-site or local human-made features or events both surface and subsurface.

(2) The owner or operator shall place a copy of the demonstration in the operating record.

(3) For purposes of this subsection:

(A) "Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the MSWLF structural components responsible for preventing releases from a landfill. Unstable areas may include poor foundation conditions, areas susceptible to mass movements, and karst terranes.

(B) "Structural components" means liners, leachate collection systems, final covers, run-on systems, run-off systems, and any other component used in the construction and operation of the MSWLF that is necessary for protection of human health and the environment.

(C) "Poor foundation conditions" means those areas where features exist which indicate that a natural or human-induced event may result in inadequate foundation support for the structural components of an MSWLF unit.

(D) "Areas susceptible to mass movement" means those areas of influence including areas characterized as having an active or substantial possibility of mass movement, where the movement of earth material at, beneath, or adjacent to the MSWLF unit, because of natural or man-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement may include:

(i) landslides;

(ii) avalanches;

(iii) debris slides and flows;

(iv) soil fluction;

(v) block sliding; and

(vi) rock fall.

(E) "Karst terranes" means areas where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes may include:

(i) sinkholes;

(ii) sinking streams;

- (iii) caves;
- (iv) large springs; and
- (v) blind valleys.

(g) Closure of existing MSWLF units.

(1) Existing units that cannot make the demonstration pertaining to airports, floodplains, or unstable areas, shall close by October 9, 1996, in accordance with K.A.R. 28-29-121 and conduct post-closure activities in accordance with K.A.R. 28-29-121.

(2) The deadline for closure required by subsection (g)(1) may be extended up to two years if the owner or operator demonstrates to the department that there is no:

(A) available alternative disposal capacity; and

(B) immediate threat to human health and the environment.

(h) Kansas historic preservation act. Each new MSWLF unit shall be located so as not to pose a threat of harm or destruction to the essential features of an irreplaceable historic or archaeological site that is listed pursuant to the Kansas historic preservation act, K.S.A. 75-2716 and 75-2724.

(i) Endangered species conservation act. Each new MSWLF unit shall be located so as not to:

(1) jeopardize the continued existence of any designated endangered species;

(2) result in the destruction or adverse modification of the critical habitat listed for such species; or

(3) cause or contribute to the taking of any endangered or threatened species of plant, fish or wildlife listed pursuant to the endangered species act 16 U.S.C. 1531 *et seq.*, or Kansas non-game and endangered species conservation act, K.S.A. 32-957 *et seq.* and K.S.A. 32-1009, *et seq.*

(j) Buffer zones.

(1) No part of a newly permitted MSWLF unit shall be located closer than 152 meters (500 feet) from an occupied dwelling, school, or hospital that was occupied on the date when the owner or operator first applied for a permit to develop the unit or the facility containing the unit, unless the owner of such dwelling, school, or hospital consents in writing.

(2) All newly permitted MSWLF units shall maintain a minimum 46 meters (150 feet) buffer from the edge of the planned MSWLF unit to the owner's or operator's property line.

(3) The owner or operator may petition the director for a reduction in the buffer zone distances, provided the county commission of the county in which the landfill is located approves the request.

(k) Navigable streams.

(1) A new MSWLF unit shall not be located within one-half mile of a navigable stream used for interstate commerce.

(2) For purposes of this subsection, "navigable stream" means any water defined as navigable water of the United States under 33 CFR Part 329 as in effect on July 1, 1993.

(3) The provisions of this subsection shall not apply to:

(A) lateral expansion onto land contiguous to a permitted MSWLF in operation on July 1, 1991; or

(B) renewal of an existing permit for a permitted MSWLF on July 1, 1991.

(l) Public drinking water supplies.

(1) No new MSWLF shall be located within one mile of a surface water intake source for a public water supply system.

(2) For purposes of this subsection:

(A) "Surface water" means any water defined under K.A.R. 28-15-11.

(B) "Public water supply system" means any system defined under K.A.R. 28-15-11. (Authorized by K.S.A. 1993 Supp. 65-3406; implementing K.S.A. 65-3401; effective Oct. 24, 1994.)

28-29-103. Small landfills. (a) Any owner or operator of a new or existing municipal landfill may request an exemption from the design requirements in K.A.R. 28-29-104, as amended, if these conditions are met:

(1) the MSWLF receives and disposes of less than 20 tons of municipal solid waste daily, based on an annual average;

(2) there is no evidence of groundwater contamination from the MSWLF;

(3) the MSWLF is in an area that annually receives less than or equal to 25 inches of precipitation; and

(4) the community or communities utilizing the MSWLF have no practicable waste management alternative.

(b) Each owner or operator requesting the small landfill exemption shall demonstrate compliance with the conditions in subsection (a) by submitting the following documentation to the department for review and approval:

(1) actual records of past operations or estimates of the amount of solid waste disposed on a daily basis to demonstrate that the MSWLF meets the condition in paragraph (a)(1);

(2) site-specific data demonstrating that the MSWLF meets the condition in paragraph (a)(2);

(3) climatic data obtained for a minimum 30-year averaging period demonstrating that the MSWLF meets the condition in paragraph (a)(3); and

(4) one of the following statements to demonstrate that the MSWLF meets the condition in paragraph (a)(4):

(A) a statement containing data showing to the department that the closest MSWLF is more than 75 miles away; or

(B) written certification, from the board of county commissioners in the county where the landfill is located, that a landfill located less than 75 miles away is not a practicable alternative.

(c) The owner or operator of each small landfill meeting the exemption criteria shall comply with the location restrictions, the operating standards, the closure and post-closure standards, and the financial assurance standards for municipal solid waste landfills.

(1) Each "existing small landfill" for the purposes of K.A.R. 28-29-103, as amended, means any area permitted for municipal solid waste disposal on or before October 9, 1993 and any area permitted for municipal solid waste disposal through a permit amendment prior to October 9, 1997 and contiguous to the area permitted before October 9, 1993.

(2) Each "new small landfill" means any area not permitted for municipal solid waste disposal prior to October 9, 1993 or not incorporated into an existing permit by amendment prior to October 9, 1997.

(d) Each existing small landfill meeting the exemption criteria in subsection (a) and receiving waste on or after October 9, 1997 shall comply with subsection (f), (g) or (h) of this regulation in order to demonstrate that naturally occurring geological conditions provide sufficient protection against groundwater contamination.

(e) Each new small landfill meeting the exemption criteria in subsection (a) shall comply with subsection (f) of this regulation and shall be constructed with the following:

(1) a liner consisting of the following:

(A) a minimum of two feet of compacted clay with a hydraulic conductivity of no more than 1×10^{-6} cm/sec; and

(B) a leachate collection system; or

(2) *in situ* material or an alternate, approved constructed liner meeting the demonstration standards for groundwater modeling prescribed in subsection (g) or the liner performance standard

prescribed in subsection (h) of this regulation. Alternate constructed liners shall be considered for approval by the department when these conditions are met:

(A) the technology or material has been successfully utilized in at least one application similar to the proposed application;

(B) methods for ensuring quality control during the manufacture and construction of the liner can be implemented; and

(C) the owner or operator can provide documentation in the operating record that the provisions set forth in this subsection have been satisfied.

(f) Groundwater monitoring, sampling, and analysis.

(1) The owner or operator of each landfill meeting the exemption criteria shall install a groundwater monitoring system developed by a qualified groundwater scientist as defined in K.A.R. 28-29-111 and approved by the department. The groundwater monitoring system shall fulfill these requirements:

(A) have monitoring wells located on the property permitted for solid waste disposal, and yield groundwater samples from the uppermost aquifer representing the quality of groundwater passing the point of compliance as defined by K.A.R. 28-29-101(aa), as amended;

(B) consist of a sufficient number of wells to accurately determine the groundwater flow gradient, including a minimum of two down gradient wells;

(C) have monitoring wells located at a distance no greater than 150 meters or 492 feet from the planned edge of the unit; and

(D) have monitoring wells located at least 50 feet from the property boundary for all new small landfills. The "upper most aquifer," for the purposes of K.A.R. 28-29-103, as amended, means the first saturated zone able to fully recharge within 24 hours after one well volume is removed.

(2) The owner or operator of each small landfill meeting the exemption criteria shall maintain and operate the monitoring system in accordance with K.A.R. 28-29-111, paragraphs (f)(2) and (f)(3), as amended.

(3) The owner or operator of each small landfill meeting the exemption criteria shall perform the following:

(A) sample each down gradient monitoring well semiannually during the active site life and post-closure period to ensure that contaminant

levels are within the parameters listed in Table 1 of this regulation;

(B) measure the water depth in all monitoring wells during the semiannual sampling to verify the groundwater flow gradient; and

(C) submit the results of analytical testing and verification of the groundwater flow gradient to the department within 45 days of receipt of the test results.

TABLE 1
Monitoring Constituents for
Exempt Small Landfills

Constituent	Maximum Contaminant Level (MCL) (in milligrams per liter mg/l)
VOLATILE ORGANIC COMPOUNDS	
Benzene	0.005
1,2-Dichloroethane	0.005
1,1-Dichloroethene	0.007
1,2-Dichloropropane	0.005
Ethylbenzene	0.7
Styrene	0.1
Tetrachloroethene	0.005
Toluene	1.0
1,1,1-Trichloroethane	0.2
Trichloroethene	0.005
Vinyl Chloride	0.002
Total Xylenes	10.0
METALS (dissolved)	
Cadmium	0.005
Chromium (total)	0.05

(4) If the owner or operator of any existing small landfill demonstrates that naturally occurring geological conditions provide sufficient protection against groundwater contamination by compliance with subsection (g) or subsection (h) of this regulation, the owner or operator may reduce the sampling frequency established in paragraph (f) (3) from semiannual samples to annual samples.

(5) The groundwater monitoring program shall include consistent sampling and analysis procedures in accordance with K.A.R. 28-29-112, subsections (a), (b)(1) through (b)(4), (c), and (d), as amended.

(6) If any monitoring well exceeds the maximum contaminant level of any constituent listed in Table 1 in subsection (f) of this regulation, the owner or operator shall sample the well again, within 30 calendar days of the finding. If the second sample confirms that contamination levels exceed the maximum contaminant level of any constituent

listed in Table 1, the exempt status of the landfill shall be revoked, and the owner or operator shall comply with K.A.R. 28-29-104 and K.A.R. 28-29-110 through 28-29-114, as amended.

(7) The groundwater sampling and analysis requirements of subsection (f) of this regulation may be suspended by the department at existing small landfills if the owner or operator demonstrates the following:

(A) naturally occurring geological conditions provide sufficient protection against groundwater contamination as evidenced by compliance with subsection (g) or (h) of this regulation;

(B) the uppermost aquifer does not exist within a depth of 150 feet below the lowest depth of the municipal solid waste; and

(C) no potential for migration of hazardous constituents exists from that MSWLF unit to the uppermost aquifer during the active life of the unit and the post-closure care period. This demonstration shall be certified by a qualified groundwater scientist and approved by the department.

(8) The groundwater monitoring, sampling, and analysis required in subsection (f) of this regulation may be reduced or suspended by the department based on site-specific data.

(g) Groundwater modeling.

(1) Each owner or operator of a small landfill meeting the exemption criteria shall demonstrate that a constructed liner at the site or naturally occurring strata prohibit contaminants from exceeding the concentration values listed in Table 1 of K.A.R. 28-29-104, subsection (e), as amended, in the uppermost aquifer at the point of compliance based on fate and transport modeling of predicted landfill leachate. The point of compliance shall be located as follows:

(A) within 150 meters or 492 feet of the edge of the planned unit boundary; and

(B) on the owner's or operator's property.

(2) When approving modeling demonstrations, the following factors may be considered by the department:

(A) the hydrogeologic characteristics of the facility and surrounding land;

(B) the climatic factors of the area; and

(C) the volume and physical and chemical characteristics of the leachate. The expected performance of the design shall be evaluated at maximum annual leachate flow conditions.

(3) Each model demonstration developed pursuant to subsection (g)(1) of this regulation shall be certified by a qualified groundwater scientist.

(4) Each owner or operator of a small landfill performing the groundwater modeling demonstration shall comply with the groundwater monitoring, sampling, and analysis requirements prescribed in subsection (f).

(h) Liner performance standard.

(1) Each owner or operator shall demonstrate that *in situ* material meets the liner performance standard by submitting the following information for each small landfill unit:

(A) certification from a professional engineer licensed in Kansas that the *in situ* material immediately below the bottom of the municipal solid waste layer but prior to encountering groundwater meets these conditions:

(i) has a permeability equivalent to two feet of 1×10^{-6} cm/sec material; and

(ii) within the equivalently permeable layer, has no soil layer or stratum with a permeability greater than 1×10^{-4} cm/sec and with sufficient continuity and thickness to allow groundwater to flow laterally off the owner's property; and

(iii) shows consistency in all boring data.

(B) data from a minimum of one centrally located boring that provides a soil profile to a depth of the following:

(i) the water table;

(ii) 46 meters or 150 feet; or

(iii) a point where a minimum of 10 feet of 1×10^{-9} cm/sec material is encountered;

(C) data from a minimum of four additional borings of sufficient depths to provide data supporting the certification in paragraph (h)(1)(A) of this regulation;

(D) laboratory soil or field permeability data sufficient to provide data supporting the certification in paragraph (h)(1)(A) of this regulation; and

(E) evidence that the highest water table of any underlying groundwater is a minimum of 1.5 meters or five feet below the bottom of the material used to make the demonstration that the *in situ* material meets the liner performance standard.

(2) When approving a liner demonstration for compliance with this subsection, the following minimum factors shall be considered by the department:

(A) the hydrogeologic characteristics of the facility and surrounding land;

(B) the climatic characteristics of the area; and

(C) the volume and physical and chemical characteristics of the leachate.

(3) Each owner or operator demonstrating the liner performance standard shall comply with the

groundwater monitoring, sampling, and analysis requirements prescribed in subsection (f).

(i) Each owner or operator shall document in the operating record that the small landfill unit meets the requirements in subsections (f), (g) or (h) of this regulation. (Authorized by K.S.A. 1995 Supp. 65-3406; implementing K.S.A. 65-3401; effective Oct. 24, 1994; amended Dec. 13, 1996.)

28-29-104. Design standards. (a) General design standards.

(1) Existing units. Any portion of a trench or area of an existing unit not filled to its permitted design capacity by October 9, 1996, shall be considered a vertical expansion subject to the standards in K.A.R. 28-29-104(a)(2), or a new unit subject to the standards in K.A.R. 28-29-104(a)(3).

(2) Vertical expansions.

(A) Any proposed vertical expansion shall be considered a significant modification to the facility and subject to permit modification procedural requirements.

(B) Any proposed vertical expansion shall meet the following requirements, in addition to any other applicable MSWLF regulations.

(i) A hydrogeologic site assessment shall be conducted in compliance with K.A.R. 28-29-104(b).

(ii) A groundwater monitoring well system shall be in place, pursuant to K.A.R. 28-29-111.

(iii) The owner or operator shall operate the landfill in a manner that minimizes leachate generation.

(iv) If groundwater contamination is detected, the owner or operator of the proposed vertical expansion shall initiate an assessment of corrective measures, pursuant to K.A.R. 28-29-114(a)(1).

(v) The final cover design shall meet the requirements of K.A.R. 28-29-121(e)(1).

(vi) Local planning and zoning approval shall be obtained from the appropriate jurisdictional body.

(vii) The owner or operator shall secure certification from the board of county commissioners that the vertical expansion is in conformance with the official county or regional solid waste management plan.

(C) A vertical expansion over a closed unit which has received final cover shall be classified as a new unit, and therefore subject to the design standards for new units.

(D) In evaluating a proposed vertical expansion, the department shall consider the following factors:

(i) The impact of the proposed vertical expansion

sion on human health and the environment rather than other alternatives, including a new unit;

(ii) the capacity needs of the community or communities and the region using the landfill;

(iii) the proposed operating life of the vertical expansion; and

(iv) the inclusion or exclusion of the landfill in a regional solid waste management plan.

(E) The expiration date for a permit modified to allow for a vertical expansion shall not exceed five years from the date the modified permit is issued. At the end of the initial five year period, and any subsequent five year period, the owner may submit a request for an additional five-year permit. The request shall include an assessment of the environmental impact of the vertical expansion. Based on an evaluation of the environmental impact, the permit shall either be denied, or renewed for a period not to exceed five additional years by the director.

(3) New units.

(A) All new units shall be equipped with a leachate drainage and collection system and liner designed as an integrated system in compliance with the requirements of this section.

(B) The design period for new municipal landfills shall be the estimated operating life plus 30 years of post-closure care.

(b) Hydrogeologic site investigations.

(1) The owner or operator of a proposed MSWLF unit shall conduct a hydrogeologic investigation to develop information for the following purposes:

(A) providing information to determine an appropriate design for the unit; and

(B) providing information to establish a groundwater monitoring system.

(2) Prior to submitting an application to the department for a permit to develop and operate a MSWLF or to design a groundwater monitoring system, the hydrogeologic site investigation shall be conducted in a minimum of two phases, unless the department approves conducting the two phases concurrently.

(A) The purpose of the phased study shall be to allow for the consideration by the department of information gathered during phase I prior to proceeding with phase II.

(B) If the owner or operator of an existing MSWLF has already compiled sufficient data to fulfill the requirements of the hydrogeologic investigation, this information may be submitted to the department in lieu of conducting a new assessment.

(3) For the purposes of the hydrogeologic investigation set forth in paragraph (b)(1), the area to be investigated shall consist of the entire area occupied by the facility and any adjacent areas, if necessary to fully characterize the site.

(4) All borings shall be sampled continuously except where continuous sampling is impossible or where interval sampling or sampling at recognizable points of geologic variation will provide satisfactory information. Sampling intervals shall not exceed 1.52 vertical meters (5 feet).

(5) The phase I hydrogeologic investigation shall consist of the following items.

(A) A minimum of one continuously sampled boring shall be drilled on the site, as close as possible to the geographic center, to determine if available regional hydrogeologic setting information is accurate and to characterize the site-specific hydrogeology to the extent specified by this phase of the investigation. The boring shall extend to the bottom of the uppermost aquifer. This boring shall be constructed so that it will not provide a conduit for contaminant migration to a lower aquifer or formation.

(B) The following information shall be gathered by the owner or operator:

(i) climatic aspects of the study area;

(ii) the regional and study area geologic and hydrogeologic setting, including a description of the geomorphology and stratigraphy of the area and aquifer characteristics, including water table depths; and

(iii) any other information needed for the purpose of designing a phase II hydrogeologic investigation.

(C) The information from the phase I investigation shall be compiled in a report and submitted with evaluations and recommendations to the department for review and approval.

(D) The results and conclusions of the phase I report shall be certified by a qualified groundwater scientist.

(6) The phase II hydrogeologic investigation shall consist of the following items.

(A) One boring shall be located as close as possible to the topographical high point, and another shall be located as close as possible to the topographical low point of the study area.

(B) Additional borings shall be made in order to characterize the subsurface geology of the entire study area.

(C) Piezometers and groundwater monitoring wells shall be established to determine the direction and flow characteristics of the groundwater in

all strata and extending down to the bottom of the uppermost aquifer. Groundwater samples taken from the monitoring wells shall be used to develop preliminary information needed for establishing background concentrations.

(D) The owner or operator shall gather the following site-specific information, as necessary, to augment the data collected during the phase I investigation:

(i) chemical and physical properties including, but not limited to, lithology, mineralogy, and hydraulic characteristics of underlying strata including those below the uppermost aquifer;

(ii) soil characteristics, including soil types, distribution, geochemical and geophysical characteristics;

(iii) hydraulic conductivities of the uppermost aquifer and all strata above it;

(iv) vertical extent of the uppermost aquifer;

(v) direction and rate of groundwater flow; and

(vi) concentrations of chemical constituents present in the groundwater below the unit, down to the bottom of the uppermost aquifer, using a broad range of chemical analysis and detection procedures such as gas chromatographic and mass spectrometric scanning.

(E) The owner or operator shall evaluate the data gathered during the phase I and phase II investigations and prepare a report for submittal to the department that contains the following information:

(i) structural characteristics and distribution of underlying strata, including bedrock;

(ii) characterization of potential pathways for contaminant migration;

(iii) correlation of stratigraphic units between borings;

(iv) continuity of petrographic features including, but not limited to, sorting, grain size distribution, cementation and hydraulic conductivity;

(v) identification of the confining layer, if present;

(vi) characterization of the seasonal and temporal, naturally and artificially induced, variations in groundwater quality and groundwater flow;

(vii) identification of unusual or unpredicted geologic features, including fault zones, fracture traces, facies changes, solution channels, buried stream deposits, cross cutting structures and other geologic features that may affect the ability of the owner or operator to monitor the groundwater or predict the impact of the disposal facility on groundwater; and

(viii) recommendations for landfill siting and

conceptual design for the department to review and approve.

(F) The results and conclusions of the phase II report shall be certified by a qualified groundwater scientist.

(c) Foundation and mass stability analysis.

(1) The material beneath the unit shall have sufficient strength to support the weight of the unit during all phases of construction and operation. The loads and loading rate shall not cause or contribute to the failure of the liner or leachate collection system.

(2) The total settlement or swell of the foundation shall not cause or contribute to the failure of the liner or leachate collection system.

(3) The solid waste disposal unit shall be designed to achieve a safety factor during the design period against bearing capacity failure of at least 2.0 under static conditions and 1.5 under seismic loadings.

(4) The waste disposal unit shall be designed to achieve a factor of safety against slope failure during the design period of at least 1.5 for static conditions and 1.3 under seismic conditions.

(5) The liner and leachate collection system shall be stable during all phases of construction and operation. The side slopes shall achieve a minimum static safety factor of 1.5 and a minimum seismic safety factor of 1.3 at all times.

(6) In calculating factors of safety, both long term, in tens or hundreds of years, and short term, over the design period of the facility, conditions expected at the facility shall be considered.

(7) The potential for earthquake or blast-induced liquefaction, and its effect on the stability and integrity of the unit shall be considered and taken into account in the design. The potential for landslides or earthquake-induced liquefaction outside the unit shall be considered if such events could affect the unit.

(d) Foundation construction.

(1) If the *in situ* material provides insufficient strength to meet the requirements of subsection (c), then the insufficient material shall be removed and replaced with clean materials sufficient to meet the requirements of subsection (c).

(2) All trees, stumps, roots, boulders and debris shall be removed.

(3) All material shall be compacted to achieve the strength and density properties necessary to demonstrate compliance with this part.

(4) Placement of frozen soil or soil onto frozen ground shall be prohibited.

(5) The foundation shall be constructed and graded to provide a smooth, workable surface on which to construct the liner.

(e) Liner standards.

(1) New MSWLF units shall be constructed:

(A) with a composite liner and a leachate collection system that is designed and constructed in accordance with subsections (g), (h), and (i). For purposes of this regulation, "composite liner" means a system consisting of two components. The upper component shall consist of a minimum 30-mil geomembrane, the lower component shall consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec. Geomembrane components consisting of high density polyethylene (HDPE) shall be at least 60-mil thick. The geomembrane component shall be installed in direct and uniform contact with the compacted soil component in order to minimize the migration of leachate through the geomembrane should a break occur; or

(B) in accordance with an alternative design approved by the department. The design shall demonstrate that the concentration values listed in table 1 below will not be exceeded in the uppermost aquifer at the point of compliance. The point of compliance shall be within 150 meters (492 feet) of the edge of the planned unit boundary. In addition, the point of compliance shall be on the owner's or operator's property and shall be at least 15.24 meters (50 feet) from the property boundary.

(2) When approving a design that complies with paragraph (1)(B), the department shall consider at least the following factors:

(A) the hydrogeologic characteristics of the facility and surrounding land;

(B) the climatic factors of the area; and

(C) the volume and physical and chemical characteristics of the leachate. The design's performance shall be evaluated at maximum annual leachate flow conditions.

(3) Approval of alternate designs shall be considered by the department only when:

(A) the technology or material has been successfully utilized in at least one application similar to the proposed application; and

(B) methods for ensuring quality control during the manufacture and construction of the liner can be implemented.

(4) The owner or operator shall document in the operating record that the liner meets the liner standards in K.A.R. 28-29-104(e)(1)(A) or (B).

TABLE 1—MAXIMUM
CONTAMINANT LEVELS

Chemical	MCL (mg/l)
Arsenic	0.05
Barium	1.0
Benzene	0.005
Cadmium	0.005
Carbon tetrachloride	0.005
Chromium (hexavalent)	0.1
2,4-Dichlorophenoxy acetic acid	0.1
1,4-Dichlorobenzene	0.075
1,2-Dichlorobenzene	0.6
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
Cis-1,2-Dichloroethylene	0.07
Trans-1,2-Dichloroethylene	0.1
1,2 Dichloropropane	0.005
Endrin	0.0002
Ethylbenzene	0.7
Fluoride	4
Lindane	0.004
Lead	0.05
Mercury	0.002
Methoxychlor	0.1
Monochlorobenzene	0.1
Nitrate	10
Nitrite	1.0
Total Nitrate/Nitrite	10
Selenium	0.05
Silver	0.05
Styrene	0.1
Tetrachloroethylene	0.005
Toluene	1
Toxaphene	0.005
1,1,1-Trichloromethane	0.2
Trichloroethylene	0.005
2,4,5-Trichlorophenoxy acetic acid	0.01
Vinyl Chloride	0.002
Xylenes	10

(f) Liner construction.

(1) The construction and compaction of the liner shall be carried out in accordance with the approved design to reduce void spaces and allow the liner to support the loadings imposed by the waste disposal operation without settling that causes or contributes to the failure of the leachate collection system.

(2) The liner shall be constructed from materials whose properties are not affected by contact with the constituents expected to be in leachate generated by the landfill.

(3) Geomembrane liners shall be constructed in compliance with the following requirements.

(A) The geomembrane shall be supported by a compacted base free from sharp objects. The

geomembrane shall be chemically compatible with the supporting soil materials.

(B) The geomembrane shall have sufficient strength and durability to function at the site for the design period under the maximum expected loadings imposed by the waste and equipment and stresses imposed by settlement, temperature, construction and operation.

(C) Seams shall be made in the field according to the manufacturer's specifications. All sections shall be arranged so that the use of field seams is minimized and seams are oriented in the direction subject to the least amount of stress where practical.

(D) The leachate collection system shall be designed to avoid loss of leachate through openings through the geomembrane.

(g) Leachate drainage system.

(1) The leachate drainage system shall be designed and constructed to operate for the entire design period.

(2) The system shall be designed in conjunction with the leachate collection system required by subsection (h):

(A) to maintain a maximum head of leachate 0.30 meter (one foot) above the liner; and

(B) to operate during the month when the highest average monthly precipitation occurs, and if the liner bottom is located within the saturated zone, under the condition that the groundwater table is at its seasonal high level.

(3) A drainage layer shall overlay the entire liner system. This drainage layer shall be no less than 0.30 meter (one foot) thick.

(4) The drainage layer shall be designed to maintain flow throughout the drainage layer under the conditions described in paragraph (g)(2) above.

(5) Materials used in the leachate drainage system shall be chemically resistant to the wastes and the leachate expected to be produced.

(h) Leachate collection system.

(1) The leachate collection system shall be designed and constructed to function for the entire design period. The leachate collection system shall consist of conduits including pipes, trenches, or a combination of pipes and trenches.

(2) Materials used in the leachate collection system shall be chemically resistant to the leachate expected to be produced.

(3) The leachate collection system shall be designed so that leachate drains freely from the collection conduits. If sumps are used, leachate shall be removed via gravity flow, whenever pos-

sible, before the level of leachate in the sumps rises above the invert of the collection conduits under the conditions established in paragraph (g)(2) above. If gravity flow is not possible, pumping may be utilized to remove leachate, but the use of pumps shall be minimized.

(4) Collection conduits shall be designed to capture leachate for open channel flow to convey leachate under the conditions established in paragraph (g)(2) above.

(5) Collection pipe conduits.

(A) Collection pipe shall be of a cross-sectional area that allows cleaning and at least 0.10 meter (four inches) nominal inside diameter.

(B) The collection pipe material and bedding materials as placed shall possess structural strength to support the maximum loads imposed by the overlying materials and equipment used at the facility, as well as the effects of differential settling.

(C) Collection pipes shall be constructed within a coarse gravel envelope using a graded filter or geotextile as necessary to minimize clogging.

(D) The collection pipe system shall be equipped with a sufficient number of manholes and cleanout risers to allow cleaning and maintenance of all pipes throughout the design period.

(6) Trench conduits.

(A) Trench conduits shall be designed to minimize particulate and biological clogging.

(B) Trench conduits shall be constructed to minimize movement of drainage media when a load is placed on the media.

(i) Leachate treatment and disposal system.

(1) The owner or operator shall be responsible for the operation of a leachate management system designed to handle all leachate as it is removed from the collection system. The leachate management system shall consist of any combination of storage, treatment, pretreatment, and disposal options.

(2) The leachate management system shall allow for the management and disposal of leachate during routine maintenance and repairs.

(3) Standards for leachate storage systems.

(A) The leachate storage facility shall be capable of storing a minimum of five days' worth of accumulated leachate at the maximum generation rate used in designing the leachate drainage system in accordance with subsection (g) of this regulation.

(B) Each leachate storage facility shall be equipped with secondary containment systems equivalent to the protection provided by a clay liner

0.61 meter (two feet) thick, having a permeability no greater than 1×10^{-7} centimeters per second.

(C) Each leachate storage system shall be fabricated from material compatible with the leachate expected to be generated and resistant to temperature extremes.

(D) The leachate storage system shall be designed to minimize odors.

(E) The leachate drainage and collection system shall not be used for the purpose of storing leachate.

(4) Standards for discharge to an off-site treatment works.

(A) Each owner or operator that discharges leachate to off-site facilities shall ensure that the receiving facility has all applicable permits or approvals in accordance with state and local water regulations.

(B) The owner or operator of a MSWLF may be required to obtain a permit or prior approval for conveyance to an off-site treatment facility.

(C) Pumps, meters, valves and monitoring stations that control and monitor the flow of leachate from the unit and which are under the control of the owner or operator shall be considered part of the facility and shall be accessible to the owner or operator at all times.

(5) Standards for leachate recycling systems.

(A) A leachate recycling system shall be utilized only at permitted waste disposal units that meet the following requirements.

(i) The unit shall have a liner designed, constructed and maintained to meet the minimum standards of paragraph (e)(1)(A) or (B) of this regulation.

(ii) The unit shall have a leachate collection system in place and operating in accordance with subsection (h) of this regulation.

(iii) The topography shall be such that any accidental leachate run-off can be controlled by ditches, berms or other equivalent control means.

(B) Leachate shall not be recycled during precipitation events or in volumes large enough to cause run-off or surface seeps.

(C) The amount of leachate added to the unit shall not exceed the ability of the waste and cover soils to transmit leachate flow downward. All other leachate shall be considered excess leachate, and a leachate management system capable of disposing of all excess leachate shall be available.

(D) The leachate storage and distribution system shall be designed to avoid exposure of leachate to air unless aeration or functionally equivalent devices are utilized.

(E) The distribution system shall be designed to allow leachate to be evenly distributed beneath the surface over the recycle area.

(6) Leachate monitoring.

(A) Representative samples of leachate shall be collected annually from each unit and tested in accordance with paragraph (i)(6)(B) of this regulation at a frequency of once per year while the leachate management system is in operation.

(B) Discharges of leachate from MSWLFs shall be tested for the following constituents prior to treatment or pretreatment:

(i) five-day biochemical oxygen demand (BOD₅);

(ii) total suspended solids;

(iii) total iron;

(iv) pH;

(v) each of the appendix I parameters listed in K.A.R. 28-29-113; and

(vi) any other constituents as specified by the director.

(C) If it can be shown that the removed constituents are not reasonably expected to be contained in or derived from the waste contained in the unit, the list of constituents in (i)(6)(B) of this regulation may be modified by the director.

(D) An appropriate alternative frequency for repeated sampling and analysis for the constituents listed in paragraph (i)(6)(B) of this regulation, or the alternative list approved in accordance with paragraph (i)(6)(C) of this regulation, may be specified by the director during the active life, including closure, and the post-closure care period. The alternative frequency shall be based on consideration of the following factors:

(i) leachate quantity; and

(ii) long-term trends in leachate quality.

(7) The owner or operator shall collect and dispose of leachate for a minimum of five years after closure and thereafter until it is determined by the director that treatment is no longer necessary. (Authorized by K.S.A. 1993 Supp. 65-3406; implementing K.S.A. 65-3401; effective Oct. 24, 1994.)

28-29-108. Operating standards. (a) Excluding the receipt of hazardous waste. Owners or operators of all MSWLF units shall implement a program at the facility for detecting and preventing the disposal of regulated hazardous wastes as defined pursuant to K.A.R. 28-31-3 and K.A.R. 28-31-4, and polychlorinated biphenyls (PCB) wastes as defined in 40 CFR part 761, as in effect

on July 1, 1996. This program shall include the following, at a minimum:

(1) random inspections of incoming loads, unless the owner or operator takes other steps to ensure that incoming loads do not contain regulated hazardous wastes or PCB wastes;

(2) records of any inspections;

(3) training of facility personnel to recognize regulated hazardous waste and PCB wastes; and

(4) notification of the department if a regulated hazardous waste or PCB waste is discovered at the facility.

(b) Daily cover.

(1) A uniform layer of at least 0.15 meter (six inches) of soil material shall be placed on all exposed waste at the end of each day of operation.

(2) Alternative materials or procedures, including the removal of daily cover before additional waste placement, may be used, if the alternative materials or procedures achieve performance equivalent to the requirements of paragraph (b)

(1) in the following areas:

(A) prevention of blowing debris;

(B) minimization of access to the waste by vectors;

(C) minimization of the threat of fires at the open face;

(D) minimization of odors; and

(E) shedding precipitation.

(3) Each owner or operator wishing to use alternative materials for daily cover shall obtain approval from the department before application.

(c) Intermediate cover.

(1) All waste that is not to be covered within 60 days of placement by another lift of waste or final cover in accordance with K.A.R. 28-29-121 shall have a cover consisting of 0.30 meter (one foot) of compacted soil material. In addition, any MSWLF unit that will not receive any waste for an entire growing season shall be seeded.

(2) All areas with intermediate cover shall be graded so as to facilitate drainage of runoff and minimize infiltration and standing water.

(3) The grade and thickness of intermediate cover shall be maintained until the placement of additional wastes or the final cover. All cracks, rills, gullies, and depressions shall be repaired to prevent access to the solid waste by vectors, to minimize infiltration and to prevent standing water.

(d) Disease vector control.

(1) Each owner or operator of a MSWLF unit shall prevent or control on-site populations of dis-

ease vectors using techniques appropriate for the protection of human health and the environment.

(2) For purposes of this subsection, "disease vectors" means any rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting disease.

(e) MSWLF gas monitoring.

(1) Each owner or operator of a MSWLF unit that receives putrescible waste or industrial wastes that have the potential to generate explosive gases shall establish and conduct an explosive gases monitoring program to ensure that dangerous levels of explosive gases do not occur within facility structures or at the surface or subsurface facility boundary.

(2) The monitoring program shall ensure that these conditions are met:

(A) the concentration of methane gas generated by the facility does not exceed 25% of the lower explosive limit for methane in facility structures, excluding gas control or recovery system components;

(B) the concentration of methane gas does not exceed the lower explosive limit for methane at the facility property boundary; and

(C) potential gas migration pathways are identified.

(3) The minimum monitoring frequency for explosive gases shall be quarterly and shall be based on the following factors:

(A) soil conditions;

(B) the hydrogeologic conditions surrounding the facility;

(C) the hydraulic conditions surrounding the facility; and

(D) the location of facility structures and property boundaries.

(4) If methane gas levels exceeding the limits specified in paragraph (e)(2) are detected, the owner or operator shall perform all of the following:

(A) immediately assess the potential danger posed to human health and the environment and take all necessary steps to ensure protection of human health;

(B) within seven days of detecting a gas level exceeding the limit, notify the department and place in the operating record the methane gas levels detected and a description of the steps taken to protect human health;

(C) within 60 days of detecting a gas level exceeding the limit, develop and submit to the department a remediation plan, which provides for the installation of an active or passive gas management system; and

(D) upon approval of the department, implement the remediation plan.

(f) MSWLF gas management standards.

(1) Standards for gas venting systems.

(A) All materials used in gas venting systems shall be resistant to chemical reaction with the constituents of the gas.

(B) The gas venting system shall be capable of venting all gas down to the water table or bottom of the liner, whichever is higher.

(C) Gas venting systems shall be installed only outside the perimeter of the unit, unless it can be shown that gas venting inside the perimeter of the unit will not interfere with the liner, leachate collection system, cover, or monitoring equipment.

(2) Standards for gas collection systems.

(A) Gas collection systems may be installed either within the perimeter of the unit or outside the unit.

(B) The owner or operator shall design and operate gas collection systems so that the standards of paragraph (e)(2) are met.

(C) Gas collection systems shall transport gas to a central point or points for processing for beneficial uses or disposal, in accordance with the requirements of subsection (g) of this regulation.

(D) Gas collection systems shall be designed to function for the entire design period. The design may include changes in the system to accommodate changing gas flow rates or compositions.

(E) All materials and equipment used in the construction of gas collection systems shall be rated by the manufacturer as safe for use in hazardous or explosive environments and shall be resistant to corrosion by constituents of the MSWLF gas.

(F) Gas collection systems shall be designed and constructed to withstand all MSWLF operating conditions, including settlement.

(G) Gas collection systems and all associated equipment including compressors, flares, monitoring installations, and manholes shall be considered part of the facility.

(H) Provisions shall be made for collecting and draining gas condensate to the leachate management system or another management system approved by the department.

(I) A gas collection system shall not compromise the integrity of the liner or of the leachate collection or cover systems.

(J) The portion of each gas collection system used to convey the gas collected from one or more units for processing and disposal shall be tested to

be airtight to prevent the leaking of gas from, or entry of air into, the collection system.

(K) The gas collection system shall be operated until the waste has stabilized enough to no longer produce methane in quantities that exceed the minimum allowable concentrations set out in paragraph (e)(2) of this regulation.

(L) Each gas collection system shall be equipped with a mechanical device, capable of withdrawing gas, or shall be designed so that a mechanical device can be easily installed at a later time, if necessary, to meet the allowable concentrations set out in paragraph (e)(2).

(g) MSWLF gas processing and disposal system.

(1) Each MSWLF with a permanent gas collection system shall evaluate the feasibility of processing of MSWLF gas for use.

(2) The following MSWLF gas processing devices and disposal systems shall remain under the control of the owner or operator and shall be considered part of the facility:

(A) compressors;

(B) blowers;

(C) raw gas monitoring systems;

(D) devices used to control the flow of gas from the unit;

(E) flares;

(F) gas treatment devices; and

(G) air pollution control devices and monitoring equipment.

(3) All gas discharges and gas processing and disposal systems shall conform with all local, state, and federal air quality requirements.

(h) Air criteria.

(1) Open burning shall be prohibited, except in accordance with K.A.R. 28-19-47.

(2) Methane, non-methane organic compounds, and other regulated emissions shall conform with all local, state, and federal air quality requirements.

(i) Boundary control.

(1) Access to the open face area of the unit and all other areas within the boundaries of the facility shall be restricted at all times to prevent unauthorized entry.

(2) A permanent sign shall be posted at the entrance to the facility stating that disposal of hazardous waste is prohibited and that, unless the waste is a predetermined class of special waste as set forth in K.A.R. 28-29-109(d) and approved for disposal by the MSWLF, special wastes shall be accompanied by a disposal authorization issued by the department. The sign shall also include the following information:

- (A) solid waste disposal area permit number;
- (B) hours of operation;
- (C) penalty for unauthorized trespassing and dumping;
- (D) name and telephone number of the appropriate emergency response agencies who shall be available to deal with emergencies and other problems, if different from the owner or operator; and

(E) name, address, and telephone number of the company operating the facility.

(j) Surface water drainage.

(1) Each owner or operator of a MSWLF unit shall design, construct, and maintain the following:

(A) a run-on control system to prevent flow onto the active portion of the MSWLF during the peak discharge from a 24-hour, 25-year storm; and

(B) a runoff control system from the active portion of the MSWLF to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(2) Each surface water control structure shall be operated until the final cover is placed and erosional stability is provided by the vegetative or other cover.

(3) Diversion of runoff from undisturbed areas.

(A) Runoff from undisturbed areas shall be diverted around disturbed areas, unless the owner or operator shows that it is impractical based on site-specific conditions.

(B) Diversion facilities shall be designed to prevent runoff from the 25-year, 24-hour precipitation event from entering disturbed areas.

(C) Runoff from undisturbed areas that becomes commingled with runoff from disturbed areas shall be handled as runoff from disturbed areas and managed in accordance with paragraph (j)(1)(B) above.

(4) The facility shall not cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirement of an area-wide or statewide water quality management plan that has been approved under 33 U.S.C. sections 1288 or 1329.

(5) The facility shall not cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of 33 U.S.C. 1251, *et seq.*, 1994 edition.

(k) Liquids restrictions.

(1) Bulk or noncontainerized liquid waste shall not be placed in MSWLF units unless either of these conditions is met:

(A) the waste is residential waste other than septic waste; or

(B) the waste is leachate or gas condensate derived from the MSWLF unit, and the MSWLF unit, whether it is a new or existing unit, is designed with a liner and leachate collection system as described in K.A.R. 28-29-103(e), or K.A.R. 28-29-104(e)(1)(A) or (B).

(2) Containers holding liquid waste shall not be placed in a MSWLF unit unless any of these conditions is met:

(A) the container is a small container similar in size to that normally found in residential waste;

(B) the container is designed to hold liquids for use other than storage; or

(C) the waste is residential waste.

(3) For purposes of this subsection, these provisions shall apply:

(A) "liquid waste" means any waste material that is determined to contain "free liquids" as defined by method 9095A, revision 1, paint filter liquids test, as described in "test methods for evaluating solid waste, physical/chemical methods," EPA Pub. No. SW-846, dated December, 1996; and

(B) "gas condensate" means the liquid generated as a result of gas collection and recovery process or processes at the MSWLF unit.

(l) Survey controls.

(1) The boundaries of all waste disposal units, property boundaries, disturbed areas, and the permit area for facilities subject to this part shall be surveyed and marked by a professional land surveyor. All stakes shall be clearly marked, inspected annually, and replaced if missing or damaged.

(2) Control monuments shall be established to check vertical elevations. The control monuments shall be established and maintained by a professional land surveyor.

(m) Compaction.

(1) All wastes shall be deposited in the smallest practical area and shall occur at the lowest part of the active face. Wastes may be deposited at locations other than the lowest part of the active face, if site conditions do not allow deposition of wastes at the lowest part of the active face, or if locations other than the lowest part of the active face are in the approved facility operational plan.

(2) All wastes shall be compacted to the highest achievable density necessary to minimize void space and settlement, unless precluded by extreme weather conditions.

(n) Phasing of operations.

(1) Waste shall be placed in a manner and at such a rate that mass stability is provided during all phases of operation. Mass stability shall mean that the mass of the waste deposited will not undergo settling or slope failure that interrupts operations at the facility or causes damage to any of the various MSWLF operations or structures, including the liner, leachate or drainage collection system, gas collection system, or monitoring system.

(2) The phasing of operations at the facility shall be designed in such a way as to allow the sequential construction, filling, and closure of discrete units or parts of units.

(3) The owner or operator shall design and sequence the waste placement operation in each discrete unit or parts of units to allow the wastes to be built up to each unit's planned final grade as quickly as possible.

(o) Size and slope of working face.

(1) The working face of the unit shall be no larger than is necessary, based on the terrain and equipment used in waste placement, to conduct operations in a safe and efficient manner.

(2) The slopes of the working face area shall be no steeper than 2:1, horizontal:vertical, unless the waste is stable at steeper slopes.

(p) Salvaging.

(1) Salvaging operations shall not cause any of the following:

(A) interfere with the operation of the waste disposal facility;

(B) result in a violation of any standard in this regulation; or

(C) delay the construction or interfere in the operation of any of the following:

(i) the liner;

(ii) leachate collection system;

(iii) daily, intermediate, or final cover; or

(iv) any monitoring devices.

(2) All salvaging operations shall be confined to an area remote from the working face of the MSWLF and be performed in a safe and sanitary manner in compliance with the requirements of this subsection.

(3) Salvageable materials may be accumulated on-site by a MSWLF owner or operator, if they are managed in a manner that will not create a nuisance, harbor vectors, cause offensive odors, or create an unsightly appearance.

(4) Scavenging at MSWLFs shall be prohibited.

(q) Recordkeeping.

(1) The owner or operator of a MSWLF unit

shall record and retain on-site for a period of five years, in an operating record, the following information as it becomes available:

(A) location restriction demonstrations required under K.A.R. 28-29-102 of this part;

(B) inspection records, training procedures, and notification procedures required under K.A.R. 28-29-108(a);

(C) gas monitoring results from monitoring and any remediation plans required by K.A.R. 28-29-108(e);

(D) MSWLF unit design documentation for placement of leachate or gas condensate in a MSWLF unit as required under K.A.R. 28-29-108(k);

(E) demonstrations, certifications, findings, monitoring, testing, or analytical data required by K.A.R. 28-29-111 through K.A.R. 28-29-114;

(F) closure and post-closure care plans and any monitoring, testing, or analytical data as required by K.A.R. 28-29-121 and K.A.R. 28-29-122;

(G) cost estimates and financial assurance documentation required by K.S.A. 1996 Supp. 65-3407(h), as amended by L. 1997, Ch. 140, Sec. 4;

(H) demonstrations for the small landfill exemption as required by K.A.R. 28-29-103;

(I) demonstrations that the liner meets the liner standards as required in K.A.R. 28-29-104 (e)(1) (A) or (B); and

(J) a copy of the current facility permit, including all approved plans and specifications.

(2) All information contained in the operating record shall be furnished upon request to the department or made available at any reasonable times for inspection by the department.

(r) Other operating standards.

(1) In order to achieve and maintain compliance with the requirements of these regulations, adequate equipment shall be available for use at the facility during all hours of operation.

(2) All utilities, including heat, lights, power and communications equipment, and sanitary facilities, necessary for operation in compliance with the requirements of this regulation shall be available at the facility at all times.

(3) The owner or operator shall maintain and operate all systems and related appurtenances and structures in a manner that facilitates proper operations in compliance with this regulation.

(4) The owner or operator shall implement methods for controlling dust to minimize wind dispersal of particulate matter.

(5) The facility shall be designed, constructed,

and maintained to minimize the level of equipment noise audible outside the facility.

(6) The owner or operator shall make arrangements for fire protection services when a fire protection district or other public fire protection service is available. When such a service is not available, the owner or operator shall institute alternate fire protection measures.

(7) The owner or operator shall patrol the facility to check for litter accumulation and take all necessary steps to minimize blowing litter, including the use of screens. All litter shall be collected and placed in the fill or in a secure, covered container for later disposal.

(8) The owner or operator shall implement a plan for litter control for all vehicles on the permitted facility site.

(9) An operational safety program shall be provided for employees at each MSWLF facility.

(10) MSWLF access roads shall be of all-weather construction and shall be negotiable at all times by trucks and other vehicles.

(11) Access to MSWLFs shall be limited to hours when an attendant or operating personnel are at the site.

(12) The owner or operator of each MSWLF shall maintain a log of commercial or industrial solid wastes received, including sludges, barreled wastes, and special wastes.

(A) The log shall indicate the source and quantity of waste and the disposal location.

(B) The areas used for disposal of these wastes and other large quantities of bulk wastes shall be clearly shown on a site map and referenced to the boundaries of the tract or other permanent markings.

(13) Sludges, industrial solid wastes, or special wastes shall not be disposed in a MSWLF until the department has been notified and has issued a disposal authorization including specific arrangements for handling of the wastes.

(s) Operating flexibility.

(1) The operator of any unit that has been granted a small landfill exemption under K.A.R. 28-29-103 may request from the director approval for alternatives to the following operating requirements:

- (A) daily cover;
- (B) MSWLF gas monitoring; and
- (C) record keeping.

(2) Each alternate requirement approved by the director shall meet the following requirements:

(A) consider the unique characteristics of small communities;

(B) take into account climatic and hydrogeologic conditions; and,

(C) be protective of human health and the environment. (Authorized by K.S.A. 1996 Supp. 65-3406, as amended by L. 1997, Ch. 139, Sec. 1; implementing K.S.A. 65-3401, as amended by L. 1997, Ch. 140, Sec. 1; effective Oct. 24, 1994; amended July 10, 1998.)

28-29-109. Special waste. (a) Disposal of special waste. Any person may dispose of special waste, as defined in K.A.R. 28-29-3, if all of the following conditions are met.

(1) The person disposes of the special waste at a permitted municipal solid waste landfill (MSWLF).

(2) A special waste disposal authorization for the special waste has been issued by the department in accordance with subsections (b) and (c).

(3) All the conditions of subsections (d) through (g) are met.

(b) Request for a special waste disposal authorization. Each person requesting a special waste disposal authorization shall provide the following information to the department:

(1) A description of the waste, including the following information:

- (A) The type of waste;
- (B) the process that produced the waste;
- (C) the physical characteristics of the waste;
- (D) the quantity of waste to be disposed of; and
- (E) the location of the waste generation site, if different from the generator's address;

(2) the following information for the generator of the waste:

- (A) The contact person's name;
- (B) the contact person's address;
- (C) the contact person's telephone number;
- (D) the contact person's electronic mail address,

if there is one; and
(E) the name of the business, if the generator is a business;

(3) the following information for the person requesting the special waste disposal authorization:

- (A) The contact person's name;
- (B) the contact person's address;
- (C) the contact person's telephone number; and
- (D) the contact person's electronic mail address,

if there is one; and
(E) the name of the business, if the request is being made on behalf of a business;

(4) the name and address of each solid waste transfer station proposed for transfer of the waste;

(5) the name and address of the MSWLF proposed for disposal of the waste;

(6) a statement, signed by the generator of the waste or an agent of the generator, that the waste is not a listed hazardous waste and is not a waste that exhibits the characteristics of a hazardous waste specified in K.A.R. 28-31-261, based on knowledge of the process generating the waste, laboratory analyses, or both; and

(7) each laboratory analysis that has been performed to determine if the waste is a listed hazardous waste or is a waste that exhibits the characteristics of a hazardous waste. The person requesting a special waste disposal authorization shall ensure that the following requirements are met:

(A) Each analysis shall be performed and reported by a laboratory that has departmental certification, if this certification is available, for that analysis;

(B) each analytical laboratory report shall include the following:

(i) Each analysis required to make a determination of hazardous waste characteristics as specified in K.A.R. 28-31-261;

(ii) all additional analyses specified by the department;

(iii) quality control data; and

(iv) a copy of the chain of custody;

(C) the generator shall provide a signed statement for each analytical laboratory report stating that the analytical results are representative of the waste; and

(D) if the waste is an unused or spilled product and the waste has not been combined with any substance other than an absorbent, the generator may submit a material safety data sheet for the waste in lieu of laboratory analyses.

(c) Issuance of special waste disposal authorizations.

(1) Not later than 10 working days after the department receives a request for a special waste disposal authorization, the person making the request shall be notified by the department of one of the following determinations:

(A) The request for a special waste disposal authorization is not complete.

(B) The waste does not require a special waste disposal authorization for disposal in an MSWLF.

(C) The waste is a special waste, and the request for a special waste disposal authorization is approved.

(D) The waste is a hazardous waste, and the request for a special waste disposal authorization is

denied. The denial notification shall include the reason for denial.

(2) If a special waste is authorized for disposal, a written special waste disposal authorization stating the terms for transportation and disposal of the special waste shall be provided by the department to all of the following persons:

(A) The person requesting the special waste disposal authorization, the generator of the waste, or both;

(B) the owner or operator of each solid waste transfer station proposed for transfer of the solid waste; and

(C) the owner or operator of the MSWLF proposed for disposal of the special waste.

(3) A special waste disposal authorization shall not obligate the owner or operator of any MSWLF or solid waste transfer station to accept the special waste.

(d) Petroleum-contaminated soil (PCS). Sampling and analysis requirements and procedures for soil, which could contain debris, contaminated with petroleum products shall include the following:

(1) The generator of the PCS shall collect at least one representative sample for analysis from the first 300 cubic yards of PCS. If the analytical data from the first sample shows that the PCS is not hazardous, the generator shall collect one representative sample for analysis from each 500 cubic yards of PCS after that first sample.

(2) The generator may be required by the secretary to collect additional samples.

(3) The generator may deviate from the required frequency of sampling schedule with written approval from the secretary. The generator shall submit a written sampling plan and an explanation for the deviation from the required sampling schedule to the secretary for review and approval.

(4) The generator shall have each sample analyzed for each the following constituents:

(A) 1,2-dichloroethane;

(B) benzene; and

(C) if required by the department, lead and any other constituent likely to be present in the PCS.

(e) Generator requirements for transfer of special wastes. Each generator of special waste or the agent of the generator shall, before transfer of the special waste, provide the transporter with a copy of the special waste disposal authorization for each load of special waste.

(f) Transporter requirements for transfer and disposal of special wastes. Before transfer or dis-

posal of special waste, each transporter of special waste shall provide notification of each load of special waste to both of the following persons:

(1) The owner or operator of each solid waste transfer station involved in the transport of the special waste; and

(2) the owner or operator of the MSWLF at which the special waste will be disposed.

(g) MSWLF requirements for acceptance and disposal of special wastes. The owner or operator of each MSWLF shall comply with each of the following requirements:

(1) If a load of special waste requires a special waste disposal authorization, check for compliance with the special waste disposal authorization;

(2) reject any special waste requiring a special waste disposal authorization if the special waste does not meet both of the following requirements:

(A) Has a special waste disposal authorization issued by the department; and

(B) meets the requirements of the special waste disposal authorization;

(3) notify the department in writing of each special waste load that is rejected at the MSWLF within one business day after the rejection;

(4) dispose of the special waste in the MSWLF only if the special waste meets one of the following requirements:

(A) Is capable of passing the paint filter liquids test specified in K.A.R. 28-29-108; or

(B) is exempt from the liquids restriction as specified in K.A.R. 28-29-108; and

(5) maintain documentation in the operating record, as specified in K.A.R. 28-29-108, of each special waste disposed of at the MSWLF, until the MSWLF is certified for closure in accordance with K.A.R. 28-29-121. (Authorized by K.S.A. 65-3406; implementing K.S.A. 65-3401; effective July 10, 1998; amended May 30, 2003; amended Aug. 16, 2013.)

28-29-111. Groundwater monitoring systems; applicability and design. (a) The requirements in this regulation shall apply to all MSWLF units, except as provided in subsection (b).

(b) Groundwater monitoring requirements may be suspended by the department for a MSWLF unit if the owner or operator demonstrates that there is no potential for migration of hazardous constituents from that MSWLF unit to the uppermost aquifer during the active life of the unit and the post-closure care period. This demonstration

shall be certified by a qualified groundwater scientist and approved by the department, and shall be based upon:

(1) site-specific field-collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport; and

(2) contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and environment.

(3) For the purposes of K.A.R. 28-29-111 and K.A.R. 28-29-112, "hazardous constituent" means all constituents listed in appendix I and appendix II of K.A.R. 28-29-113.

(c) Each owner or operator of a MSWLF unit shall comply with the groundwater monitoring requirements of this part according to the following schedule.

(1) Each existing MSWLF unit or lateral expansion less than or equal to one mile from a drinking water intake, surface or subsurface shall be in compliance with applicable groundwater monitoring requirements in K.A.R. 28-29-111 through K.A.R. 28-29-114 by October 9, 1994.

(2) Each existing MSWLF unit or lateral expansion greater than one mile but less than or equal to two miles from a drinking water intake, surface or subsurface, shall be in compliance with applicable groundwater monitoring requirements in K.A.R. 28-29-111 through K.A.R. 28-29-114 by October 9, 1995.

(3) Each existing MSWLF unit or lateral expansion greater than two miles from a drinking water intake, surface or subsurface, shall be in compliance with the groundwater monitoring requirements in K.A.R. 28-29-111 through K.A.R. 28-29-114 by October 9, 1996.

(4) Each MSWLF unit which meets the requirements of K.A.R. 28-29-103(a) and is less than or equal to two miles from a drinking water intake, surface or subsurface, shall be in compliance with applicable groundwater monitoring requirements in K.A.R. 28-29-111 through K.A.R. 28-29-114 by October 9, 1995.

(5) Each MSWLF unit which meets the requirements of K.A.R. 28-29-103(a) and is greater than two miles from a drinking water intake, surface or subsurface, shall be in compliance with the groundwater monitoring requirements in K.A.R. 28-29-111 through K.A.R. 28-29-114 by October 9, 1996.

(6) Each new MSWLF unit except those meeting the requirements of K.A.R. 28-29-103(a), shall

be in compliance with the groundwater monitoring requirements specified in subsection (f) before waste may be placed in the unit.

(d) Once a MSWLF unit has been established, groundwater monitoring shall be conducted throughout the active life and post-closure care period of that MSWLF unit.

(e) For the purposes of K.A.R. 28-29-100 through K.A.R. 28-29-121, a "qualified groundwater scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training and experience in groundwater hydrology and related fields. Sufficient training may be demonstrated by state registration, professional certifications, or completion of accredited university programs that enable that individual to make sound professional judgements regarding groundwater monitoring, contaminant fate and transport, and corrective action.

(f) Groundwater monitoring systems.

(1) A groundwater monitoring system shall be installed that consists of a sufficient number of wells, installed at appropriate locations and depths, to yield groundwater samples from the uppermost aquifer that:

(A) represent the quality of background groundwater that has not been affected by leakage from a unit; and

(B) represent the quality of groundwater passing the point of compliance.

(2) The owner or operator shall maintain records that, at a minimum include the following:

(A) exact well three-dimensional location;

(B) well size;

(C) type of well;

(D) the design and construction practice used in well installation; and

(E) well and screen depths.

(3) The monitoring wells, piezometers, and other measurement, sampling, and analytical devices shall be operated and maintained so that they perform to design specifications throughout the life of the monitoring program. The owner or operator shall maintain wells to operate throughout the design period of the landfill.

(4) Standards for the location of monitoring points in the detection monitoring system.

(A) Each monitoring well shall be located in a stratigraphic horizon that could serve as a contaminant migration pathways.

(B) Lateral distance from the unit.

(i) For new units, each monitoring well shall be

established at a lateral distance not greater than 150 meters (492 feet) from the planned edge of the unit. Each well shall be located on the owner's or operator's property, and shall be at least 15.24 meters (50 feet) from the property boundary. The requirements of paragraph (f)(4)(B)(i) shall not apply to vertical expansions or existing units that are in operation on October 9, 1996.

(ii) For existing units, each monitoring well shall be established at a lateral distance not greater than 150 meters (492 feet) from the planned edge of the unit, and shall be located on the owner's or operator's property.

(C) The number, spacing, and depths of monitoring wells shall be:

(i) determined based upon site-specific technical information gathered from the hydrogeologic investigation conducted pursuant to K.A.R. 28-29-104(b); and

(ii) certified by a qualified groundwater scientist.

(D) The network of monitoring points of several potential sources of discharge within a single facility may be combined into a single monitoring network, provided that discharges from any part of all potential sources can be detected. The following information shall be provided by the owner or operator as requested by the department for use in evaluating an owner's or operator's proposal for a multi-unit monitoring system:

(i) number, spacing, and orientation of each MSWLF unit;

(ii) hydrogeologic setting;

(iii) site history;

(iv) engineering design of each MSWLF unit; and

(v) type of waste accepted at each MSWLF unit.

(5) Well construction standards.

(A) Each monitoring well shall be constructed in accordance with K.A.R. 28-30-6.

(B) Each monitoring well shall be cased with inert materials that will not affect the water sample. Casing requiring solvent-cement type couplings shall not be used.

(C) Each well shall be screened to allow sampling only at the desired interval. The slot size of the screen and filter pack shall be designed to minimize turbidity. Screens shall be fabricated from material expected to be inert with respect to the constituents of the groundwater to be sampled.

(D) Each well shall be equipped with a device to protect against tampering and damage.

(E) Each well shall be developed to allow free entry of water and minimize turbidity of the sample.

(F) The transmissivity of the zone surrounding each well screen shall be established by field-testing techniques. (Authorized by K.S.A. 1993 Supp. 65-3406; implementing K.S.A. 65-3401; effective Oct. 24, 1994.)

28-29-112. Groundwater monitoring systems; sampling and data analysis requirements. (a) The groundwater monitoring program shall include consistent sampling and analysis procedures to ensure that monitoring results provide data representative of groundwater quality in the zone being monitored.

(b) The owner or operator shall develop a sampling and analysis plan to submit to the department for approval that includes the following:

(1) a quality assurance and quality control program for field sampling procedures and laboratory analysis that provides:

- (A) quantitative detection limits;
 - (B) the degree of error for analysis of each chemical constituent;
 - (C) equipment decontamination procedures; and
 - (D) other field quality assurance protocols;
- (2) a sample preservation and shipment procedure that maintains the integrity of the sample collected for analysis;

(3) a chain of custody procedure to prevent tampering and contamination of the collected samples prior to completion of analysis;

(4) the sampling procedures and analytical methods that will be used, why they are appropriate for groundwater sampling and whether they accurately measure constituents in groundwater samples; and

(5) the statistical method or methods listed in subsection (h) of this regulation which will be used in evaluating monitoring data for each constituent detected.

(c) Groundwater samples shall not be field-filtered prior to laboratory analysis. The director may require field filtered samples in cases where turbidity affects the validity of the results.

(d) The owner or operator shall determine the rate and direction of groundwater flow each time groundwater is sampled. Groundwater elevations in wells that monitor the same waste-management area shall be measured within a period of time short enough to avoid temporal variations in groundwater flow that could preclude accurate determination of groundwater flow rate and direction.

(e) The owner or operator shall conduct quarterly groundwater monitoring for one year to

determine background concentrations for each of the monitoring parameters or constituents required in the detection groundwater monitoring program, set out in K.A.R. 28-29-113(a).

(f) Background groundwater quality may be established at wells that are not located hydraulically upgradient from the MSWLF unit if:

(1) hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; or

(2) sampling at other wells will provide an indication of background groundwater quality that is as representative or more representative than that provided by the upgradient wells.

(g) The number of samples collected shall be consistent with the appropriate statistical procedures determined pursuant to this regulation.

(h) The following methods shall be acceptable statistical methods to be utilized in evaluating groundwater monitoring data, and shall be applied separately to each constituent detected in each well:

(1) a parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. This method shall include an estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent;

(2) an analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. This method shall include an estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent;

(3) a tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit;

(4) a control chart approach that gives control limits for each constituent; or

(5) another statistical test method that meets the following performance standards:

(A) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data may be

transformed or a distribution-free theory test may be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(B) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the type I experiment-wise error rate for each testing period shall be no less than 0.05; however, the type I error of no less than 0.01 for individual well comparisons must be maintained. This performance standard shall not apply to tolerance intervals, prediction intervals, or control charts.

(C) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be protective of human health and the environment. The parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(D) If a tolerance interval or a prediction interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval shall contain, shall be protective of human health and the environment. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(E) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantitation limit (pql) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(F) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(i) Any owner or operator wishing to use an alternative statistical test shall seek the approval of the department and provide a justification for

the alternative test. The justification shall demonstrate that the alternative method meets the performance standards listed in paragraph (h)(5) above.

(j) The owner or operator shall determine whether or not there is a statistically significant increase over background values for each parameter or constituent required in the particular groundwater monitoring program that applies to the MSWLF unit.

(1) The owner or operator shall submit the statistical analyses to the department within 45 days of receipt of analytical results.

(2) If requested by the department, the results of the statistical analyses shall be provided in electronic form via computer disc or other electronic means.

(3) If requested by the department, the raw analytical data shall also be provided.

(k) In determining whether a statistically significant increase has occurred, the owner or operator shall compare the groundwater quality of each parameter or constituent at each downgradient monitoring well to the background value of that constituent, according to the statistical procedures and performance standards specified in this regulation. (Authorized by K.S.A. 1993 Supp. 65-3406; implementing K.S.A. 65-3401; effective Oct. 24, 1994.)

28-29-113. Groundwater monitoring systems; detection and assessment monitoring. (a) Detection monitoring program.

(1) Detection monitoring shall be required at each groundwater monitoring well as defined in K.A.R. 28-29-111. At a minimum, a detection monitoring program shall include the monitoring for the constituents listed in appendix I of this regulation. The owner or operator shall also conduct the following evaluations at each well at the time of sample collection and immediately before filtering, if applicable, and preserving samples for shipment:

(A) elevation of the water table;

(B) depth of the bottom of the well;

(C) pH of the sample;

(D) temperature of the sample;

(E) specific conductance of the sample; and

(F) observations of the physical characteristics of the sample.

(2) The monitoring frequency for each constituent listed in appendix I shall be semiannual during the active life of the facility, including closure, and

the post-closure period except that monitoring shall be quarterly for the first year. At least one sample from each well, background and down-gradient, shall be collected and analyzed. An appropriate alternative frequency for sampling and analysis may be specified by the director. However, the alternative frequency shall be no less than annually.

(3) If the owner or operator determines that there is a statistically significant increase over background for one or more of the constituents listed in appendix I at any monitoring well, the owner or operator shall:

(A) notify the director within 14 calendar days of this finding. The notification shall indicate which constituents have shown statistically significant changes from background levels; and

(B) within 30 calendar days of this finding, re-sample the wells showing the statistically significant increase to confirm the finding. If the statistically significant increase is not confirmed, the owner or operator shall return to the detection monitoring program specified in paragraph (a)(1) of this regulation.

(i) If the statistically significant increase is confirmed, the owner or operator shall conduct an assessment monitoring program meeting the requirements of subsection (b) of this regulation, and develop a release assessment plan to determine the nature and extent of the release within 90 days of confirming the statistically-significant increase.

(ii) Upon approval of the release assessment plan by the director, the owner or operator shall implement the release assessment plan, and prepare and submit a report summarizing all activities and findings according to the schedule specified in the plan and approved by the department.

(iii) In lieu of paragraph (a)(3)(B)(i) and (ii) above, the owner or operator may demonstrate to the department that a source other than a MSWLF unit caused the contamination, that the statistically significant increase resulted from a natural variation in groundwater quality, or that the statistically significant increase resulted from an error in sampling. A report documenting this demonstration shall be certified by a qualified groundwater scientist and placed in the operating record. If a successful demonstration is made to and approved by the department, the owner or operator may continue detection monitoring as specified in paragraph (a)(1) of this regulation. If after 90 days a successful demonstration is not made, the owner or operator

shall conduct assessment monitoring as required in subsection (b) of this regulation, and develop a release assessment plan to determine the nature and extent of the release.

(b) Assessment monitoring.

(1) Assessment monitoring shall be required for:

(A) new municipal solid waste landfills or units, or existing municipal solid waste landfills or units which have established background groundwater concentrations for the appendix I constituents, whenever a statistically significant increase over background has been detected for one or more of the constituents listed in appendix I; and

(B) existing municipal solid waste landfills or units that have not established background groundwater concentrations for the appendix I constituents if groundwater contamination exists that exceeds the maximum contamination limits (MCLs) for any organic constituent contained in appendix I.

(2) Within 90 days of triggering assessment monitoring, the owner or operator shall sample each downgradient well, or those wells specified by the director, and analyze the groundwater for:

(A) all constituents identified in appendix II; and

(B) the parameters listed in paragraph (a)(1) of this regulation.

(3) Within 180 days of the sampling event described in paragraph (b)(2), the owner or operator shall collect and analyze from each background and downgradient well a minimum of three independent samples to establish background concentrations for each appendix II constituent detected during paragraph (b)(2) analyses.

(4)(A) Within 90 days of the sampling event described in paragraph (b)(3), and on a semi-annual basis thereafter, the owner or operator shall sample each downgradient well, or those wells specified by the director, and conduct analysis for all constituents in appendix I and for each constituent in appendix II that is detected during paragraph (b)(2) analyses.

(B) In addition, the owner or operator shall sample each downgradient well for each appendix II constituents on an annual basis.

(C) All analytical results shall be recorded in the facility operating record.

(5) Whenever a new constituent or constituents is detected in a downgradient well as a result of the sampling described in paragraphs (b)(2) or (4), above, the owner or operator shall:

(A) notify the director within 14 days of each appendix II constituent that has been detected;

(B) collect and analyze from each background and downgradient well a minimum of four independent samples to establish background concentrations for the new constituent or constituents; and

(C) include any new constituents detected in any subsequent monitoring.

(6) If it can be shown that the removed constituents are not reasonably expected to be contained in or derived from the waste contained in the unit, appendix II monitoring for a MSWLF unit may be modified by the director.

(7) An appropriate alternate frequency for repeated sampling and analysis for the full set of appendix II constituents during the active life, including closure, and post-closure care of the unit may be specified by the director.

(8) An appropriate subset of wells to be sampled and analyzed for appendix II constituents during assessment monitoring may be specified by the director.

(9) If the concentrations of all appendix II constituents are shown to be at or below background values, using the statistical procedures in K.A.R. 28-29-112, for two consecutive sampling events, the owner or operator shall notify the department of this finding and may return to detection monitoring, if approved by the department.

(10) If the concentrations of any appendix II constituents are above background values, but all concentrations are below the groundwater protection standard established under subsection (13) using the statistical procedures in section K.A.R. 28-29-112, the owner or operator shall continue assessment monitoring in accordance with this regulation. Based on an analysis of groundwater contamination trends, it may be requested by the director that the owner or operator proceed to the assessment of corrective measures, as described in K.A.R. 28-29-114.

(11) If one or more appendix II constituents are detected at statistically-significant levels above the groundwater protection standard in any sampling event, the owner or operator shall, within 14 days of this finding, notify the department and identify each appendix II constituent that has exceeded the groundwater protection standard.

(12) If a determination is made that contamination has migrated off-site, the owner or operator shall immediately notify all appropriate local government officials and all persons who own the

land or reside on the land that directly overlies any part of the plume of contamination.

(13) A groundwater protection standard for each appendix II constituent detected in the groundwater shall be established by the department. The groundwater protection standard shall be:

(A) the maximum contaminant level (MCL) where an MCL has been promulgated under section 1412 of the safe drinking water act under 40 CFR part 141, as in effect on July 1, 1992;

(B) the background concentration for the constituent established from wells in accordance with paragraph (b)(5)(B) of this regulation; or

(C) the background concentration for the constituent established from wells in accordance with paragraph (b)(5)(B) if the background level is higher than:

(i) the MCL; or

(ii) the health-based levels identified under paragraph (b)(14).

(14) An alternative groundwater protection standard for constituents for which MCLs have not been established may be approved by the department. These groundwater protection standards shall be appropriate health-based levels that satisfy the following criteria:

(A) The level is derived in a manner consistent with environmental protection agency guidelines for assessing the health risks of environmental pollutants, 51 Federal Register 33992, 34006, 34014, 34028, dated September 24, 1986;

(B) the level is based on scientifically valid studies conducted in accordance with the toxic substances control act good laboratory practice standards, 40 CFR part 792, as in effect on July 1, 1992, or equivalent;

(C) for carcinogens, the level represents a concentration associated with an excess lifetime cancer-risk level, due to continuous lifetime exposure, within the 1×10^{-4} to 1×10^{-6} range; and

(D) for systemic toxicants, the level represents a concentration to which the human population, including sensitive subgroups, could be exposed on a daily basis which is likely to be without appreciable risk of deleterious effects during a lifetime. For purposes of this paragraph, systemic toxicants include toxic chemicals that cause effects other than cancer or mutation.

(15) A standard in lieu of paragraph (b)(13) may be designated by the director while an alternative standard is being developed pursuant to paragraph (b)(14).

(c) Appendices.

APPENDIX I**GEOCHEMICALS**

Alkalinity
 Calcium
 Chemical Oxygen Demand (COD)
 Chloride
 Nitrogen (Ammonia)
 Potassium, dissolved
 Sodium, dissolved
 Sulfate
 Total Dissolved Solids (TDS)

VOLATILE ORGANICS

Acetone
 Benzene*
 Bromodichloromethane
 Bromomethane
 Bromoform
 2-Butanone
 Carbon Disulfide
 Carbon tetrachloride
 Chlorobenzene
 Chloroethane
 2-Chloroethylvinyl ether
 Chloroform
 Chloromethane
 Dibromochloromethane
 1,1-Dichloroethane
 1,2-Dichloroethane*
 1,1-Dichloroethene*
 trans-1,2-Dichloroethene
 1,2-Dichloropropane*
 cis-1,3-Dichloropropene
 trans-1,3-Dichloropropene
 Ethylbenzene*
 2-Hexanone
 4-Methyl-2-pentanone
 Methylene chloride
 Styrene*
 Tetrachloroethene*
 Toluene*
 Total Xylenes*
 1,1,2,2-Tetrachloroethane
 1,1,1-Trichloroethane*
 1,1,2-Trichloroethane
 Trichloroethene*
 Vinyl acetate
 Vinyl chloride*
 *MCL promulgated

APPENDIX II**GEOCHEMICALS**

Alkalinity

Calcium
 Chemical Oxygen Demand (COD)
 Chloride
 Nitrogen (Ammonia)
 Potassium, dissolved
 Sodium, dissolved
 Sulfate
 Total Dissolved Solids (TDS)

METALS

Antimony
 Arsenic
 Barium
 Beryllium
 Cadmium
 Chromium
 Cobalt
 Copper
 Lead
 Nickel
 Selenium
 Silver
 Thallium
 Vanadium
 Zinc

**POLYNUCLEAR AROMATIC
HYDROCARBONS**

Acenaphthene
 Acenaphthylene
 Anthracene
 Benzo(a)anthracene
 Benzo(a)pyrene
 Benzo(b)fluoranthene
 Benzo(j)fluoranthene
 Benzo(k)fluoranthene
 Benzo(ghi)perylene
 Chrysene
 Dibenz(a,h)acridine
 Dibenz(a,j)acridine
 Dibenzo(a,h)anthracene
 7H-Dibenzo(c,g)carbazole
 Dibenzo(a,e)pyrene
 Dibenzo(a,h)pyrene
 Dibenzo(a,i)pyrene
 Fluoranthene
 Fluorene
 Indeno(1,2,3-cd)pyrene
 3-Methylcholanthrene
 Naphthalene
 Phenanthrene
 Pyrene

CHLORINATED HYDROCARBONS

Benzal chloride
Benzotrichloride
Benzyl chloride
2-Chloronaphthalene
1,2-Dichlorobenzene
1,3-Dichlorobenzene
1,4-Dichlorobenzene
Hexachlorobenzene
Hexachlorobutadiene
Hexachlorocyclohexane
Hexachlorocyclopentadiene
Hexachloroethane
Tetrachlorobenzenes
1,2,4-Trichlorobenzene
Pentachlorohexane

ORGANOPHOSPHORUS PESTICIDES

Azinphos methyl
Bolstar
Chlorpyrifos
Coumaphos
Demeton-O
Demeton-S
Diazinon
Dichlorvos
Disulfoton
Ethroprop
Fensulfothion
Fenthion
Merphos
Mevinphos
Naled
Parathion methyl
Phorate
Ronnel
Stirophos (Tetrachlorvinphos)
Tokuthion (Prothiofos)
Trichloronate

CHLORINATED HERBICIDES

2,4-D
2,4-DB
2,4,5-T
2,4,5-TP (silvex)
Dalapon
Dicamba
Dichloroprop
Dinoseb
MCPA
MCPB

VOLATILE ORGANICS

Acetone

Benzene
Bromodichloromethane
Bromomethane
Bromoform
2-Butanone
Carbon Disulfide
Carbon tetrachloride
Chlorobenzene
Chloroethane
2-Chloroethylvinyl ether
Chloroform
Chloromethane
Dibromochloromethane
1,1-Dichloroethane
1,2-Dichloroethane
1,1-Dichloroethene
trans-1,2-Dichloroethene
1,2-Dichloropropane
cis-1,3-Dichloropropene
trans-1,3-Dichloropropene
Ethyl benzene
2-Hexanone
4-Methyl-2-pentanone
Methylene chloride
Styrene
Tetrachloroethene
Toluene
Total Xylenes
1,1,2,2-Tetrachloroethane
1,1,1-Trichloroethane
1,1,2-Trichloroethane
Trichloroethene
Vinyl acetate
Vinyl chloride

VOLATILE ORGANICS

Benzene
Bromobenzene
Bromochloromethane
Bromodichloromethane
Bromoform
Bromomethane
n-Butylbenzene
sec-Butylbenzene
tert-Butylbenzene
Carbon tetrachloride
Chlorobenzene
Chloroethane
Chloroform
Chloromethane
2-Chlorotoluene
4-Chlorotoluene
Dibromochloromethane

1,2-Dibromo-3-chloropropane
 1,2-Dibromoethane
 Dibromomethane
 1,2-Dichlorobenzene
 1,3-Dichlorobenzene
 1,4-Dichlorobenzene
 Dichlorodifluoromethane
 1,1-Dichloroethane
 1,2-Dichloroethane
 1,1-Dichloroethene
 cis-1,2-Dichloroethene
 trans-1,2-Dichloroethene
 1,2-Dichloropropane
 1,3-Dichloropropane
 2,2-Dichloropropane
 1,1-Dichloropropene
 Ethylbenzene
 Hexachlorobutadiene
 Isopropylbenzene
 p-Isopropyltoluene
 Methylene chloride
 Naphthalene
 n-Propylbenzene
 Styrene
 1,1,1,2-Tetrachloroethane
 1,1,2,2-Tetrachloroethane
 Tetrachloroethene
 Toluene
 1,2,3-Trichlorobenzene
 1,2,4-Trichlorobenzene
 1,1,1-Trichloroethane
 1,1,2-Trichloroethane
 Trichloroethene
 Trichlorofluoromethane
 1,2,3-Trichloropropane
 1,2,4-Trimethylbenzene
 1,3,5-Trimethylbenzene
 Vinyl chloride
 o,m,p-Xylene

(Authorized by K.S.A. 1993 Supp. 65-3406; implementing K.S.A. 65-3401; effective Oct. 24, 1994.)

28-29-114. Corrective action. (a) Assessment of corrective measures.

(1) After consideration of the results from the release assessment conducted pursuant to K.A.R. 28-29-113(a)(3)(B), the owner or operator may be asked by the director to conduct an assessment of corrective measures that includes an analysis of:

(A) performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts,

cross-media impacts, and control of exposure to any residual contamination;

(B) time required to begin and complete the remedy;

(C) costs of remedy implementation; and

(D) institutional requirements such as state or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy or remedies.

(2) The owner or operator shall continue to monitor in accordance with the assessment monitoring program as specified in K.A.R. 28-29-113(b).

(3) The owner or operator shall make a recommendation for one of the corrective measures assessed and include a rationale for the choice in the corrective measures assessment report.

(4) The owner or operator shall conduct a public hearing to discuss the range of corrective measures evaluated, the recommended corrective measures, and the rationale outlined in the assessment report.

(b) Remedy.

(1) After consideration of the results of the corrective-measures assessment and the public comments received, the owner or operator shall propose a remedy and a schedule for implementation to the department for approval. The remedy shall:

(A) be protective of human health and the environment;

(B) attain the groundwater protection standards;

(C) control the source or sources of releases so as to reduce or eliminate, to the maximum extent practicable, further releases of constituents identified in appendix II of K.A.R. 28-29-113 into the environment that may pose a threat to human health or the environment; and

(D) comply with standards for management of wastes as specified in paragraph (c)(4) of this regulation.

(2) In approving a remedy, the following evaluation factors shall be considered by the director:

(A) the long-term and short-term effectiveness and protectiveness of the potential remedy or remedies, along with the degree of certainty that the remedy will prove successful;

(B) the effectiveness of the remedy in controlling the source to reduce further releases;

(C) the ease or difficulty of implementing a potential remedy or remedies;

(D) practicable capability of the owner or operator, including a consideration of the technical and economic capability; and

(E) the degree to which community concerns are addressed by a potential remedy or remedies.

(3) A remedy other than that proposed by the owner or operator may be specified by the director.

(4) It may be determined by the director that remediation of a release of a constituent identified in appendix II of K.A.R. 28-29-113 from a MSWLF unit is not necessary if the owner or operator demonstrates to the satisfaction of the director any one of the following:

(A) the groundwater is additionally contaminated by substances that have originated from a source other than a MSWLF unit and those substances are present in concentrations such that cleanup of the release from the MSWLF unit would provide no significant reduction in risk to public health and the environment;

(B) remediation of the release or releases is technically impracticable; or

(C) remediation results in unacceptable cross-media impacts.

(5) A determination by the director that remediation is not necessary shall not affect the authority of the department to require the owner or operator to undertake source control measures or other measures that may be necessary to eliminate or minimize further releases to the groundwater, to prevent exposure to the groundwater, or to remediate the groundwater to concentrations that are technically practicable and significantly reduce threats to human health or the environment.

(6) The owner or operator may be required by the director to take any interim measures necessary to ensure the protection of human health and the environment. Interim measures shall, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy selected.

(c) Implementation of the corrective action program.

(1) Based on the schedule established under paragraph (b)(1) above, the owner or operator shall implement the corrective action remedy selected under subsection (b).

(2) An owner or operator or the director may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of paragraph (b)(1) is not being achieved through the remedy selected. In such cases, the owner or operator shall implement other methods or techniques that practicably achieve compliance with the requirements.

(3) If the owner or operator or director determines that compliance with requirements under paragraph (b)(1) cannot be practically achieved with any currently available methods, the owner or operator shall:

(A) obtain certification of a qualified groundwater scientist that compliance cannot be practically achieved with any currently available methods;

(B) implement alternate measures to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment;

(C) implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures; and

(D) submit a report to the director justifying the alternative measures prior to implementing the alternative measures.

(4) Each solid waste that is managed pursuant to a remedy or an interim measure shall be managed in accordance with Kansas waste management standards.

(5) Remedies selected pursuant to subsection (b) shall be considered complete when:

(A) the owner or operator complies with the groundwater protection standards established under K.A.R. 28-29-113(b)(13) at the point of compliance;

(B) compliance with the groundwater protection standards has been achieved by demonstrating that concentrations of constituents identified in appendix II of K.A.R. 28-29-113 have not exceeded the groundwater protection standard or standards for a period of three consecutive years using the statistical procedures and performance standards in K.A.R. 28-29-112. An alternative length of time during which the owner or operator shall demonstrate that concentrations of constituents identified in appendix II of K.A.R. 28-29-113 have not exceeded the groundwater protection standard or standards may be specified by the director, taking into consideration the:

(i) extent and concentration of the release or releases;

(ii) behavior characteristics of the contaminants in the groundwater;

(iii) accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that may affect the accuracy; and

(iv) characteristics of the groundwater; and

(C) all actions required to complete the remedy have been satisfied.

(6) Upon completion of the remedy, the owner or operator shall submit to the director a copy of a certification that the remedy has been completed in compliance with the requirements of paragraph (b)(1) and initiate a detection monitoring plan. The certification shall be signed by the owner or operator and by a qualified groundwater scientist.

(7) Upon receipt of the certification, if the director determines that the corrective action remedy has been completed in accordance with the requirements of this section, the owner or operator shall be released from the requirements for financial assurance for corrective action under K.A.R. 28-29-122. Where appropriate and necessary, a new schedule for continued detection monitoring shall be established by the director. (Authorized by K.S.A. 1993 Supp. 65-3406; implementing K.S.A. 65-3401; effective Oct. 24, 1994.)

28-29-121. Closure requirements. (a) Upon ceasing to receive waste, the unit shall be covered by a final cover consisting of a low permeability layer overlaid by a final protective layer constructed in accordance with the requirements of this regulation.

(b) Not later than 30 days after placement of the final lift of solid waste, closure activities shall begin, except as provided in subsection (c) of this regulation.

(c) The deadline for construction of the final cover may be extended by the director if:

(1) the unit has remaining capacity and there is a reasonable likelihood that the MSWLF unit will receive additional wastes;

(2) leachate is to be recirculated for a period after final receipt of waste in accordance with provisions in K.A.R. 28-29-104(i)(6); or

(3) the owner or operator demonstrates to the department that initiation of closure will, of necessity, take longer than 30 days.

(d) For any unit receiving an extension of the closure deadline as provided in subsection (c), it may be required by the director that the owner or operator comply with some or all of the provisions for intermediate cover in K.A.R. 28-29-108(c).

(e) For each MSWLF receiving waste after October 9, 1993, the low permeability layer shall consist of one of the following:

(1) a geomembrane underlaid by 0.45 meters (18 inches) of compacted soil with a permeabil-

ity of 1×10^{-5} centimeters per second or less if geomembrane is used in the bottom liner system; or

(2) the lesser of:

(i) 0.45 meters (18 inches) of compacted soil with a permeability less than or equal to the bottom liner system or natural subsoils; or

(ii) 0.45 meters (18 inches) of compacted soil with a permeability of 1×10^{-5} centimeters per second or less.

(f) If a geomembrane is used in the low permeability layer, it shall be constructed in accordance with the following standards.

(1) The geomembrane shall have strength to withstand the normal stresses imposed by the waste stabilization process.

(2) The geomembrane shall be placed over a prepared base free from sharp objects and other materials that may cause damage.

(3) The effects of landfill gas below the geomembrane shall be addressed.

(4) The effect of drainage through the final protective cover onto the geomembrane shall be addressed.

(g) The final protective layer shall be constructed in accordance with the following standards.

(1) The final protective layer shall cover the entire low permeability layer.

(2) The thickness of the final protective layer shall be at least as thick as the frost penetration depth at the landfill site and shall minimize root penetration of the low permeability layer.

(3) The final protective layer shall consist of soil material capable of supporting vegetation.

(h) The final protective layer shall be placed as soon as possible after placement of the low permeability layer to prevent desiccation, cracking, freezing or other damage to the low permeability layer.

(i) The owner or operator shall prepare a written closure plan that describes the steps necessary to close each MSWLF unit at any point during its active life in accordance with the cover design requirements. The closure plan, at a minimum, shall include the following information:

(1) plans for the final contours, type and depth of cover material, landscaping, and access control;

(2) an estimate of the largest area of the MSWLF unit ever requiring a final cover at any time during the active life;

(3) an estimate of the maximum inventory of wastes ever onsite over the active life of the MSWLF facility;

(4) final surface water drainage patterns and run-off retention basins;

(5) plans for the construction of liners, leachate collection and treatment systems, gas migration barriers or other gas controls;

(6) cross-sections of the site that delineate the disposal or storage locations of wastes. The cross-sections shall depict liners, leachate collection systems, the waste cover, and other applicable details;

(7) removal of all solid wastes from processing facilities; and

(8) a schedule for completing all closure activities.

(j) The closure plan shall be prepared not later than the effective date of this part, or by the initial receipt of waste, whichever is later, and shall be submitted to the department.

(k) A minimum of 60 days prior to beginning closure of each MSWLF unit, an owner or operator shall notify the department of the intent to close a unit.

(l) The owner or operator shall complete closure activities of each unit in accordance with the closure plan within 180 days following the beginning of closure. Extensions of the closure period may be granted by the director if the owner or operator demonstrates that:

(i) closure will, of necessity, take longer than 180 days; and

(ii) all steps have been taken and will continue to be taken to prevent threats to human health and the environment from the unclosed unit.

(m) Following closure of each MSWLF unit, the owner or operator shall submit a certification to the department. The certification shall be signed by an independent registered professional engineer, or approved by the director, and shall verify that closure has been completed in accordance with the closure plan.

(n) Following closure of all MSWLF units in a facility, the owner or operator shall perform the following tasks.

(1) The owner or operator shall file a restrictive covenant with the office of register of deeds for the county in which the property is located, pursuant to the requirements of K.A.R. 28-29-20. The restrictive covenant shall, in perpetuity, notify any potential purchaser of the property that:

(A) the property has been used as a MSWLF; and

(B) the use of the property is subject to the restrictions of the post-closure plan in subsection (p) of this regulation.

(2) The owner or operator shall notify the director that a restrictive covenant has been recorded pursuant to the requirements of paragraph (1) of this subsection.

(o) The owner or operator may request permission from the director to remove the restrictive covenant if all wastes are removed from the facility.

(p) Post-closure care requirements.

(1) Following closure of each MSWLF unit, the owner or operator shall conduct post-closure care. Post-closure care shall be conducted for 30 years, except as provided under paragraph (2) of this subsection, and shall consist of at least the following activities:

(A) maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;

(B) maintaining and operating the leachate collection system, pursuant to K.A.R. 28-29-104(h);

(C) monitoring the groundwater in accordance with the requirements of K.A.R. 28-29-113 and maintaining the groundwater monitoring system, if applicable; and

(D) maintaining and operating the gas monitoring system in accordance with the requirements of K.A.R. 28-29-108(e).

(2) The length of the post-closure care period may be increased by the director if the director determines that the lengthened period is necessary to protect human health and the environment.

(3) The owner or operator of each MSWLF unit must prepare a written post-closure plan that includes, at a minimum, the following information:

(A) plans for the post-closure operation and maintenance of liners, leachate and gas collection and treatment systems, cover material, run-off retention basins, landscaping, and access control;

(B) plans for monitoring and surveillance activities during post-closure;

(C) name, address, and telephone number of the person or office to contact about the facility during the post-closure period; and

(D) a description of the planned uses of the property during the post-closure period.

(i) Post-closure use of the property shall not disturb the integrity of the final cover, liner or liners, or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in this regulation.

(ii) If the owner or operator demonstrates that disturbance of the final cover, liner or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment, the disturbance may be approved by the director.

(4) The owner or operator shall prepare a post-closure plan not later than the effective date of this regulation, or by the initial receipt of waste, whichever is later, and submit it to the director.

(5) Following completion of the post-closure care period for each MSWLF unit, the owner or operator shall submit a certification to the director. The certification shall be signed by an independent registered professional engineer, or approved by the director, and must verify that post-closure care has been completed in accordance with the post-closure plan. (Authorized by K.S.A. 1993 Supp. 65-3406; implementing K.S.A. 65-3401; effective Oct. 24, 1994.)

PART 8. CONSTRUCTION AND DEMOLITION LANDFILLS

28-29-300. Definitions. (a) For the purposes of K.A.R. 28-29-300 through K.A.R. 28-29-333, the following definitions shall apply:

(1) "C&D" means construction and demolition.

(2) "C&D contact water" means liquid, consisting primarily of precipitation, that has infiltrated through the C&D waste or has been in contact with the C&D waste for any period of time. This term shall include all runoff from the active area of the C&D landfill and all liquid derived from the C&D waste.

(3) "C&D landfill" shall have the meaning assigned to "construction and demolition landfill" in K.S.A. 65-3402, and amendments thereto.

(4) "C&D waste" shall have the meaning assigned to "construction and demolition waste" in K.S.A. 65-3402, and amendments thereto. For the purposes of this definition, the following clarifications shall apply:

(A) "Furniture and appliances" shall not include computer monitors and other computer components, televisions, videocassette recorders, stereos, and similar waste electronics.

(B) "Treated wood" shall include wood treated with any of the following:

(i) Creosote;

(ii) oil-borne preservatives, including pentachlorophenol and copper naphthenate;

(iii) waterborne preservatives, including chromated copper arsenate (CCA), ammoniacal

copper zinc arsenate (ACZA), and ammoniacal copper quaternary compound (ACQ); or

(iv) any other chemical that poses a risk to human health or safety or the environment that is similar to any of the risks posed by the chemicals specified in paragraphs (a)(4)(B)(i) through (iii).

(C) "Untreated wood" shall include the following, if the wood has not been treated with any of the chemicals listed in paragraphs (a)(4)(B)(i) through (iv):

(i) Coated wood, including wood that has been painted, stained, or varnished; and

(ii) engineered wood, including plywood, laminated wood, oriented-strand board, and particle board.

(5) "Hazardous waste" means material determined to be hazardous waste as specified in K.A.R. 28-31-261.

(6) "Household hazardous waste" shall have the meaning specified in K.A.R. 28-29-1100.

(7) "Lower explosive limit" and "LEL" mean the lowest percent volume of a mixture of explosive gases in air that will propagate a flame at 25°C and atmospheric pressure.

(8) "Non-C&D waste" means all solid waste that is not specifically defined as construction and demolition waste in K.S.A. 65-3402, and amendments thereto. Non-C&D waste shall include hazardous waste and household hazardous waste.

(b) If a requirement in K.A.R. 28-29-300 through K.A.R. 28-29-333 conflicts with a requirement of K.A.R. 28-29-12 or K.A.R. 28-29-23, the requirement in K.A.R. 28-29-300 through K.A.R. 28-29-333 shall control. (Authorized by and implementing K.S.A. 65-3406; effective March 17, 2004; amended Dec. 28, 2012.)

28-29-302. Construction and demolition (C&D) landfill location restrictions. This regulation shall apply to each new C&D landfill and to each expansion of an existing C&D landfill that requires a permit modification.

(a) Definitions. For the purposes of this regulation, the following definitions shall apply:

(1) "Application" shall mean a permit application for a new C&D landfill or a permit modification application for the expansion of an existing C&D landfill.

(2) "New C&D unit" shall mean a new C&D landfill or the expansion of an existing C&D landfill.

(b) Floodplains.

(1) Each new C&D unit shall be located outside the 100-year floodplain, unless the applicant

submits, as part of the application, one of the following:

(A) Justification that the location of the new C&D unit will not cause any of the following:

- (i) Restriction of the flow of the 100-year flood;
- (ii) reduction of the temporary water storage capacity of the floodplain; or
- (iii) washout of the C&D waste; or

(B) a statement from the U.S. army corps of engineers, if the site is under its jurisdiction, and a statement from the Kansas department of agriculture, division of water resources, indicating that neither of the following, if likely to occur as a result of the location of the new C&D unit, will adversely affect public health, safety, or the environment:

- (i) Restriction of the 100-year flood; and
- (ii) reduction of the temporary water storage capacity of the floodplain.

(2) As part of the application, the applicant shall submit an approval or exemption for the siting of the new C&D unit with respect to the floodplain from the following agencies:

- (A) The U.S. army corps of engineers; and
- (B) the Kansas department of agriculture, division of water resources.

(c) Protection of threatened or endangered species.

(1) For the purposes of this subsection, the following definitions shall apply:

(A) "Destruction or adverse modification" means a direct or indirect alteration of critical habitat that appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(B) "Endangered species" means any species listed as such pursuant to the endangered species act, as referenced in K.S.A. 32-958, and amendments thereto.

(C) "Taking" means harassing, harming, pursuing, hunting, wounding, killing, trapping, capturing, or collecting, or attempting to engage in such conduct.

(D) "Threatened species" means any species listed as such pursuant to the endangered species act, as referenced in K.S.A. 32-958, and amendments thereto.

(2) Each new C&D unit shall be located to meet both of the following requirements:

(A) The new C&D unit shall not cause or contribute to the taking of any endangered or threatened species.

(B) The new C&D unit shall not result in the

destruction or adverse modification of the critical habitat of endangered or threatened species.

(3) As part of the application, the applicant shall submit an approval or exemption for the siting of the new C&D unit with respect to threatened or endangered species from the following agencies:

- (A) The U.S. fish and wildlife service;
- (B) the Kansas department of wildlife and parks; and
- (C) the Kansas biological survey.

(d) Surface waters.

(1) For purposes of this subsection, "surface waters" shall have the meaning specified in K.A.R. 28-16-28b.

(2) A new C&D unit shall not be located in any surface waters.

(3) A new C&D unit shall not cause or contribute to significant degradation of surface waters. As part of the application, the applicant shall provide the following information:

(A) Identification of all surface waters within one-half mile of the property boundary;

(B) the erosion, stability, and migration potential of materials used to construct the new C&D unit;

(C) the volume and characteristics of the waste to be managed in the new C&D unit;

(D) the impact on fish, wildlife, and other aquatic resources and their habitat from the release of C&D waste or C&D contact water;

(E) the potential effects of a catastrophic release of C&D waste or C&D contact water to the surface water and the resulting impact on the environment; and

(F) any additional information relative to the site that concerns the protection of ecological resources in surface waters.

(4) As part of the application, the applicant shall provide information verifying that the total area of wetlands, as defined by acreage and function, will be preserved by one or more of the following practices:

(A) Avoiding impact on the wetlands to the maximum extent practicable;

(B) minimizing impact on the wetlands to the maximum extent practicable; and

(C) offsetting unavoidable wetland impact through all appropriate and practicable compensatory mitigation actions, including the restoration of existing degraded wetlands or creation of man-made wetlands.

(5) As part of the application, the applicant shall submit an approval or exemption for the siting of

the new C&D unit with respect to surface waters from the following agencies:

- (A) The U.S. army corps of engineers;
- (B) the U.S. fish and wildlife service;
- (C) the Kansas department of agriculture, division of water resources;
- (D) the Kansas department of wildlife and parks; and
- (E) the Kansas biological survey.

(1) Each new C&D unit shall be located at least 500 feet from each dwelling, school, or hospital that was occupied on the date when the department first received the application, unless the owner of the dwelling, school, or hospital consents in writing to the siting of the C&D unit less than 500 feet from the dwelling, school, or hospital.

(2) Each new C&D unit shall be located a minimum of 150 feet from the property line.

(3) The applicant may petition the secretary for a reduction of the buffer zone distances, if the county commission of the county in which the landfill is located approves the request.

(4) As part of the application, the applicant shall submit an approval or exemption for the siting of the new C&D unit with respect to buffer zones from the following agencies:

- (A) The Kansas state conservation commission;
 - (B) the Kansas corporation commission; and
 - (C) the Kansas water office.
- (f) Navigable streams and public drinking water supplies.

(1) Each new C&D unit shall be located according to the requirements of K.S.A. 65-3407, and amendments thereto.

(2) As part of the application, the applicant shall submit an approval or exemption for the siting of the new C&D unit with respect to public drinking water supplies from the department's bureau of water.

(g) Vertical separation from groundwater.

(1) At each new C&D unit, there shall be a minimum vertical separation of five feet from the lowest point of the unit to the highest predicted groundwater elevation, based on historical data or site conditions, in the uppermost aquifer underlying the disposal area. The minimum vertical separation shall be provided by naturally occurring, in-situ soil or geologic material, or alternative material that ensures the protection of public health, safety, and the environment.

(2) As part of the application, the applicant shall submit one of the following:

(A) On-site groundwater elevations and a prediction, based on historical data or site conditions, of the highest groundwater elevation in the uppermost aquifer underlying the disposal area; or

(B) other evidence that the highest groundwater elevation in the vicinity is five feet or more from the lowest point of the C&D landfill.

(h) Unstable areas.

(1) For purposes of this subsection, the following definitions shall apply:

(A) "Areas susceptible to mass movement" means those areas of influence, including areas characterized as having active, or a substantial possibility of, mass movement, where the movement of earth material at, beneath, or adjacent to the C&D landfill, because of natural or human-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Mass movement shall include the following:

- (i) Landslides;
- (ii) avalanches;
- (iii) debris slides and flows;
- (iv) solifluction;
- (v) block sliding; and
- (vi) rock falls.

(B) "Karst terrain" means an area where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. The physiographic features characteristic of karst terrains may include the following:

- (i) Sinkholes;
- (ii) sinking streams;
- (iii) caves;
- (iv) large springs; and
- (v) blind valleys.

(C) "Poor foundation areas" means those areas where features exist that indicate that a natural or human-induced event could result in inadequate foundation support for the structural components of a C&D landfill.

(D) "Structural components" means liners, leachate collection systems, final covers, run-on systems, runoff systems, and any other component used in the construction and operation of the C&D landfill that is necessary for protection of public health, safety, and the environment.

(E) "Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the C&D landfill structural components

used to prevent releases from a landfill. This term shall include poor foundation areas, areas susceptible to mass movements, and karst terrains.

(2) As part of the application, the applicant for each C&D landfill shall submit an assessment of the stability of the area and shall consider the following factors when determining whether or not an area is unstable:

(A) On-site or local conditions that could result in significant differential settling;

(B) on-site or local geologic or geomorphologic features; and

(C) on-site or local human-made features or events, both surface and subsurface.

(3) As part of the application, the applicant for each C&D landfill proposed to be located in an unstable area shall provide information verifying that engineering measures have been incorporated into the C&D landfill's design to ensure that the integrity of the structural components of the C&D landfill will not be compromised.

(4) As part of the application, the applicant shall submit an approval or exemption for the siting of the new C&D unit with respect to stability from the Kansas geological survey.

(i) Cultural resources.

(1) Each new C&D unit shall be located so that the unit does not pose a threat of harm or destruction to the essential features of an irreplaceable historic or archaeological site that is listed on the Kansas state register of historic sites, pursuant to K.S.A. 75-2721 and amendments thereto.

(2) As part of the application, the applicant shall submit an approval or exemption for the siting of the new C&D unit with respect to cultural resources from the Kansas state historical society.

(j) Waivers. The requirement to submit a specific approval, exemption, or demonstration as part of the permit application may be waived by the secretary.

This regulation shall take effect 90 days after publication in the Kansas register. (Authorized by and implementing K.S.A. 65-3406; effective March 17, 2004.)

28-29-304. Construction and demolition (C&D) landfill design. The design requirements of this regulation shall apply to all C&D landfills.

(a) Facility access. The owner or operator of each C&D landfill shall provide fencing or other barriers, with one or more gates that can be locked to restrict access to the C&D landfill when the C&D landfill is not open for business.

(b) Facility signage. The owner or operator of each C&D landfill shall post permanent signage at the facility.

(1) The following information shall be posted at the entrance to the facility:

(A) The name of the facility;

(B) the landfill permit number;

(C) the facility's telephone number, if there is one;

(D) the emergency telephone number; and

(E) a statement indicating who may bring waste to the landfill for disposal and, if appropriate, the hours of operation.

(2) Information concerning the types of waste that are accepted or not accepted for disposal or recycling shall be posted at the facility's entrance or at a location prominently visible to the public inside the facility's boundaries.

(c) Facility roads.

(1) The owner or operator of each C&D landfill shall design and construct on-site roads to accommodate expected traffic flow in a safe and efficient manner.

(2) On-site facility roads shall be of all weather construction and shall be negotiable at all times.

(3) Load limits on bridges and on-site roads shall be sufficient to support all traffic loads generated by the use of the facility.

(d) Storm water control. The owner or operator of each C&D landfill shall design and construct a storm water control system.

(1) The storm water control system shall prevent flow onto the active area of the landfill of discharge resulting from the 25-year, 24-hour storm and lesser storms.

(2) The system shall consist of trenches, conduits, berms, and proper grading, as needed.

(3) The system shall control erosion of cover materials.

(4) Storm water discharge from the permitted property shall be reduced to predevelopment discharge rates and nonerosive velocities.

(e) C&D contact water control and management. The owner or operator of each C&D landfill shall design and construct C&D contact water control and management systems that meet the following requirements:

(1) The C&D contact water control system shall control storm water runoff from the active area of the C&D landfill.

(2) The C&D contact water management system shall meet one or more of the following requirements:

(A) Storage of C&D contact water.

(i) C&D contact water shall be stored in the permitted C&D waste disposal units, or in structures or ponds on the permitted C&D waste disposal site.

(ii) The storage system shall have provisions for overflow.

(iii) The storage system may be designed to allow percolation of C&D contact water through subsurface soils.

(B) On-site treatment of C&D contact water. The treatment system shall produce water of a quality adequate for the intended use or method of disposal.

(C) Beneficial reuse of C&D contact water on the permitted C&D waste disposal site. Beneficial reuse may include the following:

(i) Wetting of on-site roads or other site areas for dust control;

(ii) irrigation of vegetated areas, not including agricultural crops intended for human or animal consumption;

(iii) distribution on C&D waste, as necessary, for fire protection; or

(iv) other uses that do not adversely impact public health, safety, and the environment.

(D) Discharge or hauling of C&D contact water to an off-site treatment facility.

(i) The operator of each C&D landfill may discharge or haul C&D contact water to the off-site treatment facility only with written permission from the owner or operator of the off-site treatment facility. As part of the permit application or permit modification application, the applicant or permittee shall submit a copy of the written permission.

(ii) The off-site treatment facility shall have all required permits and approvals required for proper treatment of the C&D contact water. As part of the permit application or permit modification application, the applicant or permittee shall submit a copy of all required permits and approvals.

(iii) Discharge of C&D contact water to the off-site treatment facility shall conform with K.A.R. 28-16-1 through K.A.R. 28-16-7.

(E) Discharge of C&D contact water to surface waters. The applicant or permittee shall be required to obtain a national pollutant discharge elimination system (NPDES) permit from the secretary.

(F) Discharge of C&D contact water to deep injection wells. The applicant or permittee shall be required to obtain a permit from the secretary for installation and operation of deep injection wells.

(3) The C&D contact water control and management system shall meet the following requirements:

(A) Operate for the entire design period, including the active operating and closure phases of the C&D landfill;

(B) allow for the management of C&D contact water during routine maintenance and repairs;

(C) have the capacity to handle the water generated from a 25-year, 24-hour storm and lesser storms;

(D) operate via gravity flow whenever possible; and

(E) be chemically resistant to the contact water expected to be produced.

(f) Phasing of landfill development. The owner or operator of each C&D landfill shall develop the landfill in phases, according to the operating plan.

(1) The phasing plan shall provide for the sequential construction, filling, and closure of discrete units or parts of units.

(2) In determining the size of each phase, the owner or operator shall consider seasonal differences in weather and the amount of C&D waste received.

(3) Each phase shall be completed by covering all exposed waste with intermediate cover.

(A) The intermediate cover shall consist of a minimum of one foot of soil and shall meet the following requirements:

(i) Limit air intrusion to control the risk of fire;

(ii) control litter; and

(iii) limit vector harborage.

(B) Alternative material, if approved by the secretary, may be used for intermediate cover. The alternative material shall consist of material acceptable for disposal in the C&D landfill and shall meet the requirements specified in paragraphs (f)(3)(A)(i) through (f)(3)(A)(iii) of this regulation.

(g) Final cover. Within six months after the last placement of waste in the unit, the owner or operator shall construct a final cover in accordance with the approved facility closure plan.

(1) The final cover shall include the following:

(A) A low-permeability layer consisting of a minimum of 18 inches of compacted soil having permeability equal to or less than the natural subsoils or the constructed liner, and no greater than 1×10^{-5} centimeters per second; and

(B) a protective soil layer consisting of a minimum of 12 inches of topsoil and appropriate vegetative cover.

(2) The final cover shall be graded with a minimum slope of two percent and a maximum slope of 3:1, horizontal to vertical.

This regulation shall take effect 90 days after publication in the Kansas register. (Authorized by and implementing K.S.A. 65-3406; effective March 17, 2004.)

28-29-308. Construction and demolition (C&D) landfill operations. The owner or operator of each C&D landfill shall comply with the following requirements.

(a) Aesthetics. The operator shall control odors and particulates, including dust and litter, by the application of cover material, sight screening, or other means to prevent a nuisance or damage to human health or the environment.

(b) Air quality. The owner or operator shall conform to all applicable provisions of K.S.A. 65-3001 et seq., and amendments thereto, and all regulations adopted under those statutes.

(c) Fire protection.

(1) The owner or operator shall make arrangements for fire protection services if a fire protection district or other public fire protection service is available. If this service is not available, the owner or operator shall provide practical alternate arrangements.

(2) If there is a fire at the site, the operator shall perform all of the following:

(A) Initiate and continue the use of appropriate fire fighting methods until all smoldering, smoking, and burning cease;

(B) notify the department within one business day and submit a written report to the department within one week; and

(C) upon completion of fire fighting activities, cover and regrade each disruption of finished grades, covered surfaces, or completed surfaces.

(d) Water management.

(1) The owner or operator shall construct and maintain the storm water control systems according to the approved design and operating plans.

(2) The owner or operator shall manage all storm water that becomes commingled with C&D contact water as C&D contact water.

(3) The owner or operator shall manage all C&D contact water according to the approved design and operating plans. If the contact water control and management system fails, the owner or operator shall notify the department by the end of the next business day.

(4) The owner or operator shall not cause a dis-

charge of pollutants into the waters of the state. If such a discharge occurs, the owner or operator shall immediately notify the department, as specified in K.A.R. 28-48-2.

(e) Access control.

(1) Access to each C&D landfill shall be limited to the hours when the owner or operator is at the site.

(2) The owner or operator shall keep all access-control gates locked when the owner or operator is not at the landfill.

(3) Access by unauthorized vehicles and pedestrians shall be prohibited.

(f) Waste screening. The owner or operator shall implement the waste screening program designated in the operating plan.

(1) The operator shall accept for disposal only "construction and demolition waste," as defined in K.S.A. 65-3402, and amendments thereto.

(2) The operator shall not accept for disposal any "liquid waste," as defined in K.A.R. 28-29-108.

(3) The operator may refuse to accept any material that has not been removed from the delivery vehicle. The operator may return non-C&D waste that has been removed from the delivery vehicle to the hauler. The operator shall document the refusal or return by recording the following information:

(A) The date and time of the refusal or return;

(B) the driver's name;

(C) the delivery vehicle's license plate number;

(D) the hauling company's name and address;

(E) the origin of the waste;

(F) the size of the rejected load or amount of returned waste;

(G) the reason for rejection or return; and

(H) the name of the person who inspected the waste.

(4) The operator shall remove from the landfill all non-C&D waste that has not been returned to the hauler, for disposal at a site permitted to accept the non-C&D waste. The operator shall store all non-C&D waste in a manner that does not result in a nuisance or environmental hazard.

(5) If a regulated hazardous waste, regulated polychlorinated biphenol (PCB) waste, or medical waste is brought to the facility, the owner or operator shall notify the department within one business day and shall meet the following requirements:

(A) The notification requirement shall apply to waste that has been accepted at the facility and waste that has been rejected.

(B) The notification shall include the type, amount, and source of the waste.

(C) The waste shall be managed in accordance with the hazardous waste, PCB, or medical waste regulations, as appropriate.

(6) The operator shall keep a record of each day that waste is screened at the landfill.

(7) The waste screening area shall be clearly delineated using flags, signs, or markers, and shall have an area compatible with the average daily volume of waste, as approved in the operating plan.

(8) The waste screening area shall be cleared of waste no more than 24 hours after the waste has been deposited.

(9) The operating plan may specify that waste screening may take place at the point of generation rather than at the landfill.

(g) Waste placement.

(1) At least once each day that waste has been received, the operator shall dispose of the C&D waste using the following method:

(A) Screen the waste at a location other than directly on the working face; and

(B) distribute the waste uniformly on the working face.

(2) The operator shall place the waste in a manner and at a rate that provide mass stability during all phases of operation.

(h) Waste compaction.

(1) The operator shall compact the waste daily, unless an alternate schedule has been designated in the operating plan.

(2) The operator shall compact the waste as densely as is practical.

(A) The degree of compaction may vary depending on the waste type, lift thickness, placement method, and equipment used.

(B) The method of compaction shall include at least two passes of compaction equipment over the waste at the time it is placed on the working face or, at a minimum, by the end of the day that the waste is placed on the working face.

(i) Record of waste disposed. The operator shall record and maintain the following information for each load of C&D waste placed in the landfill:

(1) The tons or volume of C&D waste;

(2) the state in which the waste was generated; and

(3) if the waste is exempt from the state solid waste tonnage fee, as specified in K.S.A. 65-3415b and amendments thereto, the reason for the exemption.

(j) Record of waste recycled. The operator shall

record and maintain the following information for all waste diverted by the landfill for recycling:

(1) The type of waste, if any waste other than C&D waste is diverted for recycling;

(2) the number of tons or the volume of each type of waste;

(3) the state in which the waste was generated; and

(4) the name and address of the facility to which the waste was sent for recycling.

(k) Cover requirements.

(1) The operator shall apply cover material over every 2,000 tons of waste disposed, with the following exceptions:

(A) Cover shall be applied at least once every 120 days.

(B) No facility shall be required under these regulations to apply cover more often than once a week.

(2) The cover shall consist of a minimum of one foot of soil and shall meet the following requirements:

(A) Limit air intrusion to control the risk of fire;

(B) control litter; and

(C) limit vector harborage.

(3) Alternative material, if approved by the secretary, may be used for cover. The alternative material shall consist of material acceptable for disposal in the C&D landfill and shall meet the requirements specified in paragraphs (k)(2)(A) through (k)(2)(C) of this regulation.

(4) The operator of the facility shall maintain a log of the dates on which cover is applied.

(l) Salvaging.

(1) The operator shall permit salvaging or reclamation of materials only if working space specifically designed for salvaging C&D wastes is provided.

(2) The salvage operation and salvaged materials shall be controlled to prevent interference with the prompt disposal of C&D wastes.

(3) All salvage operations shall be conducted in a manner that does not create a nuisance.

(m) Scavenging. The operator shall not permit any scavenging at the C&D landfill.

(n) Communication. The owner or operator shall provide two-way communications accessible to the operator working at the disposal unit.

(o) Safety. The owner or operator shall provide an operational safety program for each employee at the C&D landfill.

(p) Recordkeeping.

(1) Long-term retention of permits and plans.

The owner or operator shall retain all documents concerning the landfill permit and landfill construction for a minimum of five years after the completion of the postclosure care period. The documents shall be stored in a location designated in the facility operations plan and shall be readily accessible to the department. The documents concerning the landfill permit and landfill construction shall include the following:

- (A) The permit application and all supporting documents;
- (B) all renewal documents;
- (C) the construction quality assurance (CQA) plans and reports;
- (D) additional information as required by the conditions of the permit; and
- (E) the following documents, which shall be stored at the facility while the facility is active:
 - (i) The current permit;
 - (ii) the permit conditions;
 - (iii) the design plans;
 - (iv) the operations plan;
 - (v) a contingency plan;
 - (vi) the closure plan; and
 - (vii) the postclosure plan.

(2) Short-term retention of operating records. The owner or operator shall retain all documents concerning operations at the landfill for a minimum of five years after the event occurs. The documents shall be stored at the facility, or at another site designated in the operating plan, and shall be readily accessible to the department. The documents concerning operations at the landfill shall include the following:

- (A) The waste screening records;
- (B) the records of refused and returned waste;
- (C) the records of all waste disposed of, whether on-site or offsite;
- (D) the records of waste recycled;
- (E) employee training records;
- (F) gas monitoring results, if applicable;
- (G) groundwater monitoring results, if applicable;
- (H) documentation of postclosure inspections; and
- (I) additional information as required by the conditions of the permit.

(q) Reporting. The owner or operator shall report the following information to the department on forms provided by the department:

- (1) Disposal information, including the following:
 - (A) The number of tons or the volume of the C&D waste; and

- (B) the state in which the C&D waste was generated;

- (2) recycling information, including all of the following:

- (A) The type of waste, if any waste other than C&D waste was diverted for recycling;

- (B) the number of tons or the volume of each type of waste;

- (C) the state in which the waste was generated; and

- (D) the name and address of the facility to which the waste was sent for recycling;

- (3) information required for permit renewal; and

- (4) additional information as required by the conditions of the permit.

This regulation shall take effect 90 days after publication in the Kansas register. (Authorized by and implementing K.S.A. 65-3406; effective March 17, 2004.)

28-29-321. Construction and demolition (C&D) landfill closure and postclosure care.

This regulation shall apply to each C&D landfill that closes after the effective date of this regulation.

(a) Notification of closure. The owner or operator of each C&D landfill shall notify the department, in writing, at least 60 days before each of the following events:

- (1) The closure of each disposal unit at the landfill; and

- (2) the final closure of the C&D landfill.

- (b) Closure activities.

- (1) The owner or operator of each C&D landfill shall close the landfill according to the approved closure plan and shall install the final cover within six months of the last receipt of waste at the landfill.

- (2) The owner or operator shall notify the secretary when closure activities have been completed and shall arrange for a closure inspection by the secretary.

- (c) Postclosure care. After the secretary approves the closure of the C&D landfill, the owner or operator shall conduct postclosure care for 30 years.

- (1) During the postclosure care period, the owner or operator shall perform and document annual inspection and maintenance of the cover to ensure the integrity and effectiveness of the final cover, including the following:

- (A) Making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, and other events; and

(B) preventing run-on and runoff from eroding or otherwise damaging the final cover.

(2) After five years of inspections, the owner or operator may submit a request to the secretary for a less frequent inspection schedule.

(d) Certification. Following completion of the postclosure care period for the C&D landfill, the owner or operator shall submit a certification to the secretary. The certification shall be signed by a professional engineer licensed in Kansas and shall verify that the postclosure care requirements have been fulfilled in accordance with the postclosure plan.

(e) Lengthened postclosure care period. The length of the postclosure care period may be increased if the secretary determines that the lengthened period is necessary to protect public health, safety, and the environment.

This regulation shall take effect 90 days after publication in the Kansas register. (Authorized by and implementing K.S.A. 65-3406; effective March 17, 2004.)

28-29-325. Construction and demolition (C&D) landfill permits. (a) Permit application. Each person that plans to establish a C&D landfill shall submit a permit application to the secretary on forms furnished by the department. The permit application shall include the following items:

(1) Design plans. The C&D landfill design plan shall include the following items:

(A) A plan showing the section, township, range, and site boundaries;

(B) a description of all adjacent properties, including the land use and the names and addresses of property owners. If the proposed site is adjacent to a public road or street, the property across the street or road shall also be described;

(C) a topographic map of the existing site with a contour interval of two feet or less;

(D) a minimum of three cross sections of the proposed C&D waste disposal units, with the water table shown;

(E) a plan showing the following information:

(i) The size and location of all pertinent human-made and natural features of the site, including roads, fire lanes, ditches, berms, culverts, structures, wetlands, floodways, and surface waters;

(ii) the projected site utilization with all site structures, including buildings, fences, gates, entrances and exits, parking areas, on-site roadways, and signs; and

(iii) the location of all water supplies;

(F) a series of phasing plans showing landfill development over the life of the landfill. Each plan shall indicate the location of all peripheral features, including support buildings, access roads, drainage ditches, sedimentation basins, all other storm water management features, and screening berms;

(G) an erosion control plan outlining management practices to control erosion from disturbed areas;

(H) a storm water control plan that includes an implementation schedule and copies of the notice of intent submitted to the department's bureau of water;

(I) a C&D contact water management plan that includes an implementation schedule; and

(J) if the landfill is located in an unstable area according to the criteria specified in K.A.R. 28-29-302, a description of the engineering measures incorporated into the landfill's design to ensure that the integrity of the structural components of the C&D landfill will not be disrupted.

(2) Maps. The applicant shall submit the following maps:

(A) A 7.5-minute series map of the area, as typically available from the U.S. geological survey, indicating the property boundary;

(B) a soil map of the area, as typically available from the U.S. department of agriculture natural resources conservation services; and

(C) a 100-year floodplain map of the area, if one has been developed for the area by the federal emergency management agency (FEMA). If a FEMA map is not available, the applicant shall submit a map showing the estimated location of the 100-year floodplain based on historical or hydrogeologic data.

(3) Operating plan. The written operating plan shall include the following information:

(A) The proposed operating hours of the facility;

(B) the origin and composition of the waste;

(C) the expected daily volume of all C&D waste to be accepted at the facility;

(D) the procedures for screening incoming waste for non-C&D waste;

(E) the procedures for storing and removing all non-C&D waste from the site for recycling or for disposal at a site permitted to accept the non-C&D waste;

(F) a description of all salvaging operations on-site;

(G) the procedures for handling appliances that will be disposed of;

- (H) the procedure for handling nonfriable asbestos;
- (I) the procedures for placing and compacting the waste;
- (J) the safety procedures for personnel and public on-site;
- (K) the cover application rate, including the thickness and frequency of application;
- (L) the procedures for dust suppression and fugitive emission control at the disposal unit and on haul roads;
- (M) a description of storm water control measures to be implemented during operation of the facility;
- (N) a description of the facility's water supply system, including the source and intended uses;
- (O) a description of all machinery and equipment to be used, including the design capacity;
- (P) a contingency plan for the following:
- (i) Emergencies, including fires and spills; and
 - (ii) any other unexpected suspension of operations, including equipment breakdown and personnel emergencies;
- (Q) a description of when and why the operator would suspend receipt of waste at the facility, including the following:
- (i) Temporary situations;
 - (ii) final closure due to conditions of the permit; and
 - (iii) attainment of final elevations;
- (R) a drawing that delineates and numerates phases in the landfill development sequence, along with a written description of the facility development approach and the waste placement progression in individual units;
- (S) the proposed capacity of the facility; and
- (T) the expected life of the facility.
- (4) Closure plan drawings. The closure plan drawings shall include the following items:
- (A) Surface drawings of the site showing the following information:
- (i) Access control;
 - (ii) final contours, with a contour interval of two feet or less;
 - (iii) seeding specifications;
 - (iv) landscaping;
 - (v) erosion control devices;
 - (vi) final surface water drainage patterns and runoff retention basins; and
 - (vii) waste disposal locations; and
- (B) cross sections of the site that depict the following:
- (i) The disposal or storage locations of wastes;
 - (ii) the type and depth of cover material;
 - (iii) the C&D contact water collection systems, if present; and
 - (iv) any other pertinent features.
- (5) Closure plan text. The closure plan text shall include the following information:
- (A) An estimate of the largest area of the C&D waste disposal unit requiring final cover at any time during the active life of the facility;
- (B) a description of the steps necessary to close each C&D waste disposal unit at any point during its active life in accordance with the cover design requirements;
- (C) a schedule for completing all closure activities; and
- (D) an estimate of the final volume of wastes disposed of at the C&D landfill facility.
- (6) Postclosure plan. The postclosure plan shall include the following:
- (A) A description of the planned uses of the property during the postclosure period. The postclosure use of the property shall not disturb the integrity of the final cover or any other components of the containment system unless either of the following conditions applies:
- (i) The disturbance is necessary to comply with the requirements in this regulation; or
 - (ii) the owner or operator submits justification that disturbance of the final cover or other components of the containment system, including removal of waste, will not increase the potential threat to public health, safety, or the environment; and
- (B) a schedule of proposed maintenance activities for the postclosure care period, including the following:
- (i) Postclosure operation and maintenance of cover material, runoff controls, retention basins, landscaping, and access control and, if present at the facility, the C&D contact water collection system;
 - (ii) the inspections during postclosure; and
 - (iii) the name, address, and telephone number of the person or office to contact about the facility during the postclosure period.
- (7) Restrictive covenant. Each applicant shall file a restrictive covenant or notice of restrictions with the county register of deeds in the county in which the landfill will be located. The restrictive covenant or notice of restrictions shall meet the requirements of K.A.R. 28-29-20.
- (8) Financial information.

(A) The applicant shall submit the following items on forms provided by the department:

- (i) A closure cost estimate for third-party costs;
- (ii) a postclosure estimate for third-party costs, unless exempted by K.A.R. 28-29-2101;
- (iii) documentation of financial assurance; and
- (iv) a business concern disclosure statement or public entity disclosure statement.

(B) The applicant shall also submit proof of liability insurance.

(9) Construction quality assurance (CQA) plan.

(A) The CQA plan shall include a detailed description of all CQA activities that will be used during construction to manage the installed quality of the facility, including the following items:

- (i) Storm water management structures;
- (ii) C&D contact water management systems;
- (iii) base elevations;
- (iv) final cover; and
- (v) any other components of the waste containment and management system.

(B) The CQA plan shall be tailored to the specific facility to be constructed and shall be completely integrated into the project's plans and specifications.

(C) The CQA plan shall include the responsibilities and qualifications of the CQA personnel.

(D) The CQA personnel and the CQA certifying professional engineer shall not be required to be employed by an organization that operates independently of the landfill contractor, owner, or permit holder.

(10) Additional items. Each applicant shall submit to the secretary the following items:

(A) All demonstrations, approvals, and exemptions required by K.A.R. 28-29-302;

(B) all information required by K.A.R. 28-29-304; and

(C) the permit application fee, unless exempted by K.S.A. 65-3407 and amendments thereto.

(b) Permit modifications.

(1) Each owner or operator shall notify the secretary, in writing, of all modifications to the approved plans. The owner or operator shall implement each modification only after the secretary has provided written approval of the modification.

(2) Each facility that has a permit issued before the effective date of this regulation shall comply with the following within no more than 90 days after the effective date of this regulation:

(A) If the facility does not have an operating plan, submit an operating plan to the department;

(B) if the facility has an operating plan that does not meet the requirements of subsection (a) of this regulation, submit an amended operating plan;

(C) if the facility does not have a design plan, submit a design plan to the department; and

(D) if the facility has a design plan that does not meet the requirements of subsection (a) of this regulation, submit an amended design plan.

(c) Engineer's seal. The following documents, if submitted as part of a permit application, as part of a permit modification, or a requirement of subsection (b) of this regulation, shall be prepared and sealed by a professional engineer licensed to practice in Kansas:

- (1) Plans;
- (2) specifications;
- (3) addendums;
- (4) as-built drawings; and
- (5) any other documents required for a permit application or permit modification that describe the design, construction, or closure of a C&D landfill, except financial documents.

(d) Permit renewal. The owner or operator of each active C&D landfill shall renew the permit annually by submitting the following information to the secretary at least 30 days before the permit renewal date:

- (1) An updated map of the land area used for past and present waste disposal;
- (2) updated third-party closure cost estimates;
- (3) updated third-party postclosure cost estimates, unless exempted by K.A.R. 28-29-2101;
- (4) documentation of updated financial assurance;
- (5) a current certificate of liability insurance; and
- (6) the renewal fee, unless exempted by K.S.A. 65-3407 and amendments thereto. (Authorized by and implementing K.S.A. 65-3406; effective Jan. 2, 2004.)

28-29-330. Control of hazardous and explosive gases at C&D landfills; applicability of additional requirements. (a) Applicability of additional design, operating, and postclosure requirements. The additional design, operating, and postclosure requirements of K.A.R. 28-29-332 shall apply to the owner or operator of each disposal unit at a C&D landfill that meets all of the following conditions:

(1) Location. Precipitation in all parts of the county in which the C&D landfill is located av-

erages more than 25 inches per year. The following counties and any county located east of these counties shall be designated as meeting this condition: Jewell, Mitchell, Lincoln, Ellsworth, Rice, Reno, Kingman, and Harper.

(2) Capacity. The disposal unit meets one of the following conditions:

(A) The construction of the disposal unit begins on or after the effective date of this regulation, and the capacity of the disposal unit is more than 50,000 cubic yards. Construction of the disposal unit shall be in accordance with a construction quality assurance plan that is specific to the disposal unit and has been approved by the secretary.

(B) The construction of the disposal unit begins on or after January 1, 2014 and the capacity of the disposal unit, in combination with all other disposal units constructed on or after January 1, 2014, is more than 50,000 cubic yards. Construction of the disposal unit shall be in accordance with a construction quality assurance plan that is specific to the disposal unit and has been approved by the secretary.

(3) Hydrogeology. The disposal unit meets one or both of the following conditions, as evaluated and documented by a professional engineer or licensed geologist:

(A) The disposal unit is located within a 100-year floodplain.

(B) The permeability of the natural soils or the constructed soil liner or the natural geologic formation under the disposal unit is 1×10^{-7} centimeters per second or less, including quarry landfills with competent shale bases, unless the owner or operator demonstrates to the department that design and operational practices ensure that C&D contact water will exit the disposal unit by gravity flow.

(b) Applicability of corrective action requirements. The corrective action requirements of K.A.R. 28-29-333 shall apply to the owner or operator of each C&D landfill during the operating and postclosure periods. (Authorized by and implementing K.S.A. 65-3406; effective Dec. 28, 2012.)

28-29-331. Control of hazardous and explosive gases at C&D landfills; documentation of conditions used to determine applicability. Each person that submits an application for a new C&D landfill and each owner or operator that proposes to construct a disposal unit at an existing C&D landfill shall submit to the depart-

ment documentation of the conditions specified in K.A.R. 28-29-330, according to the following requirements:

(a) Required documentation.

(1) If the C&D landfill meets the location conditions specified in K.A.R. 28-29-330(a)(1), the applicant or the owner or operator shall submit documentation of the capacity of the proposed disposal unit and the capacity of each disposal unit constructed on or after January 1, 2014.

(2) If the proposed disposal unit meets the location and capacity conditions specified in K.A.R. 28-29-330(a)(1) and (2), the applicant or the owner or operator shall submit documentation of the hydrogeologic conditions specified in K.A.R. 28-29-330(a)(3). For the purposes of determining the applicability of K.A.R. 28-29-332, if the disposal unit meets one of the hydrogeologic conditions listed in K.A.R. 28-29-330(a)(3), the applicant or the owner or operator shall not be required to submit documentation of the other hydrogeologic conditions.

(b) Schedule for submission of documentation.

(1) Each applicant for a new C&D landfill permit shall include the documentation specified in subsection (a) with the permit application.

(2) Each owner or operator of an existing C&D landfill that proposes to construct a disposal unit shall submit the documentation specified in subsection (a) on or before the date the construction quality assurance plan for the disposal unit is submitted. (Authorized by and implementing K.S.A. 65-3406; effective Dec. 28, 2012.)

28-29-332. Control of hazardous and explosive gases at C&D landfills; additional design, operating, and postclosure requirements. The owner or operator of each disposal unit at a C&D landfill that meets the conditions of K.A.R. 28-29-330 for determining the applicability of additional design, operating, and postclosure requirements shall comply with the following requirements:

(a) The owner or operator shall design, construct, and operate the disposal unit to prevent contact water from accumulating in the waste.

(b) The owner or operator shall perform both of the following:

(1) Demonstrate whether it will be necessary to pump contact water out of the landfill after the landfill closes in order to prevent contact water from accumulating in the waste; and

(2) include this information in the operating plan.

(c) If the operating plan states that contact water will be pumped out of the landfill after closure, the owner or operator shall obtain financial assurance for postclosure, according to the requirements of K.A.R. 28-29-2101 through 28-29-2113. (Authorized by and implementing K.S.A. 65-3406; effective Dec. 28, 2012.)

28-29-333. Control of hazardous and explosive gases at C&D landfills; response, assessment monitoring, and corrective action. The owner or operator of each C&D landfill shall comply with the following:

(a) Identification of potential problem. If the owner or operator observes or is informed of any indication of a release of landfill gas, the owner or operator shall perform the following:

(1) Immediately assess the potential danger posed to human health and safety;

(2) immediately take all the steps necessary to ensure protection of human health and safety;

(3) notify the department of the observation or information within two business days; and

(4) in consultation with the department, implement appropriate action to assess the concentrations of gas at the landfill.

(b) Action levels. The owner or operator shall comply with the requirements of subsection (c) if gas concentrations exceed any of the following levels:

(1) For methane, either of the following:

(A) 25% of the LEL (1.25% by volume) in any building on the facility property; or

(B) 100% of the LEL (5% by volume) at the facility property boundary;

(2) for hydrogen sulfide, either of the following:

(A) 1 ppm for on-site personnel; or

(B) 0.1 ppm in the ambient air at the facility boundary, based on a 15-minute time-weighted average measured when the wind speed is less than 15 mph; or

(3) for any gas other than methane or hydrogen sulfide, a level that presents a risk to human health or safety equivalent to the levels listed in paragraphs (1) and (2) of this subsection.

(c) Response and assessment monitoring. If the concentration of any gas exceeds the levels specified in subsection (b), the owner or operator shall perform the following actions:

(1) If an exceedance is found at the facility boundary, immediately notify the local government's public health, environment, and emergency management offices;

(2) notify the department within one business day;

(3) within one week and in consultation with the department, develop a gas monitoring plan;

(4) upon approval of the secretary, implement the gas monitoring plan; and

(5) if gas monitoring has continued for one month and the frequency of the exceedances is not decreasing, take long-term corrective action according to the requirements of subsection (d).

(d) Corrective action. If long-term corrective action is required, the owner or operator shall perform the following actions:

(1) Develop and submit to the department a corrective action plan, including provisions for the installation of an active or passive gas management system. The owner or operator shall submit the plan within 60 calendar days of the date the conditions requiring corrective action were met; and

(2) upon approval of the secretary, implement the corrective action plan. (Authorized by and implementing K.S.A. 65-3406; effective Dec. 28, 2012.)

28-29-501. Uncontaminated soil. For the purposes of K.S.A. 65-3402 and amendments thereto, "uncontaminated soil" shall mean soil that meets all the following conditions:

(a) The soil meets the definition of "construction and demolition waste" in K.S.A. 65-3402, and amendments thereto.

(b) The soil has not been generated at a facility that is under state or federal oversight for the investigation or cleanup of contamination, unless the state or federal project manager who is providing the oversight approves the use of the soil as clean rubble, as defined in K.S.A. 65-3402 and amendments thereto.

(c) The soil exhibits no characteristic that would be expected to create either of the following if the soil is managed as clean rubble:

(1) An odor or other nuisance that would be offensive to a reasonable person; or

(2) an obvious risk to human health or safety or the environment, due to any physical or chemical property of the soil.

(d) The soil is determined to be suitable for use as clean rubble by one of the following methods:

(1) The generator of the soil determines that there is no indication of contamination in the soil. Indication of contamination shall be based on information readily available to the generator of the soil, including the following:

- (A) The visual appearance of the soil;
- (B) the odor of the soil; and
- (C) all known past activities at the site from which the soil is being removed.

(2) The generator of the soil obtains analytical data from representative soil samples according to the requirements in subsection (e) and all of the following criteria are met:

- (A) The soil is not a hazardous waste.
- (B) Total nitrate plus ammonia is less than 40 mg/kg.

(C) The level of total petroleum hydrocarbons is less than $N = 1$, as described in section 5.0 of "risk-based standards for Kansas" ("RSK manual"), published in June 2007 by the department and hereby adopted by reference, including all appendices. The GRO tier 2 value shall be 39 mg/kg and the DRO tier 2 value shall be 2000 mg/kg.

(D) If the analyte is a chemical other than nitrate, ammonia, or a petroleum hydrocarbon, all of the following criteria are met:

(i) There is no more than one anthropogenic analyte present in the soil. For the purposes of this regulation, the term "anthropogenic analyte" shall mean a chemical or substance present in the environment due to human activity.

(ii) The anthropogenic analyte is listed in the KDHE tier 2 risk-based summary table in appendix A of the RSK manual.

(iii) The concentration of the anthropogenic analyte is less than the level listed in the KDHE tier 2 risk-based summary table for residential scenarios for the soil pathway or for the soil to ground water protection pathway, whichever is lower.

(3) The secretary determines that if the soil is used as clean rubble, the soil will not present a risk to human health or safety or the environment, based on information provided by the generator of the soil. The generator of the soil shall submit the following information to the department:

(A) Analytical reports from representative soil samples; and

(B) the following information, if requested by the department:

(i) Analytical reports indicating naturally occurring background concentrations at the site from which the soil is being removed;

(ii) the cumulative cancer risk level of all analytes;

(iii) the hazard index value, as defined in K.A.R. 28-71-1, of all analytes; and

(iv) any other information required by the department to evaluate the potential risk to human health or safety or the environment.

(e) If analytical data is used to meet the conditions of this regulation, the following requirements are met:

(1) At least one representative sample shall be collected and analyzed for each 500 cubic yards of soil.

(2) Each analysis shall be performed and reported by a laboratory that has departmental certification, if this certification is available, for that analysis.

(3) Each analytical report shall include the following information:

(A) The results of each analysis;

(B) quality control data;

(C) a copy of the chain of custody for each sample; and

(D) a statement signed by the generator that the analytical results are representative of the soil.

(4) The generator shall maintain each analytical report on file for at least three years after the report is received and shall make the report available to the department upon request. (Authorized by K.S.A. 65-3406; implementing K.S.A. 2008 Supp. 65-3402; effective Jan. 15, 2010.)

PART 9. STANDARDS FOR THE MANAGEMENT OF HOUSEHOLD HAZARDOUS WASTE

28-29-1100. Household hazardous waste. General. (a) Applicability. K.A.R. 28-29-1100 through K.A.R. 28-29-1107 shall apply to each household hazardous waste facility as defined in K.S.A. 65-3402, and amendments thereto. Subsection (f) of this regulation shall apply to collection events that take place at a site that is not a permanent household hazardous waste collection site. The standards in these regulations shall not exempt any materials from applicable state or federal regulations that are more stringent than these regulations. In each case in which the requirements of the household hazardous waste regulations K.A.R. 28-29-1100 through K.A.R. 28-29-1107 conflict with the requirements of the administrative procedure and solid waste management regulations in K.A.R. 28-29-6 through K.A.R. 28-29-23, the requirements of K.A.R. 28-29-1100 through K.A.R. 28-29-1107 shall control.

(b) Definitions. For the purposes of these regulations, the following definitions shall apply:

(1) "Household hazardous waste" or "HHW" means household waste that would be determined to be hazardous waste according to K.A.R. 28-31-4 (b) if the waste were not household waste.

(2) “Nonhazardous household waste” or “NHHW” means household waste that is not HHW.

(3) “Small quantity generator” shall have the meaning specified in K.A.R. 28-31-2.

(4) “USDOT hazard class or division” means the hazard class or division defined by the United States department of transportation and adopted by reference in K.A.R. 28-31-4 (e).

(c) Used oil. Each HHW facility that accepts used oil from household do-it-yourselfers or exempt farmers shall manage the used oil in accordance with K.A.R. 28-31-16 upon receipt of the used oil at the HHW facility’s central collection center. Each HHW facility that transports used oil from businesses shall manage the used oil in accordance with K.A.R. 28-31-16 upon receipt of the used oil at the business site.

(d) Small quantity generator (SQG) waste. Each HHW facility that is permitted to accept SQG waste shall manage all SQG waste that is not hazardous waste in the same manner as that for nonhazardous household waste and shall manage all SQG hazardous waste in the same manner as that for HHW.

(e) Other hazardous waste. Any HHW facility may accept hazardous waste from a source other than a household or an SQG in an emergency, if the facility’s operating plan contains procedures to follow in such an emergency.

(f) Temporary collection events. Each temporary collection event at a fixed site shall be conducted only under the direct supervision of a permitted HHW facility or in accordance with a plan approved by KDHE. (Authorized by and implementing K.S.A. 1999 Supp. 65-3406 and 65-3460; effective June 16, 2000.)

28-29-1101. Household hazardous waste facility design. The owner or operator of each HHW facility shall perform the following:

(a) Design and construct each access road to accommodate expected traffic flow in a safe and efficient manner;

(b) construct the floor or base of each household waste receiving area and each processing area of concrete or asphalt;

(c) design and construct each storage area for household waste, except used oil stored in tanks, with a weather-resistant, permanent roof; and

(d) provide secondary containment for all HHW stored for disposal or recycling. The secondary containment shall be capable of contain-

ing either 110 percent of the volume of the largest container or 10 percent of the total volume of all the containers, whichever is greater. (Authorized by and implementing K.S.A. 1999 Supp. 65-3406 and 65-3460; effective June 16, 2000.)

28-29-1102. Household hazardous waste facility operations. (a) Nonhazardous household waste.

(1) Each HHW facility operator shall store and manage all NHHW according to the facility’s operating plan and the following requirements:

(A) Place the NHHW in the designated area, as described in the facility operating plan, within one week after it is received;

(B) ensure that each NHHW storage container or each NHHW storage area has a label or sign designating its contents;

(C) when NHHW is present, inspect all NHHW storage areas weekly to assess waste volume and container integrity, and document these inspections in a log that is dated and either signed or initialed by the person who conducted the inspection; and

(D) store NHHW to be distributed for use in a manufacturer’s original container or, for latex paint, in a compatible container provided by the HHW facility. Each container that will be distributed for use shall be labeled, closed, and nonleaking.

(2) Each HHW facility operator shall distribute for use, recycling, or disposal all NHHW accepted by the facility according to all of the following requirements:

(A) NHHW may be distributed for use in a manner equivalent to its originally intended purpose.

(B) NHHW may be disposed of in a permitted municipal solid waste landfill. However, latex paint and all other liquids shall be disposed of in a permitted municipal solid waste landfill only if one of the following conditions is met:

(i) The paint or other liquid is solidified.

(ii) The paint or other liquid is in the original container, and the volume of the container is no greater than five gallons.

(C) NHHW may be disposed of in a sanitary sewer connected to a publicly owned treatment works with written authorization from the operators of the publicly owned treatment works.

(D) The HHW facility may choose to manage certain types of NHHW, as described in the facility’s operating plan, according to the requirements in subsection (b) of this regulation.

(b) Household hazardous waste.

(1) Each HHW facility operator shall store and manage all HHW according to the facility's operating plan and all of the following requirements:

(A) Place the HHW in the designated area, as described in the facility operating plan, within one week after it is received. Sort and segregate all HHW, except HHW that will be distributed for use, by U.S. department of transportation hazard class or division;

(B) except for HHW that will be distributed for use, mark each HHW storage container or each segregated HHW storage area according to U.S. department of transportation hazard class or division;

(C) keep all storage containers that are in direct contact with HHW closed, except when adding or removing waste;

(D) when HHW is present, inspect all HHW storage areas weekly to assess waste volume and container integrity, and document these inspections in a log that is dated and either signed or initialed by the person who conducted the inspection; and

(E) store HHW that will be distributed for use in a manufacturer's original container. Each container that will be distributed for use shall be labeled, closed, and nonleaking.

(2) Each HHW facility operator shall distribute for use, recycling, or disposal all HHW accepted by the facility according to all of the following requirements:

(A) HHW may be distributed for use in a manner equivalent to its originally intended purpose.

(B) All HHW that is transferred for treatment, storage, or disposal shall be transferred to a permitted hazardous waste treatment, storage, or disposal facility by a registered hazardous waste transporter.

(C) All HHW that is transferred for treatment, storage, or disposal shall be manifested as hazardous waste as described in K.A.R. 28-31-4 (d), with the following changes:

(i) For the purposes of paragraph (b)(2)(C) of this regulation, "Kansas or EPA generator" shall be replaced with "HHW facility operator," and "hazardous waste" shall be replaced with "HHW" in K.A.R. 28-31-4 (d).

(ii) All applicable hazardous waste codes for each waste shall be listed on the manifest, using all available information. HHW facilities shall not be required to submit samples for laboratory testing in order to determine hazardous waste codes.

(D) All HHW that is transferred for treatment, storage, or disposal shall be subject to the hazard-

ous waste land disposal requirements specified in K.A.R. 28-31-14.

(E) All HHW that is transferred for treatment, storage, or disposal shall be prepared for transportation off-site as specified in K.A.R. 28-31-4 (e). For the purposes of this paragraph, "Kansas or EPA generator" shall be replaced with "HHW facility operator," and "hazardous waste" shall be replaced with "HHW" in K.A.R. 28-31-4 (e).

(F) The requirements of paragraphs (b)(2)(B) through (b)(2)(E) of this regulation shall not apply to the following wastes:

(i) HHW that is transferred to a universal waste facility and packaged and labeled in accordance with K.A.R. 28-31-15;

(ii) antifreeze that is transferred to a commercial collector under the conditions of an agreement to recycle the antifreeze;

(iii) HHW that is disposed of in the sanitary sewer connected to a publicly owned treatment works with written authorization from the operators of the publicly owned treatment works. HHW shall not be discharged to storm sewers or septic systems;

(iv) containers that have been emptied to the fullest practical extent and are disposed of in a permitted municipal solid waste landfill;

(v) HHW that is transferred between HHW facilities; and

(vi) other waste, as approved by the department.

(c) Storage. Each HHW facility operator shall maintain the quantity of stored material at or below the facility's permitted storage capacity.

(d) Signs. Each HHW facility operator shall post a sign outside of the facility that includes the following information:

(1) The name of the facility;

(2) the hours and days of operation;

(3) the name of the permit holder;

(4) the telephone number of an emergency contact available during nonoperating hours; and

(5) the permit number.

(e) Training. All HHW facility managers, employees, and volunteers that are responsible for sorting, segregating, or processing HHW shall receive a minimum of 24 hours of classroom training related to the proper handling of hazardous materials and shall receive a minimum of eight hours of annual refresher training. Education or experience may be substituted for the required training, subject to departmental approval. No person shall sort, segregate, or process HHW without onsite supervision before

receiving this training. (Authorized by and implementing K.S.A. 1999 Supp. 65-3406 and 65-3460; effective June 16, 2000.)

28-29-1103. Mobile HHW collection units. Each permitted facility that transports HHW from a temporary collection site or from a satellite HHW facility to a permitted HHW facility shall perform the following:

(a) Clearly mark "Household hazardous waste" on both sides of the mobile collection unit;

(b) separate all HHW by USDOT hazard class or division before transport;

(c) lab pack or overpack the household waste in containers meeting the USDOT manufacturing and testing specifications for transportation of hazardous materials, as adopted by reference in K.A.R. 28-31-4 (e);

(d) label the containers with a USDOT hazard class or division label or sign;

(e) seal and secure all containers for transport; and

(f) during transportation, carry a bill of lading describing the USDOT hazard class or division and the approximate quantities of the contents of the mobile collection unit. (Authorized by and implementing K.S.A. 1999 Supp. 65-3406 and 65-3460; effective June 16, 2000.)

28-29-1104. Satellite HHW facilities. (a) "Satellite HHW facility" shall mean any permanent HHW collection site, located away from the central collection center, that is part of a permitted HHW program.

(b) Each person who owns or operates a satellite HHW facility shall meet all of the following requirements:

(1) The HHW satellite facility shall be described in the approved operating plan of the permitted HHW facility or facilities with which the satellite HHW facility is associated.

(2) The owner or operator of the satellite HHW facility shall submit an operating plan, a facility drawing, and a description of any HHW storage cabinets to the department.

(3) A copy of each bill of lading used for transporting HHW to the central collection center shall be maintained at the satellite HHW facility for a period of three years.

(c) Each person who owns or operates a satellite HHW facility using storage cabinets shall meet all of the following requirements:

(1) A minimum of two and a maximum of four

HHW storage cabinets, including at least one for flammables and one for corrosives, shall be used at each satellite HHW facility.

(2) Each HHW storage cabinet shall be designed for the HHW stored in it.

(3) Each HHW storage cabinet shall have a storage capacity of not more than 120 gallons.

(4) All HHW shall be properly segregated and stored within the appropriate storage cabinets by the end of the working day.

(5) If HHW is present, the facility owner or operator shall inspect all HHW storage areas weekly to assess waste volume and container integrity, and shall document these inspections in a log that is dated and either signed or initialed by the person who conducted the inspection.

(6) Not more than one week after the storage capacity has been reached, the owner or operator shall make arrangements to remove the HHW stored in HHW storage cabinets. HHW stored in HHW storage cabinets shall be removed at least once a year. (Authorized by and implementing K.S.A. 1999 Supp. 65-3406 and 65-3460; effective June 16, 2000.)

28-29-1105. HHW reporting and recordkeeping. (a) The owner or operator of each HHW facility shall submit an annual report to the department on a form furnished by the department.

(b) The owner or operator of each HHW facility shall maintain a copy of the approved design plan, closure plan, and all modifications to the plans, at the facility or at another location designated in the facility operating plan, until the facility closes.

(c) The owner or operator of each HHW facility shall maintain at the facility a copy of the approved operating plan and all modifications to the plan, until the facility closes.

(d) The owner or operator of each HHW facility shall maintain the following records at the facility or at another location designated in the facility operating plan, for at least three years:

(1) Copies of the annual report;

(2) training records;

(3) bills of lading;

(4) hazardous waste manifests;

(5) land disposal restriction notifications;

(6) weekly inspection records; and

(7) notification of changes to approved design, operations, and closure plans. (Authorized by and implementing K.S.A. 1999 Supp. 65-3406 and 65-3460; effective June 16, 2000.)

28-29-1106. HHW facility closure. The owner or operator of each HHW facility shall meet the following requirements:

- (a) Notify the department at least 60 days before beginning closure;
- (b) remove all household waste within 90 days after last receiving waste; and
- (c) submit to the department certification that the facility has closed in accordance with the specifications in the approved closure plan. (Authorized by and implementing K.S.A. 1999 Supp. 65-3406 and 65-3460; effective June 16, 2000.)

28-29-1107. HHW permits. (a) Each person that plans to establish an HHW facility shall submit a permit application to the department on a form supplied by the department. The applicant shall include with the permit application the following items:

- (1) Facility design plan. The facility design plan shall include all of the following information:
 - (A) The type, size, and location of the facility;
 - (B) a regional plan or a map showing the service area;
 - (C) a vicinity plan or map that depicts the following features and information:
 - (i) Residences, wells, surface waters, and access roads within 0.5 mile of the site boundaries, and any other existing or proposed man-made or natural features relating to the project;
 - (ii) adjacent zoning and land use; and
 - (iii) evidence that the facility will not be located within the 100-year floodplain;
 - (D) a topographic map showing elevation contours;
 - (E) a site plan depicting the following features:
 - (i) On-site and off-site utilities, including electricity, gas, and water;
 - (ii) storm and sanitary sewer systems;
 - (iii) right-of-ways; and
 - (iv) the location of buildings and appurtenances, fences, gates, roads, paved lots, parking areas, drainage, culverts, and signs; and
 - (F) detailed plans depicting the following features:
 - (i) Building elevation and plan view;
 - (ii) building floor plans, shelving plans, appurtenances, and necessary detail sections to include electrical and mechanical systems;
 - (iii) designated areas for activities to be conducted at the facility, including receipt, segregation, bulking, distribution, packaging, and storage of household waste; and

- (iv) entrance area gates, fencing, and signs.

(2) Operating plan. The operating plan shall contain the following information:

- (A) The activities to be conducted at the facility, including receipt, segregation, bulking, packaging, storage, and distribution of household waste;
- (B) the activities to be conducted off-site, including operation of mobile collection units, curb-side collection, and satellite storage facilities;
- (C) the procedures for handling ignitable or reactive waste;
- (D) the procedures for identifying and managing small quantity generator waste;
- (E) the duties and responsibilities of facility personnel;
- (F) the training program and requirements for the different types of facility personnel; and
- (G) the emergency response plan for events including spills, fires, equipment failure, power outages, natural disasters, receipt of prohibited materials, and other similar interruptions of normal activities.

(3) Closure plan. The closure plan shall contain the following information:

- (A) The procedure for removing and disposing of waste at closure;
- (B) the procedure for cleaning the facility;
- (C) the schedule for closure; and
- (D) the closure cost estimate on a form supplied by the department.

(b) Modifications to plans. The owner or operator shall notify the department, in writing, of all modifications to the approved plans before the implementation of modifications. Modifications submitted to the department shall be effective 28 calendar days after the date the modification notice is received by the department, unless the department notifies the owner or operator that the modification will require further review before it can be approved. Changes to approved plans shall not conflict with any provision of K.A.R. 28-29-1100 through K.A.R. 28-29-1107. (Authorized by and implementing K.S.A. 1999 Supp. 65-3406 and 65-3460; effective June 16, 2000.)

28-29-1600. Land-spreading; definitions and adoptions. (a) As used in K.A.R. 28-29-1600 through K.A.R. 28-29-1608, each of the following terms shall have the meaning specified in this regulation:

- (1) "Application" means land-spreading application. This term shall include the forms provided by the KCC and all other required submissions.

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

(3) “Drilling waste” means used drilling mud and cuttings generated by the drilling of oil and gas wells or related injection wells that are permitted by the KCC or by the equivalent permitting authority in the state in which the well is located. This term shall not include hydraulic fracturing fluids.

(4) “GPS” means global positioning system.

(5) “Habitable structure” means any structure that is occupied by humans or maintained in a condition that allows it to be occupied by humans. This term shall include dwellings, churches, schools, care facilities, public buildings, office buildings, commercial buildings, and industrial buildings.

(6) “KCC” means Kansas corporation commission.

(7) “Land-spreading” means the disposal of drilling waste by spreading the drilling waste on the land. This term shall not include the use of drilling waste as a product, as described in K.S.A. 65-3409 and amendments thereto, including the use of drilling waste in the construction and maintenance of roads and ponds.

(8) “Land-spreading worksheet” means the land-spreading rate calculation worksheet provided by the KCC.

(9) “NORM” means naturally occurring radioactive material.

(10) “NORM level” means the concentration of residual NORM radium-226 and radium-228 and their progeny as measured in becquerels per kilogram (Bq/kg) or picocuries per gram (pCi/g).

(11) “Operator” means operator, as defined in K.A.R. 82-3-101, of each well that generated the drilling waste.

(12) “Secretary” means secretary of health and environment.

(13) “Water-based drilling mud” means drilling mud that meets both of the following conditions:

(A) The drilling mud consists primarily of bentonite suspended in water.

(B) The liquid component of the drilling mud consists of no more than six percent oil or any oil derivative, including diesel fuel and asphalt blend oil.

(b) The following documents are hereby adopted by reference:

(1) “Standard test method for particle-size analysis of soils,” D422-63, published October 2007 by ASTM international; and

(2) section 3.2 on pages 40 through 65 of “soil survey field and laboratory methods manual,” soil

survey investigations report no. 51, version 1.0, issued in 2009 by the U.S. department of agriculture, natural resources conservation service. (Authorized by and implementing K.S.A. 2012 Supp. 65-3407c; effective Oct. 11, 2013.)

28-29-1601. Land-spreading; general requirements. (a) No person may land-spread without having obtained prior written approval from the KCC. Before drilling, each operator that wants to land-spread shall submit an application to the KCC.

(b) If the proposed land-spreading disposal area is more than 160 acres, the operator shall submit two or more applications for the disposal area. Each application shall describe no more than 160 acres.

(c) The approval shall remain in effect for three years after the date on which land-spreading commenced, with the following exceptions:

(1) If land-spreading has not commenced within one year after the approval is granted, the approval shall expire.

(2) One or more one-year extensions to the approval may be granted by the director of the KCC’s conservation division based on the following:

(A) Certification from the operator that the information in the approved application has not changed; and

(B) the operator’s history of compliance with the requirements of K.A.R. 28-29-1600 through 28-29-1608.

(d) Drilling waste from multiple wells may be disposed of on the approved land-spreading site during the approved disposal period. (Authorized by and implementing K.S.A. 2012 Supp. 65-3407c; effective Oct. 11, 2013.)

28-29-1602. Land-spreading; application. Each operator that submits an application shall provide the operator name and the lease name on each part of the application that is not submitted directly on the forms provided by the KCC. The operator shall include the following items in the application:

(a) A nonrefundable application fee, as specified in K.S.A. 65-3407c and amendments thereto;

(b) certification that the drilling waste or the disposal site meets each of the following conditions:

(1) The drilling mud that will be used in each well that produces the drilling waste is water-based drilling mud;

(2) the predicted NORM level of the drilling

waste meets the requirements of K.A.R. 28-29-1604. The operator shall submit an affidavit and supporting documentation as required by K.A.R. 28-29-1602(d)(7);

(3) no land-spreading has occurred at the disposal site in the past three years;

(4) the chloride concentration in the soil at the disposal site meets the requirements of K.A.R. 28-29-1604;

(5) the location of the disposal site meets the buffer zone requirements of K.A.R. 28-29-1604;

(6) the maximum slope at the site is eight percent or less;

(7) the depth of unconsolidated material at the surface is at least 24 inches;

(8) the soil at the site meets the requirements of K.A.R. 28-29-1604;

(9) based on historical data or site conditions, the groundwater elevation in the uppermost aquifer underlying the disposal site is at least 10 feet below the ground surface;

(10) if the disposal site is irrigated, the chloride concentration of the irrigation water is less than 350 ppm; and

(11) there is no chloride groundwater contamination below the disposal site, based on the chloride contamination map provided by the department;

(c) for the operator, the following information:

(1) Operator license number;

(2) name;

(3) mailing address; and

(4) the following information about the contact person for the application:

(A) Name;

(B) telephone number;

(C) facsimile number, if available; and

(D) electronic mail address, if available;

(d) for each well from which drilling waste will be generated, the following information:

(1) If the well is permitted in a state other than Kansas, the name and telephone number of the state authority that permitted the well;

(2) the location of the well, including the following:

(A) The state and county in which the well is located;

(B) the legal description of the well;

(C) the number of feet the well is located from the north or south section line and the east or west section line; and

(D) the latitude and longitude of the well, which shall be determined using GPS;

(3) the lease name;

(4) the well number;

(5) the American petroleum institute (API) number;

(6) the expected spud date, as defined in K.A.R. 82-3-101;

(7) an affidavit on a form provided by the KCC, according to the following requirements:

(A) The operator shall certify that the predicted NORM level of the drilling waste meets both of the following conditions:

(i) The maximum predicted NORM level in the drilling waste is no more than 1.5 times the highest NORM level found in drilling waste samples collected from Kansas wells. A summary of NORM levels found in drilling waste samples collected from Kansas wells shall be maintained by the department and provided to any person upon request; and

(ii) the maximum predicted NORM level in the drilling waste is no more than 370 Bq/kg (10 pCi/g);

(B) the operator shall make the certification based upon data from wells drilled through the same geological formations as those of the well identified in the land-spreading application; and

(C) the operator shall include on the affidavit the maximum predicted NORM level of the drilling waste, according to the following:

(i) If the well will be drilled through formations for which the department has summarized and provided data, the operator may use this data to determine the maximum predicted NORM level of the drilling waste;

(ii) if the well will be drilled through formations for which the department has not summarized and provided data, the operator shall submit to the KCC all information available to the operator that can be used to predict the maximum NORM level in the drilling waste; and

(iii) if the NORM level of a formation is dependent on geographic location, the operator shall use that information to determine the maximum predicted NORM level of the drilling waste;

(8) a list of the expected components of the drilling mud and a detailed list of all additives, including the product name and the constituents of each additive; and

(9) a sampling and analysis plan that meets the requirements of K.A.R. 28-29-1605 to determine the chloride concentration of the drilling waste. The plan shall describe the following:

(A) The sampling rate;

(B) the procedures that will be used to collect the samples; and

(C) the procedures that will be used to prepare the samples for analysis;

(e) for the proposed disposal site, the following information:

(1) The name and mailing address of the property owner;

(2) the size of the site, as measured in acres;

(3) the legal description of the site;

(4) a description of current land use at the site and surrounding areas;

(5) documentation of all land-use restrictions and zoning restrictions for the site;

(6) documentation of all local permits that are required for land-spreading at the site;

(7) the distance and direction from the site to the nearest habitable structure;

(8) if the site is irrigated, the chloride concentration in the irrigation water in parts per million. The concentration shall be determined by a laboratory that is accredited for chloride analysis by the secretary;

(9) the depth to the water table and a description of how the depth was determined;

(10) the direction of groundwater flow under the site, if known;

(11) an aerial map of the site. The map shall be detailed enough to locate the site or to determine directions to the site from the nearest highway and shall include the following:

(A) A north arrow and scale;

(B) the location of the site and the property boundaries; and

(C) each of the following features if that feature is located within one-half mile of the site:

(i) Habitable structures;

(ii) waters of the state;

(iii) perennial and intermittent streams;

(iv) ponds, lakes, and wetlands;

(v) domestic water wells;

(vi) municipal wells;

(vii) drainage swales, ditches, and all other physical features that channel overland flow; and

(viii) all other relevant features;

(12) a topographic map of the site that shows the slope of the ground to be used for land-spreading;

(13) a cell identification map that shows a grid dividing the site into cells. Each cell shall cover an area of no more than 10 acres. The map shall include the following information:

(A) The legal description of the site;

(B) the county in which the site is located;

(C) delineation of the boundary of the land-spreading area and each cell within the land-spreading area, based on one or both of the following:

(i) Physical references and measurements; or

(ii) GPS measurements;

(D) a unique label for each cell;

(E) the location of each soil sample that was collected to provide information for the application;

(F) the chloride concentration of the soil within each cell, as determined according to the requirements of K.A.R. 28-29-1603;

(G) the soil texture or textures of the site, as determined according to the requirements of K.A.R. 28-29-1603;

(H) the depth of unconsolidated material at the site;

(I) the areas that receive irrigation;

(J) the areas where vegetation will be established;

(K) the areas where conditions to support crops will be established;

(L) the areas where land restoration, other than establishing vegetation or conditions to support crops, is planned;

(M) the property boundaries;

(N) the ownership and use of adjacent properties; and

(O) the buffer zones required by K.A.R. 28-29-1604;

(14) documentation and analyses supporting all of the chloride concentration and soil texture information provided on the cell identification map, including laboratory chain-of-custody documents; and

(15) a copy of the United States department of agriculture's soil survey map for the site;

(f) documentation that the owner of the proposed disposal site has agreed to the land-spreading, which shall be submitted on a form provided by the KCC;

(g) a site access agreement that grants access to the proposed disposal site to the department and the KCC for the purposes of observation, inspection, and sampling, which shall be submitted on a form provided by the KCC;

(h) a description of the proposed land-spreading procedures, including descriptions of the following:

(1) The manner in which the drilling waste will be stored at the site of generation;

(2) the processes and equipment that will be used to spread the drilling waste at the land-spreading site;

(3) the manner in which the equipment will be operated to ensure that the drilling waste is spread at the approved rate. The description shall include information on the boom width, flow rate, ground speed, and all other factors that will be used to control the land-spreading rate; and

(4) if the operator is required by K.A.R. 28-29-1607 to incorporate the drilling waste into the soil, the processes and equipment that will be used to incorporate the drilling waste into the soil;

(i) a contingency plan that describes how drilling waste will be managed if land-spreading is not allowed due to either of the following:

(1) Weather restrictions; or

(2) the drilling waste exceeding the composition limitations specified in K.A.R. 28-29-1607;

(j) a plan describing how the land-spreading area will be restored after land-spreading, including establishment of vegetation or conditions to support crops. If the land-spreading area is not cropland, the plan shall include the erosion-control measures that will be implemented until vegetation is established; and

(k) any other relevant information required by the KCC to evaluate the application. (Authorized by and implementing K.S.A. 2012 Supp. 65-3407c; effective Oct. 11, 2013.)

28-29-1603. Land-spreading; sampling and analysis of soils. Each operator that submits an application to the KCC shall meet all of the following requirements:

(a) Sample collection for chloride analysis. For each cell, as identified on the cell identification map submitted with the application, at least four representative core samples shall be collected according to the following requirements:

(1) Each core shall sample the top 12 inches below the surface.

(2) For each cell, all samples from that cell shall be combined and thoroughly mixed.

(3) The combined samples from each cell shall have a volume of at least one pint.

(4) The label of each sample shall match the unique label of the cell from which the sample was collected, as indicated on the cell identification map submitted with the application.

(b) Chloride analysis. The soil shall be analyzed for chloride concentration by a laboratory that meets one or both of the following conditions:

(1) The laboratory is accredited for chloride analysis by the secretary.

(2) The laboratory is a participant in the North

American proficiency testing program for chloride analysis.

(c) Sample collection for soil texture analysis. For each cell, as identified on the cell identification map submitted with the application, core samples from at least four representative sampling locations shall be collected according to the following requirements:

(1) Each core or set of cores shall sample at least the top 24 inches below the surface.

(2) Each sampling location shall be continuously sampled from the ground surface to the total depth required to provide the information for the application.

(3) Each core or set of cores shall provide a minimally disturbed profile of the soil at that sampling location.

(4) Soil samples shall not be combined with samples from other locations.

(5) Each core shall be labeled in a manner that corresponds to the unique label of the cell from which the core was collected, as indicated on the cell identification map submitted with the application.

(d) Soil texture analysis. The soil texture shall be determined by one of the following:

(1) An agronomist with at least a bachelor of science degree in agronomy or a soil scientist with at least a bachelor of science degree in soil science. The agronomist or soil scientist shall perform the following:

(A) Evaluate the site in person;

(B) determine the soil texture using the feel method described in "soil survey field and laboratory methods manual," which is adopted by reference in K.A.R. 28-29-1600; and

(C) provide documentation characterizing the site; or

(2) a laboratory, according to one or both of the following requirements:

(A) The laboratory shall analyze the soil using methods described in section 3.2 of the "soil survey field and laboratory methods manual," as adopted by reference in K.A.R. 28-29-1600, and shall be a participant in the North American proficiency testing program for those methods; or

(B) the laboratory shall analyze the soil using the method described in "standard test method for particle-size analysis of soils," as adopted by reference in K.A.R. 28-29-1600, and shall be accredited by the American association of state highway and transportation officials (AASHTO) materials reference laboratory (AMRL) proficiency sample program for that method.

(e) Soil texture classification. Each soil sample shall be classified by texture class or subclass according to the texture class table and the texture triangle on page 45 of the "soil survey field and laboratory methods manual," as adopted by reference in K.A.R. 28-29-1600. (Authorized by and implementing K.S.A. 2012 Supp. 65-3407c; effective Oct. 11, 2013.)

28-29-1604. Land-spreading; conditions for disposal. Disposal of drilling waste by land-spreading shall be approved by the KCC only if the operator has certified, and provided supporting documentation if required by K.A.R. 28-29-1602, that the drilling waste and the disposal site meet all of the following conditions:

(a) Drilling waste. The drilling waste meets both of the following conditions:

(1) The drilling mud that will be used in each well that will produce the drilling waste is water-based drilling mud.

(2) The predicted NORM level, as defined in K.A.R. 28-29-1600, meets both of the following conditions:

(A) The maximum predicted NORM level is no more than 1.5 times the highest NORM level found in drilling waste samples collected from Kansas wells.

(B) The maximum predicted NORM level is no more than 370 Bq/kg (10 pCi/g).

(b) Previous land-spreading. No land-spreading has occurred at the disposal site in the past three years.

(c) Soil chloride concentration. The chloride concentration in the soil at the disposal site is less than the following:

(1) 300 parts per million (ppm) if the disposal site has previously been used for land-spreading; and

(2) 500 ppm if the disposal site has not previously been used for land-spreading.

(d) Buffer zones. The disposal site is located as follows:

(1) At least 100 feet from each of the following:

(A) Each intermittent stream; and

(B) each drainage swale, ditch, or other physical feature that channels overland flow;

(2) at least 200 feet from each of the following:

(A) The property boundary, unless the adjacent property ownership and use are the same as the property ownership and use of the disposal site;

(B) each perennial stream; and

(C) each freshwater pond, lake, and wetland;

(3) at least 500 feet from each habitable structure;

(4) at least 1,000 feet from each water well that is being used or could be used for domestic or agricultural purposes. If the applicant demonstrates to the KCC that the disposal site is hydrogeologically downgradient from the water well, this distance may be reduced to 500 feet; and

(5) one-half mile or more from each actively producing water well that is used for municipal purposes.

(e) Physical characteristics. The disposal site meets the following conditions:

(1) The maximum slope at the site is eight percent or less.

(2) The depth of unconsolidated material at the surface is at least 24 inches.

(3) Within the top six feet below the surface, there is at least one layer of soil that meets all of the following conditions:

(A) Is continuous across the site;

(B) is at least 12 inches thick;

(C) is above the shallowest consolidated layer; and

(D) consists of one or more of the following soil textures:

(i) Clay, silty clay, or sandy clay;

(ii) silt; or

(iii) loam, clay loam, silty clay loam, sandy clay loam, silt loam, fine sandy loam, or sandy loam.

(4) Based on historical data or site conditions, the groundwater elevation in the uppermost aquifer underlying the disposal site is at least 10 feet below the ground surface.

(f) Irrigation. If the disposal site is irrigated, the chloride concentration of the irrigation water is less than 350 ppm.

(g) Contamination. There is no chloride groundwater contamination below the disposal site, based on the chloride contamination map provided by the KCC. (Authorized by and implementing K.S.A. 2012 Supp. 65-3407c; effective Oct. 11, 2013.)

28-29-1605. Land-spreading; sampling and analysis of drilling waste. Each operator that conducts land-spreading shall meet all of the following requirements:

(a) Samples of the drilling waste shall be collected using a procedure that ensures that the samples are representative of the waste.

(b) Samples shall be collected according to the following rates:

(1) For drilling waste stored in tanks, at least one sample from each tank;

(2) for earthen pits containing not more than 12,500 barrels of drilling waste, at least four samples, each from a different quadrant of the pit; and

(3) for earthen pits containing more than 12,500 barrels of drilling waste, at least one sample from each quadrant of the pit, plus at least one additional sample for every additional 1,000 barrels of drilling waste contained in the pit.

(c) Samples of the drilling waste shall be analyzed for chloride concentration in parts per million by one of the following methods:

(1) Sending the samples to a laboratory that meets at least one of the following conditions:

(A) The laboratory is accredited for chloride analysis by the secretary; or

(B) the laboratory is a participant in the North American proficiency testing program for chloride analysis; or

(2) performing a field analysis of the samples. For calculating land-spreading rates, each chloride concentration determined using field analysis shall be multiplied by 1.2, as specified in the land-spreading worksheet.

(d) If the drilling waste is analyzed in the field, all of the following requirements shall be met:

(1) One or more of the following methods shall be used to analyze the drilling fluid filtrate:

(A) Silver nitrate titration;

(B) mercuric nitrate titration;

(C) direct measurement using a chloride ion selective electrode;

(D) calculation of concentration based on electrical conductivity, using the equations $EC \times 0.64 = TDS$ and $TDS \times 0.61 = CC$, where EC means electrical conductivity in micromhos or microsiemens per centimeter, TDS means total dissolved solids, and CC means chloride concentration in parts per million; or

(E) an alternate field method proposed by the operator and approved in writing by the director of the KCC's conservation division.

(2) Each analysis shall be accompanied by the following information:

(A) The manufacturer's information sheet for the equipment that will be used;

(B) the calibration requirements for the equipment;

(C) the methods that will be used to prepare the sample for testing;

(D) the chloride concentration range of the method; and

(E) any limitations of the method.

(3) The operator shall ensure that each person that analyzes drilling waste in the field is qualified to perform each analysis. The operator shall maintain documentation of the qualifications, including training and experience, of each person that analyzes drilling waste in the field.

(4) All equipment that is used for analyzing drilling waste in the field shall be calibrated according to the manufacturer's instructions before the analyses are conducted. For each piece of equipment, a log documenting all calibrations shall be maintained. (Authorized by and implementing K.S.A. 2012 Supp. 65-3407c; effective Oct. 11, 2013.)

28-29-1606. Land-spreading; determination of land-spreading rates. Before land-spreading may occur, each operator that plans to land-spread shall perform the following for each cell, as identified on the cell identification map, on which drilling waste will be land-spread:

(a) Analyze the drilling waste to be land-spread at the disposal site to determine the chloride concentration, as specified in K.A.R. 28-29-1605; and

(b) based on the chloride concentrations of the drilling waste and chloride concentrations of the soil in the cell, determine the maximum land-spreading rate according to the following requirements:

(1) The determination shall be based on the land-spreading worksheet; and

(2) the land-spreading rate shall ensure that, after land-spreading, both of the following requirements are met:

(A) Assuming uniform distribution of the chloride through the upper 12 inches of the soil, the total chloride concentration shall be 900 ppm or less; and

(B) the average thickness of the drilling waste across the site shall be no greater than two inches, and the drilling waste shall be distributed as uniformly as possible across the site. (Authorized by and implementing K.S.A. 2012 Supp. 65-3407c; effective Oct. 11, 2013.)

28-29-1607. Land-spreading; operating and management requirements. Each operator that conducts land-spreading shall meet all of the following requirements:

(a) Storage of drilling waste. The operator shall store the drilling waste at the site of generation in pits permitted by the KCC or in tanks until the drilling waste is transported to the disposal site. The operator may store drilling waste in sealed

tanks at the disposal site for no more than 24 hours before the drilling waste is land-spread.

(b) Time frame for land-spreading. The operator shall comply with the following:

(1) Complete the land-spreading within the approval period specified in K.A.R. 28-29-1601; and

(2) notify the appropriate KCC district office at least 48 hours before land-spreading.

(c) Composition of drilling waste. The operator shall land-spread only if the composition of the drilling waste meets the following requirements:

(1) The chloride concentration of the drilling waste is less than 10,000 parts per million (ppm). The operator may blend drilling waste that has a chloride concentration greater than 10,000 ppm with drilling waste that has a chloride concentration of less than 10,000 ppm to create a combined drilling waste that has a chloride content of less than 10,000 ppm.

(2) The NORM level in the drilling waste, as identified through any subsequent sampling and analysis, remains consistent with the information submitted with the application. If the observed NORM level in the drilling waste is more than 370 Bq/kg (10 pCi/g), the operator shall immediately cease land-spreading and shall notify the KCC within two business days. The operator shall evaluate the condition of the land-spreading site to determine any potential site impact and perform all corrective measures required by the KCC or the department to protect human health or safety or the environment. The operator shall not conduct any additional land-spreading at the site unless authorized by the KCC.

(d) Weather restrictions. The operator shall not conduct land-spreading if at least one of the following conditions exists at the disposal site:

(1) Precipitation is occurring or, according to national weather service predictions, has a greater than 50 percent probability of occurring within 24 hours after the land-spreading is completed.

(2) The soil cannot readily absorb the moisture content of the drilling waste due to soil moisture content or frozen soil, or for any other reason.

(e) Land-spreading requirements. The operator shall land-spread according to all of the following requirements:

(1) The operator shall land-spread at a rate no greater than the land-spreading rate calculated using the land-spreading worksheet.

(2) The operator shall, as much as possible, land-spread so that the drilling waste has a uniform thickness over the disposal site.

(3) The operator shall limit the average thickness of the drilling waste to the calculated depth, unless the calculated depth is more than two inches. If the calculated depth is more than two inches, the operator shall limit the average thickness of the drilling waste to no more than two inches.

(4) The operator shall land-spread in a manner that prevents the drilling waste from either ponding on the disposal site or running off the disposal site or into buffer zones.

(5) The operator shall land-spread according to the methods described in the approved application. If any deviation from the approved methods occurs and the deviation could result in a chloride loading rate greater than the rate approved by the KCC, the operator shall report the deviation to the KCC by the end of the next business day.

(f) Incorporation. The operator shall incorporate the drilling waste into the soil if the precipitation in the county in which the disposal site is located averages more than 25 inches per year. The following counties and any county located east of these counties shall be designated as meeting this condition: Jewell, Mitchell, Lincoln, Ellsworth, Rice, Reno, Kingman, and Harper.

The operator shall incorporate the drilling waste into the soil using standard agricultural methods, including discing, plowing, knifing, and shallow injection. This procedure shall be performed as soon as possible and not later than 48 hours after land-spreading is completed. The operator shall incorporate the drilling waste into the soil according to the methods described in the approved application.

(g) Land restoration. The operator shall take steps to restore the land-spreading area as described in the approved application. (Authorized by and implementing K.S.A. 2012 Supp. 65-3407c; effective Oct. 11, 2013.)

28-29-1608. Land-spreading; reporting and recordkeeping. Each operator that has conducted land-spreading shall meet all of the following requirements for each land-spreading site:

(a) Within 60 days after the conclusion of land-spreading, submit a land-spreading report to the KCC. The operator shall identify each part of the report by the KCC land-spreading approval number from the approved application. The land-spreading report shall contain the following items:

(1) The following information for each well from which the drilling waste was generated, on a form provided by the KCC:

- (A) The operator name and license number;
- (B) if the well is permitted in a state other than Kansas, the name and telephone number of the state authority that permitted the well;
- (C) the location of the well, including the following:
- (i) The state and county in which the well is located;
 - (ii) the legal description of the well;
 - (iii) the number of feet the well is located from the north or south section line and the east or west section line; and
 - (iv) the latitude and longitude of the well, as determined using GPS;
- (D) the lease name;
- (E) the well number;
- (F) the American petroleum institute (API) number;
- (G) the spud date, as defined in K.A.R. 82-3-101;
- (H) verification that the drilling mud components are the same as those components identified on the approved application;
- (I) verification that the chloride concentration of the drilling waste is less than 10,000 parts per million (ppm); and
- (J) the following information about the person performing the land-spreading, if different from the operator:
- (i) The name of the individual or company;
 - (ii) the contact person's name;
 - (iii) the contact person's telephone number or cellular phone number, or both; and
 - (iv) the contact person's electronic mail address, if there is one;
- (2) for the area that was actually used for land-spreading, an updated version of the cell identification map that was submitted with the application. The updated map shall include all information on the original cell identification map and the following information:
- (A) The date or dates on which land-spreading occurred;
 - (B) the land-spreading contractor name;
 - (C) identification of each well from which the drilling waste was generated;
 - (D) for each tank and each pit that was used to store drilling waste, the area where that drilling waste was land-spread, according to the following requirements:
 - (i) The dimensions of the area used for land-spreading shall be added to the map, if the area used for land-spreading is different from the cell boundaries, and shall be based on either physical references and measurements or GPS measurements, or both; and
 - (ii) the tank and pit numbers shall correspond to the labels used in the land-spreading worksheet; and
 - (E) notation identifying the cells that were not used for land-spreading;
 - (3) a description of the procedures that were used to sample the drilling waste and the sampling rates;
 - (4) a description of the methods that were used to analyze the drilling waste;
 - (5) the results of each analysis of the drilling waste;
 - (6) the completed land-spreading worksheet;
 - (7) for each cell within the land-spreading site, the following information:
 - (A) The volume of drilling waste that was spread on the cell; and
 - (B) a description of the land-spreading procedures that were used, including the following:
 - (i) Documentation of each variation from the processes or equipment described in the approved application;
 - (ii) a description of each deviation from the operating and management requirements of K.A.R. 28-29-1607; and
 - (iii) if the drilling waste was incorporated into the soil, a statement of the maximum time period from land-spreading to incorporation; and
 - (8) if corrective measures were required by the KCC or the department at the land-spreading site, the following information:
 - (i) A description of the conditions warranting the corrective measures;
 - (ii) a copy of the sampling and analysis plan, if this plan was required;
 - (iii) the results of all sampling and analyses that relate to the corrective measures;
 - (iv) a description of the corrective measures implemented at the land-spreading site; and
 - (v) a description of all long-term site monitoring or land-use restrictions associated with the site conditions;
 - (b) within 12 months after the conclusion of land-spreading, submit to the KCC a report describing the timing and success of establishing vegetative cover or conditions suitable to support crops. If the establishment of vegetative cover or conditions suitable to support crops was unsuccessful, the operator shall submit a new plan describing how vegetative cover or conditions suitable to support crops will be established. The operator shall identify the report, plan, or both, by

the KCC land-spreading approval number from the approved application; and

(c) maintain the following documents, identified by the KCC land-spreading approval number from the approved application, for at least five years after the land-spreading occurs and make the documents available to the department and the KCC, upon request:

- (1) The results of all analyses;
- (2) a copy of each application and approval;
- (3) a copy of each land-spreading report and all required attachments; and
- (4) if any drilling waste was analyzed in the field, a copy of all calibration logs for each piece of equipment used and the qualifications of each person that performed the analyses. (Authorized by and implementing K.S.A. 2012 Supp. 65-3407c; effective Oct. 11, 2013.)

28-29-2011. Waste tire permit fees. For each permit required in K.S.A. 65-3424b and amendments thereto, the applicant or permittee shall pay the applicable fee according to the following schedules.

- (a) Permit application fees.
 - Mobile waste tire processor \$250
 - Waste tire collection center..... \$100
 - Waste tire processing facility..... \$250
 - Waste tire transporter..... \$100
- (b) Annual permit renewal fees.
 - Mobile waste tire processor \$100
 - Waste tire collection center..... \$50
 - Waste tire processing facility..... \$100
 - Waste tire transporter..... \$50

(Authorized by K.S.A. 65-3424h; implementing K.S.A. 2006 Supp. 65-3424b; effective Oct. 26, 2007.)

PART 10. FINANCIAL REQUIREMENTS

28-29-2101. Financial assurance for closure and postclosure. In K.A.R. 28-29-2101 through K.A.R. 28-29-2113, “facility” shall mean a solid waste disposal area, a solid waste processing facility, or both.

(a) Evidence of financial assurance. The owner or operator of each facility shall submit to the department evidence of financial assurance for the facility for the cost of closure, postclosure, or both, as specified in K.S.A. 65-3407, and amendments thereto. The financial assurance shall meet the following requirements:

(1) Be continuous during the active life of the facility and the required postclosure care period;

(2) be in an amount that is equal to or greater than the accepted or revised amount as specified in subsection (e) of this regulation;

(3) be available when needed; and

(4) be legally enforceable.

(b) Financial assurance methods.

(1) Allowable financial assurance methods shall consist of the following:

(A) A funded trust fund, as specified in K.A.R. 28-29-2103;

(B) a surety bond guaranteeing payment, as specified in K.A.R. 28-29-2104;

(C) a surety bond guaranteeing performance, as specified in K.A.R. 28-29-2105;

(D) an irrevocable letter of credit, as specified in K.A.R. 28-29-2106;

(E) an insurance policy, as specified in K.A.R. 28-29-2107;

(F) a corporate financial test, as specified in K.A.R. 28-29-2108;

(G) a corporate financial guarantee, as specified in K.A.R. 28-29-2109;

(H) a local government financial test, as specified in K.A.R. 28-29-2110;

(I) a local government guarantee, as specified in K.A.R. 28-29-2111;

(J) use of ad valorem taxing authority for a local government subdivision of the state that owns or operates a solid waste facility other than a municipal solid waste landfill, as specified in K.A.R. 28-29-2112; and

(K) the following simplified financial instruments, as specified in K.A.R. 28-29-2113:

(i) A simplified permit bond for facilities with a closure cost estimate of \$100,000 or less;

(ii) a simplified irrevocable letter of credit for facilities with a closure cost estimate of \$100,000 or less; and

(iii) an assigned certificate of deposit for facilities with a closure cost estimate of \$25,000 or less.

(2) Any owner or operator may use a combination of instruments or methods as specified in these regulations, except that a method using a financial instrument guaranteeing performance shall not be used in combination with an instrument guaranteeing payment. Each method used in combination shall satisfy the requirements specified in these financial assurance regulations for its use.

(3) Any board of county commissioners that has established a dedicated fee fund pursuant to K.S.A. 65-3415f, and amendments thereto, may reduce the amount of financial assurance

demonstrated by any other allowable method by the current balance accumulated in the dedicated fee fund at the time that the evidence of financial assurance is submitted.

(4) If the financial assurance is a purchased financial instrument, it shall be purchased from a financial, insurance, or surety institution meeting the quality and reliability standards suitable to institutions of that type and the standards specified in these financial assurance regulations.

(c) Calculation of financial assurance. The owner or operator of each facility shall meet the following requirements when calculating the amount of financial assurance for the current estimated cost to provide for closure, postclosure, or both.

(1) The owner or operator shall meet the following requirements to determine the area or capacity to be included in the calculation of estimated cost.

(A) For each solid waste processing facility, the amount of closure financial assurance shall be calculated as the cost of removing and disposing of the greatest volume of waste allowed by terms and conditions of the permit, and all other costs relevant to certification of final closure, including certification.

(B) For each solid waste disposal area, the amount of closure financial assurance shall be calculated as the cost to complete final closure of the largest area to lack final cover at any one time before the next annual permit renewal. The calculated cost shall include the cost to complete all closure activities in a manner consistent with the approved facility closure plan.

(C) For each solid waste disposal area, the amount of postclosure financial assurance shall be calculated as the cost to be incurred for the largest area to have waste in place before the next annual permit renewal. The calculated cost shall include the cost to conduct the following, in a manner consistent with the approved facility postclosure plan, during the postclosure period of 30 years and any extensions of the postclosure period required by the secretary:

(i) Care and maintenance of the area, including all appurtenances; and

(ii) all required environmental monitoring.

(2) The owner or operator shall calculate the amount of financial assurance required by applying third-party costs to the activities listed in the closure plan and postclosure plan. The resulting amount shall not be discounted, nor shall any off-

set for the sale of recoverable materials be subtracted. Third-party costs shall be determined from one or more of the following sources:

(A) Representative costs supplied by the department;

(B) actual invoices paid by the owner or operator for the same or similar work;

(C) written bids from professional contractors having no other financial interest in the facility or its use; or

(D) authoritative costing tables issued by publishers recognized for their research into the costs of the activities to be priced.

(3) If the calculated amount does not include a specific allowance to pay for contingent events, the owner or operator shall add an amount equal to 10% of the total cost for the purpose of determining the amount of financial assurance required.

(4) The owner or operator shall submit the cost estimates on worksheets provided by the department or on other forms that contain the same information.

(d) When submissions are required. The owner or operator of each facility shall submit evidence of financial assurance to the department at the following times:

(1) Before the facility permit is issued by the secretary, including transferred permits;

(2) before a permit modification is issued by the secretary;

(3) annually during the active life of the facility, on or before the permit renewal date; and

(4) annually during the required period of postclosure, on or before the permit renewal date that was effective during the active life of the facility.

(e) Evaluation of amount of financial assurance.

(1) Upon receipt of the closure cost estimate, postclosure cost estimate, or both, from the owner or operator, the estimate or estimates shall be evaluated by the department to determine if the estimated amount of financial assurance is acceptable, according to the following criteria:

(A) The activities planned meet the requirements of the Kansas solid waste statutes and regulations, comply with all permit conditions, and are protective of public health and safety and the environment; and

(B) the method of estimating costs for the planned activities meets the requirements of this regulation.

(2) Revisions shall be made by the department in accordance with the evaluation, if the cost estimate factors are not acceptable.

(f) Annual updates to financial assurance. The owner or operator shall update the financial assurance amount, on or before the annual renewal date of each permit during the active life of the facility and annually during the required period of postclosure care, by recalculating the cost of closure, postclosure care, or both, using current dollars, or by the addition of an inflation factor to the amount accepted by the department for the prior year.

(1) If a change to any of the following has occurred that will change the cost of closure, postclosure, or both, the owner or operator shall recalculate the affected cost or costs, consistent with the change:

(A) The closure plan, as submitted or as approved;

(B) the postclosure plan, as submitted or as approved; or

(C) the conditions at the facility.

(2) If the inflation factor is used, the financial assurance instrument or other method of demonstrating financial assurance shall be adjusted to the updated amount according to the following formula:

$$\frac{IPD_y}{IPD_{y-1}} \times FA_{y-1} = FA$$

where:

IPD_y represents the current annual implicit price deflator for the gross domestic product;

IPD_{y-1} represents the previous year's implicit price deflator for the gross domestic product;

FA_{y-1} represents the previous year's approved estimate of closure or postclosure, or both; and

FA represents the current estimated cost of closure or postclosure, or both.

(g) Failure of the financial assurance method, or an inadequate amount of financial assurance. Each owner or operator of a facility who obtains information that a financial assurance instrument or other method has failed to meet the standards established by these financial assurance regulations for its use, or that the amount of financial assurance provided has become inadequate for reasons other than general annual price inflation, shall provide alternate or increased financial assurance of the type and within the time periods specified in these financial assurance regulations, but not later than 90 days after obtaining the information.

(h) Release from the requirement to provide financial assurance. Each owner or operator shall be released from the requirement to provide fi-

ancial assurance for a facility for closure or postclosure care, or both, when the owner or operator is released by the department from further obligation to perform closure activities, postclosure activities, or both, at the facility.

(i) Exception for certain closed municipal solid waste landfills. The financial assurance requirements of subsection (a) of this regulation shall not apply to closed municipal solid waste landfills that are exempted from K.A.R. 28-29-101 through K.A.R. 28-29-120 according to the closure dates specified in K.A.R. 28-29-100.

(j) Exception to the requirement for postclosure financial assurance for facilities other than municipal solid waste landfills. Postclosure financial assurance shall not be required by the secretary for a facility that is not a municipal solid waste landfill unless the secretary determines that recurring environmental monitoring is required during the entire postclosure period.

(k) Exception to the closure plan pricing requirements for waste tire permittees. No waste tire processing facility, waste tire collection center, mobile waste tire processor, or waste tire transporter permittee shall be subject to the closure plan pricing requirements of subsections (c) and (f) of this regulation. The permittee shall determine the amount of financial assurance according to the following criteria:

(1) Waste tire processing facilities and waste tire collection centers. The amount of financial assurance shall correspond to the closure cost estimate, as specified in K.A.R. 28-29-30.

(2) Mobile waste tire processors. The amount of financial assurance shall be \$1,000.00.

(3) Waste tire transporters. The amount of financial assurance shall correspond to the average number of passenger tire equivalents (PTEs) transported per month, according to the following schedule:

PTEs transported	Financial assurance
0 through 1,000.....	\$1,000.00
1,001 through 10,000.....	\$5,000.00
more than 10,000.....	\$10,000.00

(Authorized by K.S.A. 65-3406 and 65-3424h; implementing K.S.A. 2006 Supp. 65-3407 and K.S.A. 2006 Supp. 65-3424b; effective Feb. 24, 2000; amended Oct. 26, 2007.)

28-29-2102. Financial assurance for corrective action. Reference to the "facility" in these financial assurance regulations shall mean a

solid waste disposal area or a solid waste processing facility, or both.

(a) Requirement to provide financial assurance. Each owner or operator of a facility who is required to undertake a corrective action program pursuant to the provisions of K.A.R. 28-29-114, or by order of any court of competent jurisdiction, shall provide evidence of financial responsibility for the cost of corrective action in the manner and form prescribed by these financial assurance regulations. Each owner or operator required to perform corrective action for a facility shall provide and maintain financial assurance that is continuous, adequate in amount, available when needed, and legally enforceable.

(b) Financial assurance methods. Allowable financial assurance methods shall be those specified in K.A.R. 28-29-2101(b).

(c) Provider of the financial assurance. The financial assurance for corrective action shall be supplied by one of the providers specified in K.A.R. 28-29-2101(c).

(d) Demonstration of financial assurance, when required. Each owner or operator required to undertake a program of corrective action shall provide a demonstration of financial assurance to the department at the following times:

(1) Within 120 days following whichever of the following dates is earliest:

(A) The date that the selected remedy was filed with the department by the owner or operator according to the provisions of K.A.R. 28-29-114(b); or

(B) the date that the secretary informed the facility of the amount of financial assurance required based on a probable remedial cost estimate; and

(2) annually during the corrective action period, on or before the anniversary of the date the first financial assurance demonstration was required.

(e) Review of financial assurance demonstrations. Financial assurance demonstrations shall be reviewed by the department and either approved or disapproved. A financial assurance method that has been disapproved by the department shall be replaced with an alternate method as specified in these financial assurance regulations to maintain continuous assurance during the corrective action period. A purchased financial instrument that has been disapproved because of wording or the quality of the issuing institution, or for any other reason, shall be replaced by an instrument acceptable to the department or by another method listed in K.A.R. 28-29-2101(b)(1), to maintain continuous assurance.

(f) Calculation of required financial assurance.

(1) The financial assurance requirement shall be based upon the total cost accumulated in a detailed estimate of the cost of the corrective action plan for implementing the remedy approved or specified by the department according to K.A.R. 28-29-114(b).

(2) A probable remedial cost estimate for the financial assurance required to implement corrective measures at the facility may be developed by the secretary before a remedy is submitted by the facility and approved by the department.

(3) If a trust fund is selected to provide the financial assurance, a separate estimate shall be made of the cost to be incurred during each year of the corrective action plan.

(4) The corrective action plan shall be priced using one or more of the sources specified in K.A.R. 28-29-2101(f)(2).

(5) The total amount of the corrective action plan shall not be discounted, nor shall any offset for the sale of recoverable materials be subtracted.

(6) If the amount does not include a specific allowance to pay for contingent events, an amount equal to 10 percent of the total cost shall be added for the purpose of determining the amount of financial assurance required.

(g) Evaluation of amount of financial assurance. Upon receipt of a priced corrective action plan from the owner or operator, the plan shall be evaluated by the department to determine if the amounts calculated are sufficient for determining the amount of financial assurance required, or revisions shall be made by the department in accordance with the evaluation if the amounts are not sufficient. The adequacy of the physical actions planned and the pricing sources shall be considered in the departmental evaluation. Each owner or operator shall demonstrate financial assurance equal to the amount accepted or determined by the department.

(h) Annual updates to financial assurance. Each owner or operator shall update the financial assurance amount on or before the anniversary of the date the first financial assurance demonstration was required by this regulation. The financial assurance amount shall be updated by using one or more of the methods specified in K.A.R. 28-29-2101(h).

(i) Failure of the financial assurance method, or an inadequate amount of financial assurance. Each owner or operator required to process a corrective action plan who obtains information that a financial assurance instrument or other method

in use has failed to meet the standards established by these financial assurance regulations for its use, or that the amount of financial assurance provided has become inadequate for reasons other than general annual price inflation, shall provide alternate or increased financial assurance of the type and within the time periods specified in these financial assurance regulations, but in no event later than 90 days after obtaining the information.

(j) Release from the requirement to provide financial assurance. Each owner or operator required to provide financial assurance for corrective action shall be released from the requirement when the department or any court having jurisdiction releases the owner or operator from further obligation to perform corrective action activities at the facility.

(k) The provisions of this regulation shall apply on and after February 24, 2000. (Authorized by K.S.A. 1998 Supp. 65-3406; implementing K.S.A. 1998 Supp. 65-3407, as amended by L. 1999, Ch. 112, Sec. 1; effective Feb. 24, 2000.)

28-29-2103. Financial assurance provided by a funded trust fund. (a) Funded trust fund. Any owner or operator of a solid waste disposal area or processing facility may satisfy the requirements of K.A.R. 28-29-2101 or K.A.R. 28-29-2102, or both, by establishing a trust fund that conforms to the requirements of this regulation and by submitting a copy of the trust agreement, with an original signature, to the department.

(1) Each owner or operator of a new facility shall submit to the department a copy of the trust agreement, with an original signature, for closure or postclosure, or both, before the permit is issued by the department.

(2) Each owner or operator required to provide financial assurance for a corrective action plan shall submit to the department a copy of the trust agreement, with an original signature, within the times specified in K.A.R. 28-29-2102(d).

(3) The trustee financial institution shall meet the following criteria:

(A) Be unrelated to the owner or operator;
 (B) have the authority to act as trustee for the facility in the state of Kansas; and
 (C) be a trust operation regulated and examined by a state or federal agency.

(b) Form of the trust agreement.

(1) The wording of the trust agreement shall be identical to the wording in the document provided by the department.

(2) The trust agreement shall establish a trust account, referred to in this regulation as "the fund," for the receipt of annual payments into the fund and receipt of the earnings on the accumulated amount.

(3) Each owner or operator shall update schedule A of the trust agreement within 60 days following a change in the amount of the current closure, postclosure, or corrective action cost estimate covered by the agreement.

(c) Payments into the fund for closure and postclosure. The owner or operator shall annually make payments into the fund for closure or postclosure, or both, over the estimated life of the facility as approved by the department. The approved facility life shall be referred to in this regulation as the "pay-in period." The pay-in period shall be changed each time a new facility life is determined by the owner or operator and approved by the department. The pay-in period shall not exceed 30 years from the date a new facility is permitted or the date these financial assurance regulations become effective, whichever is later. Payments into the fund for closure or postclosure, or both, shall be calculated as follows:

(1) The first payment into the fund for a new facility shall be made before the permit is issued by the department. The first payment shall be equal to the current, approved estimate of closure or postclosure costs, or both, divided by the number of years in the pay-in period.

(2) The owner or operator shall make subsequent payments on or before the due date for each annual permit renewal. The amount of each subsequent payment shall be calculated by the following formula:

$$\frac{CE - CV}{Y} = P$$

where:

CE represents the current cost estimate for closure or postclosure, or both;

CV represents the current value of the fund. The current value of the fund shall be the current tax cost of the fund as reported in the trustee report unless market value is lower, in which case the lower value shall be used in the formula;

Y represents the number of years remaining in the pay-in period; and

P represents the amount of the required payment.

(3) Any owner or operator may accelerate payments into the fund or may deposit the full amount

of the current estimate for closure or postclosure costs, or both, at the time the fund is established. After making the accelerated or full payments, the owner or operator shall maintain the fund at least in the amount it would have been if initial and annual payments had been made according to the requirements in paragraphs (c)(1) and (c)(2) of this regulation.

(4) If the owner or operator establishes a trust fund for closure, postclosure, or both, after having used another allowable method of providing financial assurance, the first payment into the fund shall be at least the amount that the fund would have contained if the trust fund had been used as the first method.

(5) After the pay-in period is complete, whenever the current approved cost estimate for closure or postclosure, or both, is changed, the owner or operator shall compare the new estimate with the trustee's most recent report of the current value of the fund and, if the fund is deficient, shall deposit the amount of deficiency on or before the date required by K.A.R. 28-29-2101(i).

(6) After the pay-in period is complete, if the value of the fund exceeds the current approved estimate of closure or postclosure costs, or both, or if the owner or operator substitutes another approved method of providing financial assurance, the owner or operator may submit a request to the department for return of the excess amount. The request shall be evaluated by the department. The requested amount shall be approved, changed, or denied. The trustee shall make payment from the fund in the amount determined by the department's evaluation.

(d) Reimbursement from the closure or postclosure fund. After beginning final closure, and annually during the postclosure period, the owner or operator or another authorized person may request reimbursement for the costs incurred in carrying out the actions required by the approved closure or postclosure plan, or both. The reimbursement request shall include documentation for the costs to be reimbursed from the fund. The request shall be evaluated by the department. Reimbursement may be authorized by the department to the extent that, after the reimbursement is issued by the trustee, the fund still contains the amount required to complete closure or postclosure, or both. The trustee shall make payment from the fund in the amount determined by the department's evaluation.

(e) Payments into the fund for corrective action.

Each owner or operator shall make payments into the fund for corrective action annually during the first half of the approved corrective action period. The first half of the corrective action period shall be the "pay-in period." The pay-in period shall be changed at any time that a new corrective action period is determined by the owner or operator and approved by the department. The pay-in period shall not exceed seven years beginning on the date these financial assurance regulations become effective, or 120 days after the date determined by K.A.R. 28-29-2102(d), whichever is later. Payments into the fund for corrective action shall be calculated as follows:

(1) The first payment into the fund shall be at least in the amount of half of the approved estimate of the total cost of corrective action for the entire corrective action period, divided by the number of years in the pay-in period.

(2) The amount of each subsequent payment shall be determined by the following formula:

$$\frac{RB - CV}{Y} = P$$

where:

RB represents the required balance, defined as the total amount of corrective action cost estimated to be incurred in the last half of the corrective action period;

CV represents the current value of the trust fund. The current value of the fund shall be the current tax cost of the fund as reported in the trustee report unless market value is lower, in which case market value shall be used in the formula;

Y represents the number of years remaining in the pay-in period; and

P represents the amount of the required payment.

(3) Any owner or operator may accelerate payments into the fund or may deposit the full amount of the required balance at the time the fund is established. After making the accelerated or full payments, the owner or operator shall maintain the fund at least in the amount it would have been if initial and annual payments had been made according to the requirements in paragraphs (e)(1) and (e)(2) of this regulation.

(4) If the owner or operator establishes a corrective action trust fund after having used another allowable method of providing financial assurance, the first payment into the fund shall be at least the amount that the fund would have contained if the trust fund had been used as the first method.

(5) After the pay-in period is complete, whenever the current estimated cost of corrective action for the remaining corrective action period exceeds the amount of the current value of the fund, the owner or operator shall deposit the deficiency on or before the deadline specified in K.A.R. 28-29-2102 (i).

(f) Reimbursement from the corrective action fund. After the pay-in period is complete or after the required balance of the fund is reached, the owner or operator or another authorized person may request reimbursement for the costs incurred in carrying out the actions required by the corrective action plan. The reimbursement request shall include documentation of the costs to be reimbursed from the fund. The request shall be evaluated by the department. Reimbursement may be authorized by the department to the extent that, after the reimbursement is issued by the trustee, the fund still contains the amount required to complete the corrective action plan. The trustee shall make payment from the fund in the amount determined by the department's evaluation.

(g) Termination of the trust agreement. Any owner or operator may request termination of the trust agreement and return of any monies remaining in the fund if any of the following conditions is met:

(1) The owner or operator substitutes an alternative method of financial assurance as specified in K.A.R. 28-29-2101(b) and obtains written approval for its use from the department.

(2) The owner or operator is released by the department from further obligation to provide financial assurance for closure, postclosure, corrective action, or any combination of these, at the permitted facility.

(3) The owner or operator completes corrective action required by order of any court of competent jurisdiction and is released from further obligation by the court at the permitted facility.

(h) The provisions of this regulation shall apply on and after February 24, 2000. (Authorized by K.S.A. 1998 Supp. 65-3406; implementing K.S.A. 1998 Supp. 65-3407, as amended by L. 1999, Ch. 112, Sec. 1; effective Feb. 24, 2000.)

28-29-2104. Financial assurance provided by a surety bond guaranteeing payment.

(a) Financial guarantee bond. Any owner or operator of a permitted solid waste disposal area or processing facility may satisfy the requirements of K.A.R. 28-29-2101 or K.A.R. 28-29-2102, or both,

by obtaining a financial guarantee bond that conforms to the requirements of this regulation and by submitting the original bond to the department.

(1) Each owner or operator of a new facility shall submit to the department the bond for closure or postclosure, or both, before the permit is issued by the department.

(2) Each owner or operator required to provide financial assurance for a corrective action plan shall submit the bond to the department within the times specified in K.A.R. 28-29-2102(d).

(3) The surety institution shall meet the following criteria:

(A) Be unrelated to the owner or operator;

(B) have the authority to issue surety bonds in Kansas; and

(C) be listed as an acceptable surety institution on federal bonds.

(b) Form of the financial guarantee bond. The wording of the financial guarantee bond shall be identical to the wording in the document provided by the department. If the penal sum of the bond is increased during the life of the bond, the owner or operator shall provide written acceptance of the new amount, indicated by a signed acceptance placed on the certificate of increase issued by the surety institution. The original signed and accepted certificate of increase shall be filed with the department.

(c) Standby trust fund. Each owner or operator who uses a financial guarantee bond to satisfy the requirements of K.A.R. 28-29-2101 or K.A.R. 28-29-2102, or both, shall also establish a standby trust fund. A copy of the standby trust agreement with an original signature shall be submitted to the department along with the original financial guarantee bond. Under the terms of the bond, all payments from the penal sum shall be deposited by the surety institution directly into the standby trust fund, in accordance with instructions from the department. The standby trust fund shall conform to the requirements specified in K.A.R. 28-29-2103, except that, until the trust account is funded pursuant to the requirements of this regulation, the following shall not be required:

(1) Payments into the fund as specified in K.A.R. 28-29-2103(c) or (e);

(2) updates to schedule A of the trust agreement as specified in K.A.R. 28-29-2103(b)(3);

(3) annual valuations as required by the trust agreement; and

(4) notices of nonpayment as required by the trust agreement.

(d) Provisions of the financial guarantee bond for closure and postclosure. The financial guarantee bond for closure or postclosure, or both, shall require that the owner or operator perform one of the following:

(1) Fund the standby trust fund in the amount of the penal sum of the bond before beginning final closure of the facility;

(2) fund the standby trust fund in the amount of the penal sum of the bond within 15 days after an administrative order issued by the department to begin closure becomes final, or within 15 days after an order to begin final closure is issued by any court of competent jurisdiction; or

(3) provide alternate financial assurance as specified in these financial assurance regulations and obtain the department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the department of a notice of cancellation from the surety institution.

(e) Provisions of the financial guarantee bond for corrective action. A financial guarantee bond for corrective action shall require that the owner or operator perform one of the following:

(1) Fund the standby trust fund in the amount of the penal sum of the bond before beginning corrective action at the facility;

(2) fund the standby trust fund in the amount of the penal sum of the bond within 15 days after an administrative order issued by the department to begin corrective action becomes final, or within 15 days after an order to begin corrective action is issued by any court of competent jurisdiction; or

(3) provide alternate financial assurance as specified in these financial assurance regulations and obtain the department's written approval for the assurance provided, within 90 days after receipt by both the owner or operator and the department of a notice of cancellation from the surety institution.

(f) Liability of the surety institution. Under terms of the bond, the surety institution shall become liable on the bond obligation if the owner or operator fails to perform as guaranteed by the bond.

(g) Penal sum of the bond. The penal sum of the bond for closure, postclosure, or both, shall be at least the amount of the current cost estimate for closure, postclosure, or both. The penal sum of the bond for corrective action shall be at least the amount of the current cost estimate for corrective action for the entire corrective action period.

(h) Increase in the penal sum of the bond. Whenever the current cost of closure, postclosure, corrective action, or any combination of these, increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, shall either cause the penal sum to be increased to the new amount and submit evidence of the increase to the department, or obtain other financial assurance as specified in these financial assurance regulations to cover the increase. Whenever the current cost of closure, postclosure, or corrective action, or any combination of these, decreases, the owner or operator may request approval from the department to decrease the penal sum of the bond. The request shall be evaluated by the department, and the amount shall be decreased consistent with the department's evaluation.

(i) Cancellation of the bond by the surety institution. Under terms of the bond, the surety institution may cancel the bond by sending notice of cancellation by certified mail to both the owner or operator and the department. Cancellation shall not occur, however, during the 120 days following the date by which the notice of cancellation has been received by both the owner or operator and the department, as evidenced by the return receipts.

(j) Cancellation of the bond by the owner or operator. The owner or operator may request cancellation of the bond from the department if any of the following occurs:

(1) The owner or operator substitutes an alternative method of financial assurance as specified in K.A.R. 28-29-2101(b) and obtains written approval for its use from the department.

(2) The owner or operator is released by the department from further obligation for closure or postclosure, or both, at the facility.

(3) The owner or operator completes required corrective action and is released from further obligation by the department or any court of competent jurisdiction.

(k) The provisions of this regulation shall apply on and after February 24, 2000. (Authorized by K.S.A. 1998 Supp. 65-3406; implementing K.S.A. 1998 Supp. 65-3407, as amended by L. 1999, Ch. 112, Sec. 1; effective Feb. 24, 2000.)

28-29-2105. Financial assurance provided by a surety bond guaranteeing performance. (a) Performance guarantee bond. Any owner or operator of a permitted solid waste disposal area or processing facility may satisfy the

requirements of K.A.R. 28-29-2101 or K.A.R. 28-29-2102, or both, by obtaining a performance guarantee bond that conforms to the requirements of this regulation and by submitting the original bond to the department.

(1) Each owner or operator of a new facility shall submit to the department the bond for closure or postclosure, or both, before the permit is issued by the department.

(2) Each owner or operator required to provide financial assurance for a corrective action plan shall submit the bond to the department within the times specified in K.A.R. 28-29-2102(d).

(3) The surety institution shall meet the following criteria:

(A) Be unrelated to the owner or operator;

(B) have the authority to issue surety bonds in Kansas; and

(C) be listed as an acceptable surety institution on federal bonds.

(b) Form of the performance guarantee bond. The wording of the performance guarantee bond shall be identical to the wording in the document provided by the department. If the penal sum of the bond is increased during the life of the bond, the owner or operator shall provide written acceptance of the new amount, indicated by a signed acceptance placed on the certificate of increase issued by the surety institution. The original signed and accepted certificate of increase shall be filed with the department.

(c) Standby trust fund. Any owner or operator who uses a performance guarantee bond to satisfy the requirements of K.A.R. 28-29-2101 or K.A.R. 28-29-2102, or both, shall also establish a standby trust fund. A copy of the standby trust agreement with an original signature shall be submitted to the department along with the original performance guarantee bond. Under the terms of the bond, all payments from the penal sum shall be deposited by the surety institution directly into the standby trust fund, in accordance with instructions from the department. The standby trust fund shall conform to the requirements specified in K.A.R. 28-29-2103, except that, until the trust account is funded pursuant to the requirement of this regulation, the following shall not be required:

(1) Payments into the fund as specified in K.A.R. 28-29-2103 (c) or (e);

(2) updates to schedule A of the trust agreement as specified in K.A.R. 28-29-2103 (b)(3);

(3) annual valuations as required by the trust agreement; and

(4) notices of nonpayment as required by the trust agreement.

(d) Provisions of the performance guarantee bond for closure and postclosure. The performance guarantee bond for closure or postclosure, or both, shall require that the owner or operator perform either of the following:

(1) Perform final closure or postclosure, or both, in accordance with the closure or postclosure plan, or both, and any other requirements of the permit and the department or a court of competent jurisdiction whenever required to do so; or

(2) provide alternate financial assurance as specified in these financial assurance regulations and obtain the department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the department have received a notice of cancellation from the surety institution.

(e) Provisions of the performance guarantee bond for corrective action. A performance guarantee bond for corrective action shall require that the owner or operator perform either of the following:

(1) Perform corrective action according to the corrective action plan or according to an order from the department or any court of competent jurisdiction whenever required to do so; or

(2) provide alternate financial assurance as specified in these financial assurance regulations and obtain the department's written approval for the assurance provided, within 90 days after the date by which both the owner or operator and the department have received a notice of cancellation from the surety institution.

(f) Liability of the surety institution. Under terms of the bond, the surety institution shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(g) Penal sum of the bond. The penal sum of the bond for closure, postclosure, or both, shall be at least the amount of the current cost estimate for closure or postclosure, or both. The penal sum of the bond for corrective action shall be at least the amount of the current cost estimate for corrective action for the entire corrective period.

(h) Increase in the penal sum of the bond. Whenever the current cost of closure, postclosure, corrective action, or any combination of these, increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, shall either cause the penal sum to be increased to the new amount and submit evidence

of the increase to the department, or obtain other financial assurance as specified in K.A.R. 28-29-2101(b) to cover the increase. Whenever the current cost of closure, postclosure, corrective action, or any combination of these, decreases, the owner or operator may request approval from the department to decrease the penal sum of the bond. The request shall be evaluated by the department, and the amount shall be decreased consistent with the department's evaluation.

(i) Cancellation of the bond by the surety institution. Under terms of the bond, the surety institution may cancel the bond by sending notice of cancellation by certified mail to both the owner or operator and the department. Cancellation shall not occur, however, during the 120 days following the date by which the notice of cancellation has been received by both the owner or operator and the department, as evidenced by the return receipts.

(j) Cancellation of the bond by the owner or operator. The owner or operator may request cancellation of the bond from the department if any of the following occurs:

(1) The owner or operator substitutes an alternative method of financial assurance as specified in K.A.R. 28-29-2101(b) and obtains written approval for its use from the department.

(2) The owner or operator is released by the department from further obligation for closure or postclosure, or both, at the facility.

(3) The owner or operator completes required corrective action and is released from further obligation by the department or any court of competent jurisdiction.

(k) The provisions of this regulation shall apply on and after February 24, 2000. (Authorized by K.S.A. 1998 Supp. 65-3406; implementing K.S.A. 1998 Supp. 65-3407, as amended by L. 1999, Ch. 112, Sec. 1; effective Feb. 24, 2000.)

28-29-2106. Financial assurance provided by an irrevocable letter of credit. (a) Letter of credit. Any owner or operator of a permitted solid waste disposal area or processing facility may satisfy the requirements of K.A.R. 28-29-2101 or K.A.R. 28-29-2102, or both, by obtaining a letter of credit that conforms to the requirements of this regulation and by submitting the original letter of credit to the department.

(1) Each owner or operator of a new facility shall submit to the department the letter of credit before the permit is issued by the department.

(2) Each owner or operator required to provide financial assurance for a corrective action plan shall submit the letter of credit to the department within the times specified in K.A.R. 28-29-2102(d).

(3) The institution issuing the letter of credit shall meet the following criteria:

(A) Be unrelated to the owner or operator;

(B) be authorized to issue letters of credit in Kansas; and

(C) conduct letter of credit activities that are regulated by an agency of the state or federal government.

(b) Form of the letter of credit. The wording of the letter of credit shall be identical to the wording in the document provided by the department. If the amount of the letter of credit is changed or the expiration date is extended, an original amendment to the letter of credit shall be filed with the department.

(c) Standby trust fund. Any owner or operator who uses a letter of credit to satisfy the requirements of K.A.R. 28-29-2101 or K.A.R. 28-29-2102, or both, shall also establish a standby trust fund. A copy of the standby trust agreement with an original signature shall be submitted to the department along with the original letter of credit. Under the terms of the letter of credit, all payments from the penal sum shall be deposited by the issuing institution directly into the standby trust fund, in accordance with instructions from the department. The standby trust fund shall conform to the requirements specified in K.A.R. 28-29-2103, except that, until the trust account is funded pursuant to the requirements of this regulation, the following shall not be required:

(1) Payments into the fund as specified in K.A.R. 28-29-2103 (c) or (e);

(2) updates to schedule A of the trust agreement as specified in K.A.R. 28-29-2103(b)(3);

(3) annual valuations as required by the trust agreement; and

(4) notices of nonpayment as required by the trust agreement.

(d) Provisions of the letter of credit. The letter of credit shall be irrevocable and shall be issued for a period of at least one year. The letter of credit shall require that the expiration date be automatically extended for a period of at least one year on the expiration date and on each succeeding expiration date, unless 120 days before the current expiration date the issuing institution notifies both the owner or operator and the department by cer-

tified mail of a decision not to extend the expiration date. Under terms of the letter of credit, the 120-day period shall begin on the date by which both the owner or operator and the department have received the notice, as evidenced by the return receipts.

(e) Amount of the letter of credit. The letter of credit for closure, postclosure, or both, shall be issued for at least the amount of the current cost of closure or postclosure, or both, whichever is greater. The letter of credit for corrective action shall be issued for at least the amount of the current cost estimate for corrective action during the entire corrective action period.

(f) Increases in the amount of the letter of credit. Whenever the current cost of closure, postclosure, corrective action, or any combination of these, increases to an amount greater than the amount of the letter of credit, the owner or operator, within 60 days after the increase, shall either cause the amount of the letter of credit to be increased to the new amount and submit evidence of the increase to the department, or obtain other financial assurance as specified in K.A.R. 28-29-2101(b) to cover the increase. Whenever the current cost of closure, postclosure, corrective action, or any combination of these, decreases, the owner or operator may request approval from the department to decrease the amount of the letter of credit. The request shall be evaluated by the department, and the amount shall be decreased consistent with the department's evaluation.

(g) Failure to perform closure, postclosure, and corrective action. The amount of the letter of credit, in whole or in part, shall be drawn by the department following a determination by the department of either of the following:

(1) That the owner or operator has failed to perform closure, postclosure, or corrective action, or any combination of these, in accordance with the closure, postclosure, or corrective action plan, or any combination of these, when required; or

(2) that the owner or operator has failed to perform according to the terms and conditions of the permit.

(h) Failure to supply alternate financial assurance. If the owner or operator does not establish alternate financial assurance as specified by this regulation and does not obtain written approval for its use from the department within 90 days after the date by which both the owner or operator and the department have received a notice from the issuing institution that it has decided not to

renew the letter of credit beyond the current expiration date, the amount of the letter of credit may be drawn by the department.

(i) Termination of the letter of credit by the owner or operator. The owner or operator may request termination of the letter of credit if any of the following occurs:

(1) The owner or operator substitutes an alternative method of financial assurance as specified in K.A.R. 28-29-2101(b) and obtains written approval for its use from the department.

(2) The owner or operator is released by the department from further obligation for closure or postclosure, or both, at the facility.

(3) The owner or operator completes required corrective action and is released from further obligation by the department or any court of competent jurisdiction.

(j) The provisions of this regulation shall apply on and after February 24, 2000. (Authorized by K.S.A. 1998 Supp. 65-3406; implementing K.S.A. 1998 Supp. 65-3407, as amended by L. 1999, Ch. 112, Sec. 1; effective Feb. 24, 2000.)

28-29-2107. Financial assurance provided by insurance. (a) Insurance policy. Any owner or operator of a permitted solid waste disposal area or processing facility may satisfy the requirements of K.A.R. 28-29-2101 or K.A.R. 28-29-2102, or both, by obtaining an insurance policy that conforms to the requirements of this regulation and by submitting to the department a copy of the insurance policy with an original signature, including all riders and endorsements, and an insurance certificate.

(1) The owner or operator of a new facility shall submit the insurance policy, riders, endorsements, and certificate to the department before the permit is issued by the department.

(2) Each owner or operator required to provide financial assurance for a corrective action plan shall submit the insurance policy, riders, endorsements, and certificate to the department within the times specified in K.A.R. 28-29-2102 (d).

(3) The insuring institution shall meet the following criteria:

(A) Be unrelated to the owner or operator;
(B) be licensed to transact the business of insurance by an agency of a state; and
(C) be listed as a surplus or excess lines carrier in Kansas.

(b) Form of the insurance certificate. The wording of the insurance certificate shall be identical

to the wording in the document provided by the department.

(c) Amount of insurance. The insurance policy shall be issued for a face amount at least equal to the current cost estimate for closure or postclosure, or both, or at least in the amount of the current cost estimate for corrective action for the entire corrective action period, exclusive of legal defense costs. The term "face amount" shall mean the total amount the insurer is obligated to pay under the policy. Actual payments under the policy by the insurer shall not change the face amount, although the future liability of the insurer shall be lowered by the amount of the payments.

(d) Provisions of the insurance policy. An insurance policy issued for closure, postclosure, corrective action, or a combination of these, shall guarantee that funds are available to pay for the actions required by the closure plan, postclosure plan, corrective action plan, or any combination of these, whenever required. The policy shall also guarantee that once final closure, postclosure, corrective action, or any combination of these, begins, the insurer will be obligated to disburse funds up to the face amount of the policy, at the direction of the department. The insurer shall not exercise discretion to determine whether the expenses incurred for closure, postclosure, corrective action, or any combination of these, are ordinary, necessary, or prudent, if disbursement is required by the department.

(e) Reimbursement of expenditures. After closure, postclosure, or corrective action, or any combination of these, has begun, an owner or operator or any other authorized person may request reimbursement of expenditures by submitting itemized statements with documentation to the department. The itemized statements shall be evaluated by the department. The expenditures listed shall be approved or disapproved by the department. After evaluating the itemized statements, payment from the insurer for approved expenditures may be authorized by the department if the remaining face amount of the insurance policy is sufficient to cover any remaining costs of closure, postclosure, corrective action, or any combination of these. If the department believes that future costs of closure, postclosure, corrective action, or any combination of these, will exceed the remaining face amount of the policy, authorization for payment may be withheld by the department.

(f) Requirement to maintain the insurance policy in force. The owner or operator shall main-

tain the insurance policy for closure, postclosure, corrective action, or any combination of these, in force until the department consents, in writing, to its termination. Failure to pay the premium when due, without substitution of alternate financial assurance as specified by K.A.R. 28-29-2101(b), shall constitute a violation of these regulations. The owner or operator shall be in violation if the department receives notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than on the date the policy is actually terminated.

(g) Assignment of the insurance to successive owners or operators. Each policy of insurance shall contain a provision allowing assignment of the policy to a successor owner or operator. This assignment may be conditional upon consent of the insurer, which shall not be unreasonably withheld.

(h) Cancellation of the insurance by the insurer. The policy of insurance for closure, postclosure, corrective action, or any combination of these, shall stipulate that the insurer not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to both the owner or operator and the department. The cancellation, termination, or failure to renew shall not occur during the 120 days beginning with the date by which both the owner or operator and the department have received notice, as evidenced by the return receipts. Cancellation, termination, or failure to renew shall not occur, and the policy shall remain in full force and effect if, on or before the date of expiration, one or more of the following events occur:

(1) The department determines the facility has been abandoned.

(2) The facility permit is terminated or revoked by the department, or a new permit is denied.

(3) The commencement of closure, postclosure, or corrective action, or any combination of these, activities is required by the department or any court of competent jurisdiction.

(4) The owner or operator is named as a debtor in a voluntary or involuntary proceeding under any state or federal bankruptcy law.

(5) The owner or operator fails to provide alternative financial assurance in a form and amount acceptable to the department.

(6) The premium due is paid.

(i) Increased cost estimates. During the active life of the facility, whenever the current cost estimate of closure, postclosure, corrective action, or of any combination of these, increases to an amount greater than the face amount of the insurance policy, the owner or operator, within 60 days after the increase, shall either cause the face amount of the policy to be increased to an amount at least equal to the current cost estimate of closure, postclosure, corrective action, or any combination of these, and submit evidence of the increase to the department, or shall obtain other financial assurance as specified in K.A.R. 28-29-2101(b) to cover the increase. Whenever the estimated cost of closure, postclosure, corrective action, or any combination of these, decreases, the owner or operator may request approval from the department to decrease the face amount of the policy. The request shall be evaluated by the department, and a decrease in the amount shall be allowed by the department, consistent with its evaluation.

(j) Annual adjustments to the face amount of the policy. Beginning on the date that liability to make payments pursuant to a policy for postclosure begins, the insurer shall annually increase the face amount of the policy. This increase shall be based on the face amount of the policy, less any payments made exclusive of legal defense costs, multiplied by an amount equivalent to 85 percent of the most recent investment rate or 85 percent of the equivalent coupon-issue yield rate announced by the U.S. department of the treasury for 26-week treasury securities.

(k) Termination of the insurance by the owner or operator. The owner or operator may request cancellation of the insurance policy from the department if either of the following occurs:

(1) The owner or operator substitutes an alternative method of financial assurance as specified in K.A.R. 28-29-2101(b) and obtains written approval for its use from the department.

(2) The owner or operator is released by the department or any court of competent jurisdiction from further obligation for closure, postclosure, corrective action, or any combination of these, at the facility.

(l) The provisions of this regulation shall apply on and after February 24, 2000. (Authorized by K.S.A. 1998 Supp. 65-3406; implementing K.S.A. 1998 Supp. 65-3407, as amended by L. 1999, Ch. 112, Sec. 1; effective Feb. 24, 2000.)

28-29-2108. Financial assurance provided by the corporate financial test. (a) Corporate financial test. Any corporate owner or operator of a permitted solid waste disposal area or processing facility may satisfy the requirements of K.A.R. 28-29-2101 or K.A.R. 28-29-2102, or both, by passing a financial test based on the current financial condition of the permitted corporation as specified in this regulation. Related corporations may not be summed or otherwise combined for the purpose of the financial test, but majority-owned subsidiary corporations of the permitted corporation may be consolidated.

(b) The financial component.

(1) The owner or operator shall satisfy one of the following three conditions:

(A) A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB, as issued by Standard & Poor's, or Aaa, Aa, A, or Baa, as issued by Moody's;

(B) a ratio of less than 1.5, obtained by dividing total liabilities by net worth; or

(C) a ratio of greater than 0.10, obtained by dividing the sum of net income plus depreciation, depletion, and amortization, minus \$10 million, by total liabilities.

(2) The tangible net worth of the owner or operator shall be greater than either of the following:

(A) The sum of current closure, postclosure, and corrective action cost estimates and any other environmental obligations, including guarantees, covered by the financial test plus \$10 million; or

(B) \$10 million in net worth plus the amount of any guarantees that have not been recognized as liabilities in the financial statements, if all of the current closure, postclosure, and corrective action costs and any other environmental obligations covered by the financial test are recognized as liabilities in the owner's or operator's audited annual financial statements.

(3) The owner or operator shall have assets located in the United States amounting to at least the sum of current closure, postclosure, and corrective action cost estimates and any other environmental obligations or guarantees covered by the financial test as described in subsection (d) of this regulation.

(c) Record keeping and reporting requirements.

(1) The owner or operator shall place a copy of the following items in the facility's operating record and file the originals with the department:

(A) A letter signed by the owner's or operator's chief financial officer that is identical to the form

provided by the department and that meets the following criteria:

(i) Lists all the current cost estimates for closure, postclosure, and corrective action and any other environmental obligations or guarantees covered by any financial test under state or federal laws and regulations in any jurisdiction; and

(ii) provides evidence demonstrating that the permitted corporate entity meets the requirements of the financial component of subsection (b) of this regulation;

(B) a copy of the permitted corporate entity's most recent corporate annual financial statements containing a report of independent certified public accountants, including an unqualified opinion. An adverse opinion, disclaimer of opinion, or qualified opinion shall be cause for the department to disapprove use of the corporate financial test. A qualified opinion may be evaluated by the department. Use of the financial test may be approved or disapproved by the department based on its evaluation;

(C) a special report of independent certified public accountants based on applying agreed-upon procedures engaged in accordance with professional auditing standards and stating the following:

(i) The accountant has compared the data in the chief financial officer's letter that is specified as coming from the most recent year-end audited financial statements to the audited financial statements; and

(ii) in connection with this procedure, the accountant found the data to be in agreement; and

(D) if the chief financial officer's letter provides a demonstration that the permitted corporate entity has assured environmental obligations in the manner provided in paragraph (b)(2)(B) of this regulation, a special report of independent certified public accountants that meets the following criteria:

(i) Provides verification that all of the environmental obligations covered by the financial test have been recognized as liabilities in the most recent annual financial statements;

(ii) describes the methods used to measure and report on these obligations; and

(iii) provides verification that the tangible net worth of the permitted corporate entity is at least \$10 million plus the amount of any guarantees provided.

(2) After the initial placement of the items listed in paragraph (c)(1) of this regulation in the facility

operating record and the initial filing of the originals with the department, the owner or operator shall annually update the information in the operating record and file the updated originals with the department. The updated information shall be placed in the operating record and filed with the department within 90 days following the close of the owner's or operator's most recently completed fiscal year.

(3) The owner or operator shall no longer be required to submit the items specified in paragraph (c)(1) of this regulation or otherwise comply with the requirements of this regulation if any of the following occurs:

(A) The owner or operator substitutes an alternative method of financial assurance as specified in K.A.R. 28-29-2101(b) and obtains written approval for its use from the department.

(B) The owner or operator is released by the department from further obligation for closure, or postclosure, or both, at the facility.

(C) The owner or operator completes required corrective action and is released from further obligation by the department or any court of competent jurisdiction.

(4) If the owner or operator determines that the permitted corporate entity no longer meets the requirements of subsection (b) of this regulation, the owner or operator shall, within 120 days following the owner's or operator's most recent fiscal year end, obtain alternate financial assurance as specified in K.A.R. 28-29-2101(b) and obtain approval from the department for its use.

(5) Based on the department's reasonable belief that the owner or operator may no longer meet the requirements of subsection (b) of this regulation, the owner or operator may be required by the department at any time to provide reports of its financial condition, including or in addition to current financial test documentation as specified in subsection (c) of this regulation, for evaluation. If the department evaluation results in a determination that the owner or operator no longer meets the requirements to use the financial test, the owner or operator shall provide alternate financial assurance as specified in K.A.R. 28-29-2101(b).

(d) Calculation of costs to be assured. Each owner or operator using the corporate financial test to provide financial assurance for closure, postclosure, and corrective action shall combine the current cost estimates for the permitted facility with all other environmental obligations or guarantees also assured by any financial test in any

local, state, federal, or foreign jurisdiction. The combined environmental cost shall then be used in the financial test calculations provided to the department by the owner or operator. The environmental obligations of consolidated subsidiary corporations that are assured by the financial test shall also be included in the combined environmental obligations covered by the test.

(e) The provisions of this regulation shall apply on and after February 24, 2000. (Authorized by K.S.A. 1998 Supp. 65-3406; implementing K.S.A. 1998 Supp. 65-3407, as amended by L. 1999, Ch. 112, Sec. 1; effective Feb. 24, 2000.)

28-29-2109. Financial assurance provided by the corporate guarantee. (a) Corporate guarantee. Any owner or operator of a permitted solid waste disposal area or processing facility may meet the requirements of K.A.R. 28-29-2101 or K.A.R. 28-29-2102, or both, by obtaining a written guarantee for closure, postclosure, or corrective action costs, or any combination of these as specified in this regulation.

(1) The guarantor shall comply with the following:

(A) The requirements for owners or operators using the corporate financial test as specified in K.A.R. 28-29-2108(b);

(B) the record keeping and reporting requirements in K.A.R. 28-29-2108(c); and

(C) the terms of the guarantee.

(2) The guarantor shall be one of the following:

(A) The direct or higher-tier parent corporation of the owner or operator; or

(B) a corporation having the same parent corporation as the owner or operator.

(b) Form of the corporate guarantee. The guarantor shall provide a written guarantee that is worded identically to the document provided by the department.

(c) Effective date of the guarantee. A guarantee of closure, postclosure, or both, for a new permit shall be in force before the permit is issued by the department. A guarantee for corrective action shall be in force within the times specified in K.A.R. 28-29-2102 (d).

(d) Record keeping and reporting requirements. Copies of the guarantee, with original signatures, shall be placed in the facility operating record of the owner or operator and filed with the department, accompanied by the documents specified for use by the owner or operator in K.A.R. 28-29-2108(c), that shall be completed using the financial information and reports of the guarantor

corporation. These documents shall be updated and filed annually.

(e) Consideration for the guarantee. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the guarantor's chief financial officer shall describe the value received in consideration for the guarantee.

(f) Provisions of the guarantee. The terms of the written guarantee shall specify the following remedies:

(1) If the owner or operator fails to perform closure, postclosure, corrective action, or any combination of these, for the permitted facility covered by the guarantee when required by the department or any court of competent jurisdiction, the guarantor shall perform either of the following remedies:

(A) Perform or pay a third party to perform closure, postclosure, corrective action, or any combination of these, as required by the department or any court of competent jurisdiction; or

(B) establish a fully funded trust fund as specified in K.A.R. 28-29-2103, in the name of the owner or operator, in the amount of the current cost estimate for closure, postclosure, corrective action, or any combination of these, whichever is greatest.

(2) The guarantee shall remain in effect unless the guarantor sends prior notice of cancellation by certified mail to both the owner or operator and the department. Cancellation shall not occur, however, during the 120 days beginning on the date by which both the owner or operator and the department have received the notice of cancellation, as evidenced by the return receipts.

(3) If the guarantee is canceled, the owner or operator shall, within 90 days following the date by which both the owner or operator and the department have received the cancellation notice, obtain alternate financial assurance as specified in K.A.R. 28-29-2101(b) and obtain the approval of the department for its use. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor shall provide the alternate financial assurance in the name of the owner or operator within 120 days following the date by which both the department and the owner or operator have received the cancellation notice.

(g) Failure of the guarantee. If the corporate guarantor no longer meets the requirements of K.A.R. 28-29-2108(b), the owner or operator shall, within 90 days, obtain alternate financial

assurance and obtain the approval of the department for its use. If the owner or operator fails to provide alternate financial assurance as specified in K.A.R. 28-29-2101(b) within the 90-day period, the guarantor shall, within the next 30 days, provide the alternate financial assurance in the name of the owner or operator.

(h) Release of the guarantee. The owner or operator shall be no longer required to meet the requirements of this regulation if any of the following occurs:

(1) The owner or operator substitutes an alternative method of financial assurance as specified in K.A.R. 28-29-2101(b) and obtains written approval for its use from the department.

(2) The owner or operator is released by the department from further obligation for closure, postclosure, or both, at the permitted facility.

(3) The owner or operator completes required corrective action and is released from further obligation by the department or any court of competent jurisdiction.

(i) The provisions of this regulation shall apply on and after February 24, 2000. (Authorized by K.S.A. 1998 Supp. 65-3406; implementing K.S.A. 1998 Supp. 65-3407, as amended by L. 1999, Ch. 112, Sec. 1; effective Feb. 24, 2000.)

28-29-2110. Financial assurance provided by the local government financial test.

(a) Local government financial test. Each owner or operator of a permitted solid waste disposal area or processing facility that is a local government subdivision of the state of Kansas may satisfy the requirements of K.A.R. 28-29-2101 or K.A.R. 28-29-2102, or both, for the closure, postclosure, or corrective action costs, or any combination of these, for a municipal solid waste landfill by use of a local government financial test as specified in this regulation.

(b) Definitions. The following terms used in this regulation shall be defined as specified below:

(1) "Annual debt service" means the principal and interest due on outstanding long-term debt during a stated time period, typically the current fiscal year, and payments on capital lease obligations during the same period.

(2) "Cash plus marketable securities" means all the cash and marketable securities held by the local government on the last day of a fiscal year but shall exclude the following:

(i) Cash and marketable securities designated to satisfy past obligations; and

(ii) cash and investments held in fiduciary funds.

(3) "Current year" means the most recently completed fiscal year.

(4) "Deficit" means total annual revenues minus total annual expenditures.

(5) "Long-term debt issued in the current year" means the amount of principal borrowing actually received during the current year from the issue of obligations due more than one year from the date of issue but shall exclude the following:

(i) The amount of capital lease liability incurred during the year; and

(ii) the proceeds of any long-term borrowing in the current year that remains in the capital projects fund at year's end.

(6) "Nonroutine capital expenditures" means capital expenditures of the capital projects fund and expenditures identified as capital outlays or asset additions in the audited annual financial statements of other governmental funds and enterprise funds.

(7) "Total annual expenditures" means the total of all expenditures but shall exclude the following:

(i) Debt principal repayments;

(ii) nonroutine capital expenditures; and

(iii) the expenditures of fiduciary or other trust funds managed by a local government on behalf of specific third parties.

(8) "Total annual revenues" means revenues from all taxes, fees, investment earnings, and intergovernmental transfers but shall exclude the following:

(i) The proceeds from borrowing and asset sales; and

(ii) revenues of fiduciary or other trust funds managed by a local government on behalf of specific third parties.

(c) The financial component.

(1) If the owner or operator has outstanding general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the bonds shall have a current bond rating of AAA, AA, A, or BBB, as issued by Standard & Poor's, or a current rating of Aaa, Aa, A, or Baa, as issued by Moody's.

(2) If the owner or operator does not have outstanding and rated general obligation bonds, the owner or operator shall meet each of the following financial ratios based on the owner's or operator's most recent audited annual financial statements:

(A) A ratio of cash plus marketable securities divided by total annual expenditures equal to or greater than 0.05, referred to as the "liquidity ratio";

(B) a ratio of annual debt service divided by total annual expenditures equal to or less than 0.20, referred to as the “debt service ratio”; and

(C) a ratio of long-term debt issued in the current year divided by nonroutine capital expenditures of the current year equal to or less than 2.00, referred to as the “use of funds ratio.”

(3) The owner or operator’s annual financial statements shall be audited by an independent certified public accountant. The financial statements shall be prepared in conformity with one of the following accounting methods:

(A) Generally accepted accounting principles for governments; or

(B) a prescribed basis of accounting that demonstrates compliance with the cash basis and budget laws of the state of Kansas.

(4) An owner or operator who prepares the annual financial statements in conformity with generally accepted accounting principles for governments and uses the financial ratio test method of financial assurance may omit the ratio test stated in paragraph (c)(2)(C) of this regulation.

(5) A local government owner or operator shall not be eligible to use the financial test to assure closure, postclosure, corrective action, or any combination of these, for a municipal solid waste landfill if any of the following conditions exists:

(A) The owner or operator is currently in default on any outstanding general obligation bonds.

(B) The owner or operator has any general obligation bonds outstanding that are rated lower than BBB, as issued by Standard & Poor’s, or Baa, as issued by Moody’s.

(C) The owner or operator operated at a deficit equal to or greater than five percent of the total annual revenue in each of the two most recently completed fiscal years.

(D) The owner or operator receives an adverse opinion, disclaimer of opinion, or qualification of opinion in the report of independent certified public accountants accompanying the audited financial statements for the most recently completed fiscal year. A qualified opinion may be evaluated by the department. Use of the financial test may be approved or disapproved by the department based on its evaluation.

(d) Public notice component. The local government owner or operator shall place a reference to the cost of closure, postclosure, corrective action, or any combination of these, that is assured by the local government financial test in its comprehen-

sive annual financial report or other audited annual financial report during each year in which the owner or operator is required to provide financial assurance by these financial assurance regulations. Disclosure shall be made in a note attached to the audited annual financial statements and shall include the following:

(1) The nature and source of the requirements to conduct closure, postclosure, corrective action, or any combination of these;

(2) the liability reported or calculated at the balance sheet date;

(3) the estimated total cost of closure, postclosure, corrective action, or any combination of these, remaining to be recognized following the reported balance sheet date;

(4) the percentage of landfill capacity on the reported balance sheet date;

(5) the estimated remaining landfill life in years, or the estimated period of corrective action remaining; and

(6) the method projected for use or the method currently in use to fund the actual costs of closure, postclosure, corrective action, or any combination of these, when required.

(e) Record keeping and reporting requirements.

(1) The owner or operator shall place a copy of the following items in the facility’s operating record and shall file the originals with the department:

(A) A letter signed by the local government’s chief financial officer that is identical to the form provided by the department and that includes the following:

(i) A list of all the current cost estimates covered by a financial test, including the municipal solid waste landfill and any other environmental obligations or guarantees assured by financial test in any jurisdiction;

(ii) a certification that the local government meets the conditions of subsection (c) of this regulation required for use of either the bond rating or the financial ratio method of the local government financial test;

(iii) a certification that the local government has satisfied the public notice component requirements of subsection (d) of this regulation; and

(iv) a certification that the local government has not exceeded the amount eligible to be assured by the financial test according to subsection (f) of this regulation;

(B) a copy of the local government’s audited comprehensive annual financial report or other audited annual financial report for the latest com-

pleted fiscal year, including the report and opinion of the auditor, who shall be an independent certified public accountant; and

(C) a special report of independent certified public accountants that is based on applying agreed-upon procedures engaged in accordance with professional auditing standards and that identifies the procedures performed and states that the independent accountant has determined all of the following:

(i) The data used to calculate the financial test ratios in paragraphs (c)(2)(A), (c)(2)(B), and (c)(2)(C) of this regulation were derived from the audited annual financial statements for the most recently completed fiscal year, and the ratios calculated from this data equal or exceed the stated requirements.

(ii) The owner or operator satisfies the requirements of paragraphs (c)(5)(C) and (f)(1) of this regulation.

(iii) The annual financial report has been prepared on a basis of accounting required by paragraph (c)(3) of this regulation and is accompanied by an auditor's opinion satisfying the requirements of paragraph (c)(5)(D) of this regulation.

(2) The items required by paragraph (e)(1) of this regulation shall be placed in the facility operating record to fulfill the requirements of K.A.R. 28-29-108(q)(1)(G) and shall be filed with the department no later than the effective date for a new permit, and also annually before the end of the latest allowable day for filing the annual audited financial report with the Kansas department of administration, director of accounts and reports, without extension, according to the provisions of K.S.A. 75-1124, and amendments thereto.

(3) The local government owner or operator shall satisfy the requirements of the local government financial test at the close of each fiscal year. If the local government no longer meets the requirements of the financial test, it shall obtain alternate financial assurance as specified in K.A.R. 28-29-2101(b) within 90 days of discovering the failure or within 210 days following the close of the most recently completed fiscal year, whichever first occurs, and shall obtain approval from the department for its use.

(4) The local government owner or operator shall no longer be required to submit the items specified in paragraph (e)(1) of this regulation or otherwise comply with the requirements of this regulation if either of the following conditions occurs:

(A) The local government substitutes an alternate method or instrument of financial assurance as specified in K.A.R. 28-29-2101(b) and obtains the department's approval for its use.

(B) The local government is released by the department from further obligation for closure, postclosure, corrective action, or any combination of these, at the permitted facility.

(5) Additional reports of financial condition may be required by the department from the local government at any time for evaluation. If the department evaluation results in a determination that the local government no longer meets the requirements of the local government financial test, the local government shall provide alternate financial assurance as specified in K.A.R. 28-29-2101(b) within 90 days following notice to the local government from the department.

(f) Calculation of costs to be assured.

(1) The portion of closure, postclosure, and corrective action costs that an owner or operator may assure by the local government financial test shall be determined as follows:

(A) If the local government owner or operator does not assure other environmental obligations or guarantees by the financial test, it may assure closure, postclosure, and corrective action costs for the permitted facility up to an amount equaling 43 percent of total annual revenues.

(B) If the local government owner or operator assures other environmental obligations or guarantees in any jurisdiction by the financial test in addition to the closure, postclosure, and corrective action costs of the permitted facility, it shall add the current cost estimates of the additional obligations or guarantees to the closure, postclosure, and corrective action costs of the permitted facility, and the combined environmental obligations assured shall not exceed 43 percent of total annual revenues.

(2) The local government owner or operator shall provide alternate financial assurance as specified in K.A.R. 28-29-2101(b) for any environmental obligations or guarantees in excess of 43 percent of total annual revenues.

(g) The provisions of this regulation shall apply on and after February 24, 2000. (Authorized by K.S.A. 1998 Supp. 65-3406; implementing K.S.A. 1998 Supp. 65-3407, as amended by L. 1999, Ch. 112, Sec. 1; effective Feb. 24, 2000.)

28-29-2111. Financial assurance provided by a local government guarantee. (a) Local

government guarantee. Each owner or operator of a municipal solid waste landfill may satisfy the requirements of K.A.R. 28-29-2101 or K.A.R. 28-29-2102, or both, by obtaining a written guarantee for closure, postclosure, or corrective action costs, or any combination of these, that is provided by a local government subdivision of the state of Kansas as specified in this regulation. The guarantor shall comply with the following:

(1) The requirements of the financial component for use of the local government financial test as specified in K.A.R. 28-29-2110(b);

(2) the public notice requirements of K.A.R. 28-29-2110(c);

(3) the record keeping and reporting requirements of K.A.R. 28-29-2110(d); and

(4) the terms of the guarantee.

(b) Form of the local government guarantee. The guarantor shall provide a written guarantee that is worded identically to the document provided by the department.

(c) Effective date of the guarantee. A guarantee of closure or postclosure, or both, for a new permit shall be in force before the permit is issued by the department. A guarantee for corrective action shall be in force within the times specified in K.A.R. 28-29-2102 (d).

(d) Record keeping and reporting requirements. Copies of the guarantee, with original signatures, shall be placed in the facility operating record of the owner or operator and filed with the department, with the documents specified for use by the owner or operator in K.A.R. 28-29-2110(d). The documentation shall be completed using the financial information and reports of the guarantor. These documents shall be updated and filed annually.

(e) Provisions of the guarantee. The terms of the guarantee shall stipulate the following:

(1) If the owner or operator fails to perform closure, postclosure, corrective action, or any combination of these, for the permitted facility covered by the guarantee when required to do so by the department or a court of competent jurisdiction, the guarantor shall perform either of the following:

(A) Perform or pay a third-party to perform closure, postclosure, corrective action, or any combination of these, as required by the department or any court of competent jurisdiction; or

(B) establish a fully funded trust fund as specified in K.A.R. 28-29-2103, in the name of the owner or operator, in the amount of the current cost estimate for closure, postclosure, corrective

action, or any combination of these, whichever is greatest.

(2) The guarantee shall remain in effect unless the guarantor sends notice of cancellation by certified mail to both the owner or operator and the department. Cancellation shall not occur, however, during the 120 days beginning on the date by which both the owner or operator and the department have received the notice of cancellation, as evidenced by the return receipts.

(3) If the guarantee is canceled, the owner or operator shall, within 90 days following the date by which both the owner or operator and the department have received the cancellation notice, obtain alternate financial assurance as specified in K.A.R. 28-29-2101(b) and obtain approval from the department. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor shall provide the alternate financial assurance in the name of the owner or operator within the next 30 days.

(f) Failure of the guarantee. If the local government guarantor no longer meets the requirements of K.A.R. 28-29-2110(b), the owner or operator shall, within 90 days, obtain alternate financial assurance as specified in K.A.R. 28-29-2101(b) and obtain approval from the department for its use. If the owner or operator fails to provide the alternate financial assurance within the 90-day period, the guarantor shall, within the next 30 days, provide the alternate financial assurance in the name of the owner or operator.

(g) Release of the guarantee. The owner or operator shall no longer be required to meet the requirements of this regulation if any of the following occurs:

(1) The owner or operator substitutes an alternative method of financial assurance as specified in K.A.R. 28-29-2101(b) and obtains written approval for its use from the department.

(2) The owner or operator is released by the department from further obligation for closure, postclosure, or both, at the permitted facility.

(3) The owner or operator completes the required corrective action and is released from further obligation by the department or any court of competent jurisdiction.

(h) The provisions of this regulation shall apply on and after February 24, 2000. (Authorized by K.S.A. 1998 Supp. 65-3406; implementing K.S.A. 1998 Supp. 65-3407, as amended by L. 1999, Ch. 112, Sec. 1; effective Feb. 24, 2000.)

28-29-2112. Financial assurance provided by use of ad valorem taxing authority. (a) Ad valorem taxing authority. Any owner or operator that is a local government subdivision of the state of Kansas and that is permitted to own or operate a solid waste disposal area or processing facility other than a municipal solid waste landfill may use its statutory authority to assess and collect ad valorem taxes to assure the closure, postclosure, or corrective action costs, or any combination of these, of the facility as required by K.A.R. 28-29-2101 or K.A.R. 28-29-2102, or both.

(b) Proof of ad valorem taxing authority. Whenever required to do so by the department, the local government owner or operator shall perform one of the following:

(1) Provide evidence of currently unused ad valorem taxing authority within any statutory tax limit or cap;

(2) provide analyses demonstrating that the cost of closure, postclosure, corrective action, or any combination of these, will be provided by ad valorem tax assessments within any statutory limit or cap in future budgets at the time that closure, postclosure, corrective action, or any combination of these, is required; or

(3) provide evidence demonstrating the existence and amount of a governmental or enterprise fund containing monies designated for use in providing closure, postclosure, corrective action, or any combination of these, for the permitted facility.

(c) The provisions of this regulation shall apply on and after February 24, 2000. (Authorized by K.S.A. 1998 Supp. 65-3406; implementing K.S.A. 1998 Supp. 65-3407, as amended by L. 1999, Ch. 112, Sec. 1; effective Feb. 24, 2000.)

28-29-2113. Financial assurance provided by a simplified financial instrument. (a) Simplified financial instrument.

(1) Any owner or operator of a permitted solid waste disposal area or processing facility with a current closure cost estimate equal to or less than \$100,000, and with financial assurance from a single provider for that facility, may provide financial assurance in a simplified form of surety bond or letter of credit, instead of by use of any other financial instrument specified in K.A.R. 28-29-2101(b). The owner or operator of the facility may, with the department's approval, use an assigned certificate of deposit or assigned escrow account to provide financial assurance if the facility closure cost estimate is \$25,000 or less.

(2) The simplified forms of financial instruments specified in this regulation shall not be used to provide financial assurance for the estimated cost of postclosure or corrective action.

(b) Form of the simplified financial instrument. The wording of the simplified surety bond or letter of credit shall be identical to the wording in the documents provided by the department.

(c) When a simplified financial instrument shall not be used. Whenever the estimate of closure cost exceeds \$100,000 for any facility for which one of the simplified financial instruments specified in subsection (a) is in use, or whenever requested by the department, the owner or operator shall substitute, for that facility, one or more alternative methods of financial assurance as specified in K.A.R. 28-29-2101(b).

(d) The provisions of this regulation shall apply on and after February 24, 2000. (Authorized by K.S.A. 1998 Supp. 65-3406; implementing K.S.A. 1998 Supp. 65-340, as amended by L. 1999, Ch. 112, Sec. 1; effective Feb. 24, 2000.)

28-29-2201. Insurance for solid waste disposal areas and processing facilities. Except as provided in subsection (d), each owner or operator of a permitted solid waste disposal area or processing facility shall secure and maintain liability insurance for claims arising from injuries to other parties, including bodily injury and property damage. (a) Amount of liability coverage.

(1) The permit application shall be reviewed by the department to determine the amount of insurance coverage that the owner or operator shall secure and maintain for each disposal area or processing facility, based on the types of waste disposed and on the location, area, and geological characteristics of the site.

(2) Each owner or operator shall maintain insurance that shall provide coverage, including completed operations coverage, in the amount determined by the department but with commercial general liability limits not less than \$1,000,000 for each occurrence and \$1,000,000 for the annual aggregate.

(3) Each owner or operator shall maintain a policy that shall provide that the deductible amount be first paid by the insurer upon establishment of the legal liability of the insured, with full right of recovery from the insured. The deductible amount shall not exceed 2.5% of the policy limit for single occurrences.

(b) Insurance provider.

(1) Each owner or operator shall maintain a liability insurance policy that shall be issued by an insurance company authorized to do business in Kansas or through a licensed insurance agent operating under the authority of K.S.A. 40-246b, and amendments thereto.

(2) Each owner's or operator's liability insurance policy shall be subject to the insurer's policy provisions filed with and approved by the commissioner of insurance pursuant to K.S.A. 40-216 and amendments thereto, except as authorized by K.S.A. 40-246b, and amendments thereto.

(c) Proof of insurance.

(1) Each owner or operator shall furnish, at the following times, a certificate or memorandum of insurance to the department for the department's approval, showing specifically the coverage and limits together with the name of the insurance company and insurance agent:

(A) Before the department issues the permit and before any development work is started; and

(B) before each annual renewal of the permit during the active life of the area or facility.

(2) If any of the coverage set forth on the certificate or memorandum of insurance is reduced, canceled, terminated, or not renewed, the owner or operator or insurance company shall furnish the department with an appropriate notice of the action no fewer than 30 days before the effective date of the reduction, cancellation, termination, or nonrenewal.

(d) Governmental entities. Any owner or operator that is a governmental entity as defined in K.S.A. 75-6102, and amendments thereto, and is subject to provisions of the Kansas tort claims act, and amendments thereto, may provide to the department a statement or other evidence of its intention to fund liability judgements in the manner provided in K.S.A. 75-6113, and amendments thereto, in lieu of providing evidence of purchased insurance covering liability for accidental occurrences.

(e) Variances. Any owner or operator may request that the department evaluate the hazard or hazards involved and may request a variance, under K.A.R. 28-29-2, from the insurance method or specific insurance coverage amounts prescribed in this regulation if all the following conditions are met:

(1) The solid waste management activity is conducted solely on the premises where the wastes are generated.

(2) The owner or operator performs the waste management activity.

(3) The owner or operator is the owner of the property where the activity is conducted.

(4) The owner or operator is able to demonstrate other financial responsibility satisfactory to the department. This demonstration shall be made by adding the required liability coverage amount to the costs of closure and postclosure care assured by the corporate financial test method as specified in K.A.R. 28-29-2108, or the corporate guarantee method as specified in K.A.R. 28-29-2109. (Authorized by K.S.A. 2001 Supp. 65-3406; implementing K.S.A. 2001 Supp. 65-3407; effective March 22, 2002.)

**Article 30.—WATER WELL
CONTRACTOR'S LICENSE;
WATER WELL CONSTRUCTION
AND ABANDONMENT**

28-30-1. (Authorized by K.S.A. 1979 Supp. 82a-1202, 82a-1205; effective, E-74-34, July 2, 1974; modified, L. 1975, ch. 481, May 1, 1975; revoked May 1, 1980.)

28-30-2. Definitions. In addition to the definitions in K.S.A. 82a-1203 and amendments thereto, each of the following terms shall have the meaning assigned in this regulation:

(a) "Abandoned water well" means a water well determined by the department to meet at least one of the following conditions:

(1) Use of the water well has been permanently discontinued.

(2) Pumping equipment has been permanently removed from the water well.

(3) The water well either is in such disrepair that it cannot be used to supply water or has the potential for transmitting surface contaminants into the aquifer, or both.

(4) The water well poses potential health and safety hazards.

(5) The water well is in such a condition that it is not an active well or cannot be placed in inactive status.

(b) "Above-grade surface completion" means the termination of a water well or boring if the casing being used is at least 12 inches above the surrounding ground surface.

(c) "Active well" means a water well that is operating and is used to withdraw water or to monitor or observe groundwater conditions.

(d) "Annulus" means the space between the casing and the boring or the space between two or more strings of casing.

(e) "Aquifer" means an underground forma-

tion that contains and is capable of transmitting groundwater.

(f) “At-grade surface completion” means the termination of a monitoring well or boring if the casing is at the surrounding ground surface.

(g) “Cased test hole” means any test hole in which casing has been installed and grouted.

(h) “Confined aquifer” means an aquifer overlain and underlain by impermeable layers. Groundwater in a confined aquifer is under pressure greater than atmospheric pressure and will rise in a water well above the point at which groundwater is first encountered.

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

(j) “Designated person” means the individual designated by a water well contractor who is the contact person for compliance issues and who is responsible for submitting water well records and for earning the units of approved continuing education credits required by K.A.R. 28-30-3. The designated person may be the water well contractor.

(k) “Drill rig” means an apparatus operated to create a hole or shaft in the ground in which a water well is constructed.

(l) “Drill rig license number” means the numbers and letters assigned by the department that are affixed to each drill rig operated by or for a water well contractor.

(m) “Drilling fluid” means any fluid, including water, that is added during the drilling process to help increase the drilling efficiency.

(n) “Fresh groundwater” means water containing not more than 1,000 milligrams of total dissolved solids per liter and 500 milligrams of chloride per liter.

(o) “Groundwater” means the part of the subsurface water that is in the zone of saturation.

(p) “Grout” means bentonite clay grout, cement grout, neat cement grout, or other material approved by the secretary used to create a permanent impervious, watertight bond between the casing and the undisturbed formation surrounding the casing or between two or more strings of casing.

(1) “Bentonite clay grout” means a mixture of water and either commercial grouting or plugging sodium bentonite clay, including sodium bentonite clay manufactured under the trade name “volclay grout,” or an equivalent approved by the department according to the following:

(A) The mixture shall be prepared according to the manufacturer’s recommendations to achieve a

weight of at least 9.4 pounds per gallon of mix. Weighting agents may be added according to the manufacturer’s recommendations.

(B) Sodium bentonite pellets, tablets, or granular sodium bentonite may also be used if these additives or materials meet the specifications listed in paragraph (p)(1).

(C) Sodium bentonite products that are designed for drilling purposes or contain organic polymers shall not be used.

(2) “Cement grout” means a mixture of one 94-pound bag of portland cement, an equal volume of sand having a diameter no larger than two millimeters, and five to six gallons of clean water.

(3) “Neat cement grout” means a mixture of one 94-pound bag of portland cement and five to six gallons of clean water.

(q) “Grout tremie pipe” and “grout pipe” mean a steel or galvanized steel pipe or similar pipe having equivalent structural soundness that is used to pump grout to a point of selected emplacement during the grouting of a casing or plugging of an abandoned water well or test hole.

(r) “Heat pump hole” means a hole drilled to install piping for an earth-coupled water source heat pump system, also known as a vertical closed-loop system.

(s) “Inactive status” means a water well that is not presently operating but is maintained so that the water well can be put back in operation with minimum effort.

(t) “Monitoring well” means a water well used to monitor, obtain, or collect hydrologic, geologic, geophysical, chemical, or other technical data pertaining to groundwater, surface water, or other hydrologic conditions. A monitoring well is also known as an “observation well.”

(u) “Pitless well adapter or unit” means an assembly of parts installed below the frost line that permits pumped groundwater to pass through the wall of the casing or the extension of the casing and prevent the entrance of contaminants.

(v) “Public water-supply well” means a water well that meets both of the following conditions:

(1) Provides groundwater to the public for human consumption; and

(2) has at least 10 service connections or serves an average of at least 25 individuals daily for at least 60 days during a calendar year.

(w) “Pump pit” means a watertight structure that meets both of the following conditions:

(1) Is constructed as follows:

(A) At least two feet away from the water well; and

(B) below ground level to prevent the freezing of pumped groundwater; and

(2) houses the pump or pressure tank, distribution lines, electrical controls, or other appurtenances.

(x) "Reconstructed water well" means an existing water well that has been deepened or has had the casing replaced, repaired, added to, or modified in any way for the purpose of obtaining groundwater.

(y) "Sand point" has the meaning specified in K.S.A. 82a-1203, and amendments thereto.

(z) "Sanitary well seal" means a manufactured seal installed at the top of the casing that, when installed, creates an airtight and watertight seal to prevent contaminated or polluted water from gaining access to the groundwater supply.

(aa) "Static water level" means the highest point below or above ground level that the groundwater in the water well reaches naturally.

(bb) "Test hole" and "hole" mean any excavation constructed for the purpose of determining the geologic, hydrologic, and water quality characteristics of underground formations.

(cc) "Treatment" means the stimulation of the production of groundwater from a water well through the use of hydrochloric acid, muratic acid, sulfamic acid, calcium or sodium hypochlorite, polyphosphates or other chemicals, and mechanical means, to reduce or remove iron and manganese hydroxide and oxide deposits, calcium and magnesium carbonate deposits, and slime deposits associated with iron or manganese bacterial growths that inhibit the movement of groundwater into the water well.

(dd) "Uncased test hole" means any test hole from which casing has been removed or in which casing has not been installed.

(ee) "Unconfined aquifer" means an aquifer containing groundwater at atmospheric pressure. The upper surface of the groundwater in an unconfined aquifer is the water table.

(ff) "Water well" has the meaning specified in K.S.A. 82a-1203, and amendments thereto. (Authorized by K.S.A. 82a-1205 and 82a-1213; implementing K.S.A. 82a-1202, 82a-1205, and 82a-1213; effective, E-74-34, July 2, 1974; modified, L. 1975, ch. 481, May 1, 1975; amended May 1, 1980; amended May 1, 1987; amended Nov. 22, 1993; amended June 7, 2013.)

28-30-3. Licensing. (a) Eligibility. To be eligible for a water well contractor's license, each applicant shall meet the following requirements:

(1) Submit a complete license application on a form provided by the department;

(2) submit a water well contractor application fee of \$10.00;

(3) (A) Pass the water well contractor examination conducted by the department or employ a designated person who has passed the water well contractor examination; and

(B) submit a license fee of \$100.00 if the applicant or designated person passes the water well contractor examination; and

(4) submit a complete registration form on a form provided by the department for each drill rig operated by or for the applicant and a registration fee of \$25.00 for each drill rig operated by or for the applicant.

(b) License renewal.

(1) Each licensee shall submit an application for renewal of license and drill rig registrations before July 1 of each year by filing the proper renewal forms provided by the department and by meeting the following requirements:

(A) Paying the annual license fee and a drill rig registration fee for each drill rig to be operated in the state;

(B) filing all records for each water well constructed, reconstructed, or plugged by the licensee in accordance with K.A.R. 28-30-4 during the previous licensure period;

(C) filing a report, on a form approved by the department, of all approved continuing education units earned by the licensee or designated person during the previous licensure period;

(D) meeting the continuing education requirements in subsection (c); and

(E) providing any remaining outstanding information or records requested that existed before the issuance or revocation of a license.

(2) Failure to comply with the requirements of this subsection shall be grounds to revoke the existing license and terminate the license renewal process.

(c) Continuing education requirements. Each water well contractor or the contractor's designated person shall earn at least eight units of continuing education approved by the secretary. This requirement shall apply each year beginning with the first full year of licensure or the renewal period. One unit of continuing education shall equal 50 minutes of approved instruction except for trade shows and exhibitions, which shall be counted as one unit for each approved trade show or exhibition attended.

(d) Employment requirements. If the designated person who has passed the water well contractor examination under paragraph (a)(3)(A) leaves the contractor's employment, the contractor shall employ a designated person who shall take, within 90 days, and be required to pass the water well contractor examination. (Authorized by K.S.A. 82a-1205, K.S.A. 2012 Supp. 82a-1206, and K.S.A. 82a-1207; implementing K.S.A. 82a-1202, K.S.A. 82a-1205, K.S.A. 2012 Supp. 82a-1206, K.S.A. 82a-1207, K.S.A. 82a-1209, and K.S.A. 82a-1212; effective, E-74-34, July 2, 1974; effective May 1, 1975; amended May 1, 1980; amended May 1, 1983; amended May 1, 1987; amended Nov. 22, 1993; amended June 7, 2013.)

28-30-4. General operating requirements. (a) Water well record.

(1) Within 30 days after construction or reconstruction of a water well, each water well contractor shall submit a report to the department and to the landowner on the water well record form provided by the department.

(2) Each contractor shall report to the department and to the landowner on the water well record form provided by the department and attachments any polluted or other noncompliant conditions that the contractor was able to correct and any conditions that the contractor was unable to correct.

(3) Each contractor shall report to the department and to the landowner the plugging of any abandoned water well on the water well record form provided by the department.

(4) Each landowner who constructs, reconstructs, or plugs a water well that will be or was used by the landowner for farming, ranching, or agricultural purposes or is located at the landowner's residence shall submit a report to the department on the water well record form provided by the department within 30 days after the construction, reconstruction, or plugging of the water well. No fee shall be required from the landowner for the record.

(b) Artificial recharge and return. Each contractor who constructs an artificial recharge well or a freshwater return well shall comply with all regulations applicable to these wells specified in article 46.

(c) Water well tests. Results of a pumping test shall be reported on the water well record form provided by the department or a copy of the contractor's record of a pumping test shall be attached to the water well record form.

(d) Water samples. Within 30 days after the department's receipt of the water well record form provided by the department, the contractor or landowner who constructs or reconstructs any water well may be requested by the department to submit a sample of water from the water well for chemical analysis. The sample shall be submitted within 30 days after the department's request.

(e) Water well construction fee. Each contractor shall pay a \$5.00 fee to the department for each water well constructed. The construction fee shall be paid when the contractor requests a water well record form provided by the department or shall accompany the water well record form submitted as specified in this regulation.

(f) License number. Each drill rig operated by or for a contractor shall prominently display the drill rig license number assigned by the department in letters and numbers at least two inches tall. Decals, paint, or other permanent marking materials shall be used. (Authorized by K.S.A. 82a-1205; implementing K.S.A. 82a-1202, 82a-1205, 82a-1212, and 82a-1213; effective, E-74-34, July 2, 1974; modified, L. 1975, ch. 481, May 1, 1975; amended May 1, 1980; amended May 1, 1987; amended June 7, 2013.)

28-30-5. Construction regulations for public water-supply wells. All activities involving public water-supply wells shall meet the requirements of K.S.A. 65-163a, and amendments thereto, and regulations of the department, including K.A.R. 28-15-16. (Authorized by K.S.A. 82a-1205; implementing K.S.A. 82a-1202 and 82a-1205; effective, E-74-34, July 2, 1974; effective May 1, 1975; amended May 1, 1980; amended May 1, 1983; amended May 1, 1987; amended June 7, 2013.)

28-30-6. Construction regulations for all water wells not included under K.A.R. 28-30-5.

(a) Each water well shall be constructed to minimize the potential for contamination of the delivered or obtained groundwater and to protect groundwater aquifers from pollution and contamination.

(b) The following requirements for grouting shall be met:

(1) Each constructed water well and each reconstructed water well shall be sealed by grouting the annulus between the casing and the boring from ground level to at least 20 feet or to at least five feet into the first clay or shale layer if one is present, whichever is greater. If a pitless well adapter or

unit is being installed, the grouting shall start below the point at which the pitless well adapter or unit attaches to the casing and shall continue at least 20 feet below this point or to at least five feet into the first clay or shale layer, whichever is greater.

(2) The diameter of the drilled boring shall be at least three inches greater than the maximum outside diameter of the casing.

(3) Water from two or more separate aquifers shall be separated from each other in the boring by sealing the annulus between the aquifers with grout.

(c) If groundwater is encountered at a depth less than the minimum grouting requirement, the grouting requirement may be modified by the secretary to meet local conditions.

(d) A well vent shall be used and shall terminate at least one foot above the ground surface. The well vent shall be screened with brass, bronze, copper screen, or other screen materials approved by the secretary that are 16-mesh or greater and turned down in a full 180-degree return bend to prevent the entrance of contaminating materials.

(e) Before the completion of a constructed water well or a reconstructed water well, the water well shall be cleaned of mud, drill cuttings, and other foreign matter to make the water well suitable for pump installations.

(f) Casing shall meet the following requirements:

(1) Each water well shall have durable watertight casing from at least one foot above the finished ground surface to the top of the producing zone of the aquifer. The watertight casing shall extend at least 20 feet below the ground level. Exceptions to either of these requirements may be granted by the secretary if warranted by local conditions.

(2) Each water well shall be an above-grade surface completion, except that an at-grade surface completion may be used if all requirements of subsection (s) are met. Casing may be cut off below the ground surface to install a pitless well adapter or unit.

(3) No opening shall be made through the casing, except for the installation of a pitless well adapter or unit designed and fabricated to prevent soil, subsurface, and surface water from entering the water well.

(4) The casing shall meet the requirements of the department's document titled "approved water well casing: water well casing for water wells other than public water-supply wells," dated No-

vember 7, 2012, which is hereby adopted by reference. Used, reclaimed, defective, or contaminated pipe shall not be used for casing any water well.

(g) Each water well, when unattended during construction, reconstruction, treatment, or repair or during use as a cased test hole or as an observation or monitoring well, shall have the top of the casing securely capped in a watertight manner.

(h) During construction, reconstruction, treatment, or repair and before its first use, each water well producing water for human consumption or food processing shall be disinfected according to K.A.R. 28-30-10.

(i) The top of the casing shall be sealed by installing a sanitary well seal when the water well is completed.

(j) Each groundwater-producing zone that is known or suspected to contain natural or man-made pollutants shall be cased and grouted in accordance with subsection (b) during construction of any water well to prevent the movement of groundwater to either overlying or underlying fresh groundwater zones.

(k) Toxic material shall not be used in the construction, reconstruction, treatment, or plugging of a water well, unless the material is flushed from the water well before use.

(l) The pipe from the pump or pressure tank in the pump pit to the water well shall be sealed in a watertight manner where the pipe passes through the wall of the pump pit.

(m) A water well shall not be constructed in a pit, basement, garage, or crawl space. Each existing water well that is reconstructed, abandoned, or plugged in a basement shall conform to the requirements specified in this article, except that the finished grade of the basement floor shall be considered ground level.

(n) Drilling fluid used during the construction or reconstruction of each water well shall be initially disinfected by mixing sodium hypochlorite with water to produce at least 100 milligrams per liter (mg/l) of available chlorine.

(o) Natural organic or nutrient-producing material shall not be used during the construction, reconstruction, or treatment of a water well, unless this material is flushed from the water well and the groundwater aquifer or aquifers before the water well is completed. Natural organic or nutrient-producing material shall not be added to a grout mix used in the annulus to grout the water well.

(p) Each water well pump shall meet the following requirements:

(1) Each pump installed directly over the casing shall be installed to form an airtight and watertight seal between the top of the casing and the gear or pump head, pump foundation, or pump stand.

(2) A sanitary well seal shall be installed between the pump column pipe or pump suction pipe and the casing if the pump is not mounted directly over the casing and the pump column pipe or pump suction pipe emerges from the top of the casing.

(3) An airtight and watertight seal shall be provided for the cable conduit if submersible pumps are used.

(q) Each sand point constructed, replaced, or reconstructed shall meet the following requirements:

(1) Each sand point shall be constructed by drilling or boring a pilot hole at least three feet below ground surface. The pilot hole shall be at least three inches greater in diameter than the maximum outside diameter of the drive pipe or blank casing if the casing method is used.

(2) Each sand point shall be completed using one of the following methods:

(A) Casing method.

(i) Water well casing that meets the requirements of the department's document titled "approved water well casing; water well casing for water wells other than public water-supply wells," as adopted by reference in paragraph (f)(4), shall be set from at least three feet below the ground surface to at least one foot above the ground surface. The casing shall be sealed between the casing and the pilot hole with grouting material approved by the secretary from the bottom of the casing to ground surface.

(ii) The drive pipe shall be considered the pump drop pipe and shall be capped with a solid cap.

(iii) For underground discharge completions, a "T" joint shall be used.

(iv) A sanitary well seal and a well vent shall be installed on the top of the casing in accordance with subsections (d) and (i).

(B) Drive pipe method.

(i) A sand point may be installed without a casing for aboveground discharge completions only. In these completions, the drive pipe shall terminate at least one foot above finished ground level.

(ii) The annulus between the drive pipe and the pilot hole shall be sealed from the bottom of the pilot hole to ground surface with grout. The top of the drive pipe shall be sealed airtight and watertight with a solid cap of the same material as that of the drive pipe.

(iii) A well vent shall not be required.

(C) Other methods. Other methods may be approved by the secretary on a case-by-case basis using the appeal procedure specified in K.A.R. 28-30-9.

(r) Upon abandonment of a sand point, the contractor or landowner shall pull the drive pipe or leave it in place.

(1) If the drive pipe is left in place, the sand point shall be plugged from the bottom of the well to three feet below the ground surface with approved grouting material. The sand point constructed by the drive pipe method shall be cut off three feet below the ground surface, and the remaining three-foot-deep hole shall be backfilled with surface soil.

(2) If the drive pipe is completely pulled, the remaining hole shall be plugged with approved grouting material from the bottom of the remaining hole to three feet below the ground surface. The hole shall be backfilled with surface soil from three feet to ground surface.

(s) Each monitoring well shall be an above-grade surface completion, unless the monitoring well is located on a roadway, sidewalk, driveway, parking lot, or other heavily trafficked area that requires an at-grade surface completion monitoring well. The following requirements shall be met for each at-grade surface completion:

(1) The location of each monitoring well shall be identified by a unique well number marked on a scaled map that shows latitude and longitude coordinates. The water well contractor shall submit the scaled map and coordinates to the department with the water well record form provided by the department.

(2) The construction method for each monitoring well shall meet the requirements of the department's procedure document titled "flush-mount well construction detail," dated May 23, 2012, which is hereby adopted by reference. (Authorized by K.S.A. 82a-1205; implementing K.S.A. 82a-1202 and 82a-1205; effective, E-74-34, July 2, 1974; modified, L. 1975, ch. 481, May 1, 1975; amended May 1, 1980; amended May 1, 1983; amended May 1, 1987; amended June 21, 1993; amended June 7, 2013.)

28-30-7. Plugging of abandoned wells, cased and uncased test holes. (a) All water wells abandoned by the landowner on or after July 1, 1979, and all water wells that were abandoned prior to July 1, 1979 which pose a threat to groundwater supplies, shall be plugged or caused

to be plugged by the landowner. In all cases, the landowner shall perform the following as minimum requirements for plugging abandoned wells.

(1) The casing shall be cut off three feet below ground surface and removed.

(2) All wells shall be plugged from bottom to top using volumes of material equaling at least the inside volume of the well.

(3) Plugging top of well:

(A) For cased wells a grout plug shall be placed from six to three feet below ground surface.

(B) For dug wells, the lining material shall be removed to at least five feet below ground surface, and then sealed at five feet with a minimum of six inches of concrete or other materials approved by the department. Compacted surface silts and clays shall be placed over the concrete seal to ground surface.

(4) Any groundwater displaced upward inside the well casing during the plugging operation shall be removed before additional plugging materials are added.

(5) From three feet below ground level to ground level, the plugged well shall be covered over with compacted surface silts or clays.

(6) Compacted clays or grout shall be used to plug all wells from the static water level to six feet below surface.

(7) All sand and gravel used in plugging abandoned domestic or public water supply wells shall be chlorinated prior to placement into a well.

(b) Abandoned wells formerly producing groundwater from an unconfined aquifer shall be plugged in accordance with the foregoing and in addition shall have washed sand, and gravel or other material approved by the department placed from the bottom of the well to the static water level.

(c) Abandoned wells, formerly producing groundwater from confined and unconfined aquifers or in confined aquifers only, shall be plugged according to K.A.R. 28-30-7(a) and by using one of the following additional procedures:

(1) The entire well column shall be filled with grout, or other material approved by the department, by use of a grout tremie pipe.

(2) A 10 foot grout plug shall be placed opposite the impervious formation or confining layer above each confined aquifer or aquifers by use of a grout tremie pipe; and

(A) The space between plugs shall be filled with clays, silts, sand and gravel or grout and shall be placed inside the well so as to prevent bridging.

(B) A grout plug at least 20 feet in length shall be placed with a grout pipe so at least 10 feet of the plug extends below the base of the well casing and at least 10 feet of the plug extends upward inside the bottom of the well casing.

(C) A grout plug at least 10 feet in length shall be placed from at least 13 feet below ground level to the top of the cut off casing.

(3) Wells that have an open bore hole below the well casing, and where the casing was not grouted into the well bore when the well was constructed, shall be plugged by (1) or (2) above except that the top 20 feet of well casing shall be removed or perforated with a casing ripper or similar device prior to plugging. If the well is plugged according to part (2) of this subsection, the screened or perforated intervals below the well casing shall be grouted the entire length by use of a grout tremie pipe.

(d) Plugging of abandoned holes. If the hole penetrates an aquifer containing water with more than 1,000 milligrams per liter, mg/l, total dissolved solids or is in an area determined by the department to be contaminated, the entire hole shall be plugged with an approved grouting material from the bottom of the hole, up to within three feet of the ground surface using a grout tremie pipe or similar method. From three feet below ground surface to ground surface the plugged hole shall be covered over with compacted surface silts or clays; otherwise, the hole shall be plugged in accordance with the following paragraphs.

(1) Plugging of abandoned cased test holes. The casing shall be removed if possible and the abandoned test hole shall be plugged with an approved grouting material from the bottom of the hole, up to within three feet of the ground surface, using a grout tremie pipe or similar method. From three feet below ground surface to ground surface the plugged hole shall be covered over with compacted surface silts or clays. If the casing cannot be removed, in addition to plugging the hole with an approved grouting material the annular space shall also be grouted as described in K.A.R. 28-30-6 or as approved by the department.

(2) Abandoned uncased test holes, exploratory holes or any bore holes except seismic or oil field related exploratory and service holes regulated by the Kansas corporation commission under K.A.R. 82-3-115 through 82-3-117. A test hole or bore hole drilled, bored, cored or augered shall be considered an abandoned hole immediately after the completion of all testing, sampling or other operations for which the hole was originally intended.

The agency or contractor in charge of the exploratory or other operations for which the hole was originally intended is responsible for plugging the abandoned hole using the following applicable method, within three calendar days after the termination of testing or other operations.

(A) The entire hole shall be plugged with an approved grouting material from bottom of the hole, up to within three feet of the ground surface, using a grout tremie pipe or similar method.

(B) From three feet below ground surface to ground surface the plugged hole shall be covered over with compacted surface silts or clays.

(C) For bore holes of 25 feet or less, drill cuttings from the original hole may be used to plug the hole in lieu of grouting material, provided that an aquifer is not penetrated or the bore hole is not drilled in an area determined by the department to be a contaminated area.

(3) Plugging of heat pump holes drilled for closed loop heat pump systems. The entire hole shall be plugged with an approved grouting material from bottom of the hole, to the bottom of the horizontal trench, using a grout tremie pipe or similar method approved by the department.

(e) Abandoned oil field water supply wells. A water well drilled at an oil or gas drilling site to supply water for drilling activities shall be considered an abandoned well immediately after the termination of the oil or gas drilling operations. The company in charge of the drilling of the oil or gas well shall be responsible for plugging the abandoned water well, in accordance with K.A.R. 28-30-7(a), (b), and (c), within 30 calendar days after the termination of oil or gas drilling operations.

Responsibility for the water well may be conveyed back to the landowner in lieu of abandoning and plugging the well but the well must conform to the requirements for active or inactive status. The transfer must be made through a legal document, approved by the department, advising the landowner of the landowner's responsibilities and obligations to properly maintain the well, including the proper plugging of the well when it is abandoned and no longer needed for water production activities. If a transfer is to be made, the oil or gas drilling company shall provide the department with a copy of the transfer document within 30 calendar days after the termination of oil or gas drilling operations. Within 30 calendar days of the effective date of the transfer of the well the landowner shall notify the department of the intended use and whether the well is in active

status or inactive status in accordance with K.A.R. 28-30-7(f).

(f) Inactive status. Landowners may obtain the department's written approval to maintain wells in an inactive status rather than being plugged if the landowner can present evidence to the department as to the condition of the well and as to the landowner's intentions to use the well in the future. As evidence of intentions, the owner shall be responsible for properly maintaining the well in such a way that:

(1) The well and the annular space between the hole and the casing shall have no defects that will permit the entrance of surface water or vertical movement of subsurface water into the well;

(2) the well is clearly marked and is not a safety hazard;

(3) the top of the well is securely capped in a watertight manner and is adequately maintained in such a manner as to prevent easy entry by other than the landowner;

(4) the area surrounding the well shall be protected from any potential sources of contamination within a 50 foot radius;

(5) if the pump, motor or both, have been removed for repair, replacement, etc., the well shall be maintained to prevent injury to people and to prevent the entrance of any contaminant or other foreign material;

(6) the well shall not be used for disposal or injection of trash, garbage, sewage, wastewater or storm runoff; and

(7) the well shall be easily accessible to routine maintenance and periodic inspection.

The landowner shall notify the department of any change in the status of the well. All inactive wells found not to be in accordance with the criteria listed in lines one through seven above shall be considered to be abandoned and shall be plugged by the landowner in accordance with K.A.R. 28-30-7(a) through (c). (Authorized by K.S.A. 82a-1205; implementing K.S.A. 82a-1202, 82a-1205, 82a-1212, 82a-1213; effective, E-74-34, July 2, 1974; modified, L. 1975, ch. 481, May 1, 1975; amended May 1, 1980; amended May 1, 1983; amended May 1, 1987.)

28-30-8. Pollution sources. Well locations shall be approved by municipal and county governments with respect to distances from pollution sources and compliance with local regulations. The following minimum standard shall be observed.

(a) The horizontal distances between the well and the potential source of pollution or contamination such as sewer lines, pressure sewer lines, septic tanks, lateral fields, pit privy, seepage pits, fuel or fertilizer storage, pesticide storage, feed lots or barn yards shall be 50 feet or more as determined by the department.

(b) Proper drainage in the vicinity of the well shall be provided so as to prevent the accumulation and ponding of surface water within 50 feet of the well. The well shall not be located in a ravine or any other drainage area where surface water may flow into the well.

(c) When sewer lines are constructed of cast iron, plastic or other equally tight materials, the separation distance shall be 10 feet or more as determined by the department.

(d) All wells shall be 25 feet or more from the nearest property line, allowing public right-of-ways to be counted; however, a well used only for irrigation or cooling purposes may be located closer than 25 feet to an adjoining property where:

(1) such adjoining property is served by a sanitary sewer and does not contain a septic tank system, disposal well or other source of contamination or pollution; and

(2) the property to be provided with the proposed well is served by both a sanitary sewer and a public water supply. (Authorized by and implementing K.S.A. 82a-1202, 82a-1205; effective, E-74-34, July 2, 1974; modified, L. 1975, ch. 481, May 1, 1975; amended May 1, 1980; amended May 1, 1987.)

28-30-9. Appeals. (a) Requests for exception to any of the foregoing rules and regulations shall be submitted to the department in writing and shall contain all information relevant to the request.

(1) Those requests shall specifically set forth why such exception should be considered.

(2) The department may grant exceptions when geologic or hydrologic conditions warrant an exception and when such an exception is in keeping with the purposes of the Kansas groundwater exploration and protection act.

(b) Appeals from the decision of the department shall be made to the secretary, who after due consideration may affirm, reverse or modify the decision of the department. (Authorized by K.S.A. 82a-1205; implementing K.S.A. 82a-1202, 82a-1205; effective, E-74-34, July 2, 1974; effective May 1, 1975; amended May 1, 1980; amended May 1, 1983; amended May 1, 1987.)

28-30-10. Water well disinfection for wells constructed or reconstructed for human consumption or food processing. (a)

Gravel for gravel-packed wells shall be disinfected by immersing the gravel in a chlorine solution containing not less than 200 milligrams per liter, mg/l, of available chlorine before it is placed in the wells annular space.

(b) Constructed or reconstructed wells shall be disinfected by adding sufficient hypochlorite solution to them to produce a concentration of not less than 100 mg/l of available chlorine when mixed with the water in the well.

(c) The pump, casing, screen and pump column shall be washed down with a 200 mg/l available chlorine solution.

(d) All persons constructing, reconstructing, or treating, a water well and removing the pump or pump column, replacing a pump, or otherwise performing an activity which has potential for contaminating or polluting the groundwater supply shall be responsible for adequate disinfection of the well, well system and appurtenances thereto. (Authorized by and implementing K.S.A. 82a-1202, 82a-1205; effective, E-74-34, July 2, 1974; modified, L. 1975, ch. 481, May 1, 1975; amended May 1, 1980; amended May 1, 1987.)

EQUUS BEDS GROUNDWATER MANAGEMENT DISTRICT NO. 2

28-30-200. Definitions. In addition to the definitions in K.A.R. 28-30-2, the following definitions shall apply to the Equus Beds groundwater management district no. 2:

(a) "Bedrock" means shale, limestone, sandstone, siltstone, anhydrite, gypsum, salt, or other consolidated rock that can occur at the surface or underlie unconsolidated material.

(b) "Board" means the board of directors constituting the governing body of the Equus Beds groundwater management district no. 2.

(c) "Borehole" means any hole that is drilled, cored, bored, washed, driven, dug, or otherwise excavated, in which the casing and screen have been removed or in which the casing has not been installed.

(d) "Contaminate" means to engage in any act or omission causing the addition or introduction of substances to freshwater in concentrations that alter the physical, chemical, biological, or radiological properties of the freshwater, making the water unfit for beneficial use.

(e) "District" means the Equus Beds groundwa-

ter management district no. 2, which is organized for groundwater management purposes pursuant to K.S.A. 82a-1020 et seq., and amendments thereto.

(f) “Fluid” means any material or substance that flows or moves in a semisolid, liquid, sludge, gas, or any other form or state.

(g) “Free-fall” means a method used to place grout in a water well or borehole that meets all of the following conditions:

(1) The total grouting depth below ground level does not exceed 75 feet.

(2) The grouting interval is free of fluids.

(3) The diameter of the water well casing or borehole is sufficient to allow the unobstructed flow of grout throughout the entire grouting interval.

(4) Grout is poured or discharged into the water well or borehole at a controlled rate.

(h) “Fresh groundwater” means water containing not more than 1,000 milligrams of total dissolved solids per liter and 500 milligrams of chloride per liter.

(i) “Grout” has the meaning specified in K.A.R. 28-30-2.

(j) “Grout seal” means grout that is installed, placed, pumped, or injected to create a permanent, impervious watertight bond in a well casing, annular space, geologic unit, or any other apertures or apparatuses associated with a water well or borehole.

(k) “Inactive well” means a water well that meets the following conditions:

(1) Is not operational;

(2) is properly constructed as specified in K.A.R. 28-30-5 or K.A.R. 28-30-6;

(3) is equipped with a watertight seal; and

(4) is maintained in good repair until the water well is returned to service as an active water well.

(l) “Licensed geologist” means a geologist licensed to practice geology in Kansas by the Kansas board of technical professions.

(m) “Licensed professional engineer” means a professional engineer licensed to practice engineering in Kansas by the Kansas board of technical professions.

(n) “Monitoring well” means a water well used to monitor, obtain, or collect hydrologic, geologic, geophysical, chemical, or other technical data pertaining to groundwater, surface water, or other hydrologic conditions.

(o) “Test borehole” means a borehole used to obtain or collect hydrologic, geologic, geophysical, chemical, or other technical data pertaining

to groundwater, surface water, or other hydrologic conditions by means of placing sampling, logging, testing, casing, screen, or associated tools or equipment in the borehole for fewer than 30 days. (Authorized by and implementing K.S.A. 2004 Supp. 82a-1028 and K.S.A. 82a-1213; effective Sept. 30, 2005.)

28-30-201. Plugging operations; notification; report. (a) All plugging operations shall be supervised by one of the following:

(1) A water well contractor licensed by the department;

(2) a licensed professional engineer or licensed geologist; or

(3) the water well or borehole owner, or the landowner of the property on which the water well or borehole is located.

(b) Each water well or borehole owner, or the landowner of the property on which the water well or borehole is located, shall notify the district within 48 hours before any plugging operations occur.

(c) Within 30 days after the plugging operation is completed, one of the following requirements shall be met:

(1) The water well contractor, licensed professional engineer, or licensed geologist that supervised the water well or borehole plugging operations shall submit a completed report of the work on the department’s plugging record form WWC-5P or WWC-5 to the department, the district, and the landowner.

(2) The water well or borehole owner, or the landowner of the property on which the water well or borehole is located, shall submit a completed report of the work on the department’s plugging record form WWC-5P or WWC-5 to the department and the district. (Authorized by and implementing K.S.A. 2004 Supp. 82a-1028 and K.S.A. 82a-1213; effective Sept. 30, 2005.)

28-30-202. Plugging operations for an abandoned water well or borehole; responsibility. (a) Each water well or borehole shall be considered abandoned if at least one of the following conditions exists:

(1) The water well or borehole was not completed.

(2) The water well or borehole threatens to contaminate fresh groundwater.

(3) The water well or borehole poses a safety or health hazard.

(4) Uncontrolled fluid flow is encountered or present in the water well or borehole.

(5) The use of the water well or borehole has ceased.

(6) The borehole testing, sampling, or other operations are completed within 30 days of completion of the borehole drilling.

(7) The water well or borehole owner has not demonstrated the intention to use the water well or borehole.

(8) The water well can not be maintained in an active or inactive status.

(9) The water well or borehole is not operational or functional for the intended use.

(b) Each water well or borehole owner or the landowner of the property shall plug or cause an abandoned water well or borehole to be plugged as required in subsection (c) of this regulation.

(c) Except as specified in subsection (e), the minimum plugging operations for an abandoned water well or borehole shall include the following:

(1) Before plugging operations begin, the following water well or borehole data shall be recorded as follows:

(A) The legal description of the water well or borehole location, to the nearest 10-acre tract and, if available, the geographic coordinates consisting of the latitude, longitude, and base datum;

(B) the diameter of the water well or borehole;

(C) the static water level; and

(D) the total depth of the water well or borehole.

(2) The materials used to plug a water well or borehole shall be clean, free of defects, properly prepared, and installed according to the manufacturer's specifications.

(3) All plugging material that forms a bridge, entraps air or other fluids, or forms a blockage in the water well or borehole shall be freed or removed before continuing plugging operations.

(4) All pumping, sampling, logging, and related equipment and any other material or debris in the water well or borehole shall be removed from the water well or borehole.

(5) The annular space of the water well shall be grouted as specified in K.A.R. 28-30-203.

(6) Before plugging operations begin and when plugging operations are suspended or interrupted, the opening of the water well or borehole shall be secured to prevent fluids from entering the water well or borehole.

(7) Before placement of any plugging material, the water well or borehole shall be disinfected as specified in K.A.R. 28-30-205.

(8) Except as specified in subsection (d) of this

regulation, all of the following minimum grouting requirements shall be met:

(A) The water well or borehole shall be grouted from the bottom to three feet below ground level.

(B) Each water well meeting the requirements of subsection (d) shall be grouted from the top of the sand or gravel plugging material to three feet below ground level.

(C) Grout shall be placed in the water well or borehole using one of the following:

(i) A grout tremie pipe;

(ii) free-fall; or

(iii) a grouting procedure recommended by the grout manufacturer.

(D) Grout shall be allowed to cure as recommended by the grout manufacturer.

(9) Except as required by K.A.R. 28-30-203, the water well casing shall be cut off at a minimum of three feet below land surface and removed.

(10) From three feet below land surface to land surface, the water well or borehole shall be back-filled with clean, compacted topsoil and sloped so that drainage or runoff is directed away from the plugged water well or borehole.

(d) Any water well or borehole owner, landowner of the property, water well contractor, licensed geologist, or licensed professional engineer may utilize coarse sand or fine gravel to plug a water well by filling the water well casing to the static water level or six feet below ground level, whichever is the greater distance below ground level, if both of the following water well conditions are present:

(1) The water well is cased.

(2) The water well is completed in a single unconfined aquifer.

(e) Drill cuttings from the original borehole may be used to plug a borehole that meets all of the following conditions:

(1) The depth of the borehole is less than the highest historical groundwater level.

(2) The depth of the borehole is 25 feet or less below ground level.

(3) The borehole is not located in a contaminated area. (Authorized by and implementing K.S.A. 2004 Supp. 82a-1028 and K.S.A. 82a-1213; effective Sept. 30, 2005.)

28-30-203. Annular space grouting procedures. (a) Each water well or borehole owner or landowner of the property with an abandoned water well that was constructed on or after May 1, 1983 shall have the water well's annular space grouted as follows:

(1) From three feet below ground level to a minimum of 20 feet below ground level; or

(2) below the point at which a pitless well adapter attaches to the well casing to a minimum of 20 feet below the pitless well adapter.

(b) The annular space of each abandoned water well in which the water well was constructed before May 1, 1983 shall be grouted as follows:

(1) If the annular space does not contain grout or gravel pack and is free of debris, the grout shall be placed in the annular space in the following manner:

(A) From three feet below ground level to 20 feet below ground level; or

(B) below the point at which a pitless well adapter attaches to the well casing to a minimum of 20 feet below the pitless well adapter.

(2) If the annular space contains gravel pack or other material, all of the following requirements shall be met:

(A) The well casing shall be removed to a depth of four feet below ground level.

(B) The annular space shall be freed of gravel pack, any other material, and fluid from the top of the casing to six feet below the top of the well casing.

(C) The grout shall be placed in the annular space from six feet below the top of the well casing to one foot above the top of the well casing.

(c) From three feet below ground level to ground level, the water well or borehole shall be backfilled with clean, compacted topsoil and sloped so that the drainage or runoff is directed away from the plugged water well or borehole.

(d) If groundwater is encountered at a depth less than the minimum grouting requirement, the annular space grouting requirement may be modified by requesting a variance from the district as specified in K.A.R. 28-30-208. (Authorized by and implementing K.S.A. 2004 Supp. 82a-1028 and K.S.A. 82a-1213; effective Sept. 30, 2005.)

28-30-204. Inactive well; application; construction and extension. (a) Each owner of an inactive water well shall meet the following requirements:

(1) Submit a completed, signed, and notarized inactive water well agreement, on a form provided by the district, to the district manager 30 days before placing the well on inactive status. The form shall include a statement that the water well does not pose a public health or safety hazard and does not threaten to contaminate the groundwater;

(2) remove all pumping equipment from the water well;

(3) construct the water well and the annular space as specified in K.A.R. 28-30-6;

(4) seal and maintain the water well and the annular space to prohibit the entrance of surface fluids and materials and the vertical movement of subsurface water into the well and to prevent damage;

(5) post a sign that meets the following conditions within three feet of the water well:

(A) Has a minimum height of three feet above land surface;

(B) is easily visible;

(C) is continually maintained; and

(D) is constructed with the words "Inactive Water Well" and a legal description consisting of the 10-acre tract, section, township, and range description printed legibly; and

(6) securely install a watertight seal or cap on the water well casing opening a minimum of one foot above land surface that consists of one of the following:

(A) Steel plating that is a minimum of ¼ inch thick and is welded to the casing opening;

(B) a polyvinylchloride cap glued to the water well casing opening, with a minimum standard dimension ratio (SDR) of 21 or less on well casing less than four inches in diameter and a minimum SDR of 26 or less on well casing four or more inches in diameter. The SDR shall be calculated by dividing the casing's outside diameter (OD) by its minimum wall thickness (MWT); or

(C) any other seal or cap that is approved by the district manager.

(b) Each water well owner shall repair all damage to the water well within 30 days, unless the district manager determines that the water well poses a public health or safety hazard, in which case the district manager shall set the time period for fewer than 30 days.

(c) Each water well owner shall notify the district within 30 days after the water well is returned to service as an active water well.

(d) The district manager or a staff member of the district may inspect any inactive water well.

(e) Each water well owner shall be responsible for properly maintaining the water well in the inactive status.

(f) A radius of 50 feet around the inactive well shall be free of contamination.

(g) An inactive water well shall not be used for disposal or injection of any fluids or materials.

(h) Each inactive water well shall be easily accessible for routine maintenance and inspection.

(i) Each water well owner shall notify the district manager of any change in the condition of the water well.

(j) Each inactive water well that does not meet the requirements of these regulations shall be deemed abandoned and shall be plugged in accordance with these regulations.

(k) The expiration date of the inactive water well period may be extended beyond the date authorized in the approved inactive water well agreement or the date of any extension authorized by the district manager, if the water well is in good repair and meets the requirements of these regulations. The extension of time shall not exceed one year beyond the expiration date of the inactive well agreement or the date of any authorized extension.

(l) Each approved inactive water well request and each approved extension of time shall be reported by the district to the department, in writing, within 30 days of approval on a form provided by the district. (Authorized by and implementing K.S.A. 2004 Supp. 82a-1028 and K.S.A. 82a-1213; effective Sept. 30, 2005.)

28-30-205. Disinfection of an abandoned water well or borehole. (a) Except as specified in subsection (b), the following minimum quantities of sodium hypochlorite with 5.25 percent to 6.0 percent strength, manufactured under trade names including Clorox, Purex, Sno-White, and Topco, and other bleach products with similar properties, shall be used to disinfect each abandoned water well or borehole:

Water well casing or hole diameter (inches)	Sodium hypochlorite (fluid ounces per foot of water column)
1.25	0.015
1.5	0.023
2	0.041
2.5	0.064
3	0.094
3.5	0.127
4	0.165
5	0.259
6	0.381
8	0.660
10	1.036
12	1.490
14	2.031

Water well casing or hole diameter (inches)	Sodium hypochlorite (fluid ounces per foot of water column)
16	2.650
18	3.354
24	5.966
30	9.317

(b) Any concentration of sodium hypochlorite not specified in subsection (a) or any combination of calcium hypochlorite may be used to disinfect an abandoned water well or borehole, if a minimum concentration of 100 milligrams of chlorine solution per liter per foot of water column in the water well or borehole is produced. (Authorized by and implementing K.S.A. 2004 Supp. 82a-1028 and K.S.A. 82a-1213; effective Sept. 30, 2005.)

28-30-206. Administrative appeal to the board. (a) Any owner of a water well or borehole or any person whose legal rights, duties, privileges, immunities, or other legal interests are affected by an order issued by the district may request an appeal hearing with the board.

(b) The request for hearing shall be filed with the board within 30 days after service of the order on the owner or owners of the water well or borehole or any person whose legal rights, duties, privileges, immunities, or other legal interests are affected by the order. The request for hearing shall state the basis for requesting a hearing and shall be accompanied by documentation supporting the request.

(c) During the hearing, the board may take into consideration any relevant information or data, including information and data from any person whose legal rights, duties, privileges, immunities, or other legal interests may be affected by the order.

(d) After consideration of all information and data presented, the board shall issue one of the following:

(1) An order remanding the case to the district manager with instructions for additional investigation; or

(2) a final order that contains findings of fact and conclusions of law.

(e) Within 15 days of the service of a final order, the owner or owners of the water well or borehole or any person whose legal rights, duties, privileges, immunities, or other legal interests are affected may file a written petition for reconsideration to the board. The petition for reconsideration

shall state the basis and contain any facts and conclusions of law that are in dispute.

(f) The board shall render a written order denying the petition for reconsideration, granting the petition for reconsideration and modifying the final order, or granting the petition for reconsideration and setting the matter for further proceedings. After further proceedings, the petition for reconsideration may be denied or granted in whole or in part.

(g) Unless clear and convincing evidence is presented to the board, the board shall not render a written order if the order would result in any of the following:

(1) The impairment of an existing groundwater use;

(2) an adverse effect on public health, safety, or the environment;

(3) the threat of groundwater contamination;

(4) an adverse effect on the public interest; or

(5) the impairment of the board's ability to apply and enforce these regulations or the management program specified in K.S.A. 82a-1029, and amendments thereto.

(h) Any owner or owners or any person whose legal rights, duties, privileges, immunities, or other legal interests are affected by a final order or order rendered upon reconsideration may seek judicial review pursuant to the act for judicial review and civil enforcement of agency actions specified in K.S.A. 77-601 et seq., and amendment thereto.

(i) Each order issued by the board shall be mailed to the owner or owners; any person whose legal rights, duties, privileges, immunities, or other legal interests are affected by the order; and the department. Service shall be deemed complete upon mailing. (Authorized by and implementing K.S.A. 2004 Supp. 82a-1028; effective Sept. 30, 2005.)

28-30-207. Variance; extension of time.

(a) If an individual or party wants a variance from any of the regulations contained in K.A.R. 28-30-200 through K.A.R. 28-30-206 or an extension of time pursuant to K.A.R. 28-30-204, the individual or party shall submit a request, in writing, to the district.

(1) Each request shall include the following:

(A) The name, address, telephone number, and contact person of the individual or party requesting the variance or extension of time;

(B) the specific legal description of the site location to which the variance or extension of time would apply;

(C) the specific regulation from which the variance is sought or the amount of time requested; and

(D) the reason for requesting the variance or extension of time and any supporting data.

(2) A variance or extension of time may be granted by the district manager if the variance or extension is in keeping with the purposes of the Kansas groundwater exploration and protection act and the groundwater management district act.

(b) Each variance or extension of time granted by the district manager shall be reported by the district to the department within 30 days of approval.

(c) Each individual or party who wants an extension of time for the inactive water well period shall submit the request at least 30 days before the expiration date on a form provided by the district. (Authorized by and implementing K.S.A. 2004 Supp. 82a-1028; effective Sept. 30, 2005.)

Article 31.—HAZARDOUS WASTE MANAGEMENT STANDARDS AND REGULATIONS

28-31-1. (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999; amended Sept. 20, 2002; revoked April 29, 2011.)

28-31-2. (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999; amended Sept. 20, 2002; revoked April 29, 2011.)

28-31-3. (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999; amended Sept. 20, 2002; revoked April 29, 2011.)

28-31-4. EPA identification numbers; notification requirement for hazardous waste, universal waste, and used oil activities. Each reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279.

(a) Each person who is required to obtain an EPA identification number by 40 CFR part 124 or 40 CFR parts 260 through 279 and each Kansas small quantity generator shall notify the department of their hazardous waste, universal waste, and used oil activities and shall obtain an EPA identification number by submitting to the department KDHE form 8700-12 or another form approved by the secretary.

(b) Each person that is newly subject to these notification requirements due to promulgation of a statute or regulation shall notify the department of that person's hazardous waste, universal waste, and used oil activities within 60 days of the effective date of the statute or regulation, unless a different date is specified in that statute or regulation.

(c) Each person shall update the information associated with that person's EPA identification number if there is a change in the information. The person shall submit these changes to the department on KDHE form 8700-12 or another form approved by the secretary, no more than 60 days after the change occurs. (Authorized by and implementing K.S.A. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended March 22, 1996; amended June 4, 1999; amended Sept. 20, 2002; amended April 29, 2011.)

28-31-5. (Authorized by and implementing K.S.A. 65-3431 and K.S.A. 65-3458; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-86-6, March 22, 1985; amended, T-86-32, Sept. 24, 1985; amended, May 1, 1986; amended May 1, 1987; amended Feb. 5, 1990; amended April 25, 1994; revoked April 29, 2011.)

28-31-6. Registration and insurance requirements for transporters of hazardous waste and used oil. Each reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279. (a) Applicability. This regulation shall apply to the following:

(1) Each person that transports hazardous waste and is subject to the requirements of K.A.R. 28-31-263a; and

(2) each person that transports used oil and is subject to the requirements of 40 CFR part 279, subpart E.

(b) Registration. Each transporter shall register with the secretary according to the following requirements:

(1) The transporter shall submit the registration application on forms provided by the department.

(2) The transporter shall obtain written acknowledgment from the secretary that registration is complete before transporting hazardous waste or used oil within, into, out of, or through Kansas.

(3) The transporter shall carry a copy of the written acknowledgment in all vehicles transporting hazardous waste or used oil and shall provide the written acknowledgment for review upon request.

(4) The transporter shall update the registration information if there is a change in that information. The transporter shall submit these changes on forms provided by the department within 60 days of the date of the change.

(c) Insurance requirements. Each transporter shall secure and maintain liability insurance on each of the transporter's vehicles transporting hazardous waste or used oil in Kansas.

(1) The limits of insurance shall not be less than \$1 million per person and \$1 million per occurrence for bodily injury or death and \$1 million for all damage to the property of others. When combined bodily injury or death and property damage coverage are provided, the total limits shall not be less than \$1 million.

(2) If any coverage is reduced or canceled, the transporter shall notify the secretary in writing at least 35 days before the effective date of the reduction or cancellation.

(3) The transporter shall, before the expiration date of the insurance policy, provide the secretary with proof of periodic renewal in the form of a certificate of insurance showing the monetary coverage and the expiration date.

(d) Denial or suspension of registration.

(1) Any application may be denied and any transporter's registration may be suspended if the secretary determines that one or more of the following apply:

(A) The transporter failed or continues to fail to comply with any of the following:

(i) Provisions of the air, water, or waste statutes relating to environmental protection or to the protection of public health or safety, including regulations issued by Kansas or by the federal government; or

(ii) any condition of any permit or order issued to the transporter by the secretary.

(B) Any state or territory or the District of Columbia has found that the applicant or transporter has violated that government's hazardous waste or used oil transporter laws or regulations.

(C) One or more of the following is a principal of another corporation that would not be eligible for registration:

(i) The transporter;

(ii) a person who holds an interest in the transporter;

(iii) a person who exercises total or partial control of the transporter; or

(iv) a person who is a principal of the parent corporation.

(2) Each notice of denial or suspension shall be issued in writing by the secretary and shall inform the applicant or transporter of the procedures for requesting a hearing pursuant to K.S.A. 65-3456a and amendments thereto. (Authorized by and implementing K.S.A. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999; amended Sept. 20, 2002; amended April 29, 2011.)

28-31-7. (Authorized by and implementing K.S.A. 1984 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985; revoked April 29, 2011.)

28-31-8. (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999; amended Sept. 20, 2002; revoked April 29, 2011.)

28-31-8a. (Authorized by and implementing K.S.A. 65-3431, as amended by L. 1987, Ch. 295, Sec. 6; effective, T-85-42, Dec. 19, 1984; effec-

tive May 1, 1985; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; revoked April 6, 1992.)

28-31-8b. (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999; amended Sept. 20, 2002; revoked April 29, 2011.)

28-31-9. (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999; amended Sept. 20, 2002; revoked April 29, 2011.)

28-31-10. Hazardous waste monitoring fees. Each reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279. (a) Fee requirement. Each of the following persons shall pay an annual monitoring fee to the department according to the requirements of subsections (b) through (e):

(1) Each owner or operator of a hazardous waste treatment, storage, or disposal facility;

(2) each hazardous waste transporter; and

(3) each hazardous waste generator.

(b) Hazardous waste treatment, storage, or disposal facilities. The owner or operator of each facility shall pay the annual monitoring fee before January 1 of each year.

(1) The fee for each active facility shall be based on the following schedule:

(A) On-site storage facility..... \$10,000

(B) Off-site storage facility \$10,000

(C) On-site nonthermal treatment facility \$10,000

(D) Off-site nonthermal treatment facility \$12,000

(E) On-site thermal treatment facility .. \$12,000

(F) Off-site thermal treatment facility .. \$18,000

(G) On-site landfill or underground injection well \$14,000

(H) Off-site landfill or underground injection well \$18,000

(2) The fee for each facility subject to postclosure care shall apply upon receipt by the department of the certification of closure specified in 40

CFR 264.115 or 40 CFR 265.115. This fee shall be \$14,000.

(3) The owner or operator of each facility conducting more than one of the hazardous waste activities specified in paragraphs (b)(1) and (2) shall pay a single fee. This fee shall be in the amount specified for the activity having the highest fee of those conducted.

(c) Hazardous waste transporters. Each hazardous waste transporter shall pay the annual monitoring fee when the transporter registers with the department in accordance with K.A.R. 28-31-6, and before January 1 of each subsequent year. This fee shall be \$200.

(d) Hazardous waste generators.

(1) Each large quantity generator shall pay the annual monitoring fee before March 1 of each year.

(A) The fee shall be based on all hazardous waste generated during the previous calendar year according to the following schedule:

Total Yearly Quantity Generated	Monitoring Fee
Less than or equal to 5 tons	\$300
Greater than 5 tons but less than or equal to 50 tons	\$900
Greater than 50 tons but less than or equal to 500 tons	\$2,800
Greater than 500 tons	\$8,000

(B) Each large quantity generator that reclaims hazardous waste on-site to recover substantial amounts of energy or materials shall be exempt from payment of monitoring fees for the amount of hazardous waste reclaimed. This exemption shall not apply to hazardous waste residues produced during reclamation.

(2) Each small quantity generator and each Kansas small quantity generator shall pay the annual monitoring fee of \$150 before April 1 of each year.

(e) Monitoring fee payments. Each monitoring fee payment that is made by check or money order shall be made payable to the “hazardous waste management fund - Kansas department of health and environment.”

This regulation shall be effective on and after July 1, 2012. (Authorized by and implementing K.S.A. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-85-2, Jan. 13, 1984; amended May 1, 1984; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended, T-87-49, Dec. 19, 1986; amended May

1, 1987; amended May 1, 1988; amended April 25, 1994; amended March 22, 1996; amended June 4, 1999; amended Sept. 20, 2002; amended Oct. 29, 2004; amended April 29, 2011; amended July 1, 2012.)

28-31-10a. Off-site hazardous waste treatment fees. (a) Each off-site hazardous waste treatment facility shall pay fees proportionate to the quantity of hazardous waste treated, subject to the caps set forth in K.S.A. 65-3431, and amendments thereto. These fees shall be based upon the following schedule:

Hazardous Waste Category	Fee
Dioxin	\$20 per ton
Fewer than 5,000 British Thermal Units (BTUs) per pound	\$10 per ton
Equal to or greater than 5,000 BTUs per pound	\$2 per ton

For the purpose of calculating these fees, “dioxin” shall mean hazardous wastes carrying EPA hazardous waste numbers F020, F021, F022, F023, F026, F027, or F028, or any combination of these hazardous waste numbers. “Ton” shall mean 2,000 pounds.

(b) Payment of the treatment fees assessed under subsection (a) of this regulation shall be made quarterly. The quarterly fee shall be paid on or before the last day of April, July, October, and January for the preceding three-month period ending the last day of March, June, September, and December.

(c) Each treatment fee payment shall meet these requirements:

(1) Be made by check or money order made payable to the “Kansas department of health and environment—attention: hazardous waste management fund”; and

(2) be accompanied by a form, furnished by the department and completed by the facility operator. The form shall state the total weight of hazardous wastes treated during the reporting period and shall provide sufficient information to verify findings that a treatment process qualified as material or energy recovery. (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective April 6, 1992; amended July 7, 1997; amended Sept. 20, 2002.)

28-31-11. (Authorized by and implementing K.S.A. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985; amended April 25, 1994; revoked Sept. 20, 2002.)

28-31-12. Inspections. (a) Upon presentation of credentials and stating the purpose of the visit, the following actions may be performed during the regular business hours of the facility by the secretary or the secretary's designee:

(1) Entering any factory, plant, construction site, hazardous waste storage, treatment, or disposal facility, or other location where hazardous wastes could potentially be generated, stored, treated, or disposed of, and inspecting the premises to gather information regarding existing conditions and procedures;

(2) obtaining samples of actual or potential hazardous waste from any person or from the property of any person, including samples from any vehicle in which hazardous wastes are being transported;

(3) stopping and inspecting any vehicle, if there is reasonable cause to believe that the vehicle is transporting hazardous wastes;

(4) conducting tests, analyses, and evaluations of wastes and waste-like materials to determine whether or not the wastes or materials are hazardous and whether or not the requirements of these regulations are being met;

(5) obtaining samples from any containers;

(6) making reproductions of container labels;

(7) inspecting and copying any records, reports, information, or test results relating to wastes generated, stored, transported, treated, or disposed of;

(8) photographing or videotaping any hazardous waste management facility, device, structure, or equipment;

(9) drilling test wells or groundwater monitoring wells on the property of any person where hazardous wastes are generated, stored, transported, treated, disposed of, discharged, or migrating off-site and obtaining samples from the wells; and

(10) conducting tests, analyses, and evaluations of soil, groundwater, surface water, and air to determine whether the requirements of these regulations are being met.

(b) If, during the inspection, unsafe or unpermitted hazardous waste management procedures are discovered, the operator of the facility may be instructed by the secretary or the secretary's designee to retain and properly store hazardous wastes, pertinent records, samples, and other items. These materials shall be retained by the operator until the waste has been identified and the secretary determines the proper procedures to be used in handling the waste.

(c) When obtaining samples, the facility operator shall be allowed to collect duplicate samples for separate analyses.

(d) During the inspection, all reasonable security, safety, and sanitation measures employed at the facility shall be followed by the secretary or the secretary's designee.

(e) A written report listing all deficiencies found during the inspection and stating the measures required to correct the deficiencies shall be prepared and sent to the operator. (Authorized by and implementing K.S.A. 65-3431; effective May 1, 1982; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1987; amended June 4, 1999; amended April 29, 2011.)

28-31-13. Variances. (a) Application. Any person may apply for a variance from one or more specific provisions of these regulations according to the following criteria:

(1) An application for a variance may be submitted for any provision that is determined by the U.S. environmental protection agency to be more stringent or broader in scope than the federal hazardous waste regulations.

(2) The application shall be submitted to the department on a form provided by the department.

(3) The applicant shall state the reasons and circumstances that support the application and shall submit all other pertinent data to support the application.

(b) Review and public comment. A tentative decision to grant or deny a variance shall be made by the secretary according to the following criteria:

(1) A tentative decision shall be made within 60 days of receipt of the application by the department.

(2) A notice of the tentative decision and the opportunity for written public comment shall be published by the department in the following publications:

(A) The Kansas register; and

(B) the official county newspaper of the county in which the variance is requested or, if there is no official county newspaper, a newspaper published as provided in K.S.A. 64-101, and amendments thereto.

(3) Upon the written request of any person, a public meeting may be held to consider comments on the tentative decision. The person requesting a public meeting shall state the issues to be raised and shall explain why written comments would not suffice to communicate the person's views.

(c) Final decision. After all public comments have been evaluated, a final decision shall be made by the secretary according to the following criteria:

(1) A variance may be granted by the secretary if the variance meets the following requirements:

(A) The variance shall not be any less stringent than the federal hazardous waste regulations.

(B) The variance shall be protective of public health and safety and the environment.

(2) A notice of the final decision shall be published by the department in the Kansas register.

(A) If the variance is granted, all conditions and time limitations needed to comply with state or federal laws or to protect public health or safety or the environment shall be specified by the secretary.

(B) The date the variance expires shall be provided in the final decision.

(d) Extension of a prior or existing variance. Any person may submit a request in writing to extend a prior or existing variance that meets the requirements of this regulation, according to the following criteria:

(1) The person shall demonstrate the need for continuation of the variance.

(2) The variance may be reissued or extended for another period upon a finding by the secretary that the reissuance or extension of the variance would not endanger public health or safety or the environment.

(3) The review, public comment, and the final decision procedures shall be the same as those specified in subsections (b) and (c).

(e) Termination of a variance. Any variance granted pursuant to this regulation may be terminated, if the secretary finds one or more of the following conditions:

(1) Violation of any requirement, condition, schedule, or limitation of the variance;

(2) operation under the variance that fails to meet the minimum requirements established by state or federal law or regulations; or

(3) operation under the variance that is unreasonably threatening public health or safety or the environment. Written notice of termination shall be provided by the secretary to the person granted the variance. (Authorized by and implementing K.S.A. 65-3431; effective May 1, 1982; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1987; amended June 4, 1999; amended April 29, 2011.)

28-31-14. (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999; amended Sept. 20, 2002; revoked April 29, 2011.)

28-31-15. (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective June 4, 1999; amended Sept. 20, 2002; revoked April 29, 2011.)

28-31-16. (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective June 4, 1999; amended Sept. 20, 2002; revoked April 29, 2011.)

28-31-100. Substitution of state terms for federal terms; internal references to federal regulations. When used in any provision of 40 CFR part 124, parts 260 through 266, or part 268, 270, 273, or 279, as adopted by reference by K.A.R. 28-31-124 through 28-31-279, the following substitutions shall be made unless otherwise specified in K.A.R. 28-31-124 through 28-31-279:

(a) References to federal regulations that are adopted by reference. Each reference to 40 CFR parts 124, 260 through 268, 270, 273, and 279 shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through K.A.R. 28-31-279.

(b) References to federal regulations that are not adopted by reference.

(1) 40 CFR part 124.

(A) Each reference to 40 CFR part 124 in its entirety shall be replaced with "K.A.R. 28-31-124 through 28-31-124e."

(B) Each reference to 40 CFR 124, subpart A in its entirety shall be replaced with "K.A.R. 28-31-124 through 28-31-124e."

(C) Each reference to 40 CFR 124.2 or any portion of 40 CFR 124.2 shall be replaced with "40 CFR 270.2."

(D) Each reference to 40 CFR 124.3 or any portion of 40 CFR 124.3 shall be replaced with "K.A.R. 28-31-124a."

(E) Each reference to 40 CFR 124.5 or any portion of 40 CFR 124.5 shall be replaced with "K.A.R. 28-31-124b."

(F) Each reference to 40 CFR 124.6 or any portion of 40 CFR 124.6 shall be replaced with "K.A.R. 28-31-124c."

(G) Each reference to 40 CFR 124.8 or any portion of 40 CFR 124.8 shall be replaced with "K.A.R. 28-31-124d."

(H) Each reference to 40 CFR 124.10 or any portion of 40 CFR 124.10 shall be replaced with “K.A.R. 28-31-124e,” except in 40 CFR 124.204(d) (10), where the phrase “§§ 124.10(c)(1)(ix) and (c)(1)(x)(A)” shall be replaced with “K.A.R. 28-31-124e(e)(1)(D) and (E).”

(I) The following phrases shall be replaced with “in accordance with K.S.A. 65-3440, and amendments thereto,”:

- (i) “[A]ccording to the procedures of § 124.19”;
- (ii) “pursuant to 40 CFR 124.19”;
- (iii) “under § 124.19”;
- (iv) “under § 124.19 of this chapter”;
- (v) “under § 124.19 of this part”;
- (vi) “under the permit appeal procedures of 40 CFR 124.19.”

(2) 40 CFR 260.20 through 260.23. Each reference to 40 CFR 260.20, 260.21, 260.22, or 260.23, or any combination of these references, shall be replaced with the phrase “EPA’s rulemaking petition program.” (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-100a. Substitution of state terms for federal terms; administrator. When used in any provision of 40 CFR part 124, parts 260 through 266, or part 268, 270, 273, or 279, as adopted by reference by K.A.R. 28-31-124 through 28-31-279, the following substitutions shall be made unless otherwise specified in K.A.R. 28-31-124 through 28-31-279:

(a) The following terms and phrases shall be replaced with “secretary,” except as noted in subsection (b):

- (1) “Administrator”;
- (2) “[a]dministrator or State Director”;
- (3) “applicable EPA Regional Administrator”;
- (4) “appropriate Regional Administrator or state Director”;
- (5) “[a]ssistant Administrator”;
- (6) “[a]ssistant Administrator for Solid Waste and Emergency Response”;
- (7) “EPA Regional Administrator”;
- (8) “EPA Regional Administrator(s)”;
- (9) “EPA Regional Administrator (or his designated representative) or State authorized to implement part 268 requirements”;
- (10) “EPA Regional Administrator for the Region in which the generator is located”;
- (11) “EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located”;
- (12) “EPA Regional Administrator(s) of the

EPA Region(s) in which the bonded facility(ies) is (are) located”;

(13) “EPA Regional Administrators of the Regions in which the facilities are located, or their designees”;

(14) “[r]egional Administrator”;

(15) “[r]egional Administrator(s)”;

(16) “[r]egional Administrator of every Region in which facilities for which financial responsibility is to be demonstrated through the financial test are located”;

(17) “[r]egional Administrator or state Director”;

(18) “[r]egional Administrator, or State Director, as the context requires, or an authorized representative (‘director’ as defined in 40 CFR 270.2)”;

(19) “[r]egional Administrator, or State Director (if located in an authorized state)”;

(20) “[r]egional Administrator(s) of the EPA Region(s) in which the facility(ies) is(are) located”;

(21) “USEPA Regional Administrator for Region [Region #].”

(b) The terms listed in subsection (a) shall not be replaced with “secretary” in the following federal regulations:

- (1) 40 CFR 260.10, in the following definitions:
 - (A) “Administrator”;
 - (B) “equivalent method”;
 - (C) “hazardous waste constituent”;
 - (D) “industrial furnace”; and
 - (E) “regional administrator”;
- (2) 40 CFR part 261, in the following locations:
 - (A) 40 CFR 261.10;
 - (B) 40 CFR 261.11; and
 - (C) 40 CFR 261.21;
- (3) 40 CFR part 262, subparts E and H and the appendix;
- (4) 40 CFR part 264, in the following locations:
 - (A) 40 CFR 264.12(a);
 - (B) 40 CFR 264.151(b), in the first paragraph of the financial guarantee bond;
 - (C) 40 CFR 264.151(c), in the first paragraph of the performance bond; and
 - (D) 40 CFR 265.12(a);
- (5) 40 CFR part 268, in the following locations:
 - (A) 40 CFR 268.5;
 - (B) 40 CFR 268.6;
 - (C) 40 CFR 268.40(b);
 - (D) 40 CFR 268.42(b); and
 - (E) 40 CFR 268.44; and
- (6) 40 CFR part 270, in the following locations:

- (A) 40 CFR 270.2, in the following definitions:
 - (i) “Administrator”;
 - (ii) “corrective action management unit or CAMU”;
 - (iii) “director”;
 - (iv) “major facility”;
 - (v) “regional administrator”; and
 - (vi) “state/EPA agreement”;
- (B) 270.5;
- (C) 270.10(e)(2) and (3);
- (D) 270.10(f)(3); and
- (E) 270.11(a)(3). (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-100d. Substitution of state terms for federal terms; DOT, director. When used in any provision of 40 CFR part 124, parts 260 through 266, or part 268, 270, 273, or 279, as adopted by reference by K.A.R. 28-31-124 through 28-31-279, the following substitutions shall be made unless otherwise specified in K.A.R. 28-31-124 through 28-31-279:

(a) Department of transportation. The terms “Department of Transportation” and “DOT” shall be replaced with “U.S. department of transportation,” except in the following instances:

- (1) In an address;
- (2) in the term “DOT hazard class”;
- (3) in the term “U.S. Department of Transportation (DOT)”;
- (4) in the term “U.S. DOT.”

(b) Director.

(1) The following terms shall be replaced with “secretary” except as noted in paragraphs (b)(2) through (4):

- (A) “Director” and “Directors”;
- (B) “[d]irector of an EPA permitting agency”;
- (C) “[r]egional or State Directors to whom the claim was submitted”;

(D) “[r]egional or State RCRA and CAA Directors, in whose jurisdiction the exclusion is being claimed and where the comparable/syngas fuel will be burned”;

- (E) “[s]tate and Regional Directors”; and
- (F) “[s]tate Director.”

(2) The term “Director” shall not be replaced with “secretary” when used in the following terms:

- (A) “Director of the Federal Register”;
- (B) “[d]irector, Office of Hazardous Materials Regulations”; and

(C) “EPA Director of the Office of Solid Waste.”

(3) The term “directors” shall not be replaced with “secretary” in the term “Board of Directors.”

(4) The terms “Director,” “Directors,” and “State Director” shall not be replaced with “secretary” in the following locations:

- (A) 40 CFR part 262, in the appendix;
- (B) 40 CFR 266.201 and 266.210, in the definition of “director”; and

- (C) 40 CFR 270.2, in the following definitions:
 - (i) “Director”; and
 - (ii) “state director.” (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-100e. Substitution of state terms for federal terms; engineer, environmental appeals board, EPA. When used in any provision of 40 CFR part 124, parts 260 through 266, or part 268, 270, 273, or 279, as adopted by reference by K.A.R. 28-31-124 through 28-31-279, the following substitutions shall be made unless otherwise specified in K.A.R. 28-31-124 through 28-31-279:

(a) Engineer. The following terms shall be replaced with “Kansas professional engineer”:

- (1) “[G]eotechnical engineer”;
- (2) “PE”;
- (3) “professional engineer”;
- (4) “qualified engineer”;
- (5) “qualified Professional Engineer”;
- (6) “qualified registered professional engineer”;
- (7) “qualified, registered professional engineer”; and

(8) “registered professional engineer.”

(b) Environmental appeals board.

(1) The term “Environmental Appeals Board” shall be replaced with “secretary.”

(2) The term “EPA’s Environmental Appeals Board” shall be replaced with “the secretary.”

(c) Environmental protection agency.

(1) The following terms shall be replaced with “department” or “the department” except as noted in paragraphs (2) through (6) of this subsection:

- (A) “Agency”;
- (B) “applicable EPA Regional Office, Hazardous Waste Division”;

(C) “appropriate regional EPA office”;

(D) “[e]nvironmental Protection Agency”;

(E) “[e]nvironmental Protection Agency (EPA)”;

(F) “EPA”;

(G) “EPA Headquarters”;

(H) “EPA region”;

(I) “EPA region or authorized state”;

(J) “EPA regional office”;

(K) “regulatory agency”;

- (L) “United States Environmental Protection Agency”;
- (M) “United States Environmental Protection Agency (EPA)”;
- (N) “U.S. Environmental Protection Agency”; and
- (O) “U.S. Environmental Protection Agency (EPA).”
- (2) The terms listed in paragraph (1) of this subsection shall not be replaced with “the department” in the following instances:
- (A) Where the term is used in an address; and
- (B) where the term is part of an EPA document name or number.
- (3) The term “Agency” shall not be replaced with “the department” when used as part of the following terms in the singular or plural:
- (A) “Agency of the Federal government”;
- (B) “agency of the Federal or State government”;
- (C) “[f]ederal Agency”;
- (D) “oversight agency”; and
- (E) “[s]tate agency.”
- (4) The term “Environmental Protection Agency” shall not be replaced with “the department” when used as part of the term “Environmental Protection Agency identification number.”
- (5) The term “EPA” shall not be replaced with “the department” when used as part of the following terms in the singular or plural:
- (A) “EPA Acknowledgment of Consent”;
- (B) “EPA Director of the Office of Solid Waste”;
- (C) “EPA facility ID number”;
- (D) “EPA Form”;
- (E) “EPA guidance”;
- (F) “EPA Hazardous Waste”;
- (G) “EPA Hazardous Waste Code”;
- (H) “EPA Hazardous Waste No.”;
- (I) “EPA Hazardous Waste Number”;
- (J) “EPA identification number”;
- (K) “EPA Manual”;
- (L) “EPA Publication”;
- (M) “EPA Protocol”;
- (N) “EPA standard method”;
- (O) “EPA test method”;
- (P) “EPA waste code”; and
- (Q) “U.S. EPA Identification Number.”
- (6) The terms listed in paragraph (c)(1) shall not be replaced with “the department” in the following locations:
- (A) 40 CFR part 124, in the following locations:
- (i) 124.200; and
- (ii) 124.207;
- (B) 40 CFR 260.10, in the following definitions:
- (i) “Administrator”;
- (ii) “EPA hazardous waste number”;
- (iii) “EPA identification number”;
- (iv) “EPA region”;
- (v) “federal agency”;
- (vi) “regional administrator”; and
- (vii) “replacement unit”;
- (C) 40 CFR part 261, appendix I;
- (D) 40 CFR part 262, in the following locations:
- (i) 40 CFR 262.21;
- (ii) 40 CFR 262.32(b); and
- (iii) 40 CFR part 262, subparts E, F, and H and the appendix;
- (E) 40 CFR part 264, in the following locations:
- (i) In 40 CFR 264.151, where only the term “agency” shall not be replaced; and
- (ii) in 40 CFR 264.1082(c)(4)(ii), the second occurrence of “EPA”;
- (F) in 40 CFR 265.1083(c)(4)(ii), the second occurrence of “EPA”;
- (G) 40 CFR part 266, appendix IX, sections 4 through 9, except that the first occurrence of the term “EPA” in section 8.0 shall be replaced with “the department”;
- (H) 40 CFR 267.143;
- (I) 40 CFR part 268, in the following locations:
- (i) 40 CFR 268.1(e)(3);
- (ii) 40 CFR 268.2(j);
- (iii) 40 CFR 268.5;
- (iv) 40 CFR 268.7(e); and
- (v) 40 CFR 268.44;
- (J) 40 CFR part 270, in the following locations:
- (i) 40 CFR 270.2, in the definitions of “administrator,” “application,” “approved program or approved state,” “director,” “environmental protection agency (EPA),” “EPA,” “final authorization,” “interim authorization,” “permit,” “regional administrator,” and “state/EPA agreement”;
- (ii) 40 CFR 270.5;
- (iii) 40 CFR 270.10(e)(2);
- (iv) 40 CFR 270.11(a)(3);
- (v) 40 CFR 270.51(d);
- (vi) 40 CFR 270.72(a)(5) and (b)(5); and
- (vii) 40 CFR 270.225; and
- (K) 40 CFR part 273, in the following locations:
- (i) 40 CFR 273.32(a)(3); and
- (ii) 40 CFR 273.52.
- (d) EPA form 8700-12. The term “EPA Form 8700-12” shall be replaced with “KDHE form 8700-12.”
- (e) EPA form 8700-13B. The term “EPA form 8700-13B” shall be replaced with “KDHE form

8700-13b.” (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-100f. Substitution of state terms for federal terms; federal register. When used in any provision of 40 CFR part 124, parts 260 through 266, or part 268, 270, 273, or 279, as adopted by reference by K.A.R. 28-31-124 through 28-31-279, the substitutions specified in this regulation shall be made unless otherwise specified in K.A.R. 28-31-124 through 28-31-279. The term “Federal Register” shall be replaced with “Kansas register” except in the following locations:

- (a) 40 CFR 266.203(c) and 266.205(e);
- (b) 40 CFR 268.5(e);
- (c) 40 CFR 268.6(j);
- (d) 40 CFR part 268, subpart D; and
- (e) 40 CFR 270.10(e)(2). (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-100p. Substitution of state terms for federal terms; part B, permitting agency or authority. When used in any provision of 40 CFR part 124, parts 260 through 266, or part 268, 270, 273, or 279, as adopted by reference by K.A.R. 28-31-124 through 28-31-279, the following substitutions shall be made unless otherwise specified in K.A.R. 28-31-124 through 28-31-279:

(a) Part B. The following phrases shall be replaced with “part B application”:

- (1) “[P]art B of the RCRA application”; and
 - (2) “RCRA part B application.”
- (b) Permitting agency or authority. The following terms shall be replaced with “department” or “the department”:
- (1) “[P]ermitting agency”;
 - (2) “permitting authority”;
 - (3) “permitting authority for the facility”;
 - (4) “permitting authority of the state or territory where the facility is located”; and
 - (5) “permitting authority of the state or territory where the facility(ies) is(are) located.” (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-100q. Substitution of state terms for federal terms; qualified geologist, qualified soil scientist. When used in any provision of 40 CFR part 124, parts 260 through 266, or part 268, 270, 273, or 279, as adopted by reference by K.A.R. 28-31-124 through 28-31-279, the following substitutions shall be made unless otherwise specified in K.A.R. 28-31-124 through 28-31-279:

(a) Qualified geologist. The term “qualified geologist” shall be replaced with “Kansas licensed geologist.”

(b) Qualified soil scientist. The term “qualified soil scientist” shall be replaced with “Kansas licensed geologist.” (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-100r. Substitution of state terms for federal terms; RCRA. When used in any provision of 40 CFR part 124, parts 260 through 266, or part 268, 270, 273, or 279, as adopted by reference by K.A.R. 28-31-124 through 28-31-279, the following substitutions shall be made unless otherwise specified in K.A.R. 28-31-124 through 28-31-279:

(a) General references to the RCRA program and subtitle C.

(1) The following terms shall be replaced with “Kansas hazardous waste program” or “the Kansas hazardous waste program” except as noted in paragraphs (2) and (3) and subsections (o) through (q):

- (A) “RCRA”;
- (B) “RCRA hazardous waste”;
- (C) “RCRA hazardous waste management”;
- (D) “RCRA program”;
- (E) “RCRA subtitle C”;
- (F) “[r]esource Conservation and Recovery Act”;
- (G) “[r]esource Conservation and Recovery Act as amended (RCRA)”;
- (H) “[r]esource Conservation and Recovery Act of 1976 as amended”;
- (I) “[s]ubtitle C”;
- (J) “subtitle C of RCRA”; and
- (K) “subtitle C of the Resource Conservation and Recovery Act (RCRA).”

(2) The term “RCRA” shall not be replaced with “Kansas hazardous waste program” when used in the following terms, in the singular or plural:

- (A) “RCRA facility ID number”;
- (B) “RCRA hazardous waste code”;
- (C) “RCRA ID number”;
- (D) “RCRA identification number”;
- (E) “non-RCRA tank”;
- (F) “RCRA/Superfund Hotline”;
- (G) “RCRA waste code”; and
- (H) “RCRA Subtitle D.”

(3) The terms listed in paragraph (1) of this subsection shall not be replaced with “Kansas hazardous waste program” when used in the following locations:

(A) The parenthetical authority cited at the end of a section;

(B) 40 CFR 260.10, in the definition of “ ‘act’ or ‘RCRA’ ”;

(C) 40 CFR part 261, in the following locations:

(i) 40 CFR 261.4(e)(2)(iv); and

(ii) 40 CFR 261.38(c)(1)(ii);

(D) 40 CFR part 262, in the following locations:

(i) Subpart H; and

(ii) the appendix;

(E) 40 CFR part 266, in the following locations:

(i) 40 CFR 266.202(d); and

(ii) 40 CFR 266.210 and 266.240, where “RCRA hazardous waste” shall be replaced with “hazardous waste”; and

(F) 40 CFR 270.2, in the definition of “RCRA.”

(b) References to specific sections, subsections, or paragraphs of RCRA.

(1) Section 3010. The following phrases shall be replaced with “K.A.R. 28-31-4”:

(A) “RCRA section 3010”;

(B) “section 3010 of RCRA”;

(C) “section 3010 of the Act”; and

(D) “section 3010(a) of RCRA.”

(2) Section 7003. The following terms shall be replaced with “K.S.A. 65-3443 and 65-3445”:

(A) “[S]ection 7003”; and

(B) “section 7003 of RCRA.”

(c) References to RCRA and subtitle C facilities and disposal units.

(1) The term “RCRA hazardous waste land disposal unit” shall be replaced with “Kansas hazardous waste land disposal unit.”

(2) The term “RCRA hazardous waste management facility” shall be replaced with “Kansas hazardous waste management facility.”

(3) The term “Subtitle C landfill cell” shall be replaced with “Kansas hazardous waste landfill cell.”

(4) The term “Subtitle C monofill” shall be replaced with “Kansas hazardous waste monofill.”

(d) References to permits. The following substitutions shall apply in the singular and plural:

(1) The following phrases shall be replaced with “Kansas hazardous waste facility permit” except as noted in paragraph (d)(2):

(A) “Permit issued under section 3005 of this act”;

(B) “permit under RCRA 3005(c)”;

(C) “permit under RCRA section 3005(c)”;

(D) “permit under section 3005 of this act”;

(E) “RCRA hazardous waste permit”;

(F) “RCRA operating permit”;

(G) “RCRA permit”;

(H) “RCRA permit under RCRA section 3005(c)”;

(I) “RCRA, UIC, or NPDES permit”;

(J) “RCRA, UIC, PSD, or NPDES permit”; and

(K) “[s]tate RCRA permit.”

(2) In 40 CFR 270.51(d), the first occurrence of the phrase “RCRA permit” shall not be replaced with “Kansas hazardous waste facility permit.”

(3) The phrase “RCRA-permitted” shall be replaced with “Kansas-permitted.”

(4) The following phrases shall be replaced with “Kansas hazardous waste facility standardized permit”:

(A) “RCRA standardized permit”; and

(B) “RCRA standardized permit (RCRA).”

(5) The phrase “a final permit under RCRA section 3005” shall be replaced with “a final permit issued by EPA under RCRA section 3005 or a Kansas hazardous waste facility permit” in the following locations:

(A) 40 CFR 264.1030(c);

(B) 40 CFR 264.1050(c);

(C) 40 CFR 264.1080(c); and

(D) 40 CFR 265.1080(c). (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-100s. Substitution of state terms for federal terms; state. When used in any provision of 40 CFR part 124, parts 260 through 266, or part 268, 270, 273, or 279, as adopted by reference by K.A.R. 28-31-124 through 28-31-279, the following substitutions shall be made unless otherwise specified in K.A.R. 28-31-124 through 28-31-279:

(a) The following terms when used in the singular shall be replaced with “state of Kansas” or “the state of Kansas” except as noted in subsections (b) and (c):

(1) “State” and “a State” when referring to a political entity;

(2) “approved State” and “an approved State”; and

(3) “authorized State” and “an authorized State.”

(b) The term “State” shall not be replaced when used in the following terms in the singular or plural:

(1) “Agreement State”; and

(2) “[s]tate agency.”

(c) The terms listed in subsection (a) shall not be replaced in the following locations:

(1) 40 CFR 124.207(a)(3);

(2) 40 CFR 260.10, in the following definitions:

(A) “Designated facility”;

(B) “explosives or munitions emergency response specialist”;

(C) “person”;

- (D) “publicly owned treatment works”; and
- (E) “state”;
- (3) 40 CFR part 261, in the following locations:
 - (A) 40 CFR 261.4(g)(2)(i); and
 - (B) 40 CFR 261.5;
 - (4) 40 CFR part 262;
 - (5) 40 CFR part 264, in the following locations:
 - (A) 40 CFR part 264, subparts C and D;
 - (B) 40 CFR 264.71(e); and
 - (C) 40 CFR part 264, subpart H;
 - (6) 40 CFR part 265, in the following locations:
 - (A) 40 CFR part 265, subparts C and D;
 - (B) 40 CFR 265.71(e); and
 - (C) 40 CFR 265.147;
 - (7) 40 CFR 266.210, in the following definitions:
 - (A) “Agreement state”; and
 - (B) “naturally occurring and/or accelerator-produced radioactive material (NARM)”;
 - (8) 40 CFR part 267, subparts C, D, and H;
 - (9) 40 CFR part 270, in the following locations:
 - (A) 40 CFR 270.2, in the following definitions:
 - (i) “Approved program or approved state”;
 - (ii) “director”;
 - (iii) “final authorization”;
 - (iv) “interim authorization”;
 - (v) “person”;
 - (vi) “POTW”;
 - (vii) “state”;
 - (viii) “state director”;
 - (ix) “state/EPA agreement”;
 - (B) 40 CFR 270.10(g)(1)(ii), where only the term “approved State” shall not be replaced;
 - (C) 40 CFR 270.11(a)(3); and
 - (D) 40 CFR 270.13;
 - (10) 40 CFR 273.14(c)(1)(iii); and
 - (11) 40 CFR 279.24(a)(3). (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-124. Procedures for permitting; adoption and modification of federal regulations. (a) Adoption. The provisions of 40 CFR 124.11 through 124.17 and 40 CFR part 124, subparts B and G, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:

- (1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;
 - (2) the exclusions from adoption listed in subsection (b); and
 - (3) the modifications listed in subsection (c).
- (b) Exclusions. The following portions of 40

CFR 124.12 through 124.17 and 40 CFR part 124, subpart G shall be excluded from adoption:

- (1) 40 CFR 124.12(b);
 - (2) 40 CFR 124.16(b)(2);
 - (3) 40 CFR 124.17(b);
 - (4) 40 CFR 124.204(d)(1), (4) through (7), and (9); and
 - (5) 40 CFR 124.205(a), (c), and (i) through (l).
- (c) Modifications. The following modifications shall be made to 40 CFR 124.11 through 124.17 and 40 CFR part 124, subparts B and G:
- (1) Each occurrence of the term “decisionmaking” shall be replaced with “permitting.”
 - (2) Each parenthetical statement starting with “Applicable to State programs” shall be deleted.
 - (3) In 40 CFR 124.11, the text “or the permit application for 404 permits when no draft permit is required (see § 233.39)” shall be deleted.
 - (4) In 40 CFR 124.12(a)(3), the phrase “For RCRA permits only,” shall be deleted.
 - (5) In 40 CFR 124.13, the term “EPA documents” shall be replaced with “EPA or department documents.”
 - (6) The first sentence of 40 CFR 124.14(a)(4) shall be deleted.
 - (7) In 40 CFR 124.14(b)(2), the phrase “a revised statement of basis under § 124.7,” shall be deleted.
 - (8) The following text shall be added to the end of 40 CFR 124.15(b)(2): “by a person who filed comments on the draft permit or participated in the public hearing through written or oral comments. Stays of contested permit conditions are subject to § 124.16.”
 - (9) In 40 CFR 124.16(a)(1), the following text shall be deleted:
 - (A) “(No stay of a PSD permit is available under this section.)”;
 - (B) “or new injection well, new source, new discharger or a recommencing discharger”; and
 - (C) “, injection well, source or discharger pending final agency action. See also § 124.60.”
 - (10) In 40 CFR 124.16(a)(2)(i), the following text shall be deleted:
 - (A) “, injection wells, and sources”; and
 - (B) “, injection well, or source.”
 - (11) In 40 CFR 124.16(a)(2)(ii), the following text shall be deleted:
 - (A) “[R]eceiving notification from the EAB of”;
 - (B) “the EAB,”; and
 - (C) “[f]or NPDES permits only, the notice shall comply with the requirements of § 124.60(b).”
 - (12) In 40 CFR 124.16(b), the text “and he or she has accepted each appeal” shall be deleted.

(13) In 40 CFR 124.17(a), the text “States are” shall be replaced with “The department is.”

(14) In 40 CFR 124.17(a)(2), the phrase “or the permit application (for section 404 permits only)” shall be deleted.

(15) In 40 CFR 124.31(a), 124.32(a), and 124.33(a), the following sentence shall be deleted: “For the purposes of this section only, ‘hazardous waste management units over which EPA has permit issuance authority’ refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271.”

(16) In 40 CFR 124.204(d)(3), the sentence shall be replaced with “All subsections shall apply.”

(17) In 40 CFR 124.205(d), the text “(b),” shall be deleted.

(18) In 40 CFR 124.208(e), the phrase “§ 124.12(b), (c), and (d)” shall be replaced with “§ 124.12(c) and (d).” (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3440; effective April 29, 2011.)

28-31-124a. Procedures for permitting; application for a permit. Each reference in this regulation to 40 CFR part 270 shall mean 40 CFR part 270 as adopted by reference in K.A.R. 28-31-270. (a) Each person that is required to have a Kansas hazardous waste facility permit, as specified in 40 CFR part 270, K.S.A. 65-3433 and amendments thereto, or K.S.A. 65-3437 and amendments thereto, shall submit a completed, signed application to the department.

(b) Before submitting the application, the applicant shall submit to the department a disclosure statement that contains all information necessary for the secretary to conduct the background investigation required by K.S.A. 65-3437, and amendments thereto.

(1) The disclosure statement shall be submitted on forms provided by the department.

(2) If there is a parent company, the parent company shall submit a separate disclosure statement to the department on forms provided by the department.

(c) The application shall be reviewed by the department after the applicant has fully complied with the requirements of 40 CFR 270.10 and 270.13.

(d) The application signature and certification shall meet the requirements of 40 CFR 270.11.

(e) Applications shall not be required for permits by rule. (Authorized by K.S.A. 65-3431;

implementing K.S.A. 65-3431, 65-3433, and 65-3437; effective April 29, 2011.)

28-31-124b. Procedures for permitting; modification, revocation and reissuance, or termination of permits. Each reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279. (a) Reasons for modification, revocation and reissuance, or termination of a permit. A permit may be modified, revoked and reissued, or terminated by the secretary only for the reasons specified in 40 CFR 270.41, 40 CFR 270.43, and K.S.A. 65-3439 and amendments thereto.

(b) Request for modification, revocation and reissuance, or termination of a permit. Any person, including the permittee or the secretary, may request that a permit be modified, revoked and reissued, or terminated. Each request shall be submitted to the department in writing and shall contain the facts and reasons supporting the request.

(c) Procedures for modification or for revocation and reissuance of a permit. Modification of a permit, and revocation and reissuance of a permit, shall be subject to the following requirements:

(1) A draft permit shall be prepared by the department if either of the following occurs:

(A) The secretary tentatively decides to modify or to revoke and reissue a permit according to the criteria specified in 40 CFR 270.41, other than 40 CFR 270.41(b)(3).

(B) The permittee requests a modification in accordance with 40 CFR 270.42(c).

(2) The draft permit shall be prepared by the department according to the following criteria:

(A) The draft permit shall incorporate the proposed changes.

(B) Additional information from the permittee may be requested by the secretary.

(C) If a permit is modified, the permittee may be required by the secretary to submit an updated application.

(D) If a permit is revoked and reissued for a cause not listed in 40 CFR 270.41(b)(3), the permittee shall submit a new application to the department.

(E) If a permit is revoked and reissued in accordance with 40 CFR 270.41(b)(3), the requirements in 40 CFR part 124, subpart G for standardized permits shall be met by the secretary and the permittee.

(3) If a permit is modified, only those conditions to be modified shall be reopened by the department when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit.

(4) If a permit is revoked and reissued, the entire permit shall be reopened by the department as if the permit had expired and was being reissued. During the revocation and reissuance proceedings, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(5) "Class 1 modifications" and "Class 2 modifications," as defined in 40 CFR 270.42 (a) and (b), shall not be subject to the requirements of this regulation.

(d) Termination of permit. If the secretary tentatively decides to terminate a permit in accordance with 40 CFR 270.43 and the permittee objects, a notice of intent to terminate shall be issued by the secretary. Each notice of intent to terminate shall be deemed a type of draft permit and shall be subject to the procedures specified in K.A.R. 28-31-124c and in K.S.A. 65-3440 and amendments thereto. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431, 65-3437, and 65-3439; effective April 29, 2011.)

28-31-124c. Procedures for permitting; draft permits. Each reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279. (a) Each permit application shall be reviewed by the secretary to determine compliance with the requirements of the hazardous waste regulations.

(b) If the permit application does not meet the requirements of this article, the application shall be denied by the secretary.

(c) If the application meets the requirements of this article, a draft permit shall be prepared by the secretary according to the following criteria:

(1) The draft permit shall contain the following information:

(A) All conditions specified in 40 CFR 270.30 and 270.32;

(B) all compliance schedules specified in 40 CFR 270.33;

(C) all monitoring requirements specified in 40 CFR 270.31; and

(D) standards for treatment, storage, or disposal, or any combination of these activities, and other permit conditions under 40 CFR 270.30.

(2) The draft permit shall be accompanied by a fact sheet that meets the requirements of K.A.R. 28-31-124d.

(3) Public notice shall be given as specified in K.A.R. 28-31-124e.

(4) The draft permit shall be made available for public comment as specified in 40 CFR 124.11.

(5) Notice of opportunity for a public hearing shall be given as specified in 40 CFR 124.12.

(d) A final decision to issue the permit shall be issued by the secretary if the findings of fact show that the facility or activity will be protective of human health and safety and the environment. A final decision to deny the permit shall be issued by the secretary if the findings of fact show that the facility or activity will not be protective of human health and safety and the environment.

(e) A response to comments shall be issued by the secretary in accordance with 40 CFR 124.17.

(f) Any person may appeal the decision in accordance with K.S.A. 65-3440 and K.S.A. 65-3456a(b), and amendments thereto. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431, 65-3433, 65-3437, and 65-3439; effective April 29, 2011.)

28-31-124d. Procedures for permitting; fact sheet. A fact sheet for each draft permit shall be prepared and distributed by the department according to the following requirements:

(a) The fact sheet shall be sent by the department to the applicant and to each person who requests the fact sheet.

(b) The fact sheet shall briefly describe the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit.

(c) The fact sheet shall include the following information:

(1) A brief description of the type of facility or activity that is the subject of the draft permit;

(2) the type and quantity of wastes, fluids, or pollutants that are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

(3) the reasons why each requested variance or alternative to required standards do or do not appear justified;

(4) a description of the procedures for reaching a final decision on the draft permit, including the following information:

(A) The beginning and ending dates of the comment period as specified in K.A.R. 28-31-124e and the address where comments will be received;

(B) the procedures for requesting a hearing and the nature of that hearing; and

(C) all other procedures by which the public may participate in the final decision; and

(5) the name and telephone number of a person to contact for additional information. (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-124e. Procedures for permitting; public notice of permit actions and public comment period. Public notices shall be given by the department according to the following criteria:

(a) A public notice shall be given if one or more of the following actions have occurred:

(1) A permit application has been tentatively denied under K.A.R. 28-31-124c.

(2) A draft permit has been prepared under K.A.R. 28-31-124c.

(3) A hearing has been scheduled under 40 CFR 124.12, as adopted by reference in K.A.R. 28-31-124.

(b) No public notice shall be required if a request for permit modification, revocation and re-issuance, or termination is denied under K.A.R. 28-31-124b. Written notice of the denial shall be provided by the department to the person who made the request and to the permittee.

(c) The public notice may describe more than one permit or permit action.

(d) The public notice shall be given in accordance with the following time frames:

(1) The public notice of the preparation of a draft permit, including a notice of intent to deny a permit application, required under subsection (a) shall allow at least 45 days for public comment.

(2) The public notice of the public hearing shall be given at least 30 days before the hearing.

(3) The public notice of the hearing may be given at the same time as the public notice of the draft permit and the two notices may be combined.

(e) Public notice of the activities described in subsection (a) shall be given using the following methods:

(1) Mailing a copy of the notice to the following persons, except to any person that has waived the right to receive notices for the class or category of the permit described in the notice:

(A) The applicant;

(B) each agency that has issued or is required to issue a permit for the same facility or activity, including EPA;

(C) all federal and state agencies with jurisdiction over fish, shellfish, or wildlife resources, the advisory council on historic preservation, state historic preservation officers, and all affected states and Indian tribes;

(D) each person on the mailing list, which shall be developed by the department using the following methods:

(i) Each person who requests in writing to be on the mailing list shall be added to the mailing list;

(ii) participants in past proceedings in that area shall be solicited for inclusion on the mailing list;

(iii) the public shall be notified of the opportunity to be put on the mailing list through periodic publication in the public press and in publications which may include regional and state-funded newsletters, environmental bulletins, and state law journals; and

(iv) the mailing list may be updated by the department by requesting written indication of continued interest from persons on the list. The name of any person who fails to respond to such a request may be deleted from the list by the department;

(E) each unit of local government having jurisdiction over the area where the facility is proposed to be located; and

(F) each state agency having any authority under state law with respect to the construction or operation of the facility;

(2) publishing a notice in the official newspaper of the county in which the facility is located or proposed to be located or, if there is no official county newspaper, a newspaper published as provided in K.S.A. 64-101, and amendments thereto;

(3) broadcasting over local radio stations;

(4) giving notice in a manner constituting legal notice to the public under state of Kansas law; and

(5) using any other method chosen by the department to give notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(f) Each public notice shall contain the following information:

(1) The name and address of the office processing the permit;

(2) the name and address of the permittee or the permit applicant and, if different, of the facility or activity regulated by the permit;

(3) a brief description of the business conducted at the facility or the activities described in the permit application or the draft permit;

(4) the name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, the fact sheet, and the application;

(5) a brief description of the comment procedures required by 40 CFR 124.11 and 124.12, as adopted by reference in K.A.R. 28-31-124;

(6) the time and place of each hearing that has been scheduled;

(7) a statement of the procedures to request a hearing, unless a hearing has already been scheduled;

(8) all other procedures required for public participation in the final permit decision;

(9) the times when the record will be open for public inspection and a statement that all data submitted by the applicant is available as part of the administrative record; and

(10) any additional information necessary to allow full public participation in the final permit decision.

(g) The public notice of each hearing held pursuant to 40 CFR 124.12, as adopted by reference in K.A.R. 28-31-124, shall contain all of the information described in subsection (f) of this regulation plus the following information:

(1) Reference to the date of previous public notices relating to the permit;

(2) the date, time, and place of the hearing; and

(3) a brief description of the nature and purpose of the hearing, including the rules and procedures.

(h) In addition to the general public notice described in subsection (f), a copy of each of the following documents shall be mailed by the department to all persons identified in paragraphs (e)(1)(A) through (D):

(1) The fact sheet; and

(2) the permit application or the draft permit. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3433; effective April 29, 2011.)

28-31-260. General provisions and definitions; adoption and modification of federal regulations. (a) Adoption. The provisions of 40 CFR part 260, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:

(1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;

(2) the exclusions from adoption listed in subsection (b); and

(3) the modifications listed in subsection (c).

(b) Exclusions. The following portions of 40 CFR part 260 shall be excluded from adoption:

(1) All comments and all notes;

(2) 40 CFR 260.1;

(3) in 40 CFR 260.10, the definition of “performance track member facility”;

(4) 40 CFR 260.11;

(5) 40 CFR 260.20 through 260.23;

(6) 40 CFR 260.40 and 260.41; and

(7) appendix I.

(c) Modifications. The following modifications shall be made to 40 CFR part 260:

(1) The text of 40 CFR 260.2 shall be replaced with the following: “The Kansas open records act and K.S.A. 65-3447 shall apply to all information provided to the department.”

(2) The following definitions in 40 CFR 260.10 shall be modified as follows:

(A) The definition of “existing tank system or existing component” shall be modified by replacing “on or prior to July 14, 1986” with “on or before July 14, 1986 for HSWA tanks and on or before May 1, 1987 for non-HSWA tanks.”

(B) The definition of “facility” shall be modified by deleting the phrase “under RCRA Section 3008(h).”

(C) The definition of “new tank system or new tank component” shall be modified by replacing both occurrences of “July 14, 1986” with “July 14, 1986 for HSWA tanks and May 1, 1987 for non-HSWA tanks.”

(D) The definition of “qualified ground-water scientist” shall be replaced with the following definition: “ ‘qualified ground-water scientist’ means a licensed geologist or professional engineer who has sufficient training and experience in ground-water hydrology and related fields. Sufficient training may be demonstrated by a professional certification or by the completion of an accredited university program that enables the individual to make sound professional judgments regarding groundwater monitoring, contaminant fate and transport, and corrective action.”

(E) The definition of “small quantity generator” shall be replaced by the following definition: “ ‘Small quantity generator’ means a generator who meets all of the following criteria:

“(i) Generates more than 100 kilograms (220 pounds) of hazardous waste in any single calendar month;

“(ii) generates less than 1,000 kilograms (2,200 pounds) of hazardous waste in any single calendar month; and

“(iii) generates and accumulates acutely hazardous waste and other waste listed in 40 CFR 261.5(e) in quantities less than the generation limits listed in 40 CFR 261.5(e).”

(d) Differences between state and federal definitions. If the same term is defined differently both in K.S.A. 65-3430 et seq. and amendments thereto or this article and in any federal regulation adopted by reference in this article, the definition prescribed in the Kansas statutes or regulations shall control, except for the term “solid waste.” (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-260a. General provisions and definitions; additional state definitions. Each reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279.

(a) State definitions. The following definitions shall apply to K.A.R. 28-31-4 through 28-31-279:

(1) “Conditionally exempt small quantity generator” means a generator who meets both of the following criteria:

(A) Generates less than 25 kilograms (55 pounds) of hazardous waste in any single calendar month; and

(B) generates and accumulates acutely hazardous waste and other waste listed in 40 CFR 261.5(e) in quantities less than the generation limits listed in 40 CFR 261.5(e).

(2) “HSWA drip pad” means a drip pad associated with the handling of waste designated as F032 waste in 40 CFR 261.31.

(3) “HSWA tank” means any of the following tanks:

(A) A tank owned or operated by a generator of less than 1,000 kilograms (2,200 pounds) of hazardous waste in any single calendar month;

(B) a new underground tank; or

(C) an existing underground tank that cannot be entered for inspection.

(4) “Kansas hazardous waste facility permit” means a permit issued under the Kansas hazardous waste program.

(5) “Kansas hazardous waste program” means the hazardous waste management program operated by the state of Kansas in lieu of the U.S. environmental protection agency, authorized by and implementing K.S.A. 65-3430 et seq. and amendments thereto.

(6) “Kansas licensed geologist” means a person who has a current license to practice geology from

the state board of technical professions pursuant to K.S.A. 74-7001 et seq., and amendments thereto.

(7) “Kansas professional engineer” means a person who has a current license to practice engineering from the state board of technical professions pursuant to K.S.A. 74-7001 et seq., and amendments thereto.

(8) “Kansas small quantity generator” means a generator that meets all of the following criteria:

(A) Generates 25 kilograms (55 pounds) or more of hazardous waste in any single calendar month;

(B) generates no more than 100 kilograms (220 pounds) of hazardous waste in any single calendar month; and

(C) generates and accumulates acutely hazardous waste and other waste listed in 40 CFR 261.5(e) in quantities less than the generation limits listed in 40 CFR 261.5(e).

(9) “Large quantity generator” means a generator who meets either or both of the following criteria:

(A) Generates 1,000 kilograms (2,200 pounds) or more of hazardous waste in any single calendar month; or

(B) generates or accumulates acutely hazardous waste and other waste listed in 40 CFR 261.5(e) in quantities equal to or greater than the generation limits listed in 40 CFR 261.5(e).

(10) “Non-HSWA drip pad” means a drip pad for handling wastes designated as F034 and F035 wastes in 40 CFR 261.31.

(11) “Non-HSWA tank” means any tank except the following tanks:

(A) Tanks owned or operated by a generator of less than 1,000 kilograms (2,200 pounds) of hazardous waste in any single calendar month;

(B) new underground tanks; and

(C) existing underground tanks that cannot be entered for inspection.

(b) Differences between state and federal definitions. If the same term is defined differently both in K.S.A. 65-3430 et seq. and amendments thereto or this article and in any federal regulation adopted by reference in this article, the definition prescribed in the Kansas statutes or regulations shall control, except for the term “solid waste.” (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3451; effective April 29, 2011.)

28-31-260b. General provisions and definitions; adoption of technical documents. In any federal regulation adopted by reference in

K.A.R. 28-31-260 through 28-31-279, each reference to any of the following documents shall mean that document as hereby adopted by reference:

(a) ASTM. The following documents published by the American society for testing and materials:

(1) ANSI/ASTM D 93-79, "standard test methods for flash point by Pensky-Martens closed tester," published October 1979;

(2) D 93-80, "standard test methods for flash point by Pensky-Martens closed tester," published October 1980 and updated July 1981;

(3) D 1946-82, "standard method for analysis of reformed gas by gas chromatography," published August 1982;

(4) D 2267-88, "standard test method for aromatics in light naphthas and aviation gasolines by gas chromatography," published December 1988;

(5) D 2382-83, "standard test method for heat of combustion of hydrocarbon fuels by bomb calorimeter (high-precision method)," published January 1984;

(6) D 2879-92, "standard test method for vapor pressure-temperature relationship and initial decomposition temperature of liquids by isoteniscope," published December 1992;

(7) ASTM D 3278-78, "standard test methods for flash point of liquids by setaflash closed tester," published March 1979;

(8) E 168-88, "standard practices for general techniques of infrared quantitative analysis," published July 1988;

(9) E 169-87, "standard practices for general techniques of ultraviolet-visible quantitative analysis," published April 1987;

(10) E 260-85, "standard practice for packed column gas chromatography," published November 1985; and

(11) in E 926-88, "standard test methods of preparing refuse-derived fuel (RDF) samples for analyses of metals," published May 1988, "test method C—bomb, acid digestion method" on pages 3 and 4;

(b) EPA. The following documents published by the United States environmental protection agency (EPA):

(1) EPA 450/2-81-005, APTI course 415, "control of gaseous emissions: student manual," published December 1981, except pages ii and 1-4;

(2) EPA 454/R-92-019, previously designated as EPA 450/R-92-019, "screening procedures for estimating the air quality impact of stationary sources, revised," published October 1992, except the preface on page iii, the acknowledgments on page iv, and the references in section 5; and

(3) the following methods published in the following updates to EPA publication SW-846, "test methods for evaluating solid waste," third edition, published November 1986:

(A) In "update III," dated December 1996, the following:

(i) Method 0011, "sampling for selected aldehyde and ketone emissions from stationary sources," dated December 1996;

(ii) method 0023A, "sampling method for polychlorinated dibenzo-*p*-dioxins and polychlorinated dibenzofuran emissions from stationary sources," dated December 1996;

(iii) method 0050, "isokinetic HCl/Cl₂ emission sampling train," dated December 1996;

(iv) method 0051, "midget impinger HCl/Cl₂ emission sampling train," dated December 1996;

(v) method 0060, "determination of metals in stack emissions," dated December 1996; and

(vi) method 0061, "determination of hexavalent chromium emissions from stationary sources," dated December 1996; and

(B) in "final update for IIIB to the SW-846: test methods for evaluating solid waste physical/chemical methods," published February 2007, the following:

(i) Method 1110A, "corrosivity toward steel," dated November 2004;

(ii) method 1310B, "extraction procedure (EP) toxicity test method and structural integrity test," dated November 2004;

(iii) method 1311, "toxicity characteristic leaching procedure," dated July 1992;

(iv) method 9010C, "total and amenable cyanide: distillation," dated November 2004;

(v) method 9012B, "total and amenable cyanide (automated colorimetric, with off-line distillation)," dated November 2004;

(vi) method 9040C, "pH electronic measurement," dated November 2004;

(vii) method 9060A, "total organic carbon," dated November 2004; and

(viii) method 9095B, "paint filter liquids test," dated November 2004;

(c) NFPA. Tables 2-1 through 2-6 in chapter 2 in the following documents published by the national fire protection association (NFPA):

(1) NFPA 30, "flammable and combustible liquids code 1977," 1977 edition; and

(2) NFPA 30, "flammable and combustible liquids code 1981," 1981 edition; and

(d) API. In API publication 2517, "evaporative loss from external floating-roof tanks," third edi-

tion, published February 1989 by the American petroleum institute, pages vii through ix and pages 1 through 61. (Authorized by and implementing K.S.A. 65-3431; effective May 10, 2013.)

28-31-261. Identification and listing of hazardous waste; adoption and modification of federal regulations. (a) Adoption. The provisions of 40 CFR part 261, including appendices I, VII, and VIII, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:

(1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;

(2) the exclusions from adoption listed in subsection (b); and

(3) the modifications listed in subsection (c).

(b) Exclusions. The following portions of 40 CFR part 261 shall be excluded from adoption:

(1) All comments and all notes;

(2) 40 CFR 261.4(b)(16) through (18); and

(3) 40 CFR 261.6(a)(2)(v).

(c) Modifications. The following modifications shall be made to 40 CFR part 261:

(1) Each occurrence of the following phrases shall be deleted:

(A) “(incorporated by reference, see § 260.11)”;

(B) “, and as incorporated by reference in § 260.11 of this chapter”;

(C) “, as incorporated by reference in § 260.11 of this chapter.”

(2) In 40 CFR 261.1(b)(2), the phrase “under sections 3007, 3013, and 7003 of RCRA” shall be deleted.

(3) In 40 CFR 261.1(b)(2)(i), the following replacements shall be made:

(A) The phrase “sections 3007 and 3013” shall be replaced with “K.S.A. 65-3431, 65-3437 and 65-3441, and K.A.R. 28-31-12.”

(B) The phrase “section 1004(27) of RCRA” shall be replaced with “40 CFR 261.2.”

(C) The phrase “section 1004(5) of RCRA” shall be replaced with “K.S.A. 65-3430.”

(4) In 40 CFR 261.4(e)(3)(iii), the text “in the Region where the sample is collected” shall be deleted.

(5) 40 CFR 261.5(a) shall be replaced by the definition of “conditionally exempt small quantity generator” in K.A.R. 28-31-260a.

(6) In 40 CFR 261.5(e), (f)(2), and (g)(2), the phrases “that acute hazardous waste” and “those accumulated wastes” shall be replaced with the phrase “the generator’s hazardous waste and acute hazardous waste.”

(7) In 40 CFR 261.5(g), the phrase “100 kilograms” shall be replaced with the phrase “25 kilograms (55 pounds).”

(8) In 40 CFR 261.5(g)(2), the phrase “generators of between 100 kg and 1000 kg of hazardous waste in a calendar month” shall be replaced with the phrase “small quantity generators.”

(9) In 40 CFR 261.5(g)(3), the phrase “or ensure delivery” shall be replaced with “or, subject to the restrictions of K.A.R. 28-31-262a, ensure delivery.”

(10) In 40 CFR 261.21(a)(3), the phrase “an ignitable compressed gas as defined in 49 CFR 173.300” shall be replaced with the phrase “a flammable gas as defined in 49 CFR 173.115(a).”

(11) In 40 CFR 261.21(a)(4), the phrase “49 CFR 173.151” shall be replaced with “49 CFR 173.127(a).”

(12) 40 CFR 261.23(a)(8) shall be replaced with the following: “It is a forbidden explosive as defined in 49 CFR 173.54, or it is a division 1.1, 1.2, or 1.3 explosive, as defined in 49 CFR 173.50 and 173.53.”

(13) In 40 CFR 261.33(e), the text “be the small quantity exclusion defined in” shall be deleted.

(14) In 40 CFR 261.33(f), the phrase “the small quantity generator exclusion defined in” shall be deleted.

(15) In 40 CFR 261.38(c)(1)(i), the introductory paragraph shall be replaced with “Notice to the secretary.”

(16) In 40 CFR part 261, appendix VII, the entries in both columns for “K064,” “K065,” “K066,” “K090,” and “K091” shall be deleted. (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-261a. Identification and listing of hazardous waste; additional state requirements. Each conditionally exempt small quantity generator shall comply with K.A.R. 28-31-262a. (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-262. Generators of hazardous waste; adoption and modification of federal regulations. (a) Adoption. The provisions of 40 CFR part 262, including the appendix, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:

(1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;

(2) the exclusions from adoption listed in subsection (b); and

(3) the modifications listed in subsection (c).

(b) Exclusions. The following portions of 40 CFR part 262 shall be excluded from adoption:

(1) All comments and all notes, except in the appendix;

(2) 40 CFR 262.10(j) and (k);

(3) 40 CFR 262.34(g) through (l);

(4) 40 CFR 262.89(e); and

(5) subparts I and J.

(c) Modifications. The following modifications shall be made to 40 CFR part 262:

(1) In 40 CFR 262.10(g), the phrase “and K.S.A. 65-3441(b) and (c) and 65-3444 through 65-3446” shall be inserted after the phrase “section 3008 of the Act.”

(2) 40 CFR 262.11(c)(1) shall be replaced with the following text: “Submitting the waste for testing according to the methods in 40 CFR part 261, subpart C, by a laboratory that is certified for these analyses by the department; or.”

(3) The first paragraph in 40 CFR 262.20(e) shall be replaced with the following text: “The requirements of this subpart do not apply to hazardous waste produced by Kansas small quantity generators and small quantity generators if all of the following criteria are met:”

(4) In 40 CFR 262.27(b), the phrase “or a Kansas small quantity generator” shall be inserted at the end of the first sentence.

(5) In 40 CFR 262.34(a)(2), the phrase “and tank” shall be inserted after the phrase “each container.”

(6) In 40 CFR 262.34(c)(1), the text “A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in § 261.33(e) in containers” shall be replaced with the following text: “Any generator may accumulate 55 gallons or less, in no more than one container, of each type of hazardous waste and one quart or less, in no more than one container, of each type of acutely hazardous waste listed in § 261.33(e).”

(7) 40 CFR 262.34(c)(1)(ii) shall be replaced with the following text: “Marks the containers with the words ‘Hazardous Waste.’”

(8) At the end of 40 CFR 262.34(d)(5)(ii)(C), the following text shall be inserted as new subparagraph (D): “If the generator relies solely on cell phones, the generator shall meet the following requirements: (1) Post the information addressed by subparagraphs (A) through (C) on walls so that they can be readily seen by employees; (2) train all employees that manage hazardous waste on the locations of these postings; and (3) program the

telephone numbers into the cell phones of management personnel.”

(9) In 40 CFR 262.42(b), the phrase “greater than 100 kilograms” shall be replaced with the phrase “25 kilograms or more.”

(10) In 40 CFR 262.43, the text “, as he deems necessary under sections 2002(a) and 3002(6) of the Act,” shall be deleted.

(11) In 40 CFR 262.44, the following modifications shall be made:

(A) In the title, the number “100” shall be replaced with the number “25.”

(B) In the first paragraph, the phrase “greater than 100 kilograms” shall be replaced with the phrase “25 kilograms or more.” (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3451; effective April 29, 2011.)

28-31-262a. Generators of hazardous waste; additional state requirements. Each reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279. (a) Transportation requirements.

(1) Each generator that transports hazardous waste shall comply with K.A.R. 28-31-263a.

(2) Each generator that uses another person to transport hazardous waste shall use only a transporter who has registered with the department in accordance with K.A.R. 28-31-6.

(b) Reporting requirements. Each generator of hazardous waste, except conditionally exempt small quantity generators (CESQGs), shall submit a report to the department that indicates whether the generator is a large quantity generator (LQG), a small quantity generator (SQG), or a Kansas small quantity generator (KSQG). The generator shall comply with the following requirements:

(1) Submit the report on a form provided by the department;

(2) submit the monitoring fee required by K.A.R. 28-31-10 with the report;

(3) submit the report according to the following schedule:

(A) Each LQG report shall be due on or before March 1 of each year that the biennial report is not required;

(B) each SQG report shall be due on or before April 1 of each year; and

(C) each KSQG report shall be due on or before April 1 of each year; and

(4) keep a copy of each report for at least three years after the date of the signature on the report.

(c) Additional requirement for LQGs. Each LQG shall comply with 40 CFR 265.15(d).

(d) Additional requirements for SQGs.

(1) In addition to meeting the requirements of 40 CFR 262.34(d)(5)(iii), each SQG shall meet the following requirements:

(A) Provide the training to each employee no more than six months after the employee is hired or transferred to a new position;

(B) repeat the training at least annually;

(C) record the name of each employee, the date of the training, and the topics covered in the training; and

(D) keep training records for each employee that has received the training for at least three years from the date of the training. Training records may accompany personnel transferred within the same company.

(2) Each SQG shall comply with the following regulations:

(A) 40 CFR 265.15(d);

(B) 40 CFR 265.111(a) and (b); and

(C) 40 CFR 265.114.

(e) Additional requirements for KSQGs.

(1) In the waste minimization certification found in item 15 of the uniform hazardous waste manifest, the phrase "small quantity generator" shall include KSQGs.

(2) Each KSQG shall inspect each area where one or more hazardous waste containers are stored at least once every 31 days and shall look for deterioration and leaks.

(3) Each KSQG shall comply with the following regulations:

(A) 40 CFR part 262, subpart A;

(B) 40 CFR part 262, subpart B, except KSQGs that are exempt from the transporter requirements of K.A.R. 28-31-263a;

(C) 40 CFR 262.30 through 262.33;

(D) 40 CFR 262.34(a)(2) and (3), (c), and (d) (5);

(E) 40 CFR 262.44;

(F) 40 CFR part 262, subparts E through H;

(G) 40 CFR 265.15(d);

(H) 40 CFR part 265, subpart C;

(I) 40 CFR 265.171 through 265.173 and 265.177;

(J) 40 CFR 265.201; and

(K) 40 CFR 268.7(a)(5).

(4) In addition to meeting the requirements of 40 CFR 262.34(d)(5)(iii), each KSQG shall meet the following requirements:

(A) Provide the training to each employee no

more than six months after the employee is hired or transferred to a new position;

(B) repeat the training at least annually;

(C) record the name of each employee, the date of the training, and the topics covered in the training; and

(D) keep training records for each employee that has received the training for at least three years from the date of the training. Training records may accompany personnel transferred within the same company.

(5) Each KSQG that accumulates more than 1,000 kilograms (2,200 pounds) of hazardous waste shall comply with all of the requirements for SQGs.

(f) Additional requirements for CESQGs.

(1) No person shall send CESQG hazardous waste to a construction and demolition landfill located in Kansas.

(2) Each CESQG that accumulates 25 kilograms (55 pounds) or more of hazardous waste shall comply with all of the following requirements:

(A) The CESQG shall inspect each area where one or more hazardous waste containers are stored at least once every 31 days looking for deterioration and leaks.

(B) If the CESQG sends 25 kilograms (55 pounds) or more of hazardous waste at any one time to an off-site facility in Kansas, that waste shall be sent only to one of the following facilities:

(i) A Kansas household hazardous waste facility that has a permit issued by the secretary and is approved by the secretary to accept CESQG waste; or

(ii) a disposal facility that meets the requirements of 40 CFR 261.5(g)(3)(i), (ii), (iii), or (vii).

(C) The CESQG shall comply with the following regulations:

(i) 40 CFR 262.30 through 262.33;

(ii) 40 CFR 262.34(a)(2) and (3);

(iii) 40 CFR 265.15(d);

(iv) 40 CFR 265.171 through 265.173 and 265.177; and

(v) 40 CFR 265.201, if 25 kilograms (55 pounds) or more of hazardous waste is accumulated in one or more tanks. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3451; effective April 29, 2011.)

28-31-263. Transporters of hazardous waste; adoption and modification of federal regulations. (a) Adoption. The provisions of 40 CFR part 263, as in effect on July 1, 2006, are

hereby adopted by reference subject to the following:

(1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;

(2) the exclusions from adoption listed in subsection (b); and

(3) the modifications listed in subsection (c).

(b) Exclusions. All notes shall be excluded from adoption.

(c) Modifications. The following modifications shall be made to 40 CFR part 263:

(1) In 40 CFR 263.10(a), the following modifications shall be made:

(A) The phrase “the United States” shall be replaced with “Kansas.”

(B) The phrase “or K.A.R. 28-31-262a” shall be inserted at the end of the sentence.

(2) In 40 CFR 263.20(h), the phrase “greater than 100 kilograms” shall be replaced with “25 kilograms (55 pounds) or more.” (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3451; effective April 29, 2011.)

28-31-263a. Transporters of hazardous waste; additional state requirements. Each reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279. (a) Applicability. Each person that transports hazardous waste within, into, out of, or through Kansas shall comply with this regulation, except Kansas small quantity generators (KSQGs) and conditionally exempt small quantity generators (CESQGs) that meet the following conditions:

(1) The generator is transporting the generator’s own hazardous waste to a household hazardous waste (HHW) facility that meets one of the following conditions:

(A) If the generator is a KSQG, the HHW facility is permitted to accept KSQG waste.

(B) If the generator is a CESQG, the HHW facility is permitted to accept CESQG waste.

(2) The generator obtains a receipt for each load of hazardous waste delivered to the HHW facility.

(3) The generator keeps a copy of each receipt for a minimum of three years after the date of delivery.

(b) Registration and insurance. Each transporter of hazardous waste shall comply with the requirements of K.A.R. 28-31-6.

(c) Transportation restrictions. Each transporter shall transport hazardous waste only for hazardous waste generators and facilities that are in compliance with the requirement to obtain an

EPA identification number for the state in which the generator or facility is located.

(d) Routing restrictions.

(1) Each transporter of hazardous waste shall ensure that each vehicle containing hazardous waste is operated over a preferred route that minimizes risk to public health and safety and the environment. To select a preferred route, the transporter shall consider the following information, if available:

(A) Accident rates;

(B) the transit time;

(C) population density and activities; and

(D) the day of the week and the time of day during which transportation will occur.

(2) Each transporter shall confine the transportation of hazardous wastes to preferred routes. Unless notice to the contrary is published in the Kansas register, all portions of the major highway system may be used. For the purposes of this subsection, the major highway system shall be considered to be all interstate routes, U.S. highways, state highways, and temporary detours designated by the Kansas department of transportation. An interstate system bypass or beltway around a city shall be used when available.

(3) Any transporter of hazardous waste may deviate from a preferred route under any of the following circumstances:

(A) Emergency conditions that make continued use of the preferred route unsafe;

(B) rest, fuel, and vehicle repair stops; or

(C) deviations that are necessary to pick up, deliver, or transfer hazardous wastes. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3451; effective April 29, 2011.)

28-31-264. Hazardous waste treatment, storage, and disposal facilities; adoption and modification of federal regulations. (a) Adoption. The provisions of 40 CFR part 264, including appendices I, IV, V, VI, and IX, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:

(1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;

(2) the exclusions from adoption listed in subsection (b); and

(3) the modifications listed in subsection (c).

(b) Exclusions. The following portions of 40 CFR part 264 shall be excluded from adoption:

(1) All comments and all notes;

(2) 40 CFR 264.1(f) and (g)(12);

- (3) 40 CFR 264.15(b)(5);
- (4) 40 CFR 264.149 and 264.150;
- (5) 40 CFR 264.195(e);
- (6) 40 CFR 264.301(l);
- (7) 40 CFR 264.1030(d);
- (8) 40 CFR 264.1050(g); and
- (9) 40 CFR 264.1080(e), (f), and (g).

(c) Modifications. The following modifications shall be made to 40 CFR part 264:

(1) Each occurrence of the following text shall be deleted:

- (A) “(incorporated by reference, see § 260.11)”;
- (B) “(incorporated by reference as specified in § 260.11)”;
- (C) “(incorporated by reference under 40 CFR 260.11)”;
- (D) “40 CFR 260.11(11)”;
- (E) “as incorporated by reference in § 260.11 of this chapter.”

(2) In 40 CFR 264.1(g)(8)(D)(iii), the phrase “and K.A.R. 28-31-124a through 28-31-124e” shall be inserted after the phrase “through 124 of this chapter.”

(3) In 40 CFR 264.15(b)(4), the following text shall be deleted: “, except for Performance Track member facilities, that must inspect at least once each month, upon approval by the Director, as described in paragraph (b)(5) of this section.”

(4) In 40 CFR 264.112(d)(3), the phrase “under section 3008 of RCRA” shall be deleted.

(5) In 40 CFR 264.113(d)(2), the phrase “required under RCRA section 3019” shall be deleted.

(6) The phrase “determination pursuant to section 3008 of RCRA” shall be replaced with “determination by EPA pursuant to section 3008 of RCRA or by the state of Kansas under K.S.A. 65-3441, 65-3443, 65-3445, or 65-3439(e)” in the following locations:

- (A) 40 CFR 264.143(c)(5);
- (B) 40 CFR 264.143(d)(8);
- (C) 40 CFR 264.145(c)(5); and
- (D) 40 CFR 264.145(d)(9).

(7) The phrase “licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States” shall be replaced with “licensed to transact the business of insurance in Kansas or eligible to provide insurance as an excess or surplus lines insurer in Kansas” in the following locations:

- (A) 40 CFR 264.143(e)(1);
- (B) 40 CFR 264.145(e)(1);
- (C) 40 CFR 264.147(a)(1)(ii) and (b)(1)(ii); and

(D) 40 CFR 264.151(i) and (j).

(8) In 40 CFR 264.143(h) and 264.145(h), the text “If the facilities covered by the mechanism are in more than one Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such regions” shall be replaced with the following: “If the facilities covered by the mechanism are in more than one state, identical evidence of financial assurance shall be submitted to and maintained with the state agency regulating hazardous waste, or with the appropriate regional administrator if the facility is located in an unauthorized state.”

(9) In 40 CFR 264.144(b) and (c), the phrase “and the post-closure period” shall be inserted after the phrase “During the active life of the facility.”

(10) In 40 CFR 264.144(b), the phrase “§ 264.145(b)(1) and (2)” shall be replaced with “paragraphs (b)(1) and (2) of this section.”

(11) In 40 CFR 264.147(a)(1)(i) and (b)(1)(i), the phrase “Regional Administrator, or Regional Administrators” shall be replaced with “secretary, and regional administrators.”

(12) In 40 CFR 264.151(a)(1), (m)(1), and (n)(1), the phrase “United States Environmental Protection Agency, ‘EPA,’ an agency of the United States Government,” shall be replaced with the phrase “Kansas department of health and environment, or ‘department.’”

(13) In 40 CFR 264.151(b) and (c), the phrase “U.S. Environmental Protection Agency (hereinafter called EPA)” shall be replaced with “Kansas department of health and environment (hereinafter called ‘department’).”

(14) In 40 CFR 264.151(d) and (k), the text between the title “Irrevocable Standby Letter of Credit” and “Dear Sir or Madam:” shall be replaced with the following:

“Name and address of issuing institution: _____
 “Secretary
 “Kansas department of health and environment.”

(15) In 40 CFR 264.151(d), the following text shall be deleted: “[insert, if more than one Regional Administrator is a beneficiary, ‘by any one of you’].”

(16) In 40 CFR 264.151(f) and (g), in section 3 of the “Letter From Chief Financial Officer,” the text “In States where EPA is not administering the financial requirements of subpart H of 40 CFR part 264 or 265,” shall be deleted.

(17) In 40 CFR 264.151(l), in paragraph (1) of the “Governing Provisions” of the “Payment Bond,” the phrase “Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended” shall be replaced with “40 CFR 264.147 and 265.147.”

(18) In 40 CFR 264.174, the following text shall be deleted: “, except for Performance Track member facilities, that may conduct inspections at least once each month, upon approval by the Director. To apply for reduced inspection frequencies, the Performance Track member facility must follow the procedures identified in § 264.15(b)(5) of this part.”

(19) In 40 CFR 264.191(a), the phrase “January 12, 1988” shall be replaced with “January 12, 1988 for HSWA tanks or by May 1, 1988 for non-HSWA tanks.”

(20) In 40 CFR 264.191(c), the text “July 14, 1986, must conduct this assessment within 12 months after the date that the waste becomes a hazardous waste” shall be replaced with the following text: “July 14, 1986 for HSWA tanks, or May 1, 1987 for non-HSWA tanks, shall conduct this assessment within 12 months after the date that the waste becomes a hazardous waste regulated by the state.”

(21) The phrase “or RCRA Section 3008(h)” shall be deleted from the following locations:

(A) 40 CFR 264.551(a); and

(B) 40 CFR 264.552(a).

(22) In 40 CFR 264.553(a), the phrase “or RCRA 3008(h)” shall be deleted.

(23) In 40 CFR 264.555(a), the term “RCRA” shall be deleted.

(24) In 40 CFR 264.570(a), the following replacements shall be made:

(A) Each occurrence of the text “December 6, 1990” shall be replaced with “December 6, 1990 for HSWA drip pads and April 25, 1994 for non-HSWA drip pads.”

(B) Each occurrence of the text “December 24, 1992” shall be replaced with “December 24, 1992 for HSWA drip pads and April 25, 1994 for non-HSWA drip pads.”

(25) In 40 CFR 264.570(c)(1)(iv), the term “Federal regulations” shall be replaced with “federal and state regulations.”

(26) In 40 CFR 264.1033(a)(2)(iii) and 264.1060(b)(3), the term “EPA” shall be deleted.

(27) In 40 CFR 264.1080(b)(5), the text “required under the corrective action authorities of RCRA sections 3004(u), 3004(v), or 3008(h); CERCLA

authorities; or similar Federal or State authorities” shall be replaced with the following: “required by EPA under the corrective action authorities of RCRA sections 3004(u), 3004(v), or 3008(h) or under CERCLA authorities; required by the state under K.S.A. 65-3443, 65-3445, and 65-3453; or required under similar federal or state authorities.”

(28) In 40 CFR 264.1101(c)(4), the following text shall be deleted:

(A) “, except for Performance Track member facilities that must inspect at least once each month, upon approval by the Director,”; and

(B) “[t]o apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in § 264.15(b)(5).” (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3443; effective April 29, 2011.)

28-31-264a. Hazardous waste treatment, storage, and disposal facilities; additional state requirements. Each reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279. (a) Financial assurance.

(1) For the purposes of this subsection, the following definitions shall apply:

(A) “Captive insurance company” shall mean an insurance company that is established with the specific objective of financing risks emanating from its parent group or groups and that could or could not also insure risks of the parent groups’ customers.

(B) “Financial institution” shall mean a bank, an insurance company, a surety company, or a trust company.

(C) “Purchased financial instrument” shall mean a trust fund, a letter of credit, a surety bond, or an insurance policy.

(D) “Unrelated” shall mean that neither party has any ownership of the other party, or any controlling interest in the other party.

(2) Each financial institution that provides financial assurance for a hazardous waste facility in Kansas shall meet the following requirements, in addition to meeting the requirements of 40 CFR part 264, subpart H:

(A) Each bank and each trust company shall have the authority to issue letters of credit in Kansas or to act as trustee for the facility in Kansas, or both.

(B) Each insurance company shall meet the following criteria:

(i) Have a current minimum rating in the secure or investment grade category by the A.M. Best insurance rating agency; and

(ii) not be a captive insurance company.

(C) Each surety company shall meet the following criteria:

(i) Have a current minimum rating in the secure or investment grade category by the A.M. Best insurance rating agency; and

(ii) be licensed in Kansas.

(3) If the financial assurance required by 40 CFR part 264, 265, or 267 is a purchased financial instrument, the financial institution that provides the purchased financial instrument shall be unrelated to both the owner and the operator of the facility.

(4) Each person that is required to submit the information listed in one or more of the following regulations shall also submit a copy of the most recent corporate annual report:

(A) 40 CFR 264.143(f)(3);

(B) 40 CFR 264.145(f)(3);

(C) 40 CFR 265.143(e)(3);

(D) 40 CFR 265.145(e)(3); or

(E) 40 CFR 267.143(f)(2).

(5) The corporate annual report required by paragraph (a)(4) shall be submitted for both publicly and privately owned facilities and shall contain the following items:

(A) Financial statements;

(B) notes to financial statements; and

(C) a copy of the independent certified public accountant's report, including an unqualified opinion.

(b) Notice in deed to property. Each owner of property on which a hazardous waste treatment, storage, or disposal facility is located shall record, in accordance with Kansas law, a notice with the register of deeds in the county where the property is located. The notice shall include the following information:

(1) The land has been used to manage hazardous waste.

(2) All records regarding permits, closure, or both are available for review at the department.

(c) Restrictive covenant and easement. Any owner of property on which a hazardous waste treatment, storage, or disposal facility is or has been located may be required by the secretary to execute a restrictive covenant or easement, or both, according to the following requirements:

(1) The restrictive covenant shall be filed with the county register of deeds, shall specify the uses

that may be made of the property after closure, and shall include the following requirements:

(A) All future uses of the property after closure shall be conducted in a manner that preserves the integrity of waste containment systems designed, installed, and used during operation of the disposal areas, or installed or used during the postclosure maintenance period.

(B) The owner or tenant and all subsequent owners or tenants shall preserve and protect all permanent survey markers and benchmarks installed at the facility.

(C) The owner or tenant and all subsequent owners or tenants shall preserve and protect all environmental monitoring stations installed at the facility.

(D) The owner or tenant, all subsequent property owners or tenants, and any person granted easement to the property shall provide written notice to the secretary during the planning of any improvement to the site and shall commence any of the following activities only after receiving approval from the secretary:

(i) Excavating or constructing any permanent structures or drainage ditches;

(ii) altering the contours;

(iii) removing any waste materials stored on the site;

(iv) changing the vegetation grown on areas used for waste disposal;

(v) growing food chain crops on land used for waste disposal; or

(vi) removing any security fencing, signs, or other devices installed to restrict public access to waste storage or disposal areas.

(2) The easement shall state that the department, its duly authorized agents, or contractors employed by or on behalf of the department may enter the premises to accomplish any of the following tasks:

(A) Complete items of work specified in the site closure plan;

(B) perform any item of work necessary to maintain or monitor the area during the postclosure period; or

(C) sample, repair, or reconstruct environmental monitoring stations constructed as part of the site operating or postclosure requirements.

(3) Each offer or contract for the conveyance of easement, title, or other interest to real estate used for treatment, storage, or disposal of hazardous waste shall disclose all terms, conditions, and provisions for care and subsequent land uses that

are imposed by these regulations or the site permit authorized and issued under K.S.A. 65-3431, and amendments thereto. Conveyance of title, easement, or other interest in the property shall contain provisions for the continued maintenance of waste containment and monitoring systems.

(4) All covenants, easements, and other documents related to this regulation shall be permanent, unless extinguished by agreement between the property owner and the secretary.

(5) The owner of the property shall pay all recording fees.

(d) Marking requirements. Each operator of a hazardous waste container storage facility or a tank storage facility shall mark all containers and tanks in accordance with 40 CFR 262.34(a)(2) and (3).

(e) Environmental monitoring. All samples analyzed in accordance with 40 CFR part 264, subpart F or G or 40 CFR part 265, subpart F or G shall be conducted by a laboratory certified for these analyses by the secretary, except that analyses of time-sensitive parameters, including pH, temperature, and specific conductivity, shall be conducted at the time of sampling if possible.

(f) Laboratory certification. For hazardous waste received at a treatment, storage, or disposal facility with the intent of burning for destruction or energy recovery, all quantification analyses performed for the purpose of complying with permit conditions shall be performed by a laboratory certified for these analyses by the secretary, if this certification is available.

(g) Hazardous waste injection wells. The owner or operator of each hazardous waste injection well shall comply with the requirements of article 46 of these regulations. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3443; effective April 29, 2011.)

28-31-265. Interim status hazardous waste treatment, storage, and disposal facilities; adoption and modification of federal regulations. (a) Adoption. The provisions of 40 CFR part 265, including appendices I and III, IV, V, and VI, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:

(1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;

(2) the exclusions from adoption listed in subsection (b); and

(3) the modifications listed in subsection (c).

(b) Exclusions. The following portions of 40 CFR part 265 shall be excluded from adoption:

(1) All comments and all notes;

(2) 40 CFR 265.1(c)(4) and (15);

(3) 40 CFR 265.15(b)(5);

(4) 40 CFR 265.149 and 265.150;

(5) 40 CFR 265.195(d);

(6) 40 CFR 265.201(e);

(7) 40 CFR 265.1030(c);

(8) 40 CFR 265.1050(f); and

(9) 40 CFR 265.1080(e), (f), and (g).

(c) Modifications. The following modifications shall be made to 40 CFR part 265:

(1) Each occurrence of the following phrases shall be deleted:

(A) “(incorporated by reference, see § 260.11)”;

(B) “(incorporated by reference—refer to § 260.11 of this chapter)”;

(C) “(incorporated by reference as specified in § 260.11)”;

(D) “(incorporated by reference under § 260.11)”;

(E) “(incorporated by reference under § 260.11 of this chapter)”;

(F) “as incorporated by reference in § 260.11”; and

(G) “as incorporated by reference in § 260.11 of this chapter.”

(2) In 40 CFR 265.1(b), the phrase “issued under section 3005 of RCRA” shall be replaced with “issued by EPA under section 3005 of RCRA or a Kansas hazardous waste facility permit is issued by the department.”

(3) In 40 CFR 265.1(c)(11)(iii), the phrase “and K.A.R. 28-31-124a through 28-31-124e” shall be inserted after the phrase “through 124 of this chapter.”

(4) In 40 CFR 265.15(b)(4), the following text shall be deleted: “, except for Performance Track member facilities, that must inspect at least once each month, upon approval by the Director, as described in paragraph (b)(5) of this section.”

(5) In 40 CFR 265.90(e), the term “qualified professional” shall be replaced with “Kansas professional engineer.”

(6) In 40 CFR 265.112(d)(3)(ii), the phrase “under section 3008 of RCRA” shall be deleted.

(7) In 40 CFR 265.113(d)(2), the phrase “required under RCRA section 3019” shall be deleted.

(8) In 40 CFR 265.118(e)(2), the phrase “under section 3008 of RCRA” shall be deleted.

(9) In 40 CFR 265.143(c)(8) and 265.145(c)(9), the phrase “determination pursuant to section 3008 of RCRA” shall be replaced by “determination by EPA pursuant to section 3008 of RCRA or

by the state under K.S.A. 65-3441, 65-3443, 65-3445, or 65-3439(e).”

(10) In 40 CFR 265.143(g) and 265.145(g), the text “If the facilities covered by the mechanism are in more than one Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions” shall be replaced with the following: “If the facilities covered by the mechanism are in more than one state, identical evidence of financial assurance shall be submitted to and maintained with the state agency regulating hazardous waste, or with the appropriate regional administrator if the facility is located in an unauthorized state.”

(11) In 40 CFR 265.144(b) and (c), the phrase “and the post-closure period” shall be inserted after the phrase “During the active life of the facility.”

(12) In 40 CFR 265.144(b), the following replacements shall be made:

(A) The phrase “§ 265.145(d)(5)” shall be replaced with “§ 265.145(e)(5).”

(B) The phrase “§ 265.145(b)(1) and (2)” shall be replaced with “paragraphs (b)(1) and (2) of this section.”

(13) In 40 CFR 265.147(a)(1)(i), the text “Regional Administrator, or Regional Administrators” shall be replaced with “secretary, and regional administrators.”

(14) In 40 CFR 265.174, the following language shall be deleted: “, except for Performance Track member facilities, that must conduct inspections at least once each month, upon approval by the Director. To apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5) of this part.”

(15) In 40 CFR 265.191(a), the text “January 12, 1988” shall be replaced with “January 12, 1988 for HSWA tanks, and May 1, 1988 for non-HSWA tanks.”

(16) In 40 CFR 265.191(c), the text “July 14, 1986 must conduct this assessment within 12 months after the date that the waste becomes a hazardous waste” shall be replaced with the following: “July 14, 1986 for HSWA tanks, or May 1, 1987 for non-HSWA tanks, shall conduct this assessment within 12 months after the date that the waste becomes a hazardous waste regulated by the state.”

(17) In 40 CFR 265.201, the following modifications shall be made:

(A) In the title, the phrase “between 100 and 1,000 kg/mo” shall be replaced with “less than 1,000 kg/mo.”

(B) Paragraph (a) shall be replaced with the following: “The requirements of this section shall apply to each small quantity generator, and to each Kansas small quantity generator and conditionally exempt small quantity generator that accumulates 25 kg (55 pounds) or more of hazardous waste in one or more tanks.”

(C) In paragraphs (b), (f), (g), and (h), the phrases “generators of between 100 and 1,000 kg/mo hazardous waste” and “generators of between 100 and 1,000 kg/mo” shall be replaced with “generators identified in paragraph (a) of this section.”

(D) In paragraphs (c) and (d), the number “100” shall be replaced with “25.”

(18) In 40 CFR 265.340(b)(2), the phrase “§ 264.351” shall be replaced with “§ 265.351.”

(19) In 40 CFR 265.440(a), the following replacements shall be made:

(A) Each occurrence of the text “December 6, 1990” shall be replaced with “December 6, 1990 for HSWA drip pads and April 25, 1994 for non-HSWA drip pads.”

(B) Each occurrence of the text “December 24, 1992” shall be replaced with “December 24, 1992 for HSWA drip pads and April 25, 1994 for non-HSWA drip pads.”

(20) In 40 CFR 265.440(c)(1)(iv), the term “Federal regulations” shall be replaced with “federal and state regulations.”

(21) In 40 CFR 265.1080(b)(5), the text “required under the corrective action authorities of RCRA sections 3004(u), 3004(v), or 3008(h); CERCLA authorities; or similar federal or state authorities” shall be replaced by the following: “required by EPA under the corrective action authorities of RCRA sections 3004(u), 3004(v), or 3008(h) or under CERCLA authorities; required by the state under K.S.A. 65-3443, 65-3445, and 65-3453; or required under similar Federal or State authorities.”

(22) In 40 CFR 265.1101(c)(4), the following text shall be deleted:

(A) “, except for Performance Track member facilities, that must inspect up to once each month, upon approval of the director.”; and

(B) “[t]o apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5).” (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3443; effective April 29, 2011.)

28-31-265a. Interim status hazardous waste treatment, storage, and disposal facilities; additional state requirements. Each owner or operator of an interim status hazardous waste treatment, storage, or disposal facility shall comply with K.A.R. 28-31-264a. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3443; effective April 29, 2011.)

28-31-266. Specific hazardous wastes and specific types of hazardous waste management facilities; adoption and modification of federal regulations. (a) Adoption. The provisions of 40 CFR part 266, including appendices I through IX and XI through XIII, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:

(1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;

(2) the exclusions from adoption listed in subsection (b); and

(3) the modifications listed in subsection (c).

(b) Exclusions. The following portions of 40 CFR part 266 shall be excluded from adoption:

(1) All notes, except in appendix IX;

(2) 40 CFR 266.103;

(3) in 40 CFR 266.210, the definition of “we or us”; and

(4) subpart O.

(c) Modifications. The following modifications shall be made to 40 CFR part 266:

(1) Each occurrence of the following phrases shall be deleted:

(A) “(incorporated by reference, see § 260.11)”;

(B) “(incorporated by reference, in § 260.11)”;

(C) “(incorporated by reference in § 260.11)”;

(D) “, as incorporated by reference in § 260.11 of this chapter”; and

(E) “, incorporated by reference in §260.11.”.

(2) In 40 CFR 266.23(a), the phrase “subparts A through N of parts 124, 264, 265, 268, and 270 of this chapter” shall be replaced with “subparts A through N of 40 CFR parts 264 and 265, 40 CFR parts 268 and 270, K.A.R. 28-31-124 through 124e.”.

(3) In 40 CFR 266.202(d), the following modifications shall be made:

(A) The phrase “For the purposes of RCRA section 1004(27),” shall be deleted.

(B) The text “or imminent and substantial endangerment authorities under section 7003” shall be replaced with “and the Kansas enforcement authorities at K.S.A. 65-3441(b) and (c), 65-3443, and 65-3445.”

(4) In 40 CFR 266.210 in the definition of “naturally occurring and/or accelerator-produced radioactive material (NARM),” the phrase “by the States” shall be replaced with “by the state of Kansas.”

(5) In 40 CFR part 266, subpart N, the following replacements shall be made:

(A) The term “us” shall be replaced with “the department.”

(B) The term “we” shall be replaced with “the secretary.” (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-267. Hazardous waste facilities operating under a standardized permit; adoption and modification of federal regulations.

(a) Adoption. The provisions of 40 CFR part 267, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:

(1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;

(2) the exclusions from adoption listed in subsection (b); and

(3) the modifications listed in subsection (c).

(b) Exclusions. The following portions of 40 CFR part 267 shall be excluded from adoption:

(1) All comments and all notes; and

(2) 40 CFR 267.150.

(c) Modifications. The following modifications shall be made to 40 CFR part 267:

(1) Each occurrence of the following phrases shall be deleted:

(A) “, as incorporated by reference in 40 CFR 260.11”; and

(B) “(incorporated by reference, see 40 CFR 260.11).”

(2) In 40 CFR 267.12, the text “your state hazardous waste regulatory agency or from your EPA regional office” shall be replaced with “the department.”

(3) In 40 CFR 267.112(d)(3), the phrase “under section 3008 of RCRA” shall be deleted.

(4) In 40 CFR 267.151(a) and (b), the text “[insert ‘subpart H of 40 CFR part 267’ or the citation to the corresponding state regulation]” shall be replaced with “K.A.R. 28-31-267.” (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3443; effective April 29, 2011.)

28-31-267a. Hazardous waste facilities operating under a standardized permit; additional state requirements. Each owner or operator of hazardous waste management facility that has been issued a standardized permit shall

comply with K.A.R. 28-31-264a. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3443; effective April 29, 2011.)

28-31-268. Land disposal restrictions; adoption and modification of federal regulations. (a) Adoption. The provisions of 40 CFR part 268, including appendices III, IV, VI through VIII, and XI, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:

(1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;

(2) the exclusions from adoption listed in subsection (b); and

(3) the modifications listed in subsection (c).

(b) Exclusions. The following portions of 40 CFR part 268 shall be excluded from adoption:

(1) All comments and all notes;

(2) 40 CFR 268.13; and

(3) 40 CFR 268.44(o).

(c) Modifications. The following modifications shall be made to 40 CFR part 268:

(1) Each occurrence of the following phrases shall be deleted:

(A) “(incorporated by reference, see § 260.11 of this chapter)”;

(B) “as incorporated by reference in § 260.11”;

(C) “as incorporated by reference in § 260.11 of this chapter”;

(D) “as incorporated by reference in 40 CFR 260.11”;

(E) “as referenced in § 260.11 of this chapter.”

(2) Paragraph 40 CFR 268.1(e)(1) shall be replaced with “Waste generated by conditionally exempt small quantity generators or Kansas small quantity generators (KSQGs), except KSQGs shall comply with 40 CFR 268.7(a)(5) and (10).”

(3) In 40 CFR 268.3(a), the phrase “RCRA section 3004” shall be replaced with “40 CFR part 268.”

(4) In 40 CFR 268.7(a)(9)(iii), the phrase “except for D009” shall be added to the end of the sentence.

(5) In 40 CFR 268.7(a)(10), the phrase “and Kansas small quantity generators” shall be inserted after the term “Small quantity generators.”

(6) In 40 CFR 268.7(d), the phrase “§ 261.3(e)” shall be replaced with “§ 261.3(f).”

(7) 40 CFR 268.7(d)(1) shall be replaced with the following: “A one-time notification, including the following information, shall be submitted to the department:”

(8) In 40 CFR 268.14(b) and (c), the phrase “section 3001” shall be replaced with “40 CFR part 261.”

(9) In 40 CFR 268.44(i), the phrase “in § 260.20(b)(1)-(4)” shall be replaced with “required by EPA’s rulemaking petition program.”

(10) In 40 CFR 268.50(a), the phrase “of RCRA section 3004” shall be deleted.

(11) In 40 CFR 268.50(e), the phrase “or RCRA section 3004” shall be deleted. (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011; amended May 10, 2013.)

28-31-270. Hazardous waste permits; adoption and modification of federal regulations. (a) Adoption. The provisions of 40 CFR part 270, including appendix I to §270.42, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:

(1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;

(2) the exclusions from adoption listed in subsection (b); and

(3) the modifications listed in subsection (c).

(b) Exclusions. The following portions of 40 CFR part 270 shall be excluded from adoption:

(1) In 40 CFR 270.1, subsections (a) and (b) and paragraphs (c)(1)(iii) and (c)(2)(ix);

(2) 40 CFR 270.3;

(3) 40 CFR 270.6;

(4) 40 CFR 270.10(g)(1)(i);

(5) 40 CFR 270.14(b)(18);

(6) 40 CFR 270.42(i) and (l);

(7) 40 CFR 270.60(a); and

(8) 40 CFR 270.64.

(c) Modifications. The following modifications shall be made to 40 CFR part 270:

(1) In 40 CFR 270.1(c)(7), the following text shall be deleted: “including, but not limited to, a corrective action order issued by EPA under section 3008(h), a CERCLA remedial action, or a closure or post-closure plan.”

(2) In 40 CFR 270.2, the following definitions shall be modified as follows:

(A) Corrective action management unit.

(i) The phrase “or secretary” shall be inserted after the term “Regional Administrator.”

(ii) The word “and” shall be replaced with the term “or by the regional administrator under.”

(B) Emergency permit. The term “RCRA permit” shall be replaced with “RCRA or Kansas hazardous waste facility permit.”

(C) Permit.

(i) The reference to “124 of this chapter” shall be replaced with “124 of this chapter or K.A.R. 28-31-124 through 28-31-124e and 28-31-270.”

(ii) The term “RCRA” shall be deleted.

(iii) The term “agency” shall be replaced with the phrase “EPA or department.”

(D) Remedial action plan. The term “RCRA permit” shall be replaced with “RCRA or Kansas hazardous waste facility permit.”

(E) Standardized permit.

(i) The term “RCRA permit” shall be replaced with “RCRA or Kansas hazardous waste facility permit.”

(ii) The term “Director’s” shall be replaced with “director’s or secretary’s.”

(3) In 40 CFR 270.10(a), the following language shall be inserted after the title “Applying for a permit.”: “Each person that wants to apply for a permit to dispose of hazardous waste shall first petition the secretary for an exception to the Kansas prohibition against underground land burial under the requirements of K.A.R. 28-31-5.”

(4) In 40 CFR 270.10(e)(3), the text “, or the secretary may under the authority of K.S.A. 65-3445,” shall be inserted after the phrase “section 3008 of RCRA.”

(5) In 40 CFR 270.10(e)(4), the second sentence shall be deleted.

(6) In 40 CFR 270.10(f)(2), the second sentence shall be replaced with the following: “The application shall be filed with the secretary.”

(7) In 40 CFR 270.10(g)(1)(ii), the text “if the facility is located in a State which has obtained interim authorization or final authorization,” shall be deleted.

(8) In 40 CFR 270.10(g)(1)(iii), the text “if the State in which the facility in question is located does not have interim authorization or final authorization; otherwise it shall be filed with the State Director (if the State has an analogous provision)” shall be deleted.

(9) 40 CFR 270.12 shall be replaced with “K.S.A. 65-3447 shall apply to all information claimed as confidential.”

(10) In 40 CFR 270.13(k)(1), the term “RCRA” shall be replaced with “RCRA or the Kansas hazardous waste program.”

(11) In 40 CFR 270.14(b)(20), the phrase “Federal laws as required in § 270.3 of this part” shall be replaced with “laws.”

(12) In 40 CFR 270.24(d)(3) and 270.25(e)(3), the phrase “(incorporated by reference as specified in § 270.6)” shall be deleted.

(13) In 40 CFR 270.32(a) the text “, and for EPA issued permits only, 270.33(b) (alternate schedules of compliance) and 270.3 (considerations under Federal law)” shall be deleted.

(14) In 40 CFR 270.32(c), the following language shall be deleted:

(A) The second sentence, which starts “For a permit issued by EPA”;

(B) the term “EPA”;

(C) the phrase “and EPA administered programs.”

(15) In 40 CFR 270.43(b), the phrase “or part 22” shall be deleted.

(16) In 40 CFR 270.51(a), the title shall be replaced with “Kansas hazardous waste facility permits” and the phrase “under 5 U.S.C. 558(c)” shall be deleted.

(17) In 40 CFR 270.51(d), the title shall be replaced with “State continuation of an EPA permit” and the phrase “In a State with a hazardous waste program authorized under 40 CFR part 271,” shall be deleted.

(18) In 40 CFR 270.60, the phrase “facilities in Kansas” shall be inserted after the word “following” in the introductory paragraph.

(19) In 40 CFR 270.70(a) and 270.73(d), the phrase “under the Act” shall be deleted.

(20) 40 CFR 270.115 shall be replaced with the following: “K.S.A. 65-3447 shall apply to all information claimed as confidential.”

(21) In 40 CFR 270.155(a), the following phrases shall be deleted:

(A) “[T]o EPA’s Environmental Appeals Board”;

(B) “[i]nstead of the notice required under §§ 124.19(c) and 124.10 of this chapter,”;

(C) “by the Environmental Appeals Board”;

(D) “as provided by the Board”;

(E) “with the Board.”

(22) In 40 CFR 270.195, the phrase “in RCRA sections 3004 and 3005” shall be deleted.

(23) In 40 CFR 270.255(a)(3), each occurrence of the term “we” shall be replaced with “the secretary.”

(24) In 40 CFR 270.310(d)(3), the phrase “(incorporated by reference as specified in 40 CFR 260.11)” shall be deleted. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431, 65-3433, 65-3437, and 65-3439; effective April 29, 2011.)

28-31-270a. Hazardous waste permits; petition to be granted an exception to the prohibition against underground burial of hazardous waste. This regulation shall apply to each person that wants to apply for a permit for

the underground burial of hazardous waste. For the purposes of this regulation, this person shall be called a "potential applicant."

(a) Exception petition. Before applying for a permit according to the requirements of K.A.R. 28-31-124 through 28-31-124e and 28-31-270, each potential applicant shall submit to the secretary a petition for an exception to the prohibition against the underground burial of hazardous waste, as specified in K.S.A. 65-3458 and amendments thereto.

(b) Contents of the exception petition. Each exception petition shall include the following items:

(1) A complete chemical and physical analysis of the waste;

(2) a list and description of all technologically feasible methods that could be considered to treat, store, or dispose of the waste;

(3) for each method described in paragraph (b) (2), an economic analysis based upon a 30-year time period. The analysis shall determine the costs associated with treating, storing, disposing of, and monitoring the waste during this time period; and

(4) a demonstration that underground burial is the only economically reasonable or technologically feasible methodology for the disposal of that specific hazardous waste.

(c) Review and public notice for exception petitions. The review and public notice shall be conducted according to the following requirements:

(1) The potential applicant shall submit the exception petition to the department. If the exception petition is not complete, the potential applicant shall be notified of the specific deficiencies by the department.

(2) Upon receipt of a complete exception petition, a public notice shall be published by the department once each week for three consecutive weeks according to the following requirements:

(A) The notice shall be published in the following publications:

(i) The Kansas register; and

(ii) the official county newspaper of the county in which the proposed underground burial would occur or, if there is no official county newspaper, a newspaper published as provided in K.S.A. 64-101 and amendments thereto.

(B) The public notice shall include the following information:

(i) The name of the potential applicant;

(ii) a description of the specific waste;

(iii) a description of the proposed disposal methods;

(iv) a map indicating the location of the proposed underground burial;

(v) the address of the location where the exception petition and related documents can be reviewed;

(vi) the address of the location where copies of the exception petition and related documents can be obtained;

(vii) a description of the procedure by which the exception petition will be reviewed; and

(viii) the date and location of the public hearing.

(3) A copy of the public notice shall be transmitted by the department to the clerk of each city that is located within three miles of the proposed underground burial site.

(d) Public hearing and public comment period. The public hearing and public comment period shall be conducted according to the following requirements:

(1) The public hearing shall be conducted in the same county as that of the proposed underground burial facility.

(2) The public hearing shall be scheduled no earlier than 30 days after the date of the first public notice.

(3) A hearing officer shall be designated by the secretary.

(4) At the hearing, any person may submit oral comments, written comments, or data concerning the exception petition. Reasonable limits may be set by the hearing officer on the time allowed for oral statements, and the submission of statements in writing may be required by the hearing officer.

(5) The public comment period shall end no earlier than the close of the public hearing. The hearing officer may extend the public comment period at the hearing.

(6) A recording or written transcript of the hearing shall be made available to the public by the department upon request.

(7) A report shall be submitted by the hearing officer to the secretary detailing all written and oral comments submitted during the public comment period. The hearing officer may also recommend findings and determinations.

(e) Approval or denial of the exception petition. The following procedures shall be followed by the secretary and the department:

(1) If the secretary determines, based on the criteria specified in K.S.A. 65-3458 and amendments thereto, that the exception petition should be approved, an order shall be issued by the secretary. The order may require conditions that

the secretary deems necessary to protect public health and safety and the environment.

(2) If the secretary determines that there is not sufficient evidence to approve the exception petition, the potential applicant shall be notified by the department of the reasons why the exception petition is denied.

(3) A public notice of the final decision to approve or deny the exception petition shall be published by the department in the following publications:

(A) The Kansas register; and

(B) the official county newspaper of the county in which the proposed underground burial would occur or, if there is no official county newspaper, a newspaper published as provided in K.S.A. 64-101 and amendments thereto.

(4) A copy of the final decision shall be transmitted by the department to the clerk of each city that is located within three miles of the proposed underground burial site. (Authorized by K.S.A. 65-3431; implementing K.S.A. 2010 Supp. 65-3458; effective April 29, 2011.)

28-31-273. Universal waste; adoption and modification of federal regulations. (a) Adoption. The provisions of 40 CFR part 273, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:

(1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s; and

(2) the exclusions from adoption listed in subsection (b).

(b) Exclusions. The following portions of 40 CFR part 273 shall be excluded from adoption:

(1) All comments and all notes; and

(2) subpart G. (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-279. Used oil; adoption and modification of federal regulations. (a) Adoption. The provisions of 40 CFR part 279, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:

(1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;

(2) the exclusions from adoption listed in subsection (b); and

(3) the modifications listed in subsection (c).

(b) Exclusions. The following portions of 40 CFR part 279 shall be excluded from adoption:

(1) All comments and all notes; and

(2) 40 CFR 279.82.

(c) Modifications. The following modifications shall be made to 40 CFR part 279:

(1) In 40 CFR 279.10(a), the text “EPA presumes” shall be replaced with “EPA and the department presume.”

(2) In 40 CFR 279.12(b), the text “, except when such activity takes place in one of the states listed in § 279.82(c)” shall be deleted.

(3) The text “and which has occurred after the effective date of the recycled used oil management program in effect in the State in which the release is located” shall be deleted in the following locations:

(A) 40 CFR 279.22(d);

(B) 40 CFR 279.45(h);

(C) 40 CFR 279.54(g); and

(D) 40 CFR 279.64(g).

(4) The parenthetical text in paragraph (b)(1) concerning the “RCRA/Superfund Hotline” and the sentence in paragraph (b)(2) concerning the “RCRA/Superfund Hotline” shall be deleted in the following sections:

(A) 40 CFR 279.42;

(B) 40 CFR 279.51; and

(C) 40 CFR 279.62.

(5) In 40 CFR 279.81(b), the phrase “parts 257 and 258 of this chapter” shall be replaced with “K.S.A. 65-3401 et seq. and article 29.” (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-279a. Used oil; additional state prohibitions and requirements. (a) Prohibitions.

(1) No person shall dispose of used oil on or into any of the following:

(A) Sewers;

(B) storm drainage systems;

(C) surface water;

(D) groundwater; or

(E) the ground.

(2) No person shall apply used oil as any of the following:

(A) A coating;

(B) a sealant;

(C) a dust suppressant;

(D) a pesticide carrier; or

(E) any other similar application.

(b) Transporter registration and insurance. Each transporter of used oil shall comply with the requirements of K.A.R. 28-31-6. (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

Article 32.—TESTING HUMAN BREATH FOR LAW ENFORCEMENT PURPOSES

28-32-1 and 28-32-2. (Authorized by K.S.A. 65-1,107; implementing L. 1986, Ch. 40, Sec. 7; effective, E-74-11, Dec. 14, 1973; effective, E-76-2, Jan. 1, 1975; effective May 1, 1976; amended, T-87-35, Nov. 19, 1986; amended May 1, 1987; revoked March 14, 2008.)

28-32-4 through 28-32-5. (Authorized by K.S.A. 65-1,107; implementing L. 1986, Ch. 40, Sec. 7; effective, E-74-11, Dec. 14, 1973; effective, E-76-2, Jan. 1, 1975; effective May 1, 1976; amended, T-87-35, Nov. 19, 1986; amended May 1, 1987; revoked March 14, 2008.)

28-32-6 through 28-32-7. (Authorized by K.S.A. 65-1,107; implementing L. 1986, Ch. 40, Sec. 7; effective, T-87-35, Nov. 19, 1986; effective May 1, 1987; revoked March 14, 2008.)

28-32-8. Definitions. The following terms and abbreviations as used in this article shall have the following meanings, unless the context requires otherwise.

(a) “Agency” means any law enforcement agency under whose authority evidential breath alcohol tests are performed.

(b) “Agency custodian” means the employee at a certified agency who is responsible for administering the certified agency’s EBAT program.

(c) “Alcohol” means any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.

(d) “Alcohol concentration” means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

(e) “Certified agency” means a law enforcement agency that meets the requirements of K.A.R. 28-32-9.

(f) “Certified operator” means an individual who meets the requirements of K.A.R. 28-32-10.

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

(h) “Device custodian” means the certified operator employed by a certified agency who is responsible for oversight of the certified agency’s EBAT device.

(i) “Evidential breath alcohol test” and “EBAT” mean a quantitative chemical test for alcohol performed on a sample or samples of breath of an individual suspected of an offense that subjects the individual to the provisions of K.S.A.

8-1001 through K.S.A. 8-1022 and amendments thereto.

(j) “Evidential breath alcohol test device” and “EBAT device” mean an instrument designed to perform a quantitative chemical test for alcohol on a sample of breath of an individual, which yields test results that are admissible as evidence in a court of law.

(k) “Preliminary breath-screening test device” means an instrument designed to perform a qualitative or quantitative chemical test for alcohol on a sample of breath of an individual to determine the presence or absence of alcohol pursuant to K.S.A. 8-1012 and amendments thereto.

(l) “Quality control” means a test of an evidential breath alcohol test device that is administered at the direction of the secretary and that uses a known alcohol standard to evaluate the accuracy of the device.

(m) “Secretary” means the secretary of the Kansas department of health and environment and the secretary’s designee. (Authorized by and implementing K.S.A. 2006 Supp. 65-1,107; effective March 14, 2008.)

28-32-9. Agency certification. (a) Application. Each agency head seeking agency certification shall submit an application for agency certification on forms provided by the department.

(b) Certification requirements. Each agency for which certification is sought shall demonstrate to the secretary that all of the following requirements are met:

(1) The agency head shall specify each certified EBAT device proposed for conducting evidential breath alcohol testing.

(2) The agency head shall provide and maintain a roster of the certified operators who perform evidential breath alcohol testing for the agency.

(3) Each certified operator shall use only EBAT devices certified by the secretary.

(4) Each certified operator shall follow the standard operating procedure provided by the secretary for the EBAT device in use.

(5) For quality control, each device custodian or the device custodian’s designee shall test each EBAT device once each calendar week using the alcohol standards furnished by the department. The agency custodian shall report the test results to the department monthly on forms provided by the department.

(c) Inspection. An annual inspection of each certified agency shall be made by the secretary

or the secretary's designee to ensure compliance with this article.

(d) Certificate term. Each agency that meets the requirements of this regulation shall be issued a certificate by the secretary. Each certificate shall expire at midnight on December 31 of the year of the certificate's issuance.

(e) Certificate renewal. Each agency head of a certified agency seeking to renew the agency's certificate shall submit an application for renewal on forms provided by the department. If an application for renewal is submitted and approved before the expiration date, the certificate shall be considered renewed even if the agency does not have physical possession of the renewal certificate.

(f) Certificate suspension or revocation. The failure to comply with this regulation may be grounds for suspension or revocation of the agency's certification. (Authorized by and implementing K.S.A. 2006 Supp. 65-1,107; effective March 14, 2008.)

28-32-10. Operator certification. (a) Application. Each individual seeking certification shall submit an application for operator certification through that individual's certified agency on forms provided by the department. Each applicant shall be a duly appointed Kansas law enforcement officer or have the written endorsement of a supervisory law enforcement officer or an agency custodian.

(b) Certification requirements. Each applicant for operator certification shall be required to successfully complete the course of instruction and written examination approved by the secretary. Additional instruction may be required by the secretary to qualify a certified operator to perform evidential breath alcohol tests using additional EBAT devices.

(c) Certificate term. Each applicant that meets the requirements for conducting evidential breath alcohol testing shall be issued a certificate by the secretary. Each operator certificate that is issued in an even-numbered year shall expire at midnight on December 31 of the next even-numbered year. Each operator certificate that is issued in an odd-numbered year shall expire at midnight on December 31 of the next odd-numbered year.

(d) Certificate renewal. Each certified operator seeking to renew the operator certificate shall submit an application for renewal through that individual's certified agency on forms provided by

the department. As a condition of an operator's certificate renewal, each certified operator shall biennially complete EBAT continuing education as approved by the secretary. If an application for renewal is submitted and approved before the certificate's expiration date, the certificate shall be considered renewed even if the operator does not have physical possession of the renewal certificate.

(e) Effect of military service or official leave of absence.

(1) Any operator who returns from active military service or an official leave of absence that does not exceed two years may renew an inactive certification by meeting all of the following requirements and submitting the required information to the department on forms provided by the department:

(A) Provide proof of active military duty or official leave of absence;

(B) provide proof of the last operator certification before going on active duty or taking leave of absence;

(C) pass the current department-approved written operator examination; and

(D) provide proof of satisfactory performance of EBAT device operation in the presence of a device custodian.

(2) Any operator who returns from active military service or an official leave of absence that exceeds two years may renew an expired certification by meeting all of the following requirements and submitting the required information to the department on forms provided by the department:

(A) Provide proof of active military duty or official leave of absence;

(B) provide proof of the last operator certification before going on active duty or taking leave of absence;

(C) provide proof of completion of EBAT continuing education within 180 days of the date of return to the agency;

(D) pass the current department-approved written operator examination; and

(E) provide proof of satisfactory performance of EBAT device operation in the presence of a device custodian.

(f) Certificate denial, suspension, and revocation. The failure of an applicant or a certified operator to comply with this regulation may be grounds for denial of the application or renewal or for suspension or revocation of the operator's certificate. (Authorized by and implementing K.S.A. 2006 Supp. 65-1,107; effective March 14, 2008.)

28-32-11. EBAT device certification.

(a) Application. Each agency custodian seeking EBAT device certification shall submit an application on forms provided by the department for certification of each EBAT device that the certified agency intends to use in the certified agency's EBAT program.

(b) Initial certification requirements. Each EBAT device shall be certified by the secretary before being used by an agency.

(c) Inspection. Once an EBAT device is certified, an inspection of the EBAT device may be made by the secretary at any time. Any EBAT device may be removed from service at the time of the inspection if deemed necessary.

(d) Maintenance. Each EBAT device shall be maintained by the device custodian or the device custodian's designee as directed by the secretary.

(e) Repair. Each EBAT device removed from service for repair shall be repaired by the manufacturer or the manufacturer's authorized repair service. When the EBAT device is returned to the agency, the EBAT device shall be tested for accuracy by the device custodian or the device custodian's designee. The device custodian or the device custodian's designee shall notify the department of the date on which the instrument is placed back into service.

(f) Modification. No modification shall be made to any EBAT device without the prior written consent of the secretary. For purposes of this regulation, "modification" shall mean any change in the operating software of or any physical change to a certified EBAT device that alters the accuracy or precision of the EBAT device. (Authorized by and implementing K.S.A. 2017 Supp. 65-1,107; effective March 14, 2008; amended, T-28-12-18-17, Dec. 18, 2017; amended April 6, 2018.)

28-32-12. Certified operator instruction and continuing education requirements.

(a) Agency personnel may be trained to administer evidential breath alcohol tests by any of the following entities:

- (1) The department;
- (2) a certified agency;
- (3) a college or university; or
- (4) a law enforcement training center.

(b) Both of the following shall be approved in advance by the secretary:

- (1) Each course instructor; and
- (2) each course of instruction offered to fulfill operator certification and EBAT continuing education requirements. (Authorized by and imple-

menting K.S.A. 2006 Supp. 65-1,107; effective March 14, 2008.)

28-32-13. Records. (a)(1) Each agency custodian or the agency custodian's designee shall maintain the following records on file at the certified agency's office for at least three years:

- (A) Records of each current certified operator;
- (B) records showing that a quality control check was completed at least once each week for each EBAT device assigned to the agency; and
- (C) records documenting any maintenance or repair made to each EBAT device.

(2) The records specified in this subsection shall be subject to inspection by the secretary at least annually.

(b) Each agency custodian or the agency custodian's designee shall maintain a record of the number of individuals tested by each certified operator under the certified agency's supervision. (Authorized by and implementing K.S.A. 2012 Supp. 65-1,107; effective March 14, 2008; amended March 8, 2013.)

28-32-14. Preliminary breath-screening test devices.

(a) Each preliminary breath-screening test conducted shall be performed on a preliminary breath-screening test device approved by the secretary. The devices approved for use as preliminary breath-screening test devices in Kansas shall consist of the following devices and any other device approved by the secretary as specified in subsection (b):

Manufacturer	Model
Alcohol Countermeasure Systems Corp.	Alert J5
CMI, Inc.	Intoxilyzer 300
CMI, Inc.	Intoxilyzer 400
CMI, Inc.	Intoxilyzer S-D2
CMI, Inc.	Intoxilyzer S-D5
Draeger Safety, Inc.	Alcotest 6510
Draeger Safety, Inc.	Alcotest 6810
Draeger Safety, Inc.	Breathalyzer 7410
Guth Laboratories, Inc.	WAT89EC-1
Guth Laboratories, Inc.	Alcotector BAC-100
Intoximeters, Inc.	Alco-Sensor
Intoximeters, Inc.	Alco-Sensor Pass-Warn-Fail
Intoximeters, Inc.	Alco-Sensor III
Intoximeters, Inc.	Alco-Sensor Digital
Intoximeters, Inc.	Alco-Sensor IV Digital
Intoximeters, Inc.	Alco-Sensor IV Pass-Warn-Fail
Intoximeters, Inc.	Alco-Sensor FST
Lifeloc Technologies, Inc.	FC10
Lifeloc Technologies, Inc.	FC10Plus
Lifeloc Technologies, Inc.	FC20

Manufacturer	Model
Lifeloc Technologies, Inc.	PBA 3000
Sound-Off, Inc.	AlcoData

(b) Each agency custodian seeking to use a preliminary breath-screening test device that is not specified in subsection (a) shall submit the device to the secretary for examination and evaluation to determine if the device meets the criteria for approval. In order for a preliminary breath-screening test device to be approved, whether the device meets the following requirements shall be determined by the secretary:

(1) Each preliminary breath-screening test device shall meet the manufacturer's performance criteria when operated according to the procedures specified in the manufacturer's instruction manual for the device in use.

(2) Each reusable preliminary breath-screening test device shall have a disposable mouthpiece.

(c) Each approved preliminary breath-screening test device shall be operated according to the procedures specified in the manufacturer's instruction manual for the device in use.

(d) All training of preliminary breath-screening test device operators shall be the responsibility of each agency. All training shall follow the operational instructions supplied by the manufacturer for the device in use. (Authorized by and implementing K.S.A. 2006 Supp. 65-1,107; effective March 14, 2008.)

Article 33.—LABORATORIES PERFORMING OTHER TESTS

28-33-1. (Authorized by and implementing K.S.A. 1986 Supp. 65-1,107; effective Jan. 1, 1966; amended May 1, 1976; amended May 1, 1988; revoked May 3, 1996.)

28-33-2 to 28-33-6. (Authorized by K.S.A. 1975 Supp. 65-1,107; effective Jan. 1, 1966; amended May 1, 1976; revoked May 1, 1988.)

28-33-7. (Authorized by K.S.A. 1975 Supp. 65-1,107; effective Jan. 1, 1966; revoked May 1, 1988.)

28-33-8 to 28-33-9. (Authorized by K.S.A. 1975 Supp. 65-1,107; effective Jan. 1, 1966; amended May 1, 1976; revoked May 1, 1988.)

28-33-10. (Authorized by K.S.A. 1975 Supp. 65-1,107; effective May 1, 1976; revoked May 1, 1988.)

28-33-11. (Authorized by and implementing K.S.A. 1989 Supp. 65-1,107, as amended by L. 1990, Ch. 215, Sec. 1 and K.S.A. 1989 Supp. 65-6002, as amended by L. 1990, Ch. 234, sec. 2; effective Oct. 2, 1989; amended Feb. 4, 1991; revoked May 3, 1996.)

28-33-12. General provisions. (a) Definitions.

(1) "Department" means the department of health and environment.

(2) "Division" means the division of Kansas health and environmental laboratory.

(3) "Laboratory director" means the person responsible for the professional, administrative, organizational, and educational duties of a laboratory.

(4) "Laboratory supervisor" means the individual responsible for providing day-to-day supervision of testing personnel, including the proper performance of all laboratory procedures and reporting of test results.

(5) "Testing personnel" means individuals responsible for specimen processing, test performance, and reporting test results.

(6) "Test for controlled substance" means a procedure to evaluate a specimen for compounds identified in schedule I or II of the Kansas controlled substance act, K.S.A. 1996 Supp. 65-4105 and 65-4107.

(7) "Threshold" means a defined drug or metabolite concentration that is established at a level resulting in the following:

(A) a concentration at or above this level defines a positive result; and

(B) a concentration below this level defines a negative result.

(8) "Screening test" means a test designed to eliminate true negative specimens from further consideration. Threshold limits used for screening tests shall conform to the mandatory guidelines for federal workplace drug testing programs established by the substance abuse and mental health services administration of the department of health and human services in the federal register, volume 59, number 110, page 29921, published June 9, 1994.

(9) "Confirmatory test" means a mass spectrometry analytical procedure used to specifically identify the presence of a drug or drug metabolite. Threshold limits used for confirmatory testing shall conform to the mandatory guidelines for federal workplace drug testing programs established

by the substance abuse and mental health services administration of the department of health and human services in the federal register, volume 59, number 110, pages 29921-29922, published June 9, 1994.

(10) "Unsatisfactory performance" means a score for any analyte of less than 80% as determined by the proficiency testing provider.

(11) "Unsuccessful participation" means unsatisfactory performance for the same analyte in two consecutive or two out of three consecutive proficiency testing events.

(12) "CLIA" means the clinical laboratory improvement amendments of 1988, Public Law 100-578, as implemented by 42 CFR part 493, issued February 28, 1992, as amended and in effect on April 24, 1995.

(b) Approval procedure. (1) Except as provided in subsection (k), each laboratory located in Kansas seeking approval of the department to perform tests on biological specimens for controlled substances, as defined in schedule I and II of the Kansas controlled substance act, K.S.A. 1996 Supp. 65-4105 and 65-4107, shall be a laboratory that the division director or director's designee determines meets the requirements for certification under CLIA for the type and complexity of the tests being performed.

(2) (A) Except as set out in paragraph (C), each laboratory seeking approval to test biological specimens for the following drugs or their metabolites shall meet the requirements set out in paragraph (B):

- (i) amphetamines;
- (ii) cannabinoids or tetrahydrocannabinoids (THC);
- (iii) cocaine;
- (iv) opiates; and
- (v) phencyclidine.

(B) In addition to meeting requirements for certification under CLIA, each laboratory seeking approval under paragraph (A) shall submit the following:

- (i) a completed application on standard forms furnished by the division; and
- (ii) documents demonstrating successful performance in one testing event using a proficiency testing program approved by the division.

(C) Any laboratory facility testing specimens for emergency diagnosis and treatment may test for drugs listed on schedule I or II of the Kansas controlled substance act, K.S.A. 1996 Supp. 65-4105 and 65-4107, without meeting the requirements

of paragraph (B), if test results are used only for diagnosis and treatment.

(c) Upon receipt of a laboratory's application for approval, the laboratory shall be inspected by a representative of the division. The laboratory shall be evaluated to determine compliance using the following criteria.

(1) Screening test methods shall screen for the following five classes of drugs:

- (A) amphetamines;
- (B) cannabinoid or THC metabolites;
- (C) cocaine metabolites;
- (D) opiates; and
- (E) phencyclidine.

(2) Each test procedure shall be performed in accordance with a written protocol. The protocol shall be approved by the laboratory director. The protocol shall require that a blank control containing no drug and a control fortified with a known analyte concentration greater than the threshold limit for each analyte be included with each batch of specimens tested. At least one fortified control shall be at or near the threshold cutoff. The protocol shall insure that carryover between specimens does not occur.

(3) A laboratory quality assurance program shall be developed and implemented. The program shall contain the following components:

(A) requirements for sample collection that adhere to the criteria of the division director or the director's designee, or a signed statement that the specimen was properly collected according to these criteria, if collection is at a location other than the laboratory performing the test;

(B) identification and chain of custody procedures for specimens;

(C) procedures for assuring the security of the testing area, test records, and test reports;

(D) confirmation procedures for all positive screening tests unless evidenced by documentation that the testing is performed for one of the following:

(i) medical purposes on a hospital inpatient or patient currently undergoing treatment in a hospital emergency room;

(ii) a specimen from an individual currently under treatment for substance abuse; or

(iii) a correctional facility solely for the purpose of internal management of persons as defined in regulations promulgated by the secretary of corrections;

(E) a policy stating that only confirmed positive results shall be reported as positive;

(F) procedures for an internal quality control program that monitors the accuracy and precision of laboratory performance;

(G) procedures for an instrument maintenance program that, at a minimum, conforms to the manufacturer's specifications;

(H) provision for retention of all confirmed positive specimens for at least one year;

(I) policies requiring disposal of all medical wastes in accordance with K.A.R. 28-29-27; and

(J) documentation of adherence to the foregoing policies and procedures.

(4) Equipment required by the test system shall meet the specifications of the test system's manufacturer.

(5) Reagents, controls, and any other required materials for the procedure being performed shall be available and shall be stored according to the manufacturer's specifications.

(d) During the inspection by the division, one or more testing personnel may be required to demonstrate performance of the procedure under consideration.

(e) Except as provided in subsection (k), each approved laboratory located in Kansas shall be inspected by the division biennially. A follow-up inspection of any approved laboratory may be conducted by the division at any time.

(f) Each laboratory performing tests for controlled substances shall have an individual serving as laboratory director who holds one of the following credentials:

(1) current licensure as a physician in the state where the laboratory is located, with additional training in pharmacology, toxicology, clinical pathology or forensic pathology; or

(2) an earned doctoral degree from an accredited institution in a chemical or biological science and at least two years of laboratory experience in chemistry or analytical toxicology.

(g) Each laboratory performing tests for controlled substances shall have an individual or individuals serving as a laboratory supervisor. Each laboratory supervisor shall hold one of the following credentials:

(1) an earned doctoral degree from an accredited institution in a chemical or biological science and at least two years of laboratory experience in chemistry or analytical toxicology; or

(2) an earned baccalaureate degree from an accredited institution in a chemical or biological science or medical technology and at least four years of experience in chemistry or analytical toxicology.

(h) Each laboratory performing tests for controlled substances shall have one or more individuals serving as testing personnel. Each individual serving as testing personnel shall hold one of the following credentials:

(1) an earned baccalaureate degree from an accredited institution in a chemical or biological science or medical technology;

(2) an earned associate degree from an accredited institution in a chemical or biological science or medical technology; or

(3) have achieved a satisfactory grade in the health and human services written clinical laboratory technologist examinations offered between March 7, 1975 and August 28, 1987 by the professional examination service.

(A) The laboratory director shall document that testing personnel performing tests have been adequately trained in each test procedure being performed.

(B) Records of educational credentials and training shall be maintained for each individual qualified under subsections (f), (g), or (h) of this regulation.

(i) One copy of each test requisition, test record, and test report shall be maintained in a readily retrievable manner by the laboratory for a period of two years.

(j) Proficiency program. Each laboratory shall enroll and participate in an approved external proficiency testing program for opiates, cocaine, cannabinoids or THC, amphetamines, and phenylcyclidine. A list of approved proficiency testing programs shall be available from the division.

(1) The results of each laboratory's performance in the proficiency testing program shall be sent directly from the approved program provider to the division.

(2) The approval for any laboratory may be revoked by the director of the division or the director's designee when the laboratory meets the criteria for unsuccessful participation in an approved external proficiency testing program.

(3) Each laboratory shall undertake an investigation and institute corrective action for all incorrect responses identified in the proficiency testing program. The laboratory shall maintain documentation of the investigation and corrective action for a period of two years.

(k) (1) Any laboratory that is not located in the state of Kansas may apply for approval. Such a laboratory shall be added to the list of approved laboratories if it meets the following conditions.

(A) The laboratory shall be certified or approved by a federal, state, or independent agency having standards that are determined by the director of the division, or the director's designee, to be generally equivalent or more stringent than the standards set out in subsections (b) through (j) of this regulation.

(B) The laboratory seeking approval shall submit the following documentation for inspection by the department:

(i) a completed application on standard forms furnished by the division;

(ii) a report of the most recently completed on-site inspection by the approving agency addressing subsections (c) through (e);

(iii) proficiency testing results from the most recently completed proficiency challenge;

(iv) documents demonstrating that the laboratory personnel meet the qualifications set forth in subsections (f), (g), and (h); and

(v) any other documentation deemed necessary by the division.

(2) Any laboratory located in Kansas may seek approval under this subsection in lieu of following approval procedures in subsection (b) and meeting the on-site inspection requirements in subsections (c) through (e).

(l) List of approved laboratories. A current list of approved laboratories shall be maintained by the division. Each laboratory shall be approved biennially.

(m) Removal from approved list.

(1) A laboratory shall be removed from the approved list after voluntarily terminating or after notice and an opportunity for a hearing. All orders of revocation shall become final 15 days after service unless an appeal is filed in writing. All appeals shall be conducted according to the Kansas administrative procedure act, K.S.A. 77-501 et seq. and any amendments.

(2) Notification of removal of a laboratory from the approved list shall be made by certified mail. (Authorized by K.S.A. 1996 Supp. 65-1,107; implementing K.S.A. 1996 Supp. 65-1,107, 65-1,108, and 65-1,108a; effective Oct. 2, 1989; amended May 3, 1996; amended Oct. 10, 1997.)

Article 34.—HOSPITALS

PART 1. GENERAL

28-34-1. (Authorized by K.S.A. 65-431; effective Jan. 1, 1969; revoked June 28, 1993.)

28-34-1a. Definitions. (a) "Authenticate" means to verify authorship by written signature, identifiable initials, or computer key. The use of rubber stamp signatures shall be acceptable if the following conditions are met.

(1) The practitioner whose signature the rubber stamp represents is the only individual who has possession of the stamp and who uses the stamp.

(2) The hospital maintains, in its administrative offices, a signed statement by the practitioner indicating that the practitioner is the only person who possesses and uses the stamp.

(b) "Chief executive officer" means the individual appointed by the governing body to act on its behalf in the overall management of the hospital.

(c) "Consultant" means a person who provides professional advice or services on request.

(d) "Covering practitioner" means a member of the hospital's medical staff who is authorized by the patient's attending physician or other practitioner to provide care and treatment for the patient in the absence of the attending physician or other practitioner.

(e) "Dentist" means a person licensed in Kansas to practice dentistry.

(f) "Dietitian" means a person who is licensed in Kansas as a dietitian.

(g) "Dietetic services supervisor" means an individual who meets one of the following requirements:

(1) Is licensed in the state of Kansas as a dietitian;

(2) has an associate's degree in dietetic technology from a program approved by the American dietetic association;

(3) is a dietary manager who is certified by the board of the dietary managers' association; or

(4) has training and experience in dietetic services supervision and management that are determined by the secretary of health and environment to be equivalent in content to paragraph (2) or (3) of this subsection.

(h) "Director" means a person with administrative responsibility for the direction of a service for the hospital. When this term is used in connection with a medical or clinical service, it shall be synonymous with "chairperson" and shall not imply a salaried individual.

(i) "Drug administration" means the direct application of a drug or biological, whether by injection, inhalation, ingestion, or any other means, to the body of a patient by either of the following:

(1) A practitioner, or pursuant to the lawful direction of a practitioner, who is acting within

the scope of that practitioner's license and who is qualified according to medical staff bylaws; or

(2) the patient at the direction and in the presence of a practitioner.

(j) "Drug dispensing" means delivering prescription medication to the patient pursuant to the lawful order of a practitioner.

(k) "Facilities" means buildings, equipment, and supplies necessary for the implementation of hospital services.

(l) "Licensed practical nurse" means an individual who is licensed in Kansas as a licensed practical nurse.

(m) "Licensing agency" means the Kansas department of health and environment.

(n) "Long-term care unit" means a unit that provides physician services and continuous nursing supervision for patients who are not in an acute phase of illness and who currently require nursing care that is primarily of a convalescent, restorative, or long-term nature. Medicare-certified, distinct-part, long-term care units shall be included.

(o) "Nursing care unit" means an organized jurisdiction of nursing services in which nursing services are provided on a continuous basis.

(p) "Nursing services" means patient care services pertaining to the curative, restorative, and preventive aspects of nursing that are performed or supervised by a registered nurse pursuant to the medical care plan of the practitioner and the nursing care plan.

(q) "Organized" means administratively and functionally structured.

(r) "Organized medical staff" means a formal organization of physicians and dentists, with the responsibility and authority to maintain proper standards for patient care as delegated by the governing body.

(s) "Outpatient services" means an organizational unit of the hospital that is designed to support the provision of nonemergency health care services to patients who do not remain in the hospital overnight. The term shall include a short-term procedure unit if applicable.

(t) "Pathologist" means either of the following:

(1) A person who is licensed in Kansas to practice medicine and surgery and who is a board-certified or board-eligible pathologist; or

(2) a person licensed in Kansas as a dentist and certified as an oral pathologist.

(u) "Patient" means a person admitted to the hospital upon the order of a member of the medical staff.

(v) "Physician" means a person licensed in Kansas to practice medicine and surgery.

(w) "Practitioner" means a member of the hospital's medical staff and may include a physician or dentist.

(x) "Qualified nurse anesthetist" means any of the following:

(1) A registered nurse who has been certified as a nurse anesthetist by the council on certification of the American association of nurse anesthetists and has been authorized as a registered nurse anesthetist by the Kansas board of nursing;

(2) a student enrolled in a program of nurse anesthesia by the council on accreditation of the American association of nurse anesthetists; or

(3) a graduate of an accredited program of nurse anesthesia who is awaiting certification testing or the results of the certification test and has been granted temporary authorization as a registered nurse anesthetist by the Kansas state board of nursing.

(y) "Registered nurse" means a person who is licensed in Kansas as a registered professional nurse.

(z) "Service" means either of the following:

(1) A functional division of the hospital or of the nursing or medical staff; or

(2) the delivery of care.

(aa) "Supervision" means authoritative procedural guidance provided by a qualified person for the accomplishment of a function or activity within that person's sphere of competence. Supervision shall include initial direction and periodic inspection of the actual act of accomplishing the function or activity.

(bb) "Survey" means the process of evaluation or reevaluation of a hospital's compliance with this article. (Authorized by and implementing K.S.A. 65-431; effective June 28, 1993; amended Feb. 9, 2001; amended Nov. 26, 2001.)

28-34-2. Licensing procedure. (a) Each applicant for an initial license to operate a hospital shall file an application on forms provided by the licensing agency at least 90 days prior to admission of patients. A license previously issued shall be renewed after the licensee has filed an annual report and the licensing agency has approved the same. The licensing agency shall approve the renewal after it has documented that the applicant is in substantial compliance with these regulations. Each application for license renewal shall be filed with the licensing agency at least 90 days before

the expiration date of the current license, and the annual report shall be filed no later than 60 days after the beginning of each calendar year. The annual report may include information relating to:

- (1) Administration and ownership;
 - (2) classification;
 - (3) allocation of beds;
 - (4) special care services;
 - (5) patient statistics;
 - (6) surgical facilities, services and procedures;
 - (7) outpatient and emergency room services;
- and
- (8) staff personnel.

(b) New construction, alterations or renovations that provide space for patient services or patient rooms shall not be used until authorization has been received from the licensing agency. The licensing agency may give such authorization orally or by telephone and shall provide the facility with written confirmation within 30 days.

(c) The license shall authorize a facility to operate only the number and classifications of beds that appear on the previous license application unless additional beds or reclassification of beds have been approved in accordance with K.A.R. 28-34-32a.

(d) If the facility is found to be in violation of any of these regulations, the licensing agency shall notify the applicant in writing of each violation and require that a plan of correction be submitted before a license is issued or renewed. The plan shall state specifically what corrective action will be taken and the date on which it will be accomplished.

(e) If during the term of its current license a facility is surveyed by the joint commission on accreditation of health care organizations (JCAHO) or the American osteopathic association (AOA), the facility shall submit the survey report to the licensing agency toward satisfying the survey requirements for licensure. After reviewing the survey report, the licensing agency may notify the facility that a licensing survey will be conducted.

(f) The licensing agency will document the extent of the facility's compliance with these regulations in at least one of the following ways:

- (1) The statement of a responsible, authorized administrator or staff member;
- (2) documentary evidence of compliance provided by the facility;
- (3) answers by the facility to detailed questions provided by the licensing agency concerning the implementation of any provisions of these reg-

ulations or examples of such implementation which will enable a judgment about compliance to be made;

- (4) on-site observations by surveyors; or
- (5) interviews with patients, employees or other persons or sources capable of providing reliable information. (Authorized by K.S.A. 65-428 and K.S.A. 65-431; implementing K.S.A. 65-428; K.S.A. 65-429 and 65-431; effective Jan. 1, 1969; amended Jan. 1, 1974; amended May 1, 1980; amended June 28, 1993.)

28-34-3. (Authorized by and implementing K.S.A. 65-431; effective Jan. 1, 1969; revoked May 1, 1986.)

28-34-3a. General requirements. (a) Patient limits. The number of patients admitted to any area of the hospital shall not exceed the number for which the area is designed, equipped, and staffed, except in cases of an emergency. In an emergency, patients shall be admitted in accordance with the emergency or disaster plan of the hospital.

(b) Emergency electrical service. Each hospital shall have an emergency source of power to provide electricity during an interruption of the normal electrical supply. The source of this emergency electrical service shall be:

- (1) An emergency generating set when the normal service is supplied by one or more central station transmission lines; or
- (2) An emergency generating set or a central station transmission line when the normal electrical supply is generated on the premises.

(c) Emergency electrical system. The emergency electrical system shall include a life safety branch and a critical branch. The life safety branch shall serve illumination, alarm, and alerting equipment which shall be operable at all times for protection of life during emergencies. The critical branch shall serve lighting and receptacles in critical patient care areas.

(d) Vital statistics. Each hospital shall comply with vital statistics statutes and regulations regarding the completion and filing of birth, death, and fetal death certificates within a specified period of time.

(e) Smoking. Smoking may be permitted only in designated areas. Patients shall have the right to choose to be assigned to a room in which smoking is not permitted. Smoking shall be prohibited in all other areas that are used for patient treatment

or diagnosis. The hospital shall establish written rules regarding smoking within the hospital. Rules shall be posted where they can be observed by the hospital staff and the public. Smoking shall be prohibited in any room or area where flammable liquid, combustible gas, or oxygen is being stored or used and in any other hazardous area of the hospital. Patients classified as not mentally or physically responsible for their actions shall be prohibited from smoking unless constant supervision is provided. The sale of any tobacco products shall be prohibited in any area of the hospital.

(f) Internal disaster plan. The hospital shall establish a workable plan with the nearest fire department for fire fighting service. The hospital shall provide the fire department with a current floor plan of the building. The floor plan shall show the location of fire fighting equipment, exits, patient rooms, places where flammable and explosive gases are stored, and any other information that the fire department requires. The hospital shall also develop an internal disaster and fire plan incorporating evacuation procedures. These plans shall be made available to all personnel and shall be posted throughout the building. Each employee shall participate in the duties delegated to them under the safety program and shall be instructed in the operation of the fire warning system, the proper use of fire fighting equipment, and the procedure to follow in the event that electrical power is impaired.

(g) External disaster plan. The hospital shall establish written plans, based on its capabilities, for the proper and timely care of casualties arising from external disasters. The disaster plan shall be developed in conjunction with other emergency facilities in the community so that adequate logistical provisions are made for the expansion of the activities of the hospital in coordination with the activities of other facilities. The external disaster plan shall be rehearsed at least twice a year, preferably as part of a coordinated drill in which other community emergency service agencies participate. The drills shall involve professional, administrative, nursing, and other hospital personnel. A written report and evaluation of all drills shall be maintained for at least two years. (Authorized by and implementing K.S.A. 65-431; effective May 1, 1986.)

28-34-3b. Patient rights. (a) Policies and procedures. The governing body shall ensure that the facility establishes policies and procedures which support the rights of all inpatients

and outpatients. At a minimum, each facility shall ensure that:

(1) Each patient has the right to respectful care given by competent personnel;

(2) each patient has the right, upon request, to be given the name of his attending physician, the names of all other practitioners directly participating in his care and the names and functions of other health care persons having direct contact with the patient;

(3) each patient has the right to make health care decisions. Each patient has the right to the information necessary to make treatment decisions reflecting the patient's wishes and to request a change in his physician or transfer to another health facility due to religious or other reasons;

(4) each patient has the right to accept medical care, to refuse treatment to the extent permitted by state law and to be informed of the medical consequences of refusing treatment;

(5) each patient has the right to formulate advance directives and appoint a surrogate to make health care decisions on the patient's behalf to the extent permitted by law;

(6) each patient has the right to assistance in obtaining consultation with another physician or practitioner at the patient's request and own expense;

(7) each patient has the right to hospital services without discrimination based upon his race, color, religion, sex, national origin or source of payment;

(8) each patient or patient's legally designated representative has access to the information contained in the patient's medical records within the limits of state law;

(9) each patient has the right to examine and receive a detailed explanation of the patient's bill; and

(10) each patient is informed of the facility's policies regarding patient rights during the admission process.

(b) Grievances. The facility's policies and procedures shall establish a mechanism for responding to patient complaints. (Authorized by and implementing K.S.A. 1991 Supp. 65-431; effective June 28, 1993.)

28-34-4. (Authorized by and implementing K.S.A. 65-431; effective Jan. 1, 1974; revoked May 1, 1986.)

28-34-4a. Visitors. (a) Each hospital shall establish visitation policies which are in the interest of the patients. Children under 12 years of age shall not be admitted as visitors to the hospi-

tal except in the company of a responsible adult. Children under six years of age shall be admitted as visitors only when the hospital has a special family visiting program or when authorized in writing by the attending physician, or the chief executive officer of the hospital, or the professional nurse charged with the responsibility for the care of the patient.

(b) Each hospital shall post visiting regulations in a location where they can be easily viewed by the public. (Authorized by and implementing K.S.A. 65-431; effective May 1, 1986.)

28-34-5. (Authorized by K.S.A. 65-431; effective Jan. 1, 1969; revoked June 28, 1993.)

28-34-5a. Governing authority. (a) Governing body. Each hospital shall have an organized governing body. The governing body shall be the ultimate authority in the hospital responsible for its organization and administration in a manner which is consistent with appropriate standards of patient care, environmental safety and institutional management.

(b) Bylaws. The governing body shall adopt its own set of bylaws. At a minimum, the bylaws shall contain the following provisions:

- (1) A statement of the mission of the hospital;
- (2) a description of the powers and duties of the governing body, officers and committees and of the responsibilities of the chief executive officer;
- (3) a statement of the qualifications for governing body membership, the procedures for selecting members and the term for members, officers and committee chairpersons;
- (4) a description of the authority delegated to the medical staff;
- (5) a requirement that the governing body review and approve the bylaws of the medical staff organization;
- (6) a requirement that the governing body approve or deny all applications for medical staff membership and for the granting of clinical and admitting privileges; and
- (7) a description of the mechanism by which the governing body bylaws are adopted, reviewed and revised.

(c) Functions. At a minimum, the governing body shall:

- (1) Provide adequate physical resources and personnel for appropriate patient care;
- (2) participate in planning to define and help meet the health needs of the community;

(3) formulate short-term and long-term plans for the development of the hospital;

(4) review the annual audit of the financial operations of the hospital;

(5) maintain effective communication with the medical staff;

(6) require the medical staff to establish controls that are designed to achieve and maintain appropriate standards of ethical professional practice;

(7) establish a structure to effectively fulfill the governing body's responsibilities and to evaluate the implementation of programs and policies;

(8) maintain a written record of governing body proceedings; and

(9) implement and maintain a risk management program in accordance with K.S.A. 65-4291 et seq.

(d) Conflict of interest. Members of the governing body shall not maintain personal or business interests which conflict with those of the hospital to an extent deemed by the governing body to present a threat of injury to or loss of the hospital's reputation, assets or ability to provide patient care. (Authorized by and implementing K.S.A. 1991 Supp. 65-431; effective June 28, 1993.)

28-34-6. (Authorized by K.S.A. 65-431; effective Jan. 1, 1969; revoked June 28, 1993.)

28-34-6a. Medical staff. (a) General provision. Each hospital shall maintain an organized medical staff. Admission to the staff and clinical privileges associated with membership shall be granted by the governing authority through a mechanism that evaluates each member's qualifications to engage in that member's area of clinical practice. Admitting privileges may be granted to any practitioner as defined in K.A.R. 28-34-1a(w).

(b) Membership. The medical staff shall be limited to practitioners who have made application in accordance with the bylaws of the medical staff and the governing body. The medical staff shall adopt bylaws that define the requirements for admission to staff membership and for the delineation and retention of clinical and admitting privileges. Each member shall be granted privileges that are commensurate with the member's qualifications, experience, and present capabilities and that are within the member's scope of practice. Although certification, fellowship, membership on a specialty board or society, or the completion of a general practice residency may be considered in determining an individual's qualifications for medical staff membership,

membership decisions shall not be made solely upon any one of these factors.

(c) Medical staff status.

(1) Each hospital shall have an active medical staff to deliver the preponderance of medical services within the hospital. The active medical staff shall have primary responsibility for the organization and administration of the medical staff. Each member of the active medical staff shall be eligible to vote at staff meetings, hold office, and serve on staff committees.

(2) In addition to the active medical staff, the hospital may provide for additional kinds of medical staff privileges. These additional staff categories shall in no way modify the privileges, duties, and responsibilities of the active medical staff. These additional staff categories may be eligible to vote at staff meetings, hold office, and serve on staff committees.

(d) Appointment and reappointment. After considering medical staff recommendations, the governing body shall affirm, deny, or modify each recommendation for appointment to the medical staff and the granting of clinical privileges to any practitioner. Formal application for membership and for the granting of clinical privileges shall follow established procedures set forth in the bylaws, policies, and procedures of the medical staff.

(e) Medical staff bylaws, policies, and procedures. The medical staff shall develop and adopt, subject to the approval of the governing body, a set of bylaws that shall provide for at least the following:

(1) The organizational structure of the medical staff;

(2) qualifications for staff membership and procedures for admission, retention, assignment, and either reduction or withdrawal of privileges;

(3) procedures and standards for the review of staff credentials;

(4) a mechanism for an appeal by a practitioner who receives an unfavorable medical staff recommendation;

(5) delineation of clinical privileges and duties of professional personnel who function in a clinical capacity and who are not members of the medical staff;

(6) methods for the selection of officers and department or service chairpersons and a description of their duties and responsibilities;

(7) the composition and function of standing committees;

(8) requirements regarding the completion of medical records, including a system of disciplinary action for failure to complete the records of discharged patients within 30 days after dismissal or current records within 48 hours of admission;

(9) a mechanism by which the medical staff consults with and reports to the governing body;

(10) medical staff meetings for the purpose of reviewing the performance of the medical staff and each department or service and reports and recommendations of the medical staff and multidisciplinary committees; and

(11) a mechanism for review of medical staff performance that shall include consideration of relevant ethics and statutory codes of conduct.

(f) Medical care review. The medical staff shall develop and implement a system to review medical services rendered, evaluate their quality, and provide an educational program for medical staff members. This system shall include written criteria for the evaluation of medical care that shall cover admission, length of stay, and professional services furnished and shall be conducted on at least a sample basis.

(g) Medical orders.

(1) Medication or treatment shall be administered only upon written and signed orders of a practitioner who is acting within the scope of that practitioner's license and who is qualified according to medical staff bylaws.

(2) A practitioner may give verbal orders, including telephone orders, for medication or treatment to personnel who are qualified according to medical staff bylaws. The person entering these orders into the medical record shall sign and date the entry as soon as possible. These orders shall be authenticated by the prescribing or covering practitioner within 72 hours of the patient's discharge or 30 days, whichever occurs first. (Authorized by and implementing K.S.A. 65-431; effective June 28, 1993; amended Feb. 9, 2001.)

28-34-7. Nursing personnel. (a) There shall be an organized nursing department, including a departmental plan of administrative authority with written delineation of responsibilities and duties of each category of nursing personnel.

(b) All registered nurses employed by the hospital to practice professional nursing shall be licensed in Kansas.

(c) All practical nurses employed by the hospital shall be licensed in Kansas.

(d) There shall be a director of nursing service.

(e) All licensed practical nurses and other ancillary personnel performing patient care services shall be under the supervision of a registered nurse.

(f) There shall be at least one registered nurse on duty in the hospital at all times.

(g) Nursing care policies and procedures shall be in writing and consistent with generally accepted practice and shall be reviewed and revised as necessary.

(h) Private duty nurses shall be licensed in Kansas and shall be subject to the policies, rules, and regulations of the hospital in which they are employed.

(i) Minutes shall be kept of nursing staff meetings. (Authorized by K.S.A. 65-431; effective Jan. 1, 1969.)

28-34-8. (Authorized by K.S.A. 1979 Supp. 65-431; effective Jan. 1, 1969; amended May 1, 1980, revoked June 28, 1993.)

28-34-8a. Administrative services. (a) General provisions. There shall be an adequate administrative staff to provide effective management of the hospital.

(b) The chief executive officer. The governing body shall appoint a chief executive officer. The qualifications, responsibilities, duties and authority of the chief executive officer shall be described in a written statement adopted by the governing body. The chief executive officer shall implement the policies established by the governing body for the operation of the hospital and shall act as a liaison between the governing body, the medical staff and the departments of the hospital.

(c) Personnel policies and procedures. The governing body, through the chief executive officer, shall establish and maintain written personnel policies and procedures which adequately support sound patient care. These policies and procedures shall be made available to all employees and shall be reviewed at least every two years. A procedure shall be established for advising employees of policy and procedure changes.

(d) Personnel records. Accurate and complete personnel records shall be maintained for each employee. Personnel records shall contain at least the following information for each employee:

(1) Information regarding the employee's education, training and experience that is sufficient to verify the employee's qualifications for the employee's job. The information shall indicate the employee's professional licensure status;

(2) current information regarding periodic work performance evaluations; and

(3) records of the initial health examination and of subsequent health services and periodic health evaluations.

(e) Education programs. Orientation and inservice training programs shall be provided to allow personnel to improve and maintain skills and to learn of new health care developments.

(f) Personnel health requirements. Upon employment, all hospital personnel shall have a medical examination which shall consist of examinations appropriate to the duties of the employee, including a chest X-ray or tuberculin skin test. Subsequent medical examinations or health assessments shall be given periodically in accordance with hospital policies. Each hospital shall develop policies and procedures for control of communicable disease, including maintenance of immunization histories and the provision of educational materials to the patient care staff. (Authorized by and implementing K.S.A. 1991 Supp. 65-431; effective June 28, 1993.)

28-34-9. (Authorized by and implementing SCR 1657; effective May 1, 1982; revoked May 1, 1986.)

28-34-9a. Medical records services. (a) General provisions. Each hospital shall maintain medical records for each patient admitted for care. The records shall be documented and readily retrievable by authorized persons.

(b) Organization and staffing.

(1) Each hospital shall have a medical records service that is directed, staffed, and equipped to enable the accurate processing, indexing, and filing of all medical records. The medical records service shall be under the direction of a person who is a registered health information administrator or a registered health information technician as certified by the American health information management association, or who meets the educational or training requirements for this certification.

(2) If the employment of a full-time registered health information administrator or registered health information technician is impossible, the hospital shall employ a registered records administrator or an accredited records technician on a part-time consultant basis. The consultant shall organize the department, train full-time personnel, and make periodic visits to evaluate the

records. There shall be a written contract between the hospital and the consultant that specifies the consultant's duties and responsibilities.

(3) At least one full-time employee shall provide regular medical records service.

(c) Facilities. The medical records department shall be properly equipped to enable its personnel to function in an effective manner and to maintain medical records so that the records are readily accessible and secure from unauthorized use.

(d) Policies and procedures.

(1) Each medical record shall be kept on file for 10 years after the date of last discharge of the patient or one year beyond the date that the minor patient reached the age of majority, whichever is longer.

(2) If a hospital discontinues operation, the hospital shall inform the licensing agency of the location of its records.

(3) A summary shall be maintained of medical records that are destroyed. This summary shall be retained on file for at least 25 years and shall include the following information:

(A) The name, age, and date of birth of the patient;

(B) the name of the patient's nearest relative;

(C) the name of the attending and consulting practitioners;

(D) any surgical procedure and date, if applicable; and

(E) the final diagnosis.

(4) Medical records may be microfilmed after completion. If the microfilming is done off the premises, the hospital shall take precautions to assure the confidentiality and safekeeping of the records.

(5) Each record shall be treated as confidential. Only persons authorized by the governing body shall have access to the records. These persons shall include individuals designated by the licensing agency for the purpose of verifying compliance with state or federal statutes or regulations and for disease control investigations of public health concern.

(6) Medical records shall be the property of the hospital and shall not be removed from the hospital premises except as authorized by the governing body of the hospital or for purposes of litigation when specifically authorized by Kansas law or appropriate court order.

(e) Contents of medical records. Medical records shall contain sufficient information to identify the patient clearly, to justify the diagnosis

and treatment, and to document the results accurately. At a minimum, each record shall include the following:

(1) Notes by authorized house staff members and individuals who have been granted clinical privileges, consultation reports, nurses' notes, and entries by designated professional personnel;

(2) findings and results of any pathological or clinical laboratory examinations, radiology examinations, medical and surgical treatment, and other diagnostic or therapeutic procedures; and

(3) provisional diagnosis, primary and secondary final diagnosis, a clinical resume, and, if appropriate, necropsy reports.

(f) Each entry in each record shall be dated and authenticated by the person making the entry. Verbal orders, including telephone orders, shall include the date and signature of the person recording them. The prescribing or covering practitioner shall authenticate the order within 72 hours of the patient's discharge or 30 days, whichever occurs first. Records of patients discharged shall be completed within 30 days following discharge. (Authorized by and implementing K.S.A. 65-431; effective May 1, 1986; amended June 28, 1993; amended Feb. 9, 2001.)

28-34-10. (Authorized by K.S.A. 1973 Supp. 65-431; effective Jan. 1, 1969; amended Jan. 1, 1974; revoked June 28, 1993.)

28-34-10a. Pharmacy services. (a) General provisions. Each hospital shall provide pharmaceutical services which are administered in accordance with accepted ethical and professional practices.

(b) Organization and staffing. The pharmaceutical service shall be directed by a licensed pharmacist. If the hospital has a pharmacy, it shall be directed by a licensed pharmacist. If the hospital does not have a pharmacy or a full-time staff pharmacist, a pharmacist employed on a part-time or consultant basis shall be responsible for control and dispensing of drugs and for operation of the pharmacy or the pharmaceutical functions of nursing stations. In addition to meeting the standards in this regulation, services shall be provided in accordance with K.A.R. 68-7-11 and amendments thereto.

(c) Pharmacy facilities. Each hospital that maintains a pharmacy on its premises shall provide adequate equipment, supplies and facilities for the storage, safeguarding, preparation and dispensing

of drugs. Drugs and biologicals must be kept in locked storage areas. Drugs requiring refrigeration shall be stored in conveniently located refrigerators which shall be used for drug storage only.

(d) Pharmacy and therapeutics committee. Each hospital shall establish a pharmacy and therapeutics committee or its equivalent. The committee shall consist of at least physicians, nurses and pharmacists. This committee shall assist in the formulation of broad professional policies regarding evaluation, appraisal, selection, procurement, storage, distribution and use of drugs and safety procedures and all other matters relating to drugs in the hospital. This committee shall meet at least quarterly, record its proceedings and report to the medical staff.

(e) Policies and procedures. The pharmaceutical service shall develop written policies and procedures. These policies shall be reviewed by the medical staff at least annually and shall be dated to indicate the date of last review. Procedures shall be established for the recording of all drug dispensations or other pharmacy transactions of the pharmacy or nursing stations.

(f) Medications dispensed. The hospital pharmacy shall dispense from a formulary of drugs approved by the medical staff through its appropriate committees. Any drug approved by the food and drug administration for use as an experimental drug may be used in accordance with standards established by the hospital's medical staff.

(g) Commercial pharmaceutical service. Each hospital using an outside pharmacist or pharmaceutical service shall have a contract with that pharmacist or service. As part of the contract, the pharmacist or service shall be required to maintain at least the standards for operation outlined in these regulations. (Authorized by and implementing K.S.A. 1991 Supp. 65-431; effective June 28, 1993.)

28-34-11. Laboratory. (a) Definitions.

(1) "CLIA" means Public Law 100-578 implemented by 42 CFR 493 issued Feb. 28, 1992, as in effect on Sept. 1, 1992; changes in subparts H, R and preamble to the Feb. 28, 1992 final rule issued Aug. 11, 1992, as in effect on Sept. 1, 1992; technical corrections made in subparts T, F, A, K, C, Q, M and R issued Jan. 19, 1993, as in effect on Sept. 1, 1992; and changes in subparts M and K issued July 22, 1993, as in effect on Jan. 19, 1993.

(2) "Clinical consultant" means the individual or individuals in the laboratory defined by 42

CFR 493.1417(b), as in effect on Sept. 1, 1992 or 493.1455(b), as in effect on Sept. 1, 1992.

(b) The laboratory or laboratories performing analytical tests within the hospital shall hold a valid CLIA certificate for the type and complexity of all tests performed.

(c) Clinical laboratory services shall be available on the hospital premises or provided by a CLIA certified laboratory.

(d) An "authorized individual" shall, through written or electronic means, request all tests performed by the laboratory. The individual or individuals serving as the laboratory's clinical consultant or consultants, defined by 42 CFR 493.1417(b), as in effect on Sept. 1, 1992 or 493.1455(b), as in effect on Sept. 1, 1992, shall clearly define in writing an "authorized individual."

(e) All tissues removed shall be macroscopically examined. If deemed necessary, by written hospital policies and procedures, tissues shall then be microscopically examined. A list of all tissues which routinely do not require microscopic examination shall be developed in writing by a pathologist and approved by the medical staff of each hospital.

(f) The original report or duplicate copies of written tests reports and supporting records shall be retained in a readily retrievable form by the laboratory for a period of at least:

- (1) two years for routine test reports;
- (2) five years for blood banking test reports; and
- (3) ten years for histologic or cytologic test reports.

(g) Facilities for procurement, safekeeping, and transfusion of blood, blood products or both shall be provided or readily available. If blood products or transfusion services are provided by sources outside the hospital, they shall be provided by a CLIA certified laboratory. The source shall be certified for the scope of testing performed or products provided.

(h) Laboratories shall release all proficiency test results to KDHE within seven days of a written request. (Authorized by and implementing K.S.A. 65-431; effective Jan. 1, 1969; amended Jan. 1, 1974; amended May 3, 1996.)

28-34-12. Radiology department. (a) Facilities for diagnostic radiology shall be available.

(b) Emergency radiological services shall be reasonably available at all times.

(c) The radiology department and all patient services rendered therein shall be under the supervision of a designated medical staff physician;

wherever possible, this physician shall be an attending or consulting radiologist.

(d) The technical personnel working in the department shall be qualified for the type of service performed.

(e) Written medical policies and procedures shall be developed under the direction of the physician responsible for the patient services of the department.

(f) Rooms in which ionizing radiation producing devices or equipment or radioactive materials are to be used or stored shall afford radiation protection in accordance with the Kansas radiation protection regulations and the recommendations of the national council on radiation protection and measurements.

(g) Radioactive materials and ionizing radiation producing devices and equipment shall be procured, stored, used, and disposed of in accordance with the Kansas radiation protection regulations and the license or registration required by the regulations as authorized by K.S.A. 48-1607.

(h) All control devices, switches, and electrical connections for radiological equipment shall conform to the requirements of the national board of fire underwriters.

(i) All X-ray and gamma beam therapy equipment shall be calibrated at least annually by a qualified expert according to definitions and procedures provided by the national council on radiation protection, as amended. All radiation producing equipment, therapeutic or diagnostic, shall be inspected at least every two years by the appropriate state agency. The designated radiation safety officer or physician in charge of the radiology department shall be furnished a signed copy of such inspection reports.

(j) Therapeutic radiation shall be administered to patients only at the direction and under the supervision of a radiologist.

(k) Diagnostic and therapeutic use of radioactive isotopes and radium therapy shall conform to applicable state and federal regulations, and shall be under the supervision of a radiologist or other qualified physician.

(l) The interpretation of all radiological examinations shall be made by physicians.

(m) A written report of the findings and evaluation of each radiological examination performed or course of treatment conducted shall be signed by the physician responsible for the procedure and shall be made a part of the patient's permanent medical record.

(n) Personnel exposure monitoring shall be maintained for each person regularly working in the radiation area. Regular periodic recording of cumulative exposure shall be maintained for each person so monitored, and shall contain at least all of the information required by the Kansas radiation protection regulations for such records. Records shall be retained for the periods of time required by Kansas radiation protection regulations.

(o) No person under 18 years of age shall be permitted to operate radiation producing equipment.

(p) Fluoroscopy shall be conducted by or under the direct supervision of a physician. (Authorized by K.S.A. 65-431; effective Jan. 1, 1969.)

28-34-13. Central sterilizing and supply.

(a) Policies and procedures shall be established in writing for storage, maintenance, and distribution of supplies and equipment.

(b) Sterile supplies and equipment shall not be mixed with unsterile supplies, and shall be stored in dust-proof and moisture-free units. They shall be properly labeled.

(c) Sterilizers and autoclaves shall be provided of appropriate type and necessary capacity to adequately sterilize instruments, utensils, dressings, water, operating and delivery room materials, as well as laboratory equipment and supplies. The sterilizers shall have approved control and safety features. The accuracy of instruments shall be checked periodically by an approved method. Adequate surveillance methods for checking sterilization procedures shall be employed.

(d) The date of sterilization or date of expiration shall be marked on all sterile supplies, and unused items shall be resterilized in accordance with written policies. (Authorized by K.S.A. 65-431; effective Jan. 1, 1969.)

28-34-14. Dietary department.

(a) The dietary department shall be under the supervision of qualified personnel. A consultant dietitian may supervise the dietary department of a small hospital which does not employ a full-time qualified dietitian; a properly qualified food service supervisor may substitute if a qualified dietitian is not available.

(b) In the absence of a full-time dietitian or food service supervisor, there shall be a cook manager who is responsible for the daily management of the department.

(c) There shall be written policies for food stor-

age, preparation, and service. Policies shall conform to good sanitation practices.

(d) The food and nutritional needs of patients shall be met in accordance with the recommended dietary allowance of the food and nutrition board of the national research council and in accordance with physician's orders.

(e) Regular menus and modifications for basic therapeutic diets shall be written at least one week in advance and posted in the kitchen.

(f) Adequate administrative, working, and storage space and facilities shall be provided. There shall be a separate storage area above floor level for food.

(g) There shall be a dining area appropriate to the needs of the hospital.

(h) Dumb-waiters or other transportation equipment shall not be used to transport simultaneously both clean and unclean dishes. Dumb-waiters and other transportation equipment shall be cleaned and disinfected daily.

(i) Equipment and facilities shall be adequate to allow storage, preparation, cooking, and serving of food and drink to patients, staff, and employees in a proper and sanitary manner. There shall be separate handwashing facilities in the food preparation and service area.

(j) Temperatures in food freezers shall be no higher than 0° Fahrenheit.

(k) Dishes and utensils shall be washed in water at 140° Fahrenheit, and shall be rinsed at 180° Fahrenheit.

(l) Food service personnel shall wear washable garments, hair nets covering all of the hair (for women), clean caps (for men), and shall keep hands and fingernails clean at all times.

(m) Foods being transported shall be protected from contamination and held at proper temperatures in clean containers or serving carts.

(n) All applicable codes and ordinances shall be met.

(o) Storage of toxic agents shall be prohibited in food preparation and food serving areas.

(p) Only grade "A" pasteurized milk shall be used. Milk and fluid milk products shall be served from the distributor's original containers or from a bulk container equipped with an approved dispensing device.

(q) All red meat and poultry shall be state or federally inspected and approved.

(r) Food returned on patient's trays shall not be re-used. (Authorized by K.S.A. 65-431; effective Jan. 1, 1969.)

28-34-15. Laundry. (a) The hospital shall make provisions for the proper laundering of linen and washable goods.

(b) When linen is laundered outside of the hospital, the hospital shall be responsible to assure that the requirements of these standards are covered in the terms of the contract or agreement.

(c) Hospital employees involved in transporting, processing, or otherwise handling clean or soiled linen shall be properly trained to ensure patient and employee safety.

(d) No laundry operations shall be carried out in patient care areas, nor in areas where food is prepared, served, or stored.

(e) All soiled linen shall be clearly identified.

(f) Soiled linen from infectious or isolation areas shall be bagged, marked, and laundered separately.

(g) Soiled diapers and nursery linen shall be washed separately.

(h) Soiled linen shall be sorted only in the sorting area.

(i) The washing and rinsing process shall be adequate to provide protection to patients and personnel. The temperature of water during the washing process shall be controlled to provide minimum temperature of 165° Fahrenheit for 25 minutes.

(j) Personnel handling soiled linen shall wash their hands after completing work with soiled linen.

(k) The finished "clean" linen and other washable goods shall be transported to the storage area or nursing units in conveyances used exclusively for "clean" goods.

(l) Clean linen stored in storage areas or on nursing units shall be in closets, shelves, conveyances, or rooms used exclusively for this purpose.

(m) All clean linen being transported shall be protected from contamination.

(n) Adequate space and equipment shall be provided for the laundry operation of the hospital.

(o) Sanitation controls shall be maintained.

(p) Laundry chutes shall be used only for soiled linen that has been properly bagged. (Authorized by K.S.A. 65-431; effective Jan. 1, 1969.)

28-34-16. (Authorized by K.S.A. 65-431; effective Jan. 1, 1969; revoked June 28, 1993.)

28-34-16a. Emergency services. (a) Emergency services plans. Each hospital shall maintain a comprehensive, written emergency services plan based on community need and on

the capability of the hospital. This plan shall include procedures whereby an ill or injured person can be addressed and either treated, referred to an appropriate facility or discharged. Regardless of the scope of its services, each hospital shall provide and maintain equipment necessary to institute essential life-saving measures for inpatients and, when referral is indicated, shall arrange for necessary transportation.

(b) Organized emergency services. In hospitals with organized emergency services, the following shall apply.

(1) Emergency services shall be available 24 hours a day, and medical staff coverage shall be adequate so that the patient will be seen within a period of time which is reasonable relative to the severity of the patient's illness or injury.

(2) No patient shall be transferred until the patient has been stabilized. A written statement of the patient's immediate medical problem shall accompany the patient when transferred. Every patient seeking medical care from the emergency services who is not in need of immediate medical care or for whom services cannot be provided by the hospital shall be given information about obtaining medical care.

(3) The emergency service, regardless of its scope, shall be organized and integrated with other departments of the hospital.

(4) The service shall be directed by a physician. The governing body shall adopt a written statement defining the qualifications, duties, and authority of the director. In the absence of a single physician, the direction of emergency medical services may be provided through a multidisciplinary medical staff committee, including at least one physician. The chairperson of this committee shall serve as director.

(5) The emergency nursing service shall be directed and supervised by a registered nurse with training in cardiopulmonary resuscitation. At least one registered nurse with this training shall be available at all times.

(6) The emergency service area shall be located near an outside entrance to the hospital and shall be easily accessible from within the hospital. Suction and oxygen equipment and cardiopulmonary resuscitation units shall be available and ready for use. This equipment shall include equipment used for tracheal intubation, tracheotomy, ventilating bronchoscopy, intra-pleural decompression and intravenous fluid administration. Standard drugs, parental fluids, plasma substitutes and sur-

gical supplies shall be on hand for immediate use in treating life-threatening conditions.

(7) Written policies and procedures which delineate the proper administrative and medical procedures and methods to be followed in providing emergency care shall be established. A medical record shall be kept for each patient receiving emergency services and it shall be made a part of any other patient medical record maintained in accordance with K.A.R. 28-34-9a and amendments thereto.

(c) Cessation of organized emergency services. Any hospital ceasing to provide organized emergency services, at least 30 days prior to such action, or as soon as possible, shall:

(1) Document approval of the governing body of the closure of the organized emergency services;

(2) notify the licensing agency;

(3) place a legal public notice in the local newspaper of such cessation of services; and

(4) notify the Kansas department of transportation and the Kansas board of emergency medical services. (Authorized by and implementing K.S.A. 65-431; effective June 28, 1993.)

28-34-17. (Authorized by K.S.A. 65-431; effective Jan. 1, 1969; revoked June 28, 1993.)

28-34-17a. Anesthesia services. (a) General provisions. Anesthesia care shall be regularly available when the hospital provides surgical or obstetrical services.

(b) Personnel.

(1) The department of anesthesia shall be responsible for all anesthetics administered.

(2) In hospitals where there is no department of anesthesia, the director of surgical services shall assume the responsibility for establishing general policies relating to administration of anesthetics. When there is a department of anesthesia, it shall be directed by a member of the medical staff with appropriate clinical and administrative experience.

(3) The responsibilities of the director shall be established by the governing body and shall include the following:

(A) Establishing criteria and procedures for the evaluation of the quality of all anesthesia care rendered in the hospital;

(B) making recommendations regarding necessary equipment for administering anesthesia and related resuscitation efforts;

(C) developing hospital rules concerning anesthesia safety; and

(D) participating in the hospital's program of cardiopulmonary resuscitation and in consultations regarding management of acute and chronic respiratory insufficiency.

(c) Anesthesia shall be provided only by a qualified individual licensed by the Kansas board of healing arts, the Kansas board of nursing, or the Kansas dental board to administer anesthesia. Anesthesia may also be administered by physicians who are residents in anesthesia or student nurse anesthetists under the supervision of an individual licensed to administer anesthesia.

(d) Policies.

(1) The governing body shall determine the extent of anesthesia services and shall define the degree of collaboration required for the administration of anesthesia. Certified registered nurse anesthetists shall work in an interdependent role with other practitioners.

(2) Each patient requiring anesthesia shall have a pre-anesthesia evaluation by a qualified anesthesia provider regarding the choice of anesthesia.

(3) Each patient's condition shall be reviewed immediately prior to induction. This shall include a review of the patient's medical record with regard to completeness of pertinent laboratory data and an appraisal of any changes in the condition of the patient as compared with that noted on the patient's medical record.

(4) Following the procedure for which anesthesia was administered, the anesthetist or a designee shall remain with the patient as long as required by the patient's condition relative to the patient's anesthesia status and until responsibility for proper patient care has been assumed by other qualified individuals.

(5) A record of events taking place during the induction and maintenance of and emergence from anesthesia, including the dosage and duration of all anesthetic agents, other drugs, intravenous fluids and blood or blood fractions, shall be made.

(e) Safety precautions. The governing body, through the director of anesthesia services, shall adopt rules for safe practice in anesthetizing locations. These rules shall be substantially similar to the requirements prescribed in appendix B of NFPA No. 56A (1973), "standard for the use of inhalation anesthetics," as published by the national fire protection association, Boston, Massachusetts. Separate rules shall be adopted for hospitals having flammable anesthetizing locations, nonflammable anesthetizing locations or mixed flammable

and nonflammable anesthetizing locations. Flammable anesthetizing agents shall include cyclopropane, divinyl ether, ethyl ether, fluroxene, ethyl chloride and ethylene. (Authorized by and implementing K.S.A. 65-431; effective June 28, 1993.)

28-34-17b. Surgical services. (a) General provisions. Surgical services shall be provided in a manner sufficient to meet the medical needs of the patients.

(b) Personnel.

(1) The director of surgical services shall be a qualified member of the medical staff with appropriate surgical and administrative experience.

(2) A roster of medical staff members, with a delineation of the surgical privileges granted to each, shall be maintained in the surgical suite and available to the surgical nurse supervisor.

(3) Surgical suite nursing services shall be under the direction and supervision of a registered nurse who is qualified by training and experience in operating room management and techniques. At least one registered nurse shall be on duty in the recovery room whenever the room is occupied.

(c) Facilities.

(1) Admission of patients, personnel and visitors to the surgical suite shall be controlled in accordance with written policies.

(2) The following equipment shall be immediately available to the surgical suite:

- (A) A call system;
- (B) a cardiac monitor;
- (C) a resuscitator;
- (D) a defibrillator;
- (E) an aspirator;
- (F) a thoracotomy set; and
- (G) a tracheotomy set.

(3) Facilities for blood transfusions shall be available at all times.

(d) Policies. The medical staff shall develop written policies and procedures governing surgical services. These shall include:

(1) Appointment procedures which fairly evaluate the quality and competence of each surgeon seeking appointment to the surgical staff;

(2) reappointment procedures which provide for the periodic reappraisal of the qualifications and competence of each surgeon;

(3) criteria to determine the circumstances which require the presence of an assistant during surgery and to determine whether the assistant should be a physician or professional or nonprofessional personnel;

(4) procedures requiring that preoperative and postoperative medical records are completed in a timely and accurate manner. An accurate and complete description of findings and techniques of operation shall be made within 24 hours after operation by the surgeon who performed the operation; and

(5) procedures requiring that all tissues removed at surgery be examined by a physician whose report shall become a part of the patient's medical record.

(e) Operating room register. An operating room register shall be provided and maintained on a current basis. This register shall contain the date of the operation, the name and number of the patient, the names of surgeons and surgical assistants, the name of the anesthetist, the type of anesthesia given, preoperative and postoperative diagnosis, the type of surgical procedure and the presence or absence of complications in surgery. (Authorized by and implementing K.S.A. 1991 Supp. 65-431; effective June 28, 1993.)

28-34-18. (Authorized by and implementing K.S.A. 65-431; effective Jan. 1, 1974; revoked May 1, 1986.)

28-34-18a. Obstetrical and newborn services. (a) General provisions. If the hospital provides obstetrical and newborn services, they shall be provided in a manner sufficient to meet the medical needs of the patients.

(b) Personnel.

(1) The director of the obstetrical services shall be a member of the medical staff who has experience in obstetrics. The director of the newborn nursery service shall be a member of the medical staff who has experience in pediatrics. The obstetrical and newborn nursing services, including labor, delivery, recovery, and postpartum care, shall be under the supervision of a registered professional nurse qualified by education and experience to provide nursing care to the obstetric and newborn patients.

(2) Personnel qualified to administer inhalation and regional anesthesia shall be readily available. A registered professional nurse shall be available to supervise staff who are monitoring labor, delivery, recovery, and postpartum patients. Labor, delivery, and recovery rooms, when occupied, shall have continuous coverage by nursing staff qualified by education and experience in intrapartum and postdelivery care. The

newborn nursery shall be under the supervision of a registered professional nurse qualified by education and experience in the care of normal and high-risk infants.

(c) Facilities and equipment. The obstetrical and newborn services shall include facilities to provide for labor, delivery, recovery, postpartum, and newborn care in a designated area.

(1) Each labor room shall have access to the following:

- (A) Toilet facilities;
- (B) handwashing facilities in or immediately adjacent to each labor room;
- (C) oxygen and suction equipment;
- (D) a nurse call system;
- (E) an emergency delivery pack;
- (F) resuscitation equipment;
- (G) a fetal monitor;
- (H) intravenous therapy solutions and equipment; and

(I) emergency tray with drugs appropriate to obstetrical emergencies.

(2) Each delivery room shall have access to the following:

- (A) Equipment appropriate for maternal and newborn resuscitation, including suction, airways, endotracheal tubes, and ambubags;
- (B) equipment for administration of inhalation and regional anesthetics;
- (C) a functioning source of emergency electrical power;
- (D) an emergency call or intercommunication system;
- (E) oxygen and suction equipment which can be accurately regulated;
- (F) a fetal monitor;
- (G) supplies and instruments for emergency Cesarean section;
- (H) a scrub sink with foot, knee, or elbow control;

(I) prophylactic solution approved by the licensing agency for instillation into eyes of newborn pursuant to K.S.A. 65-153 and K.A.R. 28-4-73 and any amendments thereto;

(J) a method for identification of the newborn and mother;

(K) a movable, heated bassinet, a bassinet with a radiant warmer, or a transport isolette for the newborn while in the delivery room and during transport from the delivery room; and

(L) a sink with foot, knee, or elbow control.

(3) Each normal or neonatal intensive care nursery shall have access to the following:

(A) A bassinet or isolette for the exclusive use of each infant and for storage of individualized equipment and supplies;

(B) oxygen, oxygen analyzer, and suction equipment which can be accurately regulated;

(C) phototherapy light;

(D) intravenous infusion solutions and equipment. A pump shall also be available;

(E) sink with foot, knee, or elbow control; and

(F) newborn resuscitation equipment.

(d) General requirements.

(1) When an infected patient is delivered in the delivery room, an established infection control protocol shall be followed. An operating room may be used for delivery when the delivery rooms are occupied and for Cesarean sections or obstetrical complications.

(2) Any room may be used as a birthing room when the hospital has a birthing room program that is approved by the licensing agency.

(3) Newborn services shall provide for newborn recovery, observation, and isolation, and for high-risk infants, access to care in a neonatal intensive care nursery either at the hospital of birth or by transfer to a hospital with a neonatal intensive care unit.

(4) All necessary supplies shall be stored in covered containers to permit individualized care.

(e) Procedures and policies. The directors of the obstetrical and newborn services, in cooperation with nursing service, shall develop procedures and policies which shall be available to the medical and nursing staff. Minimal procedures shall include the following:

(1) Oxygen shall be administered only with proper apparatus for its safe administration and control of concentration. Concentrations of oxygen shall not exceed a safe level commensurate with current concepts of oxygen therapy.

(2) Identification shall be attached to the mother and newborn infant before they are removed from the delivery room.

(3) Hospital infection control protocol shall be followed with each patient admitted to the labor and delivery, nursery, or postpartum areas with suspected or confirmed transmissible infection.

(4) Each newborn shall be transported to the mother's room or other units outside the nursery in an individual bassinet.

(5) Each infant shall be tested for phenylketonuria, congenital hypothyroidism, and galactosemia prior to being discharged.

(6) Additional policies shall be adopted concerning, at minimum, the following:

(A) The use of oxytocic drugs and the administration of anesthetics, sedatives, analgesics, and other drugs;

(B) the development of a current roster of physicians with a delineation of their obstetrical privileges. The roster shall be maintained and made available to personnel;

(C) the housing of gynecology patients on the maternity unit;

(D) the presence of fathers or other support persons in the labor, delivery, and birthing rooms;

(E) the protocol for visitors to labor and recovery patients and to the nursery and postpartum units;

(F) attire and handwashing protocols for obstetrical and newborn unit staff and other hospital staff entering these units;

(G) the flow of hospital staff between the obstetric and newborn units and other patient care areas;

(H) the procedure for obtaining blood samples for newborn screening lists, in compliance with K.S.A. 65-180 et seq. and any amendments to it, prior to newborn discharge;

(I) the procedure for reporting to the licensing agency within 48 hours when two or more infants in a nursery demonstrate simultaneous evidence of an infectious disease of a similar nature;

(J) an infection control program for labor, delivery, postpartum, and nursery area which shall include specific procedures for patient isolation and the cleaning, disinfection, and sterilization of patient areas, equipment, and supplies.

(K) arrangements for implementing patient education programs and family-centered care and for promoting parental/sibling/newborn attachment and initiation of breastfeeding;

(L) a system to facilitate coordination of prenatal and postpartum referral and follow up for mothers and newborns at risk and those being discharged less than 24 hours post delivery;

(M) a defined routine for care of obstetrical and newborn patients;

(f) Perinatal Committee. The hospital shall establish an obstetrical and newborn services committee to monitor, evaluate, and recommend the provision of patient services. The committee membership shall include appropriate medical and nursing staff personnel. (Authorized by and implementing K.S.A. 65-431; effective May 1, 1986.)

28-34-19. Pediatric department. Hospitals with an organized pediatric department shall provide facilities for the care of children, apart

from the services for adult patients and from the newborn nursery, and there shall be proper facilities and procedures for the isolation of children with infectious, contagious or communicable conditions.

(a) The pediatric department shall be under the supervision of a designated staff physician.

(b) Hospitals providing pediatric care shall be evaluated and approved on the basis of the size of the service, the personnel, facilities, policies, and procedures.

(c) The newborn nursery and the pediatric department shall not be used for boarding care of illegitimate, dependent, neglected, or defective children. If, at the end of the period for which progressive medical care is indicated, the hospital is unable to properly discharge such infants, their presence shall be reported to the division of maternal and child health of the state department of health for suitable action by said department.

(d) Policies shall be established to cover conditions under which parents may stay with small children or "room-in" with their hospitalized child for moral support and assistance with care.

(e) There shall be appropriate referrals to public health nurses or other agencies for follow-up care as needed.

(f) Adolescents shall be separated from younger children. Reasonable privacy, without limiting necessary observation, shall be available for adolescents. (Authorized by K.S.A. 65-431; effective Jan. 1, 1969.)

28-34-20. (Authorized by K.S.A. 65-431; effective Jan. 1, 1969; revoked June 28, 1993.)

28-34-20a. Outpatient and short-term procedure services. (a) General provisions. If the hospital provides outpatient services, those services shall be rendered in an effective and timely manner and shall be given only on the order of a physician or practitioner.

(b) Outpatient services.

(1) The director of the outpatient service shall possess qualifications that are consistent with the criteria, authority and duties defined in a written statement adopted by the hospital. The service shall be staffed with sufficient qualified personnel to meet the needs of the patients.

(2) Each outpatient service facility in which patient medical care is delivered shall be designed to ensure the privacy of each patient and the confi-

dentiality of the patient's disclosures. Consultation and examination rooms or cubicles appropriate to the size of the service shall be available for the use of the staff.

(c) Short-term procedure services.

(1) If the hospital maintains a short-term procedure unit for treating patients requiring surgery on an outpatient basis, the unit shall be established and administered according to procedures developed by the medical staff and adopted by the governing body. Provision shall be made for back-up services by other departments in the case of emergencies or complications.

(2) The following basic facilities shall be provided when outpatient surgery is performed:

(A) An appropriately equipped and staffed operating room and postoperative recovery room;

(B) appropriate means of control against the hazards of infection, electrical or mechanical failure, fire or explosions;

(C) facilities for sterilizing equipment and supplies for maintaining sterile techniques;

(D) appropriate equipment and instrumentation for anesthesia, emergency cardiopulmonary resuscitation and other physiologic support;

(E) a readily available oxygen supply with emergency tanks; and

(F) readily available suction equipment.

The operating room shall be located so that it does not directly connect with a corridor used for general through traffic.

(d) Policies and procedures.

(1) Policies and procedures shall be developed to guide personnel in the effective implementation of the objectives of the outpatient services.

(2) Outpatient services shall be provided in accordance with established policies and procedures. In hospitals which do not provide an organized emergency service but provide outpatient services, outpatient services shall be provided during regularly scheduled hours. The hours of operation for the outpatient service shall be posted in the outpatient service waiting area. (Authorized by and implementing K.S.A. 1991 Supp. 65-431; effective June 28, 1993.)

28-34-21. (Authorized by K.S.A. 65-431; effective Jan. 1, 1969; revoked March 23, 2001.)

28-34-22. Physical therapy department.

In hospitals where organized departments of physical therapy are established the following shall apply:

(a) Physical therapy services shall be under the direction of a physician.

(b) At least one registered physical therapist shall be employed for the department. In hospitals where the day-to-day services are provided by a physical therapy assistant or other supportive personnel, a part-time or consulting physical therapist shall be utilized to provide general supervision of the department.

(c) Other professional or supportive personnel shall be included as required to assure adequate patient care. All personnel shall be qualified by training or experience for the services they are rendering.

(d) Policies for the physical therapy department shall be written and shall be reviewed and revised as necessary.

(e) When a patient is referred to the physical therapy department, the treatment to be administered shall be recorded on the patient's chart, including all pertinent details of the treatment procedure.

(f) Records of inpatients and outpatients treated in the physical therapy department shall be maintained. The date of each patient visit shall be recorded as well as modalities employed and the area or areas treated. Patient progress notes shall be maintained.

(g) Facilities, space, and equipment required shall depend upon the physical therapy services provided, but shall be sufficient to assure adequate care. The equipment shall be maintained in proper working condition to assure adequate patient benefit. (Authorized by K.S.A. 1973 Supp. 65-431; effective Jan. 1, 1969; amended Jan. 1, 1974.)

28-34-23. Inhalation or respiratory therapy department. In hospitals with an organized inhalation department, the following shall apply:

(a) Inhalation or respiratory therapy services shall be under the guidance of a designated staff physician.

(b) Equipment shall be appropriate for the services provided and shall be checked periodically by the hospital for performance.

(c) The personnel working in the department shall be qualified for the type of services performed.

(d) Supplies shall be kept and stored in a manner that promotes safety in the hospital. (Authorized by K.S.A. 1973 Supp. 65-431; effective Jan. 1, 1974.)

28-34-24. Social services department. In hospitals with an organized department of social services, the following shall apply:

(a) The department shall be under the guidance of a qualified social worker.

(b) Appropriate facilities and personnel shall be provided in accordance with the hospital's program.

(c) Records shall be kept of the social services provided. (Authorized by K.S.A. 1973 Supp. 65-431; effective Jan. 1, 1974.)

28-34-25. Occupational therapy department. In hospitals with an organized occupational therapy department, the following shall apply:

(a) The department shall be under the guidance of a qualified occupational therapist.

(b) Facilities and personnel shall be provided commensurate with the hospital's program.

(c) Records shall be kept on the services provided. (Authorized by K.S.A. 65-431; effective Jan. 1, 1974.)

28-34-26 through 28-34-28. (Authorized by K.S.A. 1973 Supp. 65-431; effective Jan. 1, 1974; revoked March 23, 2001.)

28-34-29. (Authorized by and implementing K.S.A. 65-421; effective Jan. 1, 1974; revoked May 1, 1986.)

28-34-29a. Long-term care unit. (a) General provisions. If the hospital provides a long-term care service, such service shall be provided in a manner that meets the medical, rehabilitative, and social needs of the patient.

(b) Scope of services.

(1) The long-term service shall have a written program of restorative nursing care. This program shall be an integral part of nursing services and shall be directed toward assisting the patient to achieve and maintain an optimum level of self-care and independence.

(2) In addition to restorative services, the unit shall provide or arrange for specialized rehabilitation services by qualified personnel as needed by patients to improve and maintain functioning. Services shall include physical therapy, speech pathology, audiology, and occupational therapy and shall be provided by qualified personnel.

(3) A written, overall care plan shall be developed for each long-term care patient from an interdisciplinary assessment of the patient. The interdisciplinary assessment shall consist of med-

ical, nursing, dietary, activities, and psychosocial diagnoses or evaluations.

(c) Medical direction. A member of the medical staff shall be assigned responsibility for the medical direction of the service. The director shall be responsible for the overall coordination of medical care in the unit and shall participate in the development of policies and procedures for patient care, including the delineation of responsibilities of attending physicians.

(d) Nursing services.

(1) The nursing services director shall have the overall responsibility of providing nursing services. The immediate supervisor of nursing personnel assigned to long-term care services shall be a registered nurse employed on the day shift and whose responsibilities shall be limited to the long-term care unit. Licensed nursing personnel shall be in the building at all times to be available as needed to provide services in the long-term care unit.

(2) Nursing personnel shall be assigned duties consistent with their education and experience. Each nurse aide shall be trained and examined in accordance with K.A.R. 28-39-79 and K.A.R. 28-39-80. Each nurse aide trainee who provides direct, individual care to patients shall be under the direct, onsite supervision of a licensed nurse. Each nurse aide trainee shall complete requirements for and obtain certification as a nurse aide within six months of employment.

(3) Each patient shall receive direct, individual patient care at a minimum weekly average of 2.0 hours per 24 hours, and a daily average of not fewer than 1.85 hours during any 24-hour period. Only care provided by personnel exclusively assigned to the long-term care service, including nursing personnel, the activities director, and the social services designee, shall be considered in meeting the care requirements.

(e) Restraints. A signed physician's order shall be required for any restraint. The order shall include justification, type of restraint, and duration of application. A patient shall not be restrained unless, in the written opinion of the attending physician, restraints are required to prevent injury to the patient or to others.

(f) Patient care and hygiene. The long-term care service shall provide supportive services to maintain the patients' comfort and hygiene as follows:

(1) Patients confined to bed shall receive a complete bath every other day or more often as needed.

(2) Incontinent patients shall be checked at least every two hours and shall be given partial

baths and clean linens promptly when the bed or clothing is soiled.

(3) Pads shall be used to keep the patients dry and comfortable.

(4) Rubber, plastic, or other types of protectors shall be kept clean, completely covered, and not in direct contact with the patients.

(5) Soiled linen and clothing shall be removed immediately from the patients' rooms to prevent odors.

(6) Fresh water shall be available for each patient. For each non-ambulatory patient, fresh water or other fluids shall be available at the bedside at all times unless fluids are restricted by physician's order.

(7) Each patient shall be assisted with oral hygiene to keep mouth, teeth, or dentures clean. Measures shall be taken to prevent dry, cracked lips.

(8) A written, ongoing program for skin care shall be implemented as follows:

(A) Bony prominences and weight-bearing parts, such as heels, elbows, and back, shall be bathed and given care frequently to prevent discomfort and the development of pressure sores.

(B) Treatment for pressure sores shall be given according to written physician's orders.

(C) The position of each patient confined to bed shall be changed at least every two hours during the day and night.

(D) Each patient shall be positioned in good body alignment.

(E) Precautions shall be taken to prevent foot drop in bed patients.

(g) Restorative nursing care. Each nursing personnel shall receive regular staff development training sessions in restorative techniques. Documentation of such training shall be maintained.

(h) Specialized rehabilitative services.

(1) Rehabilitation needs shall be met either through services provided directly by the hospital or through arrangements with qualified outside resources.

(2) Commensurate with the services offered, adequate space and equipment shall be available.

(3) Each rehabilitative service performed shall be recorded in the patient's record and shall be signed and dated by the person providing the service.

(4) Written policies and procedures shall be developed for specialized rehabilitative services with input from qualified therapists and representatives of the medical, administrative, and nursing staffs.

(5) A written plan of care, initiated by the attending physician and developed in consultation

with the therapist or therapists involved and with nursing services, shall be developed for each patient receiving rehabilitative services. A report of the patient's progress shall be communicated to the attending physician within two weeks of the initiation of the service. Thereafter, the patient's progress shall be reviewed and revised on not less than a quarterly basis.

(i) Social services. The long-term care service shall have methods for identifying the medically-related, psychosocial needs of each patient. Needs shall be met by qualified staff of the hospital or by referral to an outside resource through established procedures. (Authorized by and implementing K.S.A. 65-431; effective May 1, 1986.)

28-34-30. (Authorized by K.S.A. 1973 Supp. 65-431; effective Jan. 1, 1974; revoked March 23, 2001.)

28-34-31. General sanitation and house-keeping. (a) Hospitals shall comply with applicable codes.

(b) Suitable equipment shall be provided for the regular cleaning of all interior surfaces. Operating and delivery rooms shall be thoroughly cleaned after each operation or delivery. Patient rooms shall be thoroughly cleaned after discharge. No wax shall be applied to conductive floors which will render them nonconductive. Adequate and conveniently located spaces shall be provided for the storage of janitorial supplies and equipment.

(c) The premises shall be kept neat, clean, and free of rubbish.

(d) Housekeeping procedures shall be written.

(e) All garbage and waste shall be collected, stored, and disposed of in a manner that will not encourage the transmission of contagious disease. Containers shall be washed and sanitized before being returned to work areas or shall be disposable.

(f) All openings to the outer air shall be effectively protected against the entrance of insects and other animals by self-closing doors, closed windows, screening, controlled air currents, or other effective means. Screening material shall not be less than 16 mesh to the inch or equivalent.

(g) A sufficient supply of cloth or disposable towels shall be available so that a fresh towel can be used after every handwashing. Common towels are prohibited.

(h) There shall be adequate handwashing facilities conveniently located.

(i) Common drinking cups shall be prohibited.

(j) Dry sweeping and dusting shall be prohibited. Use of a rotary buffer shall be prohibited in areas such as isolation to aid in reducing the spread of pathogenic bacteria.

(k) Adequate and conveniently located toilet facilities shall be provided.

(l) Periodic checks shall be made throughout the buildings and premises to enforce sanitation procedures. The times and results of such checks shall be recorded. (Authorized by K.S.A. 1973 Supp. 65-431; effective Jan. 1, 1974.)

28-34-32. (Authorized by and implementing K.S.A. 65-421; effective Jan. 1, 1974; revoked May 1, 1986.)

28-34-32a. (Authorized by and implementing K.S.A. 65-431; effective May 1, 1986; revoked June 28, 1993.)

28-34-32b. Construction standards. (a) General provisions. All hospital construction, including new buildings and additions or alterations to existing buildings, shall be in accordance with the standards set forth in the American institute of architects academy of architecture for health, publication no. ISBN 1-55835-151-5, entitled "1996-97 guidelines for design and construction of hospital and health care facilities," copyrighted in 1996, and hereby adopted by reference.

(b) Construction plans and specifications.

(1) Plans and specifications for each new hospital and each alteration and addition to any existing hospital, other than minor alterations, shall be prepared by an architect licensed in Kansas. "Minor alterations" means those projects that meet the following conditions:

(A) Do not affect the structural integrity of the building;

(B) do not change functional operation;

(C) do not affect fire safety; and

(D) do not add beds or facilities over those for which the hospital is licensed.

(2) The preliminary plan, plans and specifications at the outline specification stage, and plans and specifications at the contract document stage shall be made available to the licensing agency upon request.

(3) The preliminary plans shall include the following:

(A) Sketch plans of the basement, each floor, and the roof, indicating the space assignment, size, and outline of fixed equipment;

(B) all elevations and typical sections;

(C) a plot plan showing roads and parking facilities; and

(D) areas and bed capacities by floors.

(4) The outline specifications shall consist of a general description of the construction, air conditioning, heating, and ventilation systems.

(5) Contract documents shall consist of working drawings that are complete and adequate for bidding, contract, and construction purposes. Specifications shall supplement the drawings to fully describe the types, sizes, capacities, workmanship, finishes, and other characteristics of all materials and equipment. Before commencing construction, the architect shall certify, in writing, to the agency that the contract documents are in compliance with subsections (a), (b), and (c) of this regulation. The written certification shall also include the following:

(A) The name of the facility;

(B) a narrative description of extent of the project;

(C) the physical location of the project;

(D) any change in room numbers and bed assignments; and

(E) the expected completion date of the project to the licensing agency, which shall be provided at least 30 days before the project completion date.

(c) The administrator of the facility shall notify the state fire marshal's office of all hospital construction, alterations, or additions at the preliminary planning stage.

(d) Access. Representatives of the licensing agency shall, at all reasonable times, have access to work in preparation or progress, and the contractor shall provide proper facilities for the access and inspection. A complete set of plans and specifications shall be available on the job site for use by licensing agency personnel. (Authorized by and implementing K.S.A. 65-431; effective June 28, 1993; amended Feb. 9, 2001.)

PART 2. AMBULATORY SURGICAL CENTERS

28-34-50. Definitions. (a) "Administrator" means an individual appointed by the governing body to act on its behalf in the overall management of the ambulatory surgical center.

(b) "Ambulatory surgical center" means an establishment with the following:

(1) An organized medical staff of one or more physicians;

(2) permanent facilities that are equipped and operated primarily for the purpose of performing surgical procedures and do not provide services or other accommodations for patients to stay more than 24 hours;

(3) continuous physician services during surgical procedures and until the patient has recovered from the obvious effects of anesthesia, and at all other times with continuous physician services available whenever a patient is in the facility; and

(4) continuous registered professional nursing services whenever a patient is in the facility.

Before discharge from an ambulatory surgical center, each patient shall be evaluated by a physician for proper anesthesia recovery. Nothing in this regulation shall be construed to require the office of a physician or physicians to be licensed under this act as an ambulatory surgical center.

(c) "Anesthesiologist" means a physician who is licensed in Kansas to practice medicine and surgery and who has successfully completed a post-graduate medical education program and training program in anesthesiology.

(d) "Change of ownership" means any transaction that results in a change of control over the capital assets of an ambulatory surgical center.

(e) "Clinical laboratory improvement amendments" or "CLIA" is as published in 42 C.F.R. Part 493, as in effect on October 1, 1996 and hereby adopted by reference.

(f) "Dentist" means a person licensed in Kansas to practice dentistry.

(g) "Drug administration" means the direct application of a drug or biological, either by injection, inhalation, ingestion, or any other means, to the body of a patient by one of the following:

(1) A practitioner or individual pursuant to the lawful direction of a practitioner who is acting within the scope of that practitioner's license and who is qualified according to medical staff bylaws; or

(2) the patient at the direction and in the presence of a practitioner.

(h) "Drug dispensing" means delivering prescription medication to the patient pursuant to the lawful order of a practitioner.

(i) "Facilities" means buildings, equipment, and supplies necessary for delivery of ambulatory surgical center services.

(j) "Governing authority" means a board of directors, governing body, or individual in whom the ultimate authority and responsibility for management of the ambulatory surgical center is vested.

(k) "Licensing department" means the Kansas department of health and environment.

(l) "Licensed practical nurse (L.P.N.)" means an individual licensed in Kansas as a licensed practical nurse.

(m) “Medical staff” means a formal organization of physicians, dentists, and other practitioners who are appointed by the governing authority to attend patients within the ambulatory surgical center. Surgical procedures shall be performed only by practitioners within the scope of their practice who at the time are privileged to perform these procedures in at least one licensed hospital in the community in which the ambulatory surgical center is located, or the ambulatory surgical center shall have a written transfer agreement with the hospital.

(n) “Nursing services” means patient care services pertaining to the curative, restorative, and preventive aspects of nursing that are performed or supervised by a registered nurse pursuant to the medical care plan of the practitioner and the nursing care plan.

(o) “Organized” means administratively and functionally structured.

(p) “Organized medical staff” means a formal organization of physicians, dentists, and practitioners with the responsibility and authority to maintain proper standards of patient care as delegated by the governing authority.

(q) “Patient” means a person admitted to the ambulatory surgical center by and upon the order of a physician, or by a dentist in accordance with the orders of a physician who is a member of the medical staff.

(r) “Physician” means a person holding a valid license from the Kansas state board of healing arts to practice medicine and surgery.

(s) “Podiatrist” means a person holding a valid license from the Kansas state board of healing arts to practice podiatric medicine and surgery.

(t) “Practitioner” means a member of the ambulatory surgical center’s medical staff and may include a physician or dentist.

(u) “Qualified nurse anesthetist” means any of the following:

(1) A registered nurse who has been certified as a nurse anesthetist by the council on certification of the American association of nurse anesthetists and has been authorized as a registered nurse anesthetist by the Kansas state board of nursing;

(2) a student enrolled in a program of nurse anesthesia by the council on accreditation of the American association of nurse anesthetists; or

(3) a graduate of an accredited program of nurse anesthesia who is awaiting certification testing or the results of the certification test and has been granted temporary authorization as a regis-

tered nurse anesthetist by the Kansas state board of nursing.

(v) “Registered nurse (R.N.)” means a person who is licensed in Kansas as a registered professional nurse.

(w) “Supervision” means authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within that person’s sphere of competence. Supervision shall include initial direction and periodic inspection of the actual act of accomplishing the function or activity.

(x) “Survey” means the process of evaluation or reevaluation of an ambulatory surgical center’s compliance with this article. (Authorized by and implementing K.S.A. 2000 Supp. 65-429 and K.S.A. 65-431; effective Jan. 1, 1974; amended April 20, 2001.)

28-34-51. Licensing procedure. (a) No construction shall begin until plans and specifications covering the construction of new buildings, additions, or material alterations to existing buildings are submitted to the department, in writing, in accordance with K.A.R. 28-34-62a. A written narrative describing the intended use of the proposed construction shall accompany the plans and specifications.

(b) Ambulatory surgical centers shall be licensed to provide only those services for which they are qualified. The extent of the facility’s compliance with this article may be documented by the department in one of the following ways:

(1) The statement of a responsible, authorized administrator or staff member, which shall include one of the following:

(A) Documentary evidence of compliance provided by the facility; or

(B) answers by the facility to detailed questions provided by the licensing department concerning the implementation of any provisions of this article or examples of this implementation that allow a judgement about compliance to be made; or

(2) on-site observations by surveyors.

(c) The application for a license to establish or maintain an ambulatory surgical center shall be submitted to the licensing department. Each application shall be made in writing on forms provided by the department for a license for a new facility or for the renewal of a license for an existing facility. Applications for a license for each new facility shall be submitted at least 90 days before opening.

(d) Upon application for a license from a facility never before licensed, an inspection shall be made by the representative of the licensing department. Every building, institution, or establishment for which a license has been issued shall be periodically surveyed for compliance with the regulations of the licensing department.

(e) A license shall be issued by the department when both the following requirements are met:

(1) Construction is complete.

(2) The facility has completed an application form and is found to be in substantial compliance with K.S.A. 65-425 et seq., and amendments thereto, and K.A.R. 28-34-51 through K.A.R. 28-34-62a.

(f) If the facility is found to be in violation of this article, the applicant shall be notified in writing of each violation, and the applicant shall submit a plan of correction to the department. The plan shall state specifically what corrective action will be taken and the date on which it will be accomplished.

(g) Each licensee shall file an annual report on forms prescribed by the department. The license may be suspended or revoked at any time for noncompliance with this article of the licensing department and in accordance with the Kansas administrative procedure act, K.S.A. 77-501 et seq., and amendments thereto.

(h) The licensing department shall be notified within 60 days of any change in ownership or location of an ambulatory surgical center, and a new application form shall be submitted to the licensing department in the event of such a change.

(i) Within 60 days of issuance of an initial license, or following a change of ownership, the administrator shall submit the following information to the licensing department:

(1) Verification of professional liability coverage for the ambulatory surgical center in compliance with K.S.A. 40-3401 et seq., and amendments thereto; and

(2) a risk management plan in compliance with K.A.R. 28-52-1.

(j) The current license certificate issued by the licensing department shall be framed and conspicuously posted on the premises. The license certificate shall remain the property of the licensing department. (Authorized by and implementing K.S.A. 2000 Supp. 65-429 and K.S.A. 65-431; effective Jan. 1, 1974; amended April 20, 2001.)

28-34-52. (Authorized by K.S.A. 1973 Supp. 65-431; effective Jan. 1, 1974; revoked April 20, 2001.)

28-34-52a. Patient rights. (a) The governing authority shall ensure that the facility establishes policies and procedures that support the rights of all patients. At a minimum, each facility shall ensure that each patient has a right to the following:

(1) Receive respectful care given from competent personnel;

(2) receive information of the proposed treatment or procedures to be performed, potential complications, and expected outcomes;

(3) make health care decisions;

(4) access information contained in the patient's medical record, within the limits of state law, by each patient or patient's designated representative;

(5) maintain privacy and security of self and belongings during the delivery of patient care service;

(6) be informed of expected services and financial charges and receive an explanation of the patient's bill; and

(7) be informed of the facility's policies regarding patient rights.

(b) Grievances and complaints. The facility's policies and procedures shall establish a mechanism for responding to patient grievances and complaints.

(c) Reporting of grievances or complaints. Each person having a grievance or complaint pertaining to the provision of any patient services in an ambulatory surgical center may direct the grievance or complaint to the licensing department.

(d) Reporting of abuse, neglect, or exploitation.

(1) Each administrator of an ambulatory surgical center shall be responsible for reporting any incidents of abuse, neglect, or exploitation of any patient, in accordance with K.S.A. 39-1401 et seq., and amendments thereto.

(2) Each administrator of an ambulatory surgical center shall be responsible for reporting any incidents of abuse or neglect of children in accordance with K.S.A. 38-1521 et seq., and amendments thereto. (Authorized by and implementing K.S.A. 65-431; effective April 20, 2001.)

28-34-52b. Assessment and care of patients. (a) Each patient admitted to the ambulatory surgical center shall be under the care of a practitioner who is a member of the medical staff.

(b) Patient care shall meet the needs of the patient and shall be provided by qualified personnel.

(c) An initial assessment of each patient shall be completed by qualified staff. The assessment shall include the following information:

- (1) The patient's current physical status;
 - (2) a history and physical completed within 30 days before any procedure performed at the ambulatory surgical facility;
 - (3) the results of clinical laboratory tests or diagnostic reports;
 - (4) a preanesthesia evaluation conducted by a licensed, qualified practitioner granted clinical privileges by the medical staff and governing body; and
 - (5) the patient's nutritional status.
- (d) Each patient's identity shall be verified before the administration of any medication.
- (e) Blood and blood products may be administered only by a physician or a registered nurse.
- (f) Each patient's status shall be evaluated during anesthesia administration and shall be evaluated by a physician for proper anesthesia recovery before discharge.
- (g) The ambulatory surgical center shall have a written transfer agreement with a local hospital for the immediate transfer of any patient requiring medical care beyond the capability of the ambulatory surgical center, or each physician performing surgery at the ambulatory surgical center shall have admitting privileges with a local hospital.
- (h) If a patient is transferred to another facility, essential medical information, including the diagnosis, shall be forwarded with the patient to ensure continuity of care.
- (i) Each patient shall be discharged in the company of a responsible adult, unless this requirement is specifically waived by the attending physician.
- (j) Discharge planning shall include education for each patient and caregiver. The patient education shall be interdisciplinary and include at least the following information:
- (1) The patient's medical condition;
 - (2) the procedure and outcome of procedures performed;
 - (3) the need and availability of follow-up care; and
 - (4) the use of prescribed medication and medical equipment. (Authorized by and implementing K.S.A. 65-431; effective April 20, 2001.)

28-34-53. Governing authority. (a) The governing authority shall be the ultimate authority in the ambulatory surgical center, responsible

for its organization and administration, including appointment of the medical staff, employment of an administrator, review and revision of policies and procedures, and maintenance of a physical plant equipped and staffed to adequately meet the needs of the patients.

(b) The governing authority shall be organized in accordance with its approved bylaws, policies, and procedures and shall be in conformance with the Kansas statutes governing ambulatory surgical centers. A copy of the ambulatory surgical center's current bylaws shall be available for review by the licensing department.

(c) Bylaws of the governing authority shall provide for the selection and appointment of medical staff members based on defined criteria and in accordance with an established procedure for processing and evaluating applications for memberships. Each application for appointment and reappointment shall be submitted in writing and shall signify agreement of the applicant to conform with the bylaws of both the governing authority and medical staff and to abide by professional ethical standards.

(d) The governing authority shall demonstrate evidence of a liaison and close working relationship with the medical staff.

(e) The governing authority shall be responsible for the implementation of a risk management program, in accordance with K.S.A. 65-4921 et seq. and amendments thereto, and K.A.R. 28-52-1 through 28-52-4.

(f) The governing authority shall select and employ an administrator and shall notify the department of any change of administrator within five days after the change has been made.

(g) Each patient admitted to the ambulatory surgical center shall be under the care of a practitioner who is a member of the medical staff.

(h) The governing authority shall ensure that the ambulatory surgical center complies with the following:

- (1) Defines, in writing, the scope of services provided;
- (2) has an adequate number of qualified personnel; and
- (3) maintains effective quality control, quality improvement, and data management activities. (Authorized by and implementing K.S.A. 65-431; effective Jan. 1, 1974; amended April 20, 2001.)

28-34-54. Medical staff. (a) The ambulatory surgical center shall have an organized medical

staff, responsible to the governing authority of the ambulatory surgical center for the quality of all medical care provided to patients in the ambulatory surgical center and for the ethical and professional practices of its members.

(b) In each ambulatory surgical center, the medical staff, with the approval of and subject to final action by the governing authority, shall formulate and approve medical staff bylaws, policies, and procedures for the proper conduct of its activities and recommend to the governing authority practitioners considered eligible for membership on the medical staff, in accordance with K.A.R. 28-34-50(u).

(c) Each member of the medical staff shall be granted privileges that are commensurate with the member's qualifications, experience, and present capabilities and that are within the practitioner's scope of practice.

(d) Each member of the medical staff shall submit a written application for staff membership on a form prescribed by the governing authority. After considering medical staff recommendations, the governing authority shall affirm, deny, or modify each recommendation for appointment to the medical staff.

(e) Surgical procedures shall be performed only by practitioners who have been granted privileges by the governing authority to perform surgical procedures.

(f) The medical staff of each ambulatory surgical center shall develop a policy stipulating which surgically removed tissues will be sent to a pathologist for review. This policy shall be approved by the governing authority.

(g) The medical staff bylaws shall require at least one physician member of the medical staff to be available to the ambulatory surgical center at all times that a patient is receiving or recovering from local, general, or intravenous sedation. The staffing shall meet the needs of the patients.

(h) The medical staff shall hold regular meetings for which records of attendance and minutes shall be kept.

(i) Medical staff committee minutes and information shall neither be a part of individual patient records nor be subject to review by other than medical staff members, except as otherwise provided by the governing authority.

(j) The medical staff shall review and analyze at regular intervals the clinical experience of its members and the medical records of patients on a sampling or other basis. All techniques and pro-

cedures involving the diagnosis and treatment of patients shall be reviewed periodically and shall be subject to change by the medical staff.

(k) The medical staff shall participate in risk management activities, in accordance with K.S.A. 65-4921 et seq., and amendments thereto, and K.A.R. 28-52-1 through 28-52-4, and with the ambulatory surgical center's risk management plan. Any ambulatory surgical center having a medical staff with fewer than two physician members shall include provisions for outside peer review in the risk management plan.

(l) All medical orders shall be given by a practitioner and recorded in accordance with the medical staff policies and procedures. All orders shall be signed or either countersigned or initialed by the attending physician, dentist, or podiatrist.

(m) The medical staff and the governing authority shall review the medical staff privileges at least every two years. (Authorized by and implementing K.S.A. 65-431; effective Jan. 1, 1974; amended April 20, 2001.)

28-34-55. (Authorized by K.S.A. 1973 Supp. 65-431; effective Jan. 1, 1974; revoked April 20, 2001.)

28-34-55a. Human resources. (a) The ambulatory surgical center shall provide an adequate number of qualified staff to meet the needs of the patients.

(b) All nursing and ancillary staff employed by or contracted with the ambulatory surgical center shall be qualified and shall provide services consistent with the scope of practice granted by the license, registration, or certification regulations.

(c) One registered nurse shall be on duty at all times whenever a patient is in the ambulatory surgical center.

(d) The ambulatory surgical center shall provide all nursing and ancillary staff services in accordance with written policies and procedures consistent with professional practice standards and reviewed and revised, as necessary.

(e) The governing authority shall ensure that all employees are provided information related to the reporting of reportable incidents in accordance with the ambulatory surgical center's risk management plan.

(f) The governing authority shall ensure that ongoing staff education and training are provided to continually improve patient care services.

(g) The ambulatory surgical center shall main-

tain personnel records on each employee that shall include the job application, professional and credentialing information, health information, and annual performance evaluations. (Authorized by and implementing K.S.A. 65-431; effective April 20, 2001.)

28-34-56. (Authorized by K.S.A. 1973 Supp. 65-431; effective Jan. 1, 1974; revoked April 20, 2001.)

28-34-56a. Anesthesia services. (a) If there is a department of anesthesia, it shall be directed by a member of the medical staff with appropriate clinical and administrative experience. The clinical privileges of qualified anesthesia personnel shall be reviewed by the director of anesthesia services and the medical staff and approved by the governing authority.

(b)(1) An anesthesiologist or physician shall be on the premises and readily accessible during the administration of anesthetics, whether local, general, or intravenous, and the postanesthesia recovery period until all patients are alert or medically discharged from the postanesthesia area. Qualified anesthesia personnel shall be present in the room through the administration of all general anesthetics, regional anesthetics, and monitored anesthesia care and shall continuously evaluate the patient's oxygenation, ventilation, circulation, and temperature.

(2) The following equipment shall be available as the scope of practice requires:

(A) Oxygen analyzers;

(B) a pulse oximeter; and

(C) electrocardiography, blood pressure, resuscitation, and suction equipment.

(c) The medical staff, in consultation with qualified anesthesia personnel, shall develop policies and procedures on the administration of anesthetics and drugs that produce conscious and deep sedation and on postanesthesia care. These policies and procedures shall be approved by the governing authority.

(d) Before undergoing general anesthesia, each patient shall have a history and physical examination by a physician entered in the patient's record, including the results of any necessary laboratory examination. A physician shall examine the patient immediately before surgery and shall evaluate the risk of anesthesia and of the procedure to be performed.

(e) The anesthesiologist or anesthesiologist shall dis-

cuss anesthesia options and risks with the patient or family before surgery.

(f) Qualified anesthesia personnel shall develop a plan of anesthesia care with the physician or dentist. The patient records shall contain a preanesthetic evaluation and a postanesthetic note by qualified anesthesia personnel. Anesthesia services shall write postanesthetic policies and procedures. Follow-up notes shall include postoperative abnormalities or complications.

(g) Flammable anesthetics shall not be used in the ambulatory surgical center.

(h) Anesthesia shall be provided only by a qualified individual licensed to administer anesthesia by the Kansas board of healing arts, the Kansas board of nursing, or the Kansas dental board. Each certified registered nurse anesthetist shall work in an interdependent role as a member of a physician- or dentist-directed health care team.

(i) All anesthetics shall be properly labeled and inventoried according to the facility's policies and procedures.

(j) All equipment for the administration of anesthetics shall be made available, cleaned with a facility-approved disinfectant and clean cloth, and maintained in good working condition.

(k) Written procedures and criteria for discharge from the recovery service shall be approved by the medical staff. Each patient who has received anesthesia shall be discharged in the company of a responsible adult, unless the requirement is specifically waived by the attending physician.

(l) There shall be a mechanism for the review and evaluation, according to the facility's policies and procedures, of the quality and scope of anesthesia services. (Authorized by and implementing K.S.A. 65-431; effective April 20, 2001.)

28-34-57. Medical records. (a) A medical record shall be maintained for each patient cared for in the ambulatory surgical center. The records shall be documented and retrievable by authorized persons.

(b) Each medical record shall be the property of the ambulatory surgical center. Only persons authorized by the governing authority shall have access to medical records. These persons shall include individuals designated by the licensing department for verifying compliance with the state or federal regulations, and for disease control investigations of public health concern.

(c) Each medical record shall be maintained in

a retrievable form for 10 years after the date of last discharge of the patient, or one year after the date that the minor patient reaches the age of 18, whichever is greater.

(d) Each medical record shall contain the following information, if applicable:

- (1) Patient identification data;
- (2) patient consent forms;
- (3) patient history and physical;
- (4) clinical laboratory reports;
- (5) physician's or physicians' orders;
- (6) radiological reports;
- (7) consultations;
- (8) anesthesia records;
- (9) surgical reports;
- (10) tissue reports;
- (11) progress notes;
- (12) a description of the care given to that patient based on the type of surgical procedure;
- (13) the signature or initials of authorized personnel on notes or observations;
- (14) the final diagnosis;
- (15) the discharge summary;
- (16) discharge instructions to the patient;
- (17) a copy of transfer form; and
- (18) the autopsy findings.

(e) Each record shall be dated and authenticated by the person making the entry. Nursing notes and observations shall be signed and dated by the registered nurse or licensed practical nurse making the entry. Verbal orders by authorized individuals shall be accepted and transcribed only by designated personnel.

(f) The ambulatory surgical center shall furnish, to the appropriate authority, all available information on deceased patients for completion of a death certificate.

(g) The medical record shall be completed within 30 days following the patient's discharge.

(h) Statistical data, administrative records, and records of reportable diseases as required shall be maintained and submitted by the ambulatory surgical center to the licensing department, as requested.

(i) Adequate space, facilities, and equipment shall be provided for completion and storage of medical records.

(j) Nothing in this article shall be construed to prohibit the use of properly automated medical records or use of other automated techniques, if these regulations are met. (Authorized by and implementing K.S.A. 65-431; effective Jan. 1, 1974; amended April 20, 2001.)

28-34-58. (Authorized by K.S.A. 1973 Supp. 65-431; effective Jan. 1, 1974; revoked April 20, 2001.)

28-34-58a. Infection control. (a) Each ambulatory surgical center shall establish and maintain an ongoing infection control program. The program shall be based upon guidelines established by the centers for disease control and the licensing department. The program shall include the following:

(1) Measures for the surveillance, prevention, and control of infections;

(2) the assignment of the primary responsibility for the program, as well as medical staff participation and review of findings, to an individual;

(3) written policies and procedures outlining infection control measures and aseptic techniques;

(4) orientation and ongoing education provided to all personnel on the cause, effect, transmission, and prevention of infections;

(5) policies and procedures that require all employees to adhere to universal precautions to prevent the spread of blood-borne infectious diseases;

(6) policies and procedures related to employee's health;

(7) review and evaluation, according to the facility's policies and procedures, of the quality and effectiveness of infection control throughout the ambulatory surgical center; and

(8) provisions for reporting, to the licensing department, infectious or contagious diseases in accordance with K.A.R. 28-1-2.

(b) Personnel health requirements. Upon employment, each individual shall have a medical examination consisting of examinations appropriate to the duties of the employee, including a tuberculin skin test. Subsequent medical examinations or health assessments shall be given periodically in accordance with the facility's policies. Each ambulatory surgical center shall develop policies and procedures for the control of communicable diseases, including maintenance of immunization histories and the provision of educational materials for patient care staff. Cases of employees with tuberculin skin test conversion shall be reported to the Kansas department of health and environment.

(c) Any personnel having a condition detrimental to patient well-being, or suspected of having such a condition, shall be excluded from work until the requirements of K.A.R. 28-1-6 are met.

(d) Sanitation and housekeeping. Each ambulatory surgical center shall comply with the following procedures:

- (1) Be kept neat, clean, and free of rubbish;
- (2) develop written housekeeping procedures;
- (3) provide hand-washing facilities; and
- (4) develop written procedures for the laundering of linen and washable goods.

(e) Soiled and clean linen shall be handled and stored separately.

(f) All garbage and waste shall be collected, stored, and disposed of in a manner that does not encourage the transmission of contagious disease. Containers shall be washed and sanitized before being returned to work areas, or the containers may be disposable.

(g) Staff shall make periodic checks, according to the facility's policies and procedures, throughout the premises to enforce sanitation procedures.

(h) Sterilizing supplies and equipment. The governing authority shall establish written policies and procedures for the storage, maintenance, and distribution of supplies and equipment.

(1) Sterile supplies and equipment shall not be mixed with unsterile supplies and shall be stored in dustproof and moisture-free units. These sterile units shall be labeled.

(2) Sterilizers and autoclaves shall be provided, of the appropriate type and necessary capacity, to sterilize instruments, utensils, dressings, water, and operating and delivery room materials, as well as laboratory equipment and supplies. The sterilizers shall have approved control and safety features. The accuracy of instruments shall be checked, and surveillance methods, according to the facility's policies and procedures, for checking sterilization procedures shall be employed.

(3) The date of sterilization or date of expiration shall be marked on all sterile supplies, and unused items shall be resterilized in accordance with written policies. (Authorized by and implementing K.S.A. 65-431; effective April 20, 2001.)

28-34-59. (Authorized by K.S.A. 1973 Supp. 65-431; effective Jan. 1, 1974; revoked April 20, 2001.)

28-34-59a. Ancillary services. (a) The ambulatory surgical center shall provide, either directly or through agreement, laboratory, radiology, and pharmacy services to meet the needs of the patients.

(b) Laboratory services. If the ambulatory sur-

gical center provides its own clinical laboratory services, the following criteria shall be met:

(1) The laboratory performing analytical tests within the ambulatory surgical center shall hold a valid CLIA certificate for the type and complexity of all tests performed.

(2) An authorized individual shall, through written or electronic means, request all tests performed by the laboratory. The individual or individuals serving as the laboratory's clinical consultant or consultants shall be as defined in 42 C.F.R. 493.1417(b), as in effect on October 1, 1996 and hereby adopted by reference.

(3) The original report or duplicate copies of written tests, reports, and supporting records shall be retained in a retrievable form by the laboratory for at least the following periods:

- (A) Two years for routine test reports;
- (B) five years for blood banking test reports; and
- (C) 10 years for histologic or cytologic test reports.

(4) Facilities for procurement, safekeeping, and transfusion of blood, blood products, or both shall be provided or available. If blood products or transfusion services are provided by sources outside the ambulatory surgical center, outside sources shall be provided by a CLIA-certified laboratory. The source shall be certified for the scope of testing performed or products provided.

(c) If the ambulatory surgical center contracts for laboratory services, the center shall have a written agreement with that CLIA-certified laboratory.

(d) Radiology services. If the ambulatory surgical center provides its own radiology services, the services shall meet the requirements specified in K.S.A. 48-1607, and amendments thereto.

(e) The ambulatory surgical center staff shall meet the following standards:

- (1) Allow only trained and qualified individuals to operate radiology equipment;
- (2) document annual checks and calibration of all radiology equipment and maintain records of such;

(3) ensure that all radiology and diagnostic services are provided only on the order of a physician; and

(4) document the presence of signed and dated clinical reports of the radiological or diagnostic findings in the patient's record.

(f) If the ambulatory surgical center contracts for radiology services, it shall have a written agreement with a medicare-approved radiology provider or supplier.

(g) Pharmacy services. Each ambulatory surgical center shall provide pharmaceutical services that are appropriate for the services offered by the ambulatory surgical center.

(h) The pharmaceutical service shall be under the direction of an individual designed responsible for the service and shall be provided in accordance with K.A.R. 68-7-11.

(i) Policies and procedures. There shall be policies and procedures developed by a pharmacist, and approved by the governing authority, related to the following:

- (1) Storage of drugs;
- (2) security of drugs;
- (3) labeling and preparation of drugs;
- (4) administration of drugs; and
- (5) disposal of drugs.

(j) All drugs and biologicals shall be ordered pursuant to a written order issued by a licensed physician.

(k) Each adverse drug reaction shall be reported to the physician responsible for the patient and shall be documented in the patient's record.

(l) Drugs requiring refrigeration shall be stored in a refrigerator that is used only for drug storage.

(m) Quality assurance. There shall be a mechanism for the ongoing review and evaluation of the quality and scope of radiological, laboratory, and pharmacy services. (Authorized by and implementing K.S.A. 65-431; effective April 20, 2001.)

28-34-60. (Authorized by K.S.A. 1973 Supp. 65-431; effective Jan. 1, 1974; revoked April 20, 2001.)

28-34-60a. Food services. (a) Food service and food service policies and procedures shall reflect the level of services offered to meet the needs of the patients.

(b) The food and nutritional needs of patients shall be met in accordance with physician's orders.

(c) There shall be written policies for food storage, preparation, and service. Policies shall meet the following standards:

(1) There shall be a separate storage area above the floor level for food.

(2) Food transportation equipment shall be cleaned and disinfected daily or after each use if uneaten food or unclean dishes are transported.

(3) There shall be separate hand-washing facilities in the food preparation and service area.

(4) The temperature in each food freezer shall be no higher than 0° Fahrenheit.

(5) Dishes and utensils shall be washed in water at 140° Fahrenheit and shall be rinsed at 180° Fahrenheit, or a ware-washing machine and its auxiliary components shall be operated in accordance with the machine's data plate and any other manufacturer's instructions.

(6) Foods being transported shall be protected from contamination and held at required temperatures in clean containers or serving carts.

(7) Except during preparation, cooking, or cooling, potentially hazardous food shall be maintained at or above 140° Fahrenheit or at or below 41° Fahrenheit.

(8) Storage of toxic agents shall be prohibited in food preparation and food serving areas.

(9) Food returned on patients' trays shall not be reused. (Authorized by and implementing K.S.A. 65-431; effective April 20, 2001.)

28-34-61. (Authorized by K.S.A. 1973 Supp. 65-431; effective Jan. 1, 1974; revoked April 20, 2001.)

28-34-61a. Physical environment. (a) Each ambulatory surgical center shall be designed, constructed, equipped, and maintained to protect the health and safety of patients, staff, and visitors.

(b) Each ambulatory surgical center shall include the following features:

- (1) A separate recovery area and waiting area;
- (2) business office facilities;
- (3) storage areas designated for janitorial supplies and equipment; and
- (4) separate toilet facilities designated for patients, staff, and visitors.

(c) Equipment.

(1) Patient resuscitation and suction equipment shall be available in the surgical area at all times.

(2) All equipment shall be clean, functional, and maintained in accordance with the manufacturer's instruction.

(3) Each fire extinguisher shall be the type approved by underwriters laboratories. Extinguishers shall be inspected and tagged annually to assure that nothing has been tampered with or moved from designated areas. All extinguishers shall be functional.

(d) Fire and disaster drills. Each ambulatory surgical center shall meet the following requirements:

(1) Develop a written fire evacuation plan. Drills shall be held according to the facility's policies and procedures to prepare employees for evacuation

of patients, staff, and visitors during a fire emergency. A record of each drill shall be kept on file.

(2) Develop a written plan for addressing the safety of patients, staff, and visitors during disasters. Periodic drills shall be held, and a record of each drill shall be kept on file.

(e) Smoking shall be prohibited in each ambulatory surgical center, and “no smoking” signs shall be posted in accordance with K.S.A. 21-4017, and amendments thereto.

(f) Use of space. The physical space licensed as an ambulatory surgical center shall be separate from any physician’s office. (Authorized by and implementing K.S.A. 65-431; effective April 20, 2001.)

28-34-62. (Authorized by and implementing K.S.A. 65-431; effective Jan. 1, 1974; amended June 12, 1979; revoked May 1, 1986.)

28-34-62a. Construction standards. (a) General provisions. All ambulatory surgical center construction, including new buildings and additions or alterations to existing buildings, shall be in accordance with standards set forth in sections 1, 2, 3, 4, 5, 6, and subsections 9.1, 9.2, 9.5, 9.9, 9.10, 9.31, and 9.32 in the American institute of architects academy of architecture for health publication no. ISBN 1-55835-151-5, entitled “1996-97 guidelines for design and construction of hospital and health care facilities,” copyrighted in 1996, and hereby adopted by reference.

(b) Provisions for handicapped. All construction shall be in compliance with K.S.A. 58-1301 et seq., and amendments thereto.

(c) Construction plans and specifications.

(1) Plans and specifications for each new ambulatory surgical center and each alteration and addition to any existing ambulatory surgical center, other than minor alterations, shall be prepared by an architect licensed in Kansas and shall be submitted to the licensing department before beginning construction. “Minor alterations” means those projects that do not affect the structural integrity of the building, do not change functional operation, and do not affect fire safety.

(2) Plans shall be submitted at the preliminary plan and outline specification stage.

(3) The preliminary plans shall include the following information:

(A) Sketch plans of the basement, each floor, and the roof indicating the space assignment, size, and outline of fixed equipment;

(B) all elevations and typical sections;

(C) a plot plan showing roads and parking facilities; and

(D) areas and bed capacities by floors.

(4) Outline specifications shall consist of a general description of the construction, air conditioning, heating, and ventilation systems.

(5) Contract documents and final plans shall be prepared by the architect and consist of working drawings that are complete and adequate for bidding, contract, and construction purposes. Specifications shall supplement the drawings to fully describe the types, sizes, capacities, workmanship, finishes, and other characteristics of all materials and equipment. Contract documents shall be submitted to the licensing department, if requested. The architect shall certify that contract documents and final plans are in compliance with subsections (a) and (b) of this regulation.

(d) Access. Representatives of the licensing department shall, at all reasonable times, have access to work in preparation or progress, and the contractor shall provide proper facilities for this access and inspection. A complete set of plans and specifications shall be available on the job site for use by licensing department personnel. (Authorized by and implementing K.S.A. 65-431; effective May 1, 1986; amended, T-87-51, Dec. 19, 1986; amended May 1, 1987; amended Dec. 29, 1995; amended April 20, 2001.)

PART 3. RECUPERATION CENTERS

28-34-75. (Authorized by K.S.A. 1973 Supp. 65-431; effective Jan. 1, 1974; revoked March 23, 2001.)

28-34-76. (Authorized by K.S.A. 1979 Supp. 65-428, 65-429, 65-431; effective Jan. 1, 1974; amended May 1, 1980; revoked March 23, 2001.)

28-34-77 through 28-34-93. (Authorized by K.S.A. 1973 Supp. 65-431; effective Jan. 1, 1974; revoked March 23, 2001.)

28-34-94. (Authorized by K.S.A. 1979 Supp. 65-431; effective Jan. 1, 1974; amended, E-80-8, June 12, 1979; amended May 1, 1980; revoked, T-87-51, Dec. 19, 1986; revoked May 1, 1987.)

PART 4. CONSTRUCTION STANDARDS

28-34-94a. (Authorized by and implementing K.S.A. 65-431; effective, T-87-51, Dec. 19, 1986; effective May 1, 1987; revoked March 23, 2001.)

28-34-125. (Authorized by and implementing K.S.A. 65-431; effective May 1, 1987; revoked June 28, 1993.)

28-34-126. Definitions. For the purposes of K.A.R. 28-34-126, 28-34-127, and 28-34-129 through 28-34-144, the following terms shall have the meanings specified in this regulation. (a) “Admitting privileges” means permission extended by a hospital to a physician to allow the physician to admit a patient to that hospital either as active or courtesy staff.

(b) “Ancillary services” means laboratory, radiology, or pharmacy services.

(c) “Ancillary staff member” means an individual who performs laboratory, radiology, or pharmacy services at a facility.

(d) “Applicant” means a person who has applied for a license but who has not yet been granted a license to operate a facility.

(e) “Clinical privileges” means permission extended by a hospital to a physician to allow the physician to provide treatment to a patient in that hospital.

(f) “Health professional” means an individual, other than a physician, who is one of the following:

(1) A nurse licensed by the Kansas state board of nursing; or

(2) a physician assistant licensed by the Kansas state board of healing arts.

(g) “Licensee” means a person who has been granted a license to operate a facility.

(h) “Medical staff member” means an individual who is one of the following:

(1) A physician licensed by the Kansas state board of healing arts;

(2) a health professional; or

(3) an ancillary staff member.

(i) “Newborn child” means a viable child delivered during an abortion procedure.

(j) “Person” means any individual, firm, partnership, corporation, company, association, or joint-stock association, and the legal successor thereof.

(k) “Reportable incident” means an act by a medical staff member which:

(1) Is or may be below the applicable standard of care and has a reasonable probability of causing injury to a patient; or

(2) may be grounds for disciplinary action by the appropriate licensing agency.

(l) “Risk manager” means the individual designated by the applicant or licensee to administer the facility’s internal risk management program

and to receive reports of reportable incidents within the facility.

(m) “Staff member” means an individual who provides services at the facility and who is compensated for those services.

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

(o) “Viable” shall have the same meaning ascribed in K.S.A. 65-6701, and amendments thereto.

(p) “Volunteer” means an individual who provides services at the facility and who is not compensated for those services. (Authorized by L. 2011, ch. 82, sec. 9; implementing L. 2011, ch. 82, sec. 1; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

28-34-127. Application process. (a) Any person desiring to operate a facility shall apply for a license on forms provided by the department.

(b) Each applicant shall submit a fee of \$500 for a license. The applicable fee shall be submitted at the time of license application and shall not be refundable.

(c) Before initial licensing each applicant shall submit to the department the following information:

(1) Written verification from the applicable local authorities showing that the premises are in compliance with all local codes and ordinances, including all building, fire, and zoning requirements;

(2) written verification from the state fire marshal showing that the premises are in compliance with all applicable fire codes and regulations;

(3) documentation of the specific arrangements that have been made for the removal of biomedical waste and human tissue from the premises; and

(4) documentation that the facility is located within 30 miles of an accredited hospital.

(d) The granting of a license to any applicant may be denied by the secretary if the applicant is not in compliance with all applicable laws, rules, and regulations. (Authorized by L. 2011, ch. 82, sec. 9; implementing L. 2011, ch. 82, secs. 2 and 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

28-34-129. Terms of a license. (a) Each license shall be effective for one year following the date of issuance.

(b) Each license shall be valid for the licensee and the address specified on the license. When an initial, renewed, or amended license becomes

effective, all licenses previously granted to the applicant or licensee at the same address shall become invalid.

(c) Only one physical location shall be described in each license.

(d) Any applicant may withdraw the application for a license.

(e) Any licensee may submit, at any time, a request to close the facility permanently and to surrender the license.

(f) If a facility is closed, any license granted for that facility shall become void. (Authorized by L. 2011, ch. 82, sec. 9; implementing L. 2011, ch. 82, sec. 2; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

28-34-130. Renewals; amendments. (a) No earlier than 90 days before but no later than the renewal date, each licensee wishing to renew the license shall submit the following:

(1) The nonrefundable license fee of \$500; and
(2) an application to renew the license on the form provided by the department.

(b) Each licensee shall submit a request for an amended license to the department within 30 days after either of the following:

(1) A change of ownership by purchase or by lease; or
(2) a change in the facility's name or address. (Authorized by L. 2011, ch. 82, sec. 9; implementing L. 2011, ch. 82, secs. 2, 3, and 4; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

28-34-131. Operation of the facility. (a) Each applicant and each licensee shall be responsible for the operation of the facility.

(b) Each applicant and each licensee shall:

(1) Ensure compliance with all applicable federal, state, and local laws;
(2) serve as or designate a medical director who is a physician licensed by the Kansas state board of healing arts and who has no limitations to the license that would prohibit the physician's ability to serve in the capacity as a medical director of a facility; and
(3) ensure the following documents are conspicuously posted at the facility:

(A) The current facility license issued by the department; and

(B) the current telephone number and address of the department.

(c) Each applicant and each licensee shall ensure that written policies and procedures are de-

veloped and implemented for the operation of the facility. The policies and procedures shall include the following requirements:

(1) An organized recordkeeping system to meet the requirements in K.A.R. 28-34-144;

(2) documentation of personnel qualifications, duties, and responsibilities to meet the requirements in K.A.R. 28-34-132;

(3) that the facility is designed, constructed, equipped, and maintained to protect the health and safety of patients, staff, and visitors to meet the requirements in K.A.R. 28-34-133 through 28-34-136;

(4) ensure proper and adequate medical screening and evaluation of each patient to meet the requirements in K.A.R. 28-34-137;

(5) consent is obtained from each patient before the procedure;

(6) safe conduct of abortion procedures to meet the requirements in K.A.R. 28-34-138;

(7) the appropriate use of anesthesia, analgesia and sedation to meet the requirements in K.A.R. 28-34-138;

(8) ensure the use of appropriate precautions for any patient undergoing a second or third trimester abortion to meet the requirements in K.A.R. 28-34-138;

(9) post-procedure care of patients to meet the requirements in K.A.R. 28-34-139;

(10) identify and ensure a physician with admitting privileges at an accredited hospital located within 30 miles of the facility is available during facility hours of operation;

(11) if indicated, the transfer of any patient and newborn child to a hospital to meet the requirements in K.A.R. 28-34-140;

(12) follow-up and aftercare for each patient receiving an abortion procedure in the facility to meet the requirements in K.A.R. 28-34-141;

(13) a written plan for risk management to meet the requirements in K.A.R. 28-34-142, including policies and procedures for staff member or volunteer reporting of any clinical care concerns; and

(14) ensure that incidents that require reporting to the department are completed as required in K.A.R. 28-34-143. (Authorized by L. 2011, ch. 82, sec. 9; implementing L. 2011, ch. 82, secs. 2 and 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

28-34-132. Staff requirements. (a) Each applicant and each licensee shall ensure that each physician performing surgery in a facility is approved by the medical director, licensed to prac-

tice medicine and surgery in the state of Kansas, and demonstrates competence in the procedure involved in the physician's duties at the facility. Competence shall be demonstrated through both of the following means and methods:

(1) Documentation of education and experience; and

(2) observation by or interaction with the medical director.

(b) Each applicant and each licensee shall ensure the following:

(1) A physician with admitting privileges at an accredited hospital located within 30 miles of the facility is available.

(2) Any physician performing or inducing abortion procedures in the facility has clinical privileges at a hospital located within 30 miles of the facility.

(c) Each applicant and each licensee shall ensure that each individual who performs an ultrasound is one of the following:

(1) A physician licensed in the state of Kansas who has completed a course for the type of ultrasound examination the physician performs; or

(2) an individual who performs ultrasounds under the supervision of a physician and who meets all of the following requirements:

(A) Has completed a course in performing ultrasounds;

(B) has completed a training for the specific type of ultrasound examination the individual performs; and

(C) is not otherwise precluded by law from performing ultrasound examinations.

(d) Each applicant and each licensee shall ensure that each staff member employed by or contracted with the facility is licensed, if required by state law, is qualified, and provides services to patients consistent with the scope of practice of the individual's training and experience.

(e) Each applicant and each licensee shall ensure that each surgical assistant employed by or contracted with the facility receives training in the specific responsibilities of the services the surgical assistant provides in the facility.

(f) Each applicant and each licensee shall ensure that each volunteer receives training as identified by the medical director in the specific responsibilities the volunteer provides at the facility.

(g) Each applicant and each licensee shall ensure that at least one physician or registered nurse is certified in advanced cardiovascular life support and is present at the facility when any patient who is having an abortion procedure or recovering

from an abortion procedure is present at the facility. (Authorized by and implementing L. 2011, ch. 82, sec. 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

28-34-133. Facility environmental standards. (a) Each applicant and each licensee shall ensure that the facility is designed, constructed, equipped, and maintained to protect the health and safety of patients, staff members, volunteers, and visitors.

(b) Each facility shall include the following rooms and areas:

(1) At least one room designated for patient interviews, counseling, and medical evaluations, located and arranged to preserve patient privacy;

(2) at least one dressing room for patients only and arrangements for storage of patient clothing and valuables;

(3) at least one dressing room for staff members, including a toilet, hand washing station, and arrangements for storage for staff member clothing and valuables;

(4) a toilet room and hand washing station designated for patients;

(5) hand washing stations for pre-procedure hand washing by staff members;

(6) private procedure rooms and doorways of those rooms of sufficient size to accommodate the following:

(A) The equipment, supplies, and medical staff members required for performance of an abortion procedure; and

(B) emergency equipment and personnel in the event of a transfer, as described in K.A.R. 28-34-140;

(7) a recovery area that meets all of the following requirements:

(A) Has a nurse station with visual observation of each patient in the recovery area;

(B) provides privacy for each patient in the recovery area with at least cubicle curtains around each patient gurney or bed; and

(C) has sufficient space to accommodate emergency equipment and personnel in the event of a transfer, as described in K.A.R. 28-34-140;

(8) a waiting area for patients and visitors;

(9) an administrative area, including office space for the secure filing and storage of facility patient records;

(10) a workroom separate from the procedure rooms for cleaning, preparation, and sterilization

of instruments, arranged to separate soiled or contaminated instruments from clean or sterilized instruments, including the following:

- (A) A hand washing station;
- (B) receptacles for waste and soiled items;
- (C) designated counter space for soiled or contaminated instruments;
- (D) a sink for cleaning soiled or contaminated instruments;
- (E) designated counter space for clean instruments; and
- (F) an area for sterilizing instruments, if sterilization is completed at the facility;
- (11) storage space for clean and sterile instruments and supplies; and
- (12) at least one room equipped with a service sink or a floor basin and space for storage of janitorial supplies and equipment. (Authorized by and implementing L. 2011, ch. 82, sec. 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

28-34-134. Health and safety requirements. (a) Each applicant and each licensee shall ensure that the facility meets the following health and safety requirements:

- (1) The temperature in each procedure room and in each recovery area shall be between 65 and 75 degrees Fahrenheit unless otherwise ordered by a physician in order to meet the comfort or medical needs of the patient.
- (2) Fixed or portable lighting units shall be present in each examination, procedure, and recovery room or area, in addition to general lighting.
- (3) Each emergency exit shall accommodate a stretcher or a gurney.
- (4) The facility shall be maintained in a clean condition.
- (5) The facility shall not be infested by insects and vermin.
- (6) A warning notice shall be placed at the entrance to any room or area where oxygen is in use.
- (7) Soiled linen and clothing shall be kept in covered containers in a separate area from clean linen and clothing.
- (b) A written emergency plan shall be developed and implemented, including procedures for protecting the health and safety of patients and other individuals in any of the following circumstances:
 - (1) A fire;
 - (2) a natural disaster;
 - (3) loss of electrical power; or
 - (4) threat or incidence of violence.

(c) An evacuation drill shall be conducted at least once every six months, including participation by all individuals in the facility at the time of the drill. Documentation shall be maintained at the facility for one year from the date of the drill and shall include the date and time of the drill. (Authorized by and implementing L. 2011, ch. 82, sec. 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

28-34-135. Equipment; supplies; drugs and medications. (a) Each applicant and each licensee shall ensure that supplies, equipment, drugs, and medications are immediately available for use or in an emergency.

(b) Equipment and supplies shall be maintained in the amount required to assure sufficient quantities of clean and sterilized durable equipment to meet the needs of each patient during any abortion procedure and for monitoring each patient throughout the procedure and recovery period.

(c) Each applicant and each licensee shall ensure that the following equipment and supplies are maintained in the facility for airway management:

- (1) An oxygen source with flowmeter;
- (2) face masks, in child and adult sizes for assisting ventilation;
- (3) a non self-inflating bag with face mask;
- (4) suction, either wall or machine;
- (5) suction catheters, in sizes 8, 10, 14F, and Yankauer;
- (6) oral airways, in child and adult sizes;
- (7) nasal cannulas, in child and adult sizes; and
- (8) the following additional equipment and supplies for airway management for any abortion procedure performed when the gestational age of the unborn child is 22 weeks or more:
 - (A) A self-inflating bag with reservoir, 500 cc and 1000 cc;
 - (B) oral airways, in infant sizes;
 - (C) a laryngoscope handle with batteries;
 - (D) straight blades or curved blades, in sizes 0, 1, 2, and 3;
 - (E) endotracheal tubes, uncuffed, in sizes 3.0, 3.5, 4.0, 4.5, 5.0, 6.0, 7.0, and 8.0;
 - (F) stylets, small and large; and
 - (G) adhesive tape to secure airway.
- (d) Each applicant and each licensee shall ensure that the following supplies are maintained in the facility for fluid management:
 - (1) Intraosseous needles, 15 or 18 gauge;
 - (2) intravenous catheters, 18, 20, 22, and 24 gauge;

- (3) butterfly needles, 23 gauge;
- (4) tourniquets, alcohol swabs, and tape;
- (5) isotonic fluids, either normal saline or lactated Ringer's solution; and

(6) for any abortion procedure performed when the gestational age of the unborn child is 22 weeks or more, pediatric drip chambers and tubing.

(e) Each applicant and each licensee shall ensure that the following miscellaneous equipment and supplies are maintained in the facility:

(1) Blood pressure cuffs, in small, medium and large adult sizes;

(2) adult nasogastric tubes;

(3) manual sphygmomanometer; and

(4) for any abortion procedure performed when the gestational age of the unborn child is 22 weeks or more, blood pressure cuffs in preemie and infant sizes.

(f) Each applicant and each licensee shall ensure that all equipment is safe for each patient and for the staff.

(g) Each applicant and each licensee shall ensure that each item of equipment is installed and used according to the manufacturer's recommendations for use.

(h) Each applicant and each licensee shall ensure that each item of equipment is checked annually to ensure safety and required calibration.

(i) Each applicant and each licensee shall ensure that equipment and supplies are clean and sterile, if applicable, before each use.

(j) Each applicant and each licensee shall ensure that the facility meets the following requirements for equipment:

(1) All equipment shall be clean, functional, and maintained in accordance with the manufacturer's instructions.

(2) The following equipment shall be available at all times:

(A) Ultrasound equipment;

(B) intravenous equipment;

(C) laboratory equipment;

(D) patient resuscitation and suction equipment;

(E) equipment to monitor vital signs in each room in which an abortion is performed;

(F) a surgical or gynecologic examination table;

(G) equipment to measure blood pressure;

(H) a stethoscope; and

(I) a scale for weighing a patient.

(k) Each applicant and each licensee shall ensure that, for any abortion procedure performed when the gestational age of the unborn child is

22 weeks or more, the following equipment and supplies are maintained in the facility:

(1) Equipment to monitor cardiopulmonary status; and

(2) drugs to support cardiopulmonary function.

(l) Each applicant and each licensee shall ensure that equipment and appropriate medications are located in the recovery area as needed for the provision of appropriate emergency resuscitative and life support procedures pending the transfer to a hospital of a patient or a newborn child.

(1) Each applicant and each licensee shall maintain a stock supply of drugs and medications for the use of the physician in treating the emergency needs of patients.

(2) The medications shall be stored in such a manner as to prohibit access by unauthorized personnel.

(3) The stock supplies of medications shall be regularly reviewed to ensure proper inventory control with removal or replacement of expired drugs and medications.

(4) Drugs and equipment shall be available within the facility to treat the following conditions consistent with standards of care for advanced cardiovascular life support:

(A) Cardiac arrest;

(B) a seizure;

(C) an asthma attack;

(D) allergic reaction;

(E) narcotic or sedative toxicity;

(F) hypovolemic shock;

(G) vasovagal shock; and

(H) anesthetic reactions.

(m) Drugs and medications shall be administered to individual patients only by a facility physician or a facility health professional.

(n) If a stock of controlled drugs is to be maintained at the facility, the applicant or licensee shall ensure that the facility is registered by the Kansas board of pharmacy. Each applicant and each licensee shall ensure the proper safeguarding and handling of controlled substances within the facility, and shall ensure that all possible control measures are observed and that any suspected diversion or mishandling of controlled substances is reported immediately.

(o) Records shall be kept of all stock supplies of controlled substances giving an accounting of all items received or administered. (Authorized by and implementing L. 2011, ch. 82, sec. 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

28-34-136. Ancillary services. (a) Each applicant and each licensee shall document that the facility maintains a certificate of compliance from the centers for medicare and medicaid services pursuant to section 353 of the public health services act, 42 U.S.C. 263a, as revised by the clinical laboratory and current clinical laboratory improvement amendments for the purpose of performing examinations or procedures.

(b) Each applicant and each licensee shall ensure that the facility meets the following requirements for radiology services:

(1) Allow only trained and qualified individuals to operate radiology equipment;

(2) document annual checks and calibration of radiology equipment and maintain records of the annual checks and calibrations;

(3) ensure that all radiology and diagnostic procedures are provided only on the order of a physician; and

(4) maintain signed and dated clinical reports of the radiological findings in each patient's record.

(c) Each applicant and each licensee shall ensure that written policies and procedures are developed and implemented relating to drugs, including the following:

(1) Storage of drugs;

(2) security of drugs;

(3) labeling and preparation of drugs;

(4) administration of drugs; and

(5) disposal of drugs.

(d) Each applicant and each licensee shall ensure that all drugs and medications shall be administered pursuant to a written order from a facility physician or a facility health professional.

(e) Each applicant and each licensee shall ensure that each adverse drug reaction is reported to the physician responsible for the patient and is documented in the patient record.

(f) Each applicant and each licensee shall ensure that each drug and each medication requiring refrigeration is stored in a refrigerator that is used only for drug and medication storage.

(g) Each applicant and each licensee shall ensure that there is a mechanism for the ongoing review and evaluation of the quality and scope of laboratory, radiology, and pharmaceutical services. (Authorized by and implementing L. 2011, ch. 82, sec. 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

28-34-137. Patient screening and evaluation. (a) Each applicant and each licensee shall

ensure written policies and procedures are developed and implemented for the medical screening and evaluation of patients. A medical screening and evaluation shall be completed on each patient before an abortion procedure is performed.

(b) The medical screening and evaluation shall consist of the following:

(1) A medical history shall be completed, including the following:

(A) Reported allergies to medications, antiseptic solution, or latex;

(B) obstetric and gynecologic history;

(C) past surgeries;

(D) medication currently being taken by the patient; and

(E) any other medical conditions.

(2) A physical examination shall be performed by a physician, including a bimanual examination to estimate uterine size and palpation of the adnexa.

(3) An ultrasound evaluation shall be completed for any patient who elects to have an abortion of an unborn child. The physician shall estimate the gestational age of the unborn child based on the ultrasound examination and obstetric standards in keeping with established standards of care regarding the estimation of the age of the unborn child and shall verify the estimate in the patient's medical history. The physician shall keep the original prints of each ultrasound examination for each patient in the patient's medical history file. The original prints may consist of a digitized record or an electronic record.

(4) The appropriate laboratory tests shall be completed, including the following:

(A) For an abortion performed in a medical emergency and in which an ultrasound examination is not performed before the abortion procedure, urine or blood tests for pregnancy, which shall be completed before the abortion procedure;

(B) a test for anemia as indicated;

(C) determination of Rh factor or Rh typing, unless the patient provides written documentation of blood type acceptable to the physician; and

(D) other tests recommended by the physician or the medical director on the basis of the physical examination, which may include tests for chlamydia and gonorrhea and other cultures, syphilis serology, and a papanicolaou procedure.

(c) Each licensee shall ensure that another individual is present in the room during a pelvic examination or an abortion procedure. If the physician conducting the examination or the procedure is male, the other individual in the room shall be female.

(d) The physician or health care professional shall review, at the request of the patient, the ultrasound evaluation results with the patient before the abortion procedure is performed, including the probable gestational age of the unborn child. (Authorized by and implementing L. 2011, ch. 82, sec. 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

28-34-138. Abortion procedure. (a) Each applicant and each licensee shall ensure that written policies and procedures are developed and implemented for the following procedures:

(1) Safe conduct of abortion procedures that conform to obstetric standards in keeping with established standards of care regarding the estimated gestational age of the unborn child;

(2) the appropriate use of local anesthesia, analgesia, and sedation if ordered by the physician; and

(3) the use of appropriate precautions, including the establishment of intravenous access for any patient undergoing a second or third trimester abortion, unless the physician determines that establishing intravenous access is not appropriate for the patient and documents that fact in the medical record of the patient.

(b) Each licensee shall ensure that the following procedures are followed for each patient after completion of all requirements for patient screening and evaluation required in K.A.R. 28-34-137 and before performance of an abortion:

(1) Information is provided to the patient on the abortion procedure, including alternatives, risks, and potential complications.

(2) Written consent is signed and dated by the patient.

(c) Each licensee shall ensure that a physician and at least one health professional is available to each patient throughout the abortion procedure.

(d) Each licensee shall ensure that an infection control program is established which includes the following:

(1) Measures for surveillance, prevention, and control of infections;

(2) policies and procedures outlining infection control and aseptic techniques to be followed by staff members and volunteers; and

(3) training on infection control and aseptic techniques for all staff members and volunteers.

(e) Each licensee shall ensure that each abortion is performed according to the facility's policies and procedures and in compliance with all applicable laws, rules, and regulations.

(f) Each licensee shall ensure that health professionals monitor each patient's vital signs throughout the abortion procedure to ensure the health and safety of the patient.

(g) Each licensee shall ensure that the following steps are performed if an abortion procedure results in the delivery of a newborn child:

(1) Resuscitative measures are used to support life;

(2) the newborn child is transferred to a hospital; and

(3) resuscitative measures and the transfer to a hospital are documented. (Authorized by and implementing L. 2011, ch. 82, sec. 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

28-34-139. Recovery procedures; discharge. (a) Each applicant and each licensee shall ensure that written policies and procedures are developed and implemented for the post-procedure care of patients who are administered local anesthesia, analgesia, or sedation, including the following:

(1) Immediate post-procedure care for each patient shall consist of observation in a supervised recovery area.

(2) The vital signs and bleeding of each patient shall be monitored by a physician or a health professional.

(3) Each patient shall remain in the recovery area following the abortion procedure for the following time periods, based on the gestational age of the unborn child:

(A) For a gestational age of 12 weeks or less, a minimum of 30 minutes;

(B) for a gestational age of 13 to 15 weeks, a minimum of 45 minutes; and

(C) for a gestational age of 16 weeks or more, a minimum of 60 minutes. The patient shall remain in the recovery area for a longer period of time when necessary based on the physician's evaluation of the patient's medical condition.

(b) Each licensee shall ensure that a physician or an individual designated by a physician shall discuss Rho(d) immune globulin with each patient for whom it is indicated and assure that it is offered to the patient in the immediate post-procedure period or that it will be available to the patient within 72 hours after completion of the abortion procedure. If the patient refuses the Rho(d) immune globulin, the refusal shall be documented on a form approved by the department, signed by the patient and a witness, and filed in the medical record of the patient.

(c) At the time of discharge from the facility, each patient shall receive the following written information:

- (1) Signs of possible complications;
- (2) when to access medical care in response to complications;
- (3) the telephone number to call in an emergency;
- (4) instructions and precautions for resuming vaginal intercourse; and
- (5) any other instructions specific to a patient's abortion or condition.

(d) Each licensee shall ensure that a physician signs the discharge order for each patient. (Authorized by and implementing L. 2011, ch. 82, sec. 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

28-34-140. Transfers. (a) Each applicant and each licensee shall ensure that written policies and procedures are developed and implemented for the transfer of patients and newborn children to a hospital.

(b) Each licensee shall ensure that a physician arranges the transfer of a patient to a hospital if any complications beyond the medical capability of the health professionals of the facility occurs or is suspected.

(c) Each licensee shall ensure that a physician arranges the transfer of a newborn child to a hospital if the child requires emergency care.

(d) A physician or a nurse who is certified in advanced cardiovascular life support shall remain on the premises of the facility to facilitate the transfer of an emergency case if hospitalization of a patient or a newborn child is required. (Authorized by and implementing L. 2011, ch. 82, sec. 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

28-34-141. Follow-up contact and care.

Each applicant and each licensee shall ensure that written policies and procedures are developed and implemented for follow-up and aftercare for each patient receiving an abortion procedure in the facility, including the following: (a) With the consent of the patient, a health professional from the facility shall make a good faith effort to contact the patient by telephone within 24 hours after the procedure to assess the patient's recovery.

(b) Each patient shall be offered a follow-up visit and, if requested by the patient, shall be scheduled no more than four weeks after completion

of the procedure. The follow-up visit shall include the following:

- (1) A physical examination;
- (2) a review of all laboratory tests performed as required in K.A.R. 28-34-137; and
- (3) a urine pregnancy test.

If a continuing pregnancy is suspected, a physician who performs abortion procedures shall be consulted.

(c) The physician who performs or induces the abortion, or an individual designated by the physician, shall make all reasonable efforts to ensure that the patient returns for a subsequent examination so the physician can assess the patient's medical condition. A description of the efforts made to comply with this regulation, including the date, time, and name of the individual making the efforts, shall be included in the patient's medical record. (Authorized by and implementing L. 2011, ch. 82, sec. 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

28-34-142. Risk management. (a) Each applicant and each licensee shall develop and implement a written risk management plan.

(b) The risk management plan shall be reviewed and approved annually by the licensee.

(c) Findings, conclusions, recommendations, actions taken, and results of actions taken shall be documented and reported through procedures established within the risk management plan.

(d) All patient services, including those services provided by outside contractors or consultants, shall be periodically reviewed and evaluated in accordance with the risk management plan.

(e) Each risk management plan shall include the following:

(1) Section I. A description of the system implemented by the facility for investigation and analysis of the frequency and causes of reportable incidents within the facility;

(2) Section II. A description of the measures used by the facility to minimize the occurrence of reportable incidents and the resulting injuries within the facility;

(3) Section III. A description of the facility's implementation of a reporting system based upon the duty of all medical staff members staffing the facility and all agents and staff members of the facility directly involved in the delivery of health care services to report reportable incidents; and

(4) Section IV. A description of the organizational elements of the plan, including the following:

- (A) Name and address of the facility;
- (B) name and title of the facility's risk manager; and
- (C) description of involvement and organizational structure of medical staff members as related to the risk management program, including names and titles of medical staff members involved in investigation and review of reportable incidents.

(f) The standards-of-care determinations shall include the following:

(1) Each facility shall assure that analysis of patient care incidents complies with the definition of a "reportable incident". Each facility shall use categories to record its analysis of each incident, and those categories shall be in substantially the following form:

- (A) Standards of care met;
- (B) standards of care not met, but with no reasonable probability of causing injury;
- (C) standards of care not met, with injury occurring or reasonably probable; or
- (D) possible grounds for disciplinary action by the appropriate licensing agency.

(2) Each reported incident shall be assigned an appropriate standard-of-care determination. Separate standard-of-care determinations shall be made for each involved medical staff member and each clinical issue reasonably presented by the facts. Any incident determined to meet paragraph (f)(1)(C) or (D) of this regulation shall be reported to the appropriate licensing agency. (Authorized by and implementing L. 2011, ch. 82, sec. 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

28-34-143. Reporting requirements. In addition to the reporting requirements for risk management required in K.A.R. 28-34-142, each licensee shall ensure that the following incidents are reported to the department, on a form provided by the department:

- (a) Each incident resulting in serious injury of a patient or a viable unborn child shall be reported to the department within 10 days after the incident.
- (b) The death of a patient, other than the death of an unborn child, shall be reported to the department not later than the next department business day. (Authorized by and implementing L. 2011, ch. 82, sec. 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

28-34-144. Records. (a) Each applicant and each licensee shall maintain an organized record-keeping system that provides for identification, security, confidentiality, control, retrieval, and preservation of all staff member and volunteer records, patient medical records, and facility information.

(b) Each applicant and each licensee shall ensure that only individuals authorized by the applicant or licensee have access to patient medical records.

(c) All records shall be available at the facility for review by the secretary or the authorized agent of the secretary.

(d) For staff member and volunteer records, each applicant and each licensee shall ensure that an individual record is maintained at the facility. The record shall include all of the following information:

- (1) The staff member's or volunteer's name, position, title, and the first and last date of employment or volunteer service;
- (2) verification of qualifications, training, or licensure, if applicable;
- (3) documentation of cardiopulmonary resuscitation certification, if applicable;
- (4) if a physician, documentation of verification of competence, as required in K.A.R. 28-34-132, signed and dated by the medical director;
- (5) if an individual who performs ultrasounds, documentation of ultrasound training required in K.A.R. 28-34-132;
- (6) if a surgical assistant, documentation of training required in K.A.R. 28-34-132; and
- (7) if a volunteer, documentation of training required in K.A.R. 28-34-132.

(e) For patient records, each licensee shall ensure that an individual record is maintained at the facility for each patient. The record shall include all of the following information:

- (1) Patient identification, including the following:
 - (A) Name, address, and date of birth; and
 - (B) name and telephone number of an individual to contact in an emergency;
- (2) medical history as required in K.A.R. 28-34-137;
- (3) the physical examination required in K.A.R. 28-34-137;
- (4) laboratory test results required in K.A.R. 28-34-137;
- (5) ultrasound results required in K.A.R. 28-34-137;

(6) the physician's estimated gestational age of the unborn child as required in K.A.R. 28-34-137;

(7) each consent form signed by the patient;

(8) a record of all orders issued by a physician, physician assistant, or nurse practitioner;

(9) a record of all medical, nursing, and health-related services provided to the patient;

(10) a record of all adverse drug reactions as required in K.A.R. 28-34-136; and

(11) documentation of the efforts to contact the patient within 24 hours of the procedure and offer and schedule a follow-up visit no more than four weeks after the procedure, as required in K.A.R. 28-34-141.

(f) For facility records, each applicant and each licensee shall ensure that a record is maintained for the documentation of the following:

(1) All facility, equipment, and supply requirements specified in K.A.R. 28-34-133 through 28-34-136;

(2) ancillary services documentation required in K.A.R. 28-34-136;

(3) risk management activities required in K.A.R. 28-34-142; and

(4) submission of all reports required in K.A.R. 28-34-143. (Authorized by L. 2011, ch. 82, sec. 9; implementing L. 2011, ch. 82, secs. 5 and 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

Article 35.—RADIATION

28-35-29 to 28-35-31. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1966; revoked Jan. 1, 1970.)

28-35-32. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1966; amended Jan. 1, 1967; revoked Jan. 1, 1970.)

28-35-33 to 28-35-38. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1966; revoked Jan. 1, 1970.)

28-35-39. (Authorized by K.S.A. 48-1607, 48-1611; effective Jan. 1, 1966; revoked Jan. 1, 1970.)

28-35-40 to 28-35-53. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1966; revoked Jan. 1, 1970.)

28-35-54. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1966; amended Jan. 1, 1967; revoked Jan. 1, 1970.)

28-35-55. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1966; revoked Jan. 1, 1970.)

28-35-56. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1966; amended Jan. 1, 1967; revoked Jan. 1, 1970.)

28-35-57. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1966; revoked Jan. 1, 1970.)

28-35-58 and 28-35-59. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1966; amended Jan. 1, 1967; revoked Jan. 1, 1970.)

28-35-60 to 28-35-70. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1966; revoked Jan. 1, 1970.)

28-35-71. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1966; amended Jan. 1, 1967; revoked Jan. 1, 1970.)

28-35-72. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1966; revoked Jan. 1, 1970.)

28-35-73 and 28-35-74. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1966; amended Jan. 1, 1967; revoked Jan. 1, 1970.)

28-35-75 to 28-35-81. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1966; revoked Jan. 1, 1970.)

28-35-82. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1966; amended Jan. 1, 1967; revoked Jan. 1, 1970.)

28-35-83 to 28-35-93. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1966; revoked Jan. 1, 1970.)

28-35-94. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1966; amended Jan. 1, 1967; revoked Jan. 1, 1970.)

28-35-95 to 28-35-98. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1966; revoked Jan. 1, 1970.)

28-35-99. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1966; amended Jan. 1, 1967; revoked Jan. 1, 1970.)

28-35-100 to 28-35-115. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1966; revoked Jan. 1, 1970.)

28-35-116. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1966; amended Jan. 1, 1967; revoked Jan. 1, 1970.)

28-35-117. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1966; revoked Jan. 1, 1970.)

28-35-118 and 28-35-119. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1966; amended Jan. 1, 1967; revoked Jan. 1, 1970.)

28-35-120 and 28-35-121. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1966; revoked Jan. 1, 1970.)

28-35-122. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1966; amended Jan. 1, 1967; revoked Jan. 1, 1970.)

28-35-123. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1966; revoked Jan. 1, 1970.)

28-35-124. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1966; amended Jan. 1, 1967; revoked Jan. 1, 1970.)

28-35-125 to 28-35-129. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1966; revoked Jan. 1, 1970.)

28-35-130. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1966; amended Jan. 1, 1967; revoked Jan. 1, 1970.)

28-35-131. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1967; revoked Jan. 1, 1970.)

PART I. DEFINITIONS

28-35-133. Persons protected. These regulations state the requirements that shall be applied in the use of all radiation, radiation machines, and radioactive materials to ensure the maximum protection of the public health and the maximum safety to all persons at, or in the vicinity of, the place of use, storage, or disposal of sources of radiation. These regulations are intended to be consistent with the best use of radiation machines and radioactive materials, and to encourage the constructive uses of radiation. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective Jan. 1, 1970; amended May 1, 1976; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985.)

28-35-134. Persons regulated and exempted. Except as otherwise specified, these regulations shall apply to all persons who receive,

possess, use, transfer, own or acquire any source of radiation. However, nothing in these regulations shall apply to any person to the extent that the person is subject to regulation by the United States nuclear regulatory commission. Regulation by the secretary of source material, by-product material, and special nuclear material in quantities not sufficient to form a critical mass is subject to the provisions of the agreement between the department and the U.S. nuclear regulatory commission and to part 150 of the commission's regulations (10 CFR Part 150), as in effect on January 29, 1982. The provisions of part 4 of these regulations shall not limit the exposure of patients to radiation for the purpose of diagnosis or therapy, by persons licensed to practice one or more of the healing arts within the authority granted to them by the Kansas healing arts statutes, or by persons licensed to practice dentistry or podiatry within the authority granted to them by Kansas licensing laws applying to dentists and podiatrists. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective Jan. 1, 1970; amended May 1, 1976; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985.)

28-35-135. (Authorized by K.S.A. 1992 Supp. 48-1607; implementing K.S.A. 1993 Supp. 48-1603, 48-1607; effective Jan. 1, 1970; amended May 1, 1976; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985; amended Sept. 20, 1993; amended Oct. 17, 1994; revoked Dec. 30, 2005.)

28-35-135a. Definitions. As used in these regulations, each of the following terms shall have the meaning specified in this regulation: (a) "A₁" means the maximum activity of special form radioactive material permitted in a type A package.

(b) "A₂" means the maximum activity of radioactive material, other than special form radioactive material, permitted in a type A package. These values are listed in or may be derived as specified in 10 C.F.R. part 71, appendix A, which is adopted by reference in K.A.R. 28-35-221b.

(c) "Absorbed dose" means the energy imparted to matter by ionizing radiation per unit mass of irradiated material at the place of interest. The units of absorbed dose are the rad and the gray (Gy).

(d) "Absorbed dose rate" means the absorbed dose per unit of time or, for linear accelerators, the dose monitor unit per unit of time.

(e) "Accelerator-produced material" means any material made radioactive by exposing it in a particle accelerator.

(f) "Accessible surface" means the surface of equipment or of an equipment part that can be easily or accidentally touched by persons without the use of a tool.

(g) "Accident" means an unintended event, including an operating error, equipment failure, and other mishap, that could result in either of the following:

(1) A dose in excess of regulatory limits on site or for the public; or

(2) consequences or potential consequences that cannot be ignored from the point of view of protection or safety, including an actual or potential substantial degradation of the level of protection or safety of the facility or the release of radioactive material in sufficient quantity to warrant consideration of protective actions.

(h) "Act" means the "nuclear energy development and radiation control act," K.S.A. 48-1601 et seq., and amendments thereto.

(i) "Activity" means the rate of disintegration, transformation, or decay of radioactive material. Activity is expressed in the SI unit of becquerel (Bq) or in the special unit of curie (Ci), or the multiples of either unit.

(j) "Added filter" means the filter added to the inherent filtration.

(k) "Address of use" means the building or buildings that are identified on the license and each location where radioactive material could be produced, prepared, received, used, or stored.

(l) "Adult" means an individual who is 18 or more years of age.

(m) (1) "Agreement state" means any state with which the nuclear regulatory commission (NRC) enters, or has entered, into an effective agreement pursuant to subsection 274b of the atomic energy act of 1954, 68 Stat. 919, as amended.

(2) "Non-agreement state" means any other state.

(n) "Airborne radioactive area" means the following:

(1) Any room, enclosure, or operating area in which airborne radioactive material exists in concentrations in excess of the derived air concentrations (DAC) specified in "appendices to part 4: standards for protection against radiation," effective April 1994, published by the department and hereby adopted by reference; or

(2) any room, enclosure, or operating area in which airborne radioactive material exists in con-

centrations such that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the ALI or 12 DAC-hours.

(o) "Airborne radioactive material" means any radioactive material dispersed in the air in the form of dust, fumes, mists, vapors, or gases.

(p) "Air kerma" means the kinetic energy released in air by ionizing radiation. Kerma is determined by dividing dE by dM, where dE is the sum of the initial kinetic energies of all the charged ionizing particles liberated by uncharged ionizing particles in air of mass dM. The SI unit of air kerma is joule per kilogram, and the special name for the unit of kerma is the gray (Gy).

(q) "Alert" means a period during which one of the following could lead to a release of radioactive material that is not expected to require a response by off-site response organizations to protect persons off-site:

(1) Conditions have arisen that could cause an event.

(2) An event is in progress.

(3) An event has occurred.

(r) "Aluminum equivalent" means the thickness of type 1100 aluminum alloy that affords the same attenuation, under specified conditions, as that of the material in question. The nominal chemical composition of type 1100 aluminum alloy is a minimum of 99.00 percent aluminum and 0.12 percent copper.

(s) "Amendment" means any change to a license or registration issued under these regulations.

(t) "Analytical X-ray system" means a group of local and remote components utilizing X-rays to determine the elemental composition or to examine the microstructure of materials.

(1) Local components shall include those components that are struck by X-rays, including radiation source housings, port and shutter assemblies, collimators, sample holders, cameras, goniometers, detectors, and shielding.

(2) Remote components may include power supplies, transformers, amplifiers, readout devices, and control panels.

(u) "Annual limit on intake" and "ALI" mean the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the reference man that would result in a committed effective dose equivalent of 5 rem (0.05 Sv) or

a committed dose equivalent of 50 rem (0.5 Sv) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are specified in appendix B, table I, published in “appendices to part 4: standards for protection against radiation,” which is adopted by reference in this regulation.

(v) “Annual refresher safety training” means a review conducted or provided by the licensee or registrant for its employees on radiation safety aspects of industrial radiography. The review shall include, at a minimum, any results of internal inspections, new procedures or equipment, new or revised regulations, and accidents or errors that have been observed. The review shall also provide opportunities for employees to ask safety questions.

(w) “ANSI” means the American national standards institute.

(x) “Applicator” means a structure that determines the extent of the treatment field at a given distance from the virtual source.

(y) “Area of use” means a portion of a physical structure that has been set aside for the purpose of producing, preparing, receiving, using, or storing radioactive material.

(z) “As low as is reasonably achievable” and “ALARA,” when used to describe exposures to radiation workers, mean that every reasonable effort has been made to maintain exposures to radiation workers as far below the dose limits specified in these regulations as is practical, consistent with the purpose for which the licensed or registered activity is undertaken, taking the following into account:

- (1) The state of technology;
- (2) the economics of improvements in relation to the state of technology;
- (3) the economics of improvements in relation to benefits to public health and safety and to other societal and socioeconomic considerations; and
- (4) the economics of improvements in relation to the utilization of nuclear energy and licensed or registered sources of radiation in the public interest.

(aa) “Assembler” means any person engaged in the business of assembling, replacing, or installing one or more components into an X-ray system or subsystem. The term shall include the owner of an X-ray system or any employee or agent of the owner who assembles components into an X-ray system that is subsequently used to provide professional or commercial services.

(bb) “Associated equipment” means equipment that is used in conjunction with a radiographic exposure device that makes radiographic exposures and that drives, guides, or comes in contact with the source.

(cc) “Attenuation block” means a block or stack, with dimensions of 20 cm by 20 cm by 3.8 cm, made of type 1100 aluminum alloy or other materials having equivalent attenuation.

(dd) “Authorized user” means an individual who is identified as an authorized user on a license issued by the department for the use of radioactive material or an individual who is designated by a registered facility as a user of X-ray machines or accelerators. This term shall not apply to part 6 of these regulations.

(ee) “Automatic exposure control” means a device that automatically controls one or more technique factors in order to obtain a required quantity of radiation, at one or more preselected locations. (Authorized by K.S.A. 48-1607; implementing K.S.A. 2017 Supp. 48-1603 and K.S.A. 48-1607; effective Dec. 30, 2005; amended July 27, 2007; amended May 4, 2018.)

28-35-135b. Definitions. As used in these regulations, each of the following terms shall have the meaning assigned in this regulation: (a) (1) “Background radiation” means the following:

- (A) Radiation from cosmic sources;
 - (B) naturally occurring radioactive materials, including radon, except for those radioactive materials that are a decay product of source material or special nuclear material; and
 - (C) global fallout as it exists in the environment from the testing of nuclear explosive devices.
- (2) The term “background radiation” shall not include radiation from radioactive materials regulated by the department.

(b) “Beam axis” means a line from the source through the centers of the X-ray fields.

(c) “Beam-limiting device” means a device that provides a means to restrict the dimensions of the X-ray field.

(d) “Beam-monitoring filter” means a filter used to scatter a beam of electrons.

(e) “Beam-monitoring system” means a system designed to detect and measure the radiation present in the useful beam.

(f) “Beam-scattering foil” means a thin piece of material, usually metallic, placed in a beam of electrons to scatter the beam in order to provide more uniform electron distribution in the useful beam.

(g) “Becquerel (Bq)” means the SI unit of activity. One becquerel is equal to one disintegration per second (dps) or transformation per second (tps).

(h) “Bent-beam linear accelerator” means a linear accelerator in which the accelerated electron beam must change direction by passing through a bending magnet.

(i) “Bioassay” means the determination of kinds, quantities, or concentrations and, in some cases, the locations of radioactive material in the human body, whether by direct measurement, in vivo counting, or analysis and evaluation of materials excreted or removed from the human body. For purposes of these regulations, “radiobioassay” shall be considered an equivalent term.

(j) “Brachytherapy” means a method of radiation therapy in which sealed sources are utilized to deliver a radiation dose at a distance of up to a few centimeters, by surface, intracavitary, or interstitial application.

(k)(1) “Byproduct material” means the following:

(A) Any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; and

(B) the tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content including discrete surface wastes resulting from uranium or thorium solution-extraction processes. Underground ore bodies depleted by these solution-extraction processes shall not constitute “byproduct material” within this definition.

(2) For the purposes of part 6, “byproduct material” shall mean all radioactive material regulated by the department. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1603 and 48-1607; effective Dec. 30, 2005.)

28-35-135c. Definitions. As used in these regulations, each of the following terms shall have the meaning specified in this regulation: (a) “Cabinet radiography using radiation machines” means industrial radiography that is conducted in an enclosed, interlocked cabinet that prevents the radiation machine from operating unless all openings are securely closed and that is sufficiently shielded so that every location on the cabinet’s exterior meets the conditions for an unrestricted area as specified in K.A.R. 28-35-214a.

(b) “Cabinet X-ray system” means an X-ray system with the X-ray tube installed in an enclosure,

called a “cabinet,” that is independent from existing architectural structures except the floor on which the cabinet could be placed. The cabinet is intended for the following purposes:

(1) To contain at least that portion of a material being irradiated;

(2) to provide radiation attenuation; and

(3) to exclude personnel from the interior of the cabinet during the generation of X-rays.

This term shall include all X-ray systems designed primarily for the inspection of carry-on baggage at airline, railroad, and bus terminals, and in similar facilities. An X-ray tube that is used within a shielded part of a building, or X-ray equipment that may temporarily or occasionally incorporate portable shielding, shall not be considered a cabinet X-ray system.

(c) “Calendar quarter” means at least 12 but not more than 14 consecutive weeks. The first calendar quarter of each year shall begin in January. Subsequent calendar quarters shall be arranged so that no day is included in more than one calendar quarter and no day in any one year is omitted from inclusion within a calendar quarter. A licensee or registrant shall not change the method of determining and observing calendar quarters for purposes of these regulations except at the beginning of a calendar year.

(d) “Calibration” means the determination of either of the following:

(1) The response or reading of an instrument relative to a series of known radiation values over the range of the instrument; or

(2) the strength of a source of radiation relative to a standard.

(e) “Camera” means a radiographic exposure device.

(f) “Central axis of the beam” means a line passing through the virtual source and the center of the plane figure formed by the edge of the first beam-limiting device.

(g) “Cephalometric device” means a device intended for the radiographic visualization and measurement of the dimensions of the human head.

(h) “Certifiable cabinet X-ray system” means an existing, uncertified X-ray system that has been modified to meet the certification requirements specified in 21 C.F.R. 1020.40, as in effect on April 30, 1984.

(i) “Certified cabinet X-ray system” means a cabinet X-ray system that has been certified as manufactured and assembled as specified in 21 C.F.R. 1020.40, as in effect on April 30, 1984.

(j) "Certified components" means the components of X-ray systems that are subject to regulations promulgated under public law 90-602, the radiation control for health and safety act of 1968 as amended.

(k) "Certified system" means any X-ray system that has one or more certified components.

(l) "Certifying entity" means an independent certifying organization or state regulatory program meeting the requirements in K.A.R. 28-35-293.

(m) "Changeable filter" means any filter, exclusive of inherent filtration, that can be removed from the useful beam through any electronic, mechanical, or physical process.

(n) "Chelating agent" means amine polycarboxylic acids, hydroxycarboxylic acids, gluconic acids, and polycarboxylic acids.

(o) "Class" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. For the purposes of these regulations, "lung class" and "inhalation class" shall be considered equivalent terms. Materials are classified as D, W, or Y, which applies to the following range of clearance half-times:

- (1) For class D, fewer than 10 days;
- (2) for class W, from 10 through 100 days; and
- (3) for class Y, more than 100 days.

(p) "Coefficient of variation" and "C" mean the ratio of the standard deviation to the mean value of a population of observations. This ratio is estimated using the following equation:

$$C = \frac{s}{\bar{x}} = \frac{1}{\bar{x}} \left(\sum_{i=1}^n \frac{(x_i - \bar{x})^2}{n-1} \right)^{1/2}$$

where

s = Estimated standard deviation of the population

\bar{x} = Mean value of observations in sample

x_i = *i*th observation in sample

(q) "Collective dose" means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(r) "Collimator" means a radiation shield that is placed at the end of a guide tube or directly onto a radiographic exposure device to restrict the size of the

radiation beam when the sealed source is cranked into position to make a radiographic exposure.

(s) "Committed dose equivalent" and " $H_{T,50}$ " mean the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

(t) "Committed effective dose equivalent" and " $H_{E,50}$ " mean the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues ($H_{E,50} = \sum w_T H_{T,50}$).

(u) "Computed tomography" means the production of a tomogram by the acquisition and computer processing of X-ray transmission data.

(v) "Consortium" means an association of medical use licensees and a positron emission tomography (PET) radionuclide production facility in the same geographical area that jointly own or share the operation and maintenance cost of the PET radionuclide production facility that produces PET radionuclides for use in producing radioactive drugs within the consortium for noncommercial distributions among its associated members for medical use.

(w) "Contact therapy" means therapy in which the X-ray tube port is put in contact with, or within five centimeters of, the surface being treated.

(x) "Contact therapy system" means a therapeutic radiation machine with a short target-to-skin distance (TSD), usually less than five centimeters.

(y) "Control cable" means the cable that is connected to the source assembly and used to drive the source to and from the exposure location.

(z) "Control drive mechanism" means a device that enables the source assembly to be moved into and out of the exposure device.

(aa) "Controlled area" means an area outside of a restricted area but inside the site boundary, access to which can be limited by the licensee or registrant for any reason.

(bb) "Control panel" means that part of the X-ray system where the switches, knobs, push buttons, and other hardware necessary for manually setting the technique factors are mounted.

(cc) "Control tube" means a protective sheath for guiding the control cable. The control tube connects the control drive mechanism to the radiographic exposure device.

(dd) "Cooling curve" means the graphical relationship between the heat units stored and the cooling time.

(ee) “Curie” means a unit of activity. One curie (Ci) is the quantity of radioactive material that decays at the rate of 3.7×10^{10} transformations per second (tps). Commonly used submultiples of the curie are the millicurie and the microcurie. One millicurie ($_m\text{Ci}$) = 0.001 curie = 3.7×10^7 tps. One microcurie (μCi) = 0.000001 curie = 3.7×10^4 tps. (Authorized by K.S.A. 48-1607; implementing K.S.A. 2017 Supp. 48-1603 and K.S.A. 48-1607; effective Dec. 30, 2005; amended May 4, 2018.)

28-35-135d. Definitions. As used in these regulations, each of the following terms shall have the meaning assigned in this regulation: (a) “Deadman switch” means a switch constructed so that circuit closure can be maintained only by continuous pressure by the operator.

(b) “Declared pregnant woman” means a woman who has voluntarily informed her employer, in writing, of her pregnancy and the estimated date of delivery. The written declaration shall remain in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.

(c) “Decommission” means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits either of the following:

(1) The release of the property for unrestricted use and the termination of the license; or

(2) The release of the property under restricted conditions and the termination of the license.

(d) “Dedicated check source” means a radioactive source that is used to ensure the constant operation of a radiation detection or measurement device over several months or years. This source may also be used for other purposes.

(e) “Deep dose equivalent (H_d),” which applies to external whole body exposure, means the dose equivalent to a tissue depth of one centimeter ($1,000 \text{ mg/cm}^2$).

(f) “Deliberate misconduct” means a person’s intentional act or omission about which the person knows one of the following:

(1) If not detected, the act or omission would cause a licensee, a registrant, or an applicant to be in violation of any statute, regulation, or order or any term, condition, or limitation of any license issued by the secretary.

(2) The act or omission constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, registrant, applicant, contractor, or subcontractor.

(3) The act or omission involves the person’s deliberate submission to the department, a licensee, a registrant, an applicant, or a licensee’s contractor or subcontractor of information relating to a licensee’s, a registrant’s, or an applicant’s operations that the person knows to be incomplete or inaccurate in some respect.

(g) “Dentistry” means the functions authorized by K.S.A. 65-1421 et seq., and amendments thereto.

(h) “Department” means the department of health and environment.

(i) “Depleted uranium” means source material uranium in which the isotope uranium 235 is less than 0.711 percent of the total weight of uranium present. This term shall not include special nuclear material.

(j) “Derived air concentration (DAC)” means the concentration of a given radionuclide in air that, if breathed by the reference man for a working year of 2,000 hours under conditions of light work, results in an intake of one ALI. For purposes of these regulations, the condition of light work is an inhalation rate of 1.2 cubic meters of air per hour for 2,000 hours in a year. The DAC are values specified in “appendices to part 4: standards for protection against radiation,” effective April 1994, which is adopted by reference in K.A.R. 28-35-135a.

(k) “Derived air concentration-hour (DAC-hour)” means the product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee or registrant may assume that a total of 2,000 DAC-hours represents one ALI, which is equivalent to a committed effective dose equivalent of 5 rem (0.05 Sv).

(l) “Diagnostic clinical procedures manual” means a collection of written procedures that describes each method and other instructions and precautions by which the licensee performs diagnostic clinical procedures, each of which has been approved by the authorized user and includes the radiopharmaceutical, dosage, and route of administration.

(m) “Diagnostic source assembly” means the tube housing assembly with a beam-limiting device attached.

(n) “Diagnostic-type tube housing” means an X-ray tube housing constructed so that the leakage radiation, at a distance of one meter from the target, does not exceed 100 milliroentgens in one hour when the tube is operated at the maximum

rate of continuous tube current and the maximum rate of tube potential.

(o) “Diagnostic X-ray imaging system” means an assemblage of components for the generation, emission, and reception of X-rays and the transformation, storage, and visual display of the resultant X-ray image.

(p) “Diagnostic X-ray system” means an X-ray system designed for irradiation of any part of the human body for the purpose of diagnosis or visualization.

(q) “Direct scattered radiation” means scattered radiation that has been deviated in direction only by materials irradiated by the useful beam.

(r) “Dose” is a generic term that means the absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, total organ dose equivalent, or total effective dose equivalent. For purposes of these regulations, “radiation dose” shall be considered an equivalent term.

(s) “Dose equivalent (H_T)” means the product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the rem and sievert (Sv).

(t) “Dose limits” means the permissible upper bounds of radiation doses established in accordance with these regulations. For purposes of these regulations, “limits” is an equivalent term.

(u) “Dose-monitoring system” means a system of devices for the detection, measurement, and display of quantities of radiation.

(v) “Dose monitor unit” means a unit response from the dose-monitoring system from which the absorbed dose can be calculated.

(w) “Dosimetry processor” means an individual or an organization that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

(x) “Doubly encapsulated sealed source” means a sealed source in which the radioactive material is sealed within an inner capsule and that capsule is sealed within an outer capsule.

(y) “Drill” means a supervised, hands-on instruction period intended to test, develop, or maintain a specific emergency response capability. A drill may be a component of an exercise. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1603 and 48-1607; effective Dec. 30, 2005; amended July 27, 2007.)

28-35-135e. Definitions. As used in these regulations, each of the following terms shall have the meaning assigned in this regulation: (a) “Effective dose equivalent (H_E)” means the sum of the products of the dose equivalent to each organ or tissue (H_T) and the weighting factor (w_T) applicable to each of the body organs or tissues that are irradiated ($H_E = \sum w_T H_T$).

(b) “Embryo or fetus” means the developing human organism at any stage of development until the time of birth.

(c) “Emergency” means an event requiring prompt action to mitigate a threat to the health and safety of workers or the public or a threat of damage to the environment.

(d) “Emergency planning zone” means a geographic area surrounding a specific facility for which special planning and preparedness efforts are carried out to ensure that prompt and effective protective actions will reduce or minimize the impact of releases of radioactive material on public health and safety or the environment.

(e) “Energy compensation source (ECS)” means a small sealed source, with an activity not exceeding 3.7 Mbq (100 microcuries), used within a logging tool or other tool components to provide a reference standard to maintain the tool’s calibration when in use.

(f) “Entrance exposure rate” means the roentgens per unit of time at the point where the center of the useful beam enters any individual.

(g) “Entrance or access point” means any opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed or registered radioactive materials. This term shall include entry and exit portals of sufficient size to permit human entry, irrespective of the intended use.

(h) “Evacuation” means the urgent removal of people from an area to avoid or reduce high-level, short-term exposure.

(i) “Event” means a situation reasonably discrete in time, location, and consequences.

(j) “Exercise” means a multifaceted activity that test the plans, procedures, adequacy of training, resources, and integrated capability of an emergency response system.

(k) “Existing equipment” means therapy systems subject to K.A.R. 28-35-250a that were manufactured on or before January 1, 1985.

(l) “Explosive material” means any chemical compound, mixture, or device that produces a substantial, instantaneous release of gas and

heat spontaneously or by contact with sparks or flame.

(m) "Exposure" means the quotient of dQ divided by dm . " dQ " is the absolute value of the total charge of the ions of one sign produced in air when all the electrons, negatrons, and positrons liberated by photons in a volume element of air having mass, expressed as " dm ," are completely stopped in air. The special unit of exposure is the roentgen (R). One roentgen equals 2.58×10^{-4} coulombs per kilogram of air.

(n) "Exposure head" means a device that locates the sealed source in the selected working position. For the purposes of these regulations, "source stop" is an equivalent term.

(o) "Exposure rate" means the exposure per unit of time, including roentgens per minute (R/min) and milliroentgens per hour (mR/hr).

(p) "External beam radiation therapy" means therapeutic irradiation in which the source of radiation is at a distance from the body.

(q) "External dose" means that portion of the dose equivalent received from any source of radiation outside the body.

(r) "Extremity dose" means the external dose equivalent to the hand, elbow, arm below the elbow, foot, knee, and leg below the knee.

(s) "Eye dose equivalent" means the external dose equivalent to the lens of the eye, at a tissue depth of 0.3 centimeter or 300 mg/cm^2 . (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1603 and 48-1607; effective Dec. 30, 2005.)

28-35-135f. Definitions. As used in these regulations, each of the following terms shall have the meaning assigned in this regulation: (a) "Facility" means the specific location at which a person is licensed or registered to use radioactive material or radiation-producing devices. Separate physical locations shall be considered to be separate facilities.

(b) "Fail-safe characteristic" means a design feature that causes beam port shutters to close, or otherwise prevents emergence of the primary beam, upon the failure of a safety or warning device.

(c) "Field emission equipment" means equipment that uses an X-ray tube in which electron emission from the cathode is due solely to the action of an electric field.

(d) "Field-flattening filter" means a filter used to provide dose uniformity over the area of a useful beam of X-rays at a specified depth.

(e) "Field size" means the dimensions along the major axes of an area in a plane perpendicular to the specified direction of the beam of incident radiation at the normal treatment distance. Field size is defined by the intersection of the major axes and the 50 percent isodose line. Material shall be placed in the beam so that the maximum dose is produced at the normal treatment distance when the field size is being determined.

(f) "Field station" means a facility where radioactive sources or radiation-processing devices are stored or used and from which equipment is dispatched to temporary job sites.

(g) "Filter" means material placed in the path of the useful beam of X-rays to selectively absorb the less penetrating radiation.

(h) "Fluoroscopic imaging assembly" means a component that comprises a reception system in which X-ray photons produce a fluoroscopic image. This term shall include equipment housings, any electrical interlocks, the primary protective barrier, and structural material providing linkage between the image receptor and the diagnostic source assembly.

(i) "Focal spot" means the area projected on the anode of the X-ray tube by the electrons accelerated from the cathode and from which the useful beam originates.

(j) "Full-cost reimbursement" means reimbursement of the total cost of staff time and any contractual support services expended. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1603 and 48-1607; effective Dec. 30, 2005.)

28-35-135g. Definitions. As used in these regulations, each of the following terms shall have the meaning assigned in this regulation: (a) "Gantry" means that part of the system supporting and allowing possible movements of the radiation head.

(b) "General emergency" means that an accident has occurred or is in progress, involving actual or imminent catastrophic reduction of facility safety systems with the potential for loss of containment or confinement integrity or release of radioactive material that can be reasonably expected to exceed off-site protective action guides.

(c) "Generally applicable environmental radiation standards" means standards issued by the U.S. environmental protection agency (EPA) under the authority of the atomic energy act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of

radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(d) "General purpose radiographic X-ray system" means any radiographic X-ray system that, by design, is not limited to the radiographic examination of specific anatomical regions.

(e) "Gonadal shield" means a protective barrier for the testes or ovaries.

(f) "Gray (Gy)" means the SI unit of absorbed dose. One gray is equal to an absorbed dose of one joule per kilogram. One gray is also equal to 100 rads.

(g) "Group I" means prepared radiopharmaceuticals that are used for diagnostic studies involving measurements of uptake, dilution, and excretion, as specified in 10 CFR 35.100, which is adopted by reference in K.A.R. 28-35-264.

(h) "Group II" means prepared radiopharmaceuticals that are used for diagnostic studies involving imaging and tumor localizations and any radioactive material in a radiopharmaceutical prepared from a group II kit or providing a single dose. With respect to radiopharmaceuticals prepared from group II kits or as single doses, group II shall refer to the unsealed byproduct material specified in 10 CFR 35.200, which is adopted by reference in K.A.R. 28-35-264.

(i) "Group III" means generators and reagent kits that are used following the manufacturer's instructions for the preparation of diagnostic radiopharmaceuticals. With respect to generators and reagent kits, group III shall refer to the unsealed byproduct material specified in 10 CFR 35.200, which is adopted by reference in K.A.R. 28-35-264.

(j) "Group IV" means prepared radiopharmaceuticals that are used for certain therapeutic uses that do not normally require hospitalization for purposes of radiation safety. With respect to uses that do not normally require hospitalization, group IV shall refer to the unsealed byproduct material specified in 10 CFR 35.300, which is adopted by reference in K.A.R. 28-35-264.

(k) "Group V" means prepared radiopharmaceuticals for certain therapeutic uses that normally require hospitalization for purposes of radiation safety. With respect to uses that normally require hospitalization, group V shall refer to unsealed byproduct material specified in 10 CFR 35.300, which is adopted by reference in K.A.R. 28-35-264.

(l) "Group VI" means sources and devices containing radioactive material used for medical diag-

nosis and therapy, as specified in 10 CFR 35.400, which is adopted by reference in K.A.R. 28-35-264.

(m) "Guide tube" means a flexible or rigid tube for guiding the source assembly and the attached control cable from the exposure device to the exposure head. This term may include the connections necessary for attachment to the exposure device and to the exposure head. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1603 and 48-1607; effective Dec. 30, 2005.)

28-35-135h. Definitions. As used in these regulations, each of the following terms shall have the meaning assigned in this regulation: (a) "Half-life" means the time required for the activity of any given radioisotope to decay to one-half of its original activity.

(b) "Half-value layer (HVL)" means the thickness of specified material that attenuates the beam of radiation to an extent that the exposure rate is reduced to one-half of its original value.

(c) "Hands-on experience," as applied to industrial radiology, means experience in all areas considered to be directly involved in the radiography process. This term shall include taking radiographs, the calibration of survey instruments, operational and performance testing of survey instruments and devices, film development, the posting of radiation areas, transporting radiography equipment, the posting of records and radiation area surveillance, and other areas as applicable. A disproportionate amount of time spent in only one or two of these areas shall not be counted toward the 2,000 hours of hands-on experience required for a radiation safety officer or a radiographer.

(d) "Hazardous waste" shall have the meaning assigned in K.A.R. 28-31-3.

(e) "Healing arts" means the activities authorized in K.S.A. 65-2801 et seq., and amendments thereto.

(f) "Healing arts screening" means the testing of human beings using X-ray machines for the detection or evaluation of health indications when the test is performed without any prior examination and without any specific and individual order by a licensed practitioner of the healing arts who is legally authorized to perform examinations and to prescribe X-ray tests for the purpose of diagnosis or treatment.

(g) "Heat unit" means a unit of energy equal to the product of the peak kilovoltage, milliamperes, and seconds (kVp × mA × second).

(h) "High dose-rate remote afterloader" means a brachytherapy device that remotely delivers a dose rate in excess of 12 grays (1,200 rads) per hour at the point or surface where the dose is prescribed.

(i) "High-radiation area" means any area that is accessible to individuals, in which there exists radiation at such levels that a major portion of the body could receive, in any one hour and at 30 centimeters from the source of the radiation or any surface that the radiation penetrates, a dose to the whole body in excess of 100 millirems. For purposes of these regulations, rooms or areas in which diagnostic X-ray systems are used for healing arts purposes shall not be considered high-radiation areas.

(j) "Human use" means the intentional internal or external administration of radiation or radioactive material to any individual. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1603 and 48-1607; effective Dec. 30, 2005.)

28-35-135i. Definitions. As used in these regulations, each of the following terms shall have the meaning specified in this regulation: (a) "Image intensifier" means a device that instantaneously converts, by means of photoemissive surfaces and electronic circuitry, an X-ray pattern into a light pattern of greater intensity than would have been provided by the original X-ray pattern.

(b) "Image receptor" means any device, including a fluorescent screen and radiographic film, that transforms incident X-ray photons into a visible image or into another form that can be made into a visible image by further transformations.

(c) "Image receptor support," for mammographic systems, means that part of the system designed to support the image receptor in a horizontal plane during a mammographic examination.

(d) "Immediate" means within not more than 15 minutes or as otherwise defined in a license condition.

(e) "Incident" means an individual event or series of related events that caused or threatened to cause any violation of these regulations or license conditions. For the purposes of part 13, "incident" shall mean any unintended event involving radioactive material for which the public dose is a fraction of regulatory limits and safety provisions are sufficient, but further degradation of safety systems could lead to an accident.

(f) "Independent certifying organization" means an independent organization that meets all of the criteria specified in K.A.R. 28-35-293.

(g) "Indian tribe" and "tribe" mean any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary of the United States department of the interior because of their status as Indians.

(h) "Indian tribal official" and "tribal official" mean the highest-ranking individual who represents tribal leadership, including the chief, president, and tribal council leader.

(i) "Individual" means any human being.

(j) "Individual monitoring" means the assessment of either of the following:

(1) A dose equivalent by the use of individual-monitoring devices or by the use of survey data; or

(2) a committed effective dose equivalent determined by bioassay or by computation of the number of DAC-hours to which an individual is exposed.

(k) "Individual-monitoring device" means any device designed to be worn by a single individual for the assessment of dose equivalent. "Individual-monitoring device" shall include any film badge, thermoluminescent dosimeter (TLD), optically stimulated dosimeter, pocket ionization chamber, and personal air-sampling device. For purposes of these regulations, "personnel dosimeter" and "dosimeter" shall be considered terms equivalent to "individual-monitoring device."

(l) "Industrial radiography" means the examination of the structure of materials by nondestructive methods utilizing sources of radiation.

(m) "Inherent filtration" means the filtration permanently mounted in the useful beam, including the window of the X-ray tube and any permanent tube or source enclosure.

(n) "Injection tool" means a device used for controlled subsurface injection of radioactive tracer material.

(o) "Inspection" means an official examination or observation that may include tests, surveys, and monitoring to determine compliance with federal rules, state regulations, orders, requirements, and license and registration conditions.

(p) "Installation" means the location where one or more sources of radiation are used, operated, or stored.

(q) "Interlock" means a device for precluding access by an individual to an area of radiation hazard without warning, either by preventing admission or by automatically removing the hazards.

(r) "Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.

(s) “Interruption of irradiation” means the stopping of irradiation with the possibility of continuing irradiation without the resetting of operating conditions at the control panel.

(t) “Ionizing radiation” means radiation capable of producing an ionization event, including gamma rays and X-rays, alpha and beta particles, high-speed electrons, neutrons, and other nuclear particles.

(u) “Irradiation” means the exposure of matter to ionizing radiation.

(v) “Irradiator” means a facility that uses radioactive sealed sources for the irradiation of objects or materials and in which radiation dose rates exceeding five grays (500 rads) per hour exist at one meter from the sealed radioactive sources in air or water, as applicable for the irradiator type. This term shall not include any irradiator in which both the sealed source and the area subject to irradiation are contained within a device and are not accessible to personnel.

(w) “Irradiator operator” means an individual who has successfully completed the required training and testing and is authorized by the terms of the license to operate an irradiator without a supervisor present.

(x) “Irretrievable well-logging source” means any sealed source containing licensed material that is pulled off or not connected to the wireline that suspends the source in the well and for which all reasonable effort at recovery has been expended.

(y) “Isocenter” means a fixed point in space that is located at the center of the smallest sphere through which the central axis of the beams passes under all conditions. (Authorized by K.S.A. 48-1607; implementing K.S.A. 2017 Supp. 48-1603 and K.S.A. 48-1607; effective Dec. 30, 2005; amended May 4, 2018.)

28-35-135k. Definitions. As used in these regulations, each of the following terms shall have the meaning assigned in this regulation: (a) “Kilovolts (kV)” means the energy equal to that acquired by a particle with one electron charge in passing through a potential difference of 1,000 volts in a vacuum.

(b) “Kilovolts peak (kVp)” has the meaning assigned to “peak tube potential.”

(c) “kWs” means kilowatt second. This term is calculated using the following equation:

$$\text{kWs} = (X)\text{kV} \times (Y)\text{mA} \times Z(\text{s}) \times \frac{\text{kWs}}{10^3\text{kV} \times \text{mA} \times \text{s}} = \frac{XYZ \text{ kWs}}{10^3}$$

(Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1603 and 48-1607; effective Dec. 30, 2005.)

28-35-135l. Definitions. As used in these regulations, each of the following terms shall have the meaning assigned in this regulation: (a) “Lead equivalent” means the thickness of lead affording the same attenuation, under specified conditions, as the material in question.

(b) “Leakage radiation” means radiation emanating from the device source assembly, except for the following:

(1) The useful beam; and

(2) radiation produced when the exposure switch or timer is not activated for diagnosis or therapy.

(c) “Leakage technique factors” means the technique factors associated with the tube housing assembly that are used in measuring leakage radiation. The leakage technique factors shall be defined as follows:

(1) For diagnostic source assemblies intended for capacitor energy storage equipment, the maximum rated number of exposures in an hour for operation at the maximum rated peak tube potential, with the quantity of charge per exposure being 10 millicoulombs or the minimum obtainable from the unit, whichever is larger;

(2) for diagnostic source assemblies intended for field emission equipment rated for pulsed operation, the maximum rated number of X-ray pulses in an hour for operation at the maximum rated peak tube potential; and

(3) for all other diagnostic or therapeutic source assemblies, the maximum rated peak tube potential and the maximum rated continuous tube current for the maximum rated peak tube potential.

(d) “License” means a document issued in accordance with these regulations specifying the conditions of use of radioactive material.

(e) “Licensed or registered material” means radioactive material received, possessed, used, transferred, or disposed of under a general or specific license or registration issued by the department.

(f) “Licensee” means any person who is licensed in accordance with these regulations.

(g) “Licensing state” means any state that has been granted final designation by the conference of radiation control program directors, inc., for the regulatory control of NARM, as defined in K.A.R. 28-35-135n.

(h) "Light field" means that area of the intersection of the light beam from the beam-limiting device and one plane in the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the illumination is one-fourth of the maximum in the intersection.

(i) "Line-voltage regulation" means the difference between the no-load and the load line potentials, expressed as a percent of the load line potential, using the following equation:

$$\text{Percent line-voltage regulation} = 100 (V_n - V_l) / V_l$$

where

V_n = No-load line potential and

V_l = Load line potential.

(j) "Local component" means any part of an analytical X-ray system. This term shall include components that are struck by X-rays, including radiation source housings, port and shutter assemblies, collimators, sample holders, cameras, goniometers, detectors, and shielding. This term shall not include power supplies, transformers, amplifiers, readout devices, and control panels.

(k) "Logging supervisor" means the individual who uses sources of radiation or provides personal supervision of the utilization of sources of radiation at a well site.

(l) "Logging tool" means a device used subsurface to perform well logging.

(m) "Lost or missing licensed or registered source of radiation" means a licensed or registered source of radiation whose location is unknown. This term shall include licensed or registered material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

(n) "Lot tolerance percent defective" means the poorest quality, expressed as the percentage of defective units, in an individual inspection lot that may be accepted.

(o) "Low dose-rate remote afterloader" means a brachytherapy device that remotely delivers a dose rate of less than or equal to two grays per hour at the point or surface where the dose is prescribed. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1603 and 48-1607; effective Dec. 30, 2005; amended March 18, 2011.)

28-35-135m. Definitions. As used in these regulations, each of following terms shall have the meaning assigned in this regulation: (a) "mA" means milliamperere.

(b) "Major processor" means a user processing, handling, or manufacturing radioactive material exceeding type A quantities as unsealed sources or material, or exceeding four times the type B quantities as sealed sources. This term shall not include nuclear medicine programs, universities, industrial radiographers, and small industrial programs. Type A and B quantities are specified in K.A.R. 28-35-221b of these regulations.

(c) "Management" means the chief executive officer or other individual having the authority to manage, direct, or administer the licensee's activities, or that person's delegate or delegates.

(d) "Manual brachytherapy" means a type of brachytherapy in which the brachytherapy sources, including seeds and ribbons, are manually placed topically on or inserted either into the body cavities that are in close proximity to a treatment site or directly into the tissue volume.

(e) "mAs" means the product of milliamperes and seconds.

(f) "Maximum line current" means the root-mean-square current in the supply line of an X-ray machine operating at its maximum rating.

(g) "Medical event" means an event that meets the criteria specified in part 6 of these regulations.

(h) "Medical institution" means an organization in which several medical disciplines are practiced.

(i) "Medical use" means the intentional internal or external administration of radioactive material, or radiation, to humans in the practice of the healing arts.

(j) "Medium dose-rate remote afterloader" means a brachytherapy device that remotely delivers a dose rate of greater than two grays, but less than 12 grays per hour at the point or surface where the dose is prescribed.

(k) "Megavolt (MV)" means the energy equal to that acquired by a particle with one electron charge in passing through a potential difference of one million volts in a vacuum.

(l) "Member of the public" means an individual, except when that individual is receiving an occupational dose.

(m) "Mineral logging" means logging performed for the purpose of mineral exploration other than oil or gas.

(n) "Minor" means an individual younger than 18 years of age.

(o) "Mobile nuclear medicine service" means the transportation and medical use of radioactive material.

(p) "Mobile X-ray equipment" means X-ray equipment mounted on a permanent base with

wheels or casters, or both, for moving while completely assembled. This term shall include X-ray equipment mounted in a vehicle.

(q) "Monitoring" means the measurement of radiation, radioactive material concentrations, surface area activities, or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of these regulations, "radiation monitoring" and "radiation protection monitoring" shall be considered terms equivalent to "monitoring."

(r) "Moving beam therapy" means radiation therapy with relative displacement of the useful beam and the patient during irradiation, including therapy, skip therapy, and rotational therapy. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1603 and 48-1607; effective Dec. 30, 2005.)

28-35-135n. Definitions. As used in these regulations, each of the following terms shall have the meaning assigned in this regulation: (a) "NARM" means any naturally occurring or

accelerator-produced radioactive material, not including byproduct, source, or special nuclear material.

(b) "Nationally tracked source" means a sealed source containing any quantity of radioactive material equal to or greater than any threshold listed in the table in this subsection. For purposes of the definition of "nationally tracked source," "sealed source" shall be defined as radioactive material that is sealed in a capsule or closely bonded, that is in a solid form, and that is not exempt from regulatory control. For purposes of the definition of "nationally tracked source," "sealed source" shall not include any radioactive material encapsulated solely for disposal and any nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet. Category I nationally tracked sources contain radioactive material in quantities equal to or greater than the category 1 threshold. Category 2 nationally tracked sources contain radioactive material in quantities equal to or greater than the category 2 threshold but less than the category 1 threshold.

Nationally tracked source thresholds

Radioactive material	Category 1 (TBq)*	Category 1 (Ci)**	Category 2 (TBq)*	Category 2 (Ci)**
Actinium-227	20	540	0.2	5.4
Americium-241	60	1,600	0.6	16
Americium-241/Be	60	1,600	0.6	16
Californium-252	20	540	0.2	5.4
Cobalt-60	30	810	0.3	8.1
Curium-244	50	1,400	0.5	14
Cesium-137	100	2,700	1	27
Gadolinium-153	1,000	27,000	10	270
Iridium-192	80	2,200	0.8	22
Plutonium-238	60	1,600	0.6	16
Plutonium-239/Be	60	1,600	0.6	16
Polonium-210	60	1,600	0.6	16
Promethium-147	40,000	1,100,000	400	11,000
Radium-226	40	1,100	0.4	11
Selenium-75	200	5,400	2	54
Strontium-90	1,000	27,000	10	270
Thorium-228	20	540	0.2	5.4
Thorium-229	20	540	0.2	5.4
Thulium-170	20,000	540,000	200	5,400
Ytterbium-169	300	8,100	3	81

* The Terabecquerel (TBq) values are the regulatory standard.

** The curie (Ci) values specified are obtained by converting from the TBq value. The curie values are provided for practical usefulness only and are rounded after conversion.

(c) "Natural radioactivity" means the radioactivity of naturally occurring nuclides.

(d) "New equipment" means any system subject to K.A.R. 28-35-249 that was manufactured after January 1, 1985.

(e) "Nonionizing radiation" means radiation not capable of producing ionization, including sound and radio waves and visible, infrared, or ultraviolet light.

(f) "Non-stochastic effect" means a health effect, the severity of which varies with the dose and for which a threshold is believed to exist. For purposes of these regulations, "deterministic effect" shall be considered an equivalent term.

(g) "Normal operating procedures" means operating procedures for conditions suitable for routine purposes with shielding and barriers in place, including routine alignment procedures. This term shall not include maintenance procedures and routine and emergency radiation safety considerations.

(h) "Normal treatment distance" means either of the following:

(1) For electron irradiation, the distance from the virtual source to the surface along the central axis of the useful beam, as specified by the manufacturer; or

(2) for X-ray irradiation, the distance from the virtual source to the isocenter along the central axis of the useful beam. For non-isocentric equipment, this distance shall be the distance specified by the manufacturer.

(i) "Nuclear regulatory commission (NRC)" means the U.S. nuclear regulatory commission or its duly authorized representatives.

(j) "NVLAP" means the national voluntary laboratory accreditation program. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1603 and 48-1607; effective Dec. 30, 2005; amended July 27, 2007.)

28-35-135o. Definitions. As used in these regulations, each of the following terms shall have the meaning assigned in this regulation: (a) "Occupational dose" means the dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation or radioactive material from licensed or unlicensed sources of radiation. The term "occupational dose" shall not include any dose received under any of the following circumstances:

(1) As background radiation;

(2) as a patient from medical practices;

(3) from voluntary participation in medical research programs; or

(4) as a member of the public.

(b) "Off-site response organization" means any non-licensee off-site organization that could be needed to respond to an emergency, including local fire, police, ambulance, and hospital emergency management services.

(c) "Open-beam configuration" means an X-ray system in which an individual could accidentally place some part of the individual's body in the primary beam path during normal operation.

(d) "Output" means the exposure rate or dose rate, or a quantity related in a known manner to these rates from a teletherapy unit for a specified set of exposure conditions. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1603 and 48-1607; effective Dec. 30, 2005.)

28-35-135p. Definitions. As used in these regulations, each of the following terms shall have the meaning assigned in this regulation: (a) "Package" means a container and packing material, together with the radioactive contents, as presented for transport.

(b) "Panoramic dry-source-storage irradiator" means an irradiator in which the irradiations occur in air in areas potentially accessible to personnel and in which the sources are stored in shields made of solid materials. This term shall include beam-type dry-source-storage irradiators in which one narrow beam of radiation is produced for performing irradiations.

(c) "Panoramic wet-source-storage irradiator" means an irradiator in which the irradiations occur in air in areas potentially accessible to personnel and in which the sources are stored underwater in a storage pool.

(d) "Particle accelerator" means any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of one mega electron volt (MeV).

(e) "Patient" means an individual subjected to examination, diagnosis, or treatment.

(f) "Patient intervention" means any action by the patient or human research subject, whether intentional or unintentional, that affects the prescribed treatment. This term shall include dislodging or removing any treatment device and prematurely terminating the prescribed treatment.

(g) “Peak tube potential” means the maximum value of the potential differences across an X-ray tube during an exposure. This term is also referred to as “kilovolts peak (kVp).”

(h) “Periodic quality-assurance check” means a procedure that is performed to ensure that the previous calibration continues to be valid.

(i) “Permanent radiographic installation” means an enclosed, shielded room, cell, or vault, not located at a temporary job site, in which radiography is performed.

(j) “Person” means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this or any other state, or political subdivision or agency, excluding federal government agencies.

(k) “Personnel-monitoring equipment” means any device designed to be carried or worn by an individual and used to measure the exposure of that individual to radiation. For purposes of these regulations, “PMD,” which means “personnel-monitoring device,” shall be an equivalent term.

(l) “Personnel supervision” means guidance and instruction by the supervisor who is physically present at the job site and who is watching the performance of the operation in such proximity that contact can be maintained and immediate assistance given, as required.

(m) “Phantom” means a volume of material behaving in a manner similar to that of tissue, with respect to the attenuation and scattering of radiation.

(n) “Pharmacist” means any individual licensed to practice pharmacy under K.S.A. 65-1626 et seq., and amendments thereto.

(o) “Phototimer” means a device used for controlling radiation exposures to image receptors by limiting the amount of radiation that reaches a radiation-monitoring device or devices. The radiation-monitoring device or devices are part of an electronic circuit that controls the period of time during which the tube is activated. For purposes of these regulations, “automatic exposure control” is an equivalent term.

(p) “Physician” means any individual licensed to practice the healing arts specified in K.S.A. 65-2869, K.S.A. 65-2870, or K.S.A. 65-2871, and amendments thereto.

(q) “Planned special exposure” means an infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

(r) “Podiatry” means the activities authorized

and specified in K.S.A. 65-2001 et seq., and amendments thereto.

(s) “Pool irradiator” means any irradiator at which the sources are stored or used in a pool of water, including panoramic wet-source-storage irradiators and underwater irradiators.

(t) “Portable X-ray equipment” means X-ray equipment designed to be hand-carried.

(u) “Position indication device (PID)” means a device on dental X-ray equipment used to indicate the beam position and to establish a definite source-to-skin-surface distance. A PID can incorporate or serve as a beam-limiting device.

(v) “Positive beam limitation” means the automatic or semiautomatic adjustment of an X-ray beam to the size of the selected image receptor. Exposures cannot be made without this adjustment.

(w) “Practical examination” means a demonstration by personnel through the application of safety principles, including the use of all procedures and equipment.

(x) “Preceptor” means an individual who provides or directs the training and experience required for another individual to become an authorized user, an authorized medical physicist, an authorized nuclear pharmacist, or a radiation safety officer.

(y) “Prescribed dosage” means the quantity of radiopharmaceutical activity documented as follows:

(1) In a written directive; or

(2) either in the diagnostic clinical procedures manual or in any appropriate record in accordance with the directions of the authorized user for diagnostic procedures.

(z) “Prescribed dose” means any of the following:

(1) For gamma stereotactic radiosurgery, the total dose as documented in the written directive;

(2) for teletherapy, the total dose and dose per fraction as documented in the written directive; or

(3) for brachytherapy, either the total source strength and exposure time or the total dose, as documented in the written directive.

This term shall not apply to part 6 of these regulations.

(aa) “Primary beam” means ionizing radiation that passes through an aperture of the source housing by a direct path from the X-ray tube or a radioactive source located in the radiation source housing.

(bb) “Primary dose-monitoring system” means a system that monitors the useful beam during irradiation and that terminates irradiation when

a preselected number of dose monitor units are acquired.

(cc) "Primary protective barrier" means a barrier of attenuating materials used to reduce the useful X-ray beam to the required degree.

(dd) "Product conveyor system" means a system for moving the product to be irradiated to, from, and within the area where irradiation takes place.

(ee) "Projected dose" means a future dose calculated for a specified time period on the basis of estimated or measured initial concentrations of radionuclides or exposure rates and in the absence of protective actions.

(ff) "Protective action" means an action taken by members of the public to protect themselves from radiation from an accident involving radioactive material. This term may include sheltering, evacuation, relocation, control of access, administration of a radioprotective drug, decontamination of persons, decontamination of land or property, and controls placed on food or water.

(gg) "Protective action guide" means a projected dose from an accidental release of radioactive material at which protective action may be considered.

(hh) "Protective apron" means an apron made of radiation-absorbing materials used to reduce radiation exposure.

(ii) "Protective barrier" means a barrier of attenuating materials used to reduce radiation exposure to the required degree.

(jj) "Protective glove" means a glove made of radiation-absorbing materials used to reduce radiation exposure.

(kk) "Public dose" means the dose received by a member of the public from exposure to radiation, radioactive material released by a licensee or registrant, or any other source of radiation under the control of the licensee or registrant. This term shall not include an occupational dose, a dose received from background radiation, a dose received as a patient from medical practices, and a dose received from voluntary participation in a medical research program.

(ll) "Pulse dose-rate remote afterloader" means a special type of remote afterloading brachytherapy device that meets all of the following conditions:

(1) The device uses a single source capable of delivering more than 12 grays per hour.

(2) The source activity of the device is approximately one-tenth of the activity of typical high dose-rate remote afterloader sources.

(3) The device is used to stimulate the radiobiology of a low dose-rate treatment by inserting the source for a given fraction of each hour.

(mm) "Pyrophoric liquid" means any liquid that ignites spontaneously in dry or moist air at or below 130°F (54.4°C).

(nn) "Pyrophoric solid" means any solid material, other than one classified as an explosive, that under normal conditions results in the following:

(1) Is liable to cause fires through friction or retained heat from manufacturing or processing;

(2) is ignited readily; and

(3) if ignited, burns vigorously and persistently enough to create a serious transportation, handling, or disposal hazard, including spontaneously combustible and water-reactive materials. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1603 and 48-1607; effective Dec. 30, 2005; amended July 27, 2007.)

28-35-135q. Definitions. As used in these regulations, each of the following terms shall have the meaning assigned in this regulation: (a) "Qualified expert" means an individual having the knowledge and training to measure ionizing radiation, to evaluate safety techniques, and to advise regarding radiation protection needs.

(1) This term shall include any individual certified in the appropriate field by any of the following, or an individual with equivalent qualifications as determined by the secretary:

(A) The American board of radiology;

(B) the American board of health physics; or

(C) the American board of medical physics.

(2) With reference to the calibration of radiation therapy equipment, this term shall include any individual having, in addition to the qualifications specified in paragraph (1) of this subsection, training and experience in the clinical applications of radiation physics to radiation therapy, including any individual certified in either of the following, or an individual with equivalent qualifications as determined by the secretary:

(A) Therapeutic radiological physics by the American board of radiology; or

(B) X-ray and radium physics by the American board of radiology.

(b) "Quality factor (Q)" means the modifying factor, as listed in tables I and II in K.A.R. 28-35-144a, used to derive the dose equivalent from the absorbed dose.

(c) "Quarter" means a period of time that is equal to one-fourth of the year and is approximately 13

consecutive weeks. The beginning of the first quarter in each year shall coincide with the starting date of the year, and no day shall be omitted or duplicated in consecutive quarters. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1603 and 48-1607; effective Dec. 30, 2005.)

28-35-135r. Definitions. As used in these regulations, each of the following terms shall have the meaning assigned in this regulation: (a) “Rad” means the unit of absorbed dose. One rad equals one-hundredth of a joule per kilogram of material or the absorption of 100 ergs per gram of material. One millirad (mrad) equals 0.001 rad.

(b) “Radiation area” means any area that is accessible to individuals, in which there exists radiation at such levels that, at 30 centimeters from the source of the radiation or any surface that the radiation penetrates, an individual could receive a dose equivalent in excess of five millirems in one hour.

(c) “Radiation detector” means a device that, in the presence of radiation, provides a signal or other indication suitable for use in measuring one or more quantities of incident radiation.

(d) “Radiation head” means the structure from which the useful beam emerges.

(e) “Radiation machine” means either of the following:

(1) Any device that is primarily intended to produce, and is capable of producing, ionizing radiation; or

(2) any device that is not primarily intended to produce, but does produce, ionizing radiation at a level greater than 0.5 mR/hr at any point five centimeters from its surface.

This term shall not mean any device that produces ionizing radiation only by use of radioactive materials.

(f) “Radiation room” means a shielded room in which irradiations take place. Underwater irradiations shall not be deemed to have radiation rooms.

(g) “Radiation safety officer” means an individual directly responsible for radiation protection. This term shall not apply to part 6 of these regulations.

(h) “Radiation therapy simulation system” means a radiographic or fluoroscopic X-ray system intended for localizing the volume of tissue to be exposed during radiation therapy and confirming the position and size of the therapeutic irradiation field.

(i) “Radioactive marker” means radioactive material placed subsurface or on a structure intend-

ed for subsurface use for the purpose of depth determination or direction orientation.

(j) “Radioactive material” means any material, in any chemical or physical form, that emits radiation spontaneously.

(k) “Radioactivity” means the disintegration of unstable atomic nuclei by the emission of radiation.

(l) “Radiograph” means an image receptor on which the image is created directly or indirectly by an X-ray pattern that results in a permanent record.

(m) “Radiographer” means any individual who meets the following conditions:

(1) Performs nonmedical radiographic operations or, while in attendance at the site where those radiographic operations are being performed, personally supervises the operations; and

(2) is responsible to the licensee or registrant, or both, for ensuring compliance with the requirements of these regulations or the conditions of the license, including any specific authorization by the department to provide training to radiographic trainees.

(n) “Radiographer certification” means the written approval received from a certifying entity stating that an individual has satisfactorily met the radiation safety, testing, and experience criteria.

(o) “Radiographer’s assistant” means any individual who, under the personal supervision of a radiographer, uses radiation machines, radiographic exposure devices, sealed sources, or related handling tools or survey instruments in industrial radiography.

(p) “Radiographic exposure device” means any instrument with a sealed source fastened or contained in the instrument in which the sealed source or shielding of the source can be moved or otherwise changed from a shielded to unshielded position for purposes of making a radiographic exposure.

(q) “Radiographic imaging system” means any system that produces a permanent or semipermanent image on an image receptor by the action of ionizing radiation.

(r) “Radiographic operations” means all activities performed with a radiographic exposure device or with a radiation machine. These activities shall include the following:

(1) Transporting, except by common or contract carriers;

(2) storing at a temporary job site;

(3) performing surveys to confirm the adequacy of boundaries;

- (4) setting up equipment; and
- (5) any activity performed inside restricted area boundaries.

This term shall not include transporting a radiation machine.

(s) "Radiological physicist" means an individual who meets at least one of the following requirements:

(1) Is certified by the American board of radiology in any of the following:

- (A) Therapeutic radiological physics;
- (B) roentgen ray and gamma ray physics;
- (C) X-ray and radium physics; or
- (D) radiological physics;

(2) is certified by the American board of medical physics in radiation oncology physics; or

(3) (A) Holds a master's or doctoral degree in physics, biophysics, radiological physics, or health physics; and

(B) has completed one year of full-time training in therapeutic radiological physics and an additional year of full-time work experience under the supervision of teletherapy physicist at a medical institution that includes duties that involve performing calibration and spot checks of a medical accelerator or a sealed source teletherapy unit.

(t) "Rating" means the operating limits specified by the component manufacturer.

(u) "Recordable event" means the administration of any of the following:

(1) A radiopharmaceutical or radiation without a written directive if a written directive is required;

(2) a radiopharmaceutical or radiation if a written directive is required, without the daily recording of each administered radiopharmaceutical dosage or radiation dose in the appropriate record;

(3) a radiopharmaceutical dosage greater than 1.11 megabecquerels (30 μ Ci) of sodium iodide I-125 or I-131 if the administered dosage of both differs from the prescribed dosage by more than 10 percent of the prescribed dosage and if the difference between the administered dosage and the prescribed dosage exceeds 555 kilobecquerels (15 μ Ci);

(4) a therapeutic radiopharmaceutical dosage, other than sodium iodide I-125 or I-131, if the administered dosage differs from the prescribed dosage by more than 10 percent of the prescribed dosage;

(5) a teletherapy radiation dose if the calculated weekly administered dose exceeds the weekly prescribed dose by 15 percent or more of the weekly prescribed dose; or

(6) a brachytherapy radiation dose if the calculated administered dose differs from the prescribed dose by more than 10 percent of the prescribed dose.

(v) "Recording" means producing a permanent form of an image resulting from X-ray photons.

(w) "Redundant beam-monitoring system" means a combination of two dose-monitoring systems in which each system is designed to terminate irradiation in accordance with a preselected number of dose monitor units.

(x) "Reference man" means a hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics may be used by researchers and public health workers to standardize the results of experiments and to relate biological damage to a common base.

(y) "Registrable item" means any radiation machine.

(z) "Registrant" means any person who is registered with the department and is legally obligated to register with the department according to these regulations.

(aa) "Registration" means the process of completing and filing forms with the department as required by these regulations.

(bb) "Relocation" means the removal or, after a plume has passed, the continued exclusion of people from contaminated areas to avoid a chronic radiation dose.

(cc) "Rem" means the special unit of any of the quantities expressed as dose equivalent. One millirem (mrem) equals 0.001 rem.

(dd) "Research and development" means either of the following:

(1) Theoretical analysis, exploration, or experimentation; or

(2) the extension of investigating findings and theories of a scientific or technical nature into practical application for experimental purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

Research and development, as used in these regulations, shall not include the internal or external administration of radiation or radioactive materials to any individual.

(ee) "Respiratory protective equipment" means any apparatus used to reduce an individual's intake of airborne radioactive materials.

(ff) "Response time" means the time required for an instrument system to reach 90 percent of

its final reading when the radiation-sensitive volume of the instrument system is exposed to a step change in radiation flux from zero to a level sufficient to provide a steady-state midscale reading.

(gg) "Restricted area" means any area to which the access is limited by the licensee or registrant to protect individuals against undue risks from exposure to sources of radiation. This term shall not include areas used as residential quarters. However, separate rooms in a residential building may be set apart and designated as a restricted area. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1603 and 48-1607; effective Dec. 30, 2005; amended July 27, 2007.)

28-35-135s. Definitions. As used in these regulations, each of the following terms shall have the meaning specified in this regulation: (a) "Sanitary sewerage" means a system of public sewers to carry off waste water and refuse. This term shall exclude sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee or registrant.

(b) "Scattered radiation" means radiation that, during its passage through matter, is deviated in direction.

(c) "Sealed source" means any radioactive material that is permanently encased in a capsule designed to prevent the leakage or escape of the radioactive material.

(d) "Secondary dose-monitoring system" means a system that terminates irradiation if the primary system fails.

(e) "Secondary protective barrier" means a barrier sufficient to attenuate stray radiation to the required degree.

(f) "Secretary" means secretary of the department of health and environment.

(g) "Seismic area" means any area where the probability of a horizontal acceleration in rock of more than 0.3 times the acceleration of gravity in 250 years is greater than 10 percent, as designated by the U.S. geological survey.

(h) "Shallow dose equivalent" and "H_s," which apply to the external exposure of the skin or an extremity, mean the dose equivalent at a tissue depth of 0.007 centimeter (7 mg/cm²) averaged over an area of one square centimeter.

(i) "Sheltering" means using a structure for radiation protection from an airborne plume containing radioactive material.

(j) "Shielded position" means the location within the radiographic exposure device or storage

container that, by the manufacturer's design, is the proper location for storage of the sealed source.

(k) "Shielded-room radiography using radiation machines" means industrial radiography using radiation machines that meets the following conditions:

(1) Is conducted in an enclosed room, the interior of which is not occupied during radiographic operations;

(2) is shielded so that every location on the exterior meets the conditions specified in K.A.R. 28-35-214a; and

(3) is accessible only through openings that are interlocked so that the radiation machine will not operate unless all openings are securely closed.

(l) "SI" means the abbreviation for the international system of units.

(m) "Shutter" means a device attached to an X-ray tube housing assembly that can totally intercept the useful beam and that has a lead equivalency not less than that of the tube housing assembly.

(n) "Sievert" means the SI unit of any of the quantities expressed as a dose equivalent. The dose equivalent in sieverts is equal to the absorbed dose in grays multiplied by the quality factor (1 Sv = 100 rem).

(o) "Site area emergency" means an event that could occur, is in progress, or has occurred, that could lead to a significant release of radioactive material, and that could require a response by off-site response organizations to protect persons off-site.

(p) "Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.

(q) "Source" means the focal spot of the X-ray tube.

(r) "Source assembly" means an assembly that consists of the sealed source and a connector that attaches the source to the control cable.

(s) "Source changer" means a device designed and used for replacement of sealed sources in radiographic exposure devices, including those devices also used for transporting and storing sealed sources.

(t) "Source holder" means a housing or assembly into which a radioactive source is placed for the purpose of facilitating the handling and use of the source in well-logging operations.

(u) "Source-image receptor distance" and "SID" mean the distance from the source to the center of the input surface of the image receptor.

(v) "Source material" means the following:

(1) Uranium or thorium, or any combination of these, in any physical or chemical form; or

(2) ores that contain, by weight, 0.05 percent or more of uranium, thorium, or any combination of these.

The term "source material" shall not include special nuclear material.

(w) "Source material milling" means any activity that results in the production of by-product material.

(x) "Source of radiation" means any material, device, or equipment that emits or is capable of producing radiation.

(y) "Source-to-skin distance" and "SSD" mean the distance between the source and the patient's skin.

(z) "Special form" means any licensed material that meets either of the following conditions:

(1)(A) Is in solid form;

(B) has at least one dimension measuring at least five millimeters;

(C) does not melt, sublime, or ignite in air at a temperature of 1,000°F;

(D) does not shatter or crumble if subjected to the percussion test described in K.A.R. 28-35-144; and

(E) is not dissolved or converted into dispensable form to the extent of more than 0.005 percent by weight by immersion for one week in water at 68°F or in air at 86°F; or

(2)(A) Is in any physical form securely contained in a capsule;

(B) has at least one dimension measuring at least five millimeters;

(C) will retain its contents if subjected to the tests described in K.A.R. 28-35-144; and

(D) is constructed of materials that do not melt, sublime, or ignite in air at 1,475°F and do not dissolve or convert into dispensable form to the extent of more than 0.005 percent by weight by immersion for one week in water at 68°F or in air at 86°F.

(aa) "Special nuclear material" means either of the following:

(1) Plutonium, uranium-223, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the department declares by order to be special nuclear material after the nuclear regulatory commission (NRC), pursuant to the provisions of section 51 of the atomic energy act of 1954, has determined the material to be special nuclear material, except for source material; or

(2) any material artificially enriched as specified in paragraph (aa)(1), except for source material.

(bb) "Special nuclear material in quantities not sufficient to form a critical mass" means any of the following:

(1) Uranium enriched in the isotope U-235, in quantities not exceeding 350 grams of contained U-235;

(2) uranium enriched in the isotope uranium-233, in quantities not exceeding 200 grams of contained U-233;

(3) plutonium not exceeding 200 grams; or

(4) any combination of these special nuclear materials in accordance with the following formula:

$$\frac{\text{grams of contained U-235}}{350} + \frac{\text{grams of contained U-233}}{200} + \frac{\text{gram of Pu}}{200} \leq 1$$

The sum of the ratios for all of the kinds of special nuclear material in combination shall not exceed one.

(cc) "Spot check" means a procedure that is performed to ensure that a previous calibration continues to be valid.

(dd) "Spot film" means a radiograph that is made during a fluoroscopic examination or radiation therapy treatment to permanently record conditions that exist during the procedure.

(ee) "Spot-film device" means a device intended either to transport and position a radiographic image receptor between the radiation source and image receptor or to position a radiographic image receptor between the radiation source and image receptor. This term shall include a device intended to hold a cassette over the input end of an image intensifier for the purpose of making a radiograph.

(ff) "Stationary beam therapy" means radiation therapy without relative displacement of the useful beam and the patient during irradiation.

(gg) "Stationary X-ray equipment" means X-ray equipment that is installed in a fixed location.

(hh) "Stereotactic radiosurgery" means the use of external radiation in conjunction with a stereotactic guidance device to very precisely deliver a therapeutic dose to a tissue volume.

(ii) "Stochastic effect" means a health effect that occurs randomly and for which the probability of the occurrence of the effect, rather than the severity of the effect, is assumed to be a linear function of dose without threshold. For purposes

of these regulations, “probabilistic effect” shall be considered an equivalent term.

(jj) “Storage area” means any location, facility, or vehicle that is used to store, transport, or secure a radiographic exposure device, radiation machine, storage container, or sealed source when not in use. Each storage area shall be locked or have physical barriers to prevent accidental exposure, tampering, or unauthorized removal of the device, machine, sealed source, or container.

(kk) “Storage container” means a device in which radioactive materials are transported or stored.

(ll) “Stray radiation” means the sum of leakage radiation and scattered radiation.

(mm) “Structured educational program” means an educational program designed to impart particular knowledge and practical education through interrelated studies and supervised training.

(nn) “S-tube” means a tube through which the radioactive source travels when inside a radiographic exposure device.

(oo) “Subsurface studies” means the evaluation of parameters below the surface of the earth.

(pp) “Subsurface tracer study” means the release of a substance tagged with radioactive material for the purpose of tracing the movement or position of the tagged substance in the well bore or adjacent formation.

(qq) “Survey” means an evaluation of a radiation hazard resulting from the production, use, transfer, release, disposal, or presence of sources of radiation. This term shall include a physical survey of the location of materials or equipment, or both, and either the measurements of levels of radiation or the concentrations or quantities of radioactive materials present. (Authorized by K.S.A. 48-1607; implementing K.S.A. 2017 Supp. 48-1603 and K.S.A. 48-1607; effective Dec. 30, 2005; amended May 4, 2018.)

28-35-135t. Definitions. As used in these regulations, each of the following terms shall have the meaning assigned in this regulation: (a) “Target” means the part of a radiation head that by design intercepts a beam of accelerated particles, with the subsequent emission of other radiation.

(b) “Target-to-skin distance (TSD)” means the distance measured along the beam axis from the center of the front surface of the X-ray target or electron virtual source to the irradiated object or patient.

(c) “Technique factors” means the conditions of operation specified as follows:

(1) For capacitor energy storage equipment, peak tube potential in kV and quantity of charge in mAs;

(2) for field emission equipment rated for pulsed operation, peak tube potential in kV and number of X-ray pulses; and

(3) for all equipment not specified in paragraphs (c)(1) and (2), peak tube potential in kV and either the tube current in mA and the exposure time in seconds or the product of the tube current and the exposure time in mAs.

(d) “Teletherapy” means therapeutic irradiation in which the source of radiation is located at a distance from the body.

(e) “Teletherapy physicist” means an individual identified as the qualified teletherapy physicist on a department license.

(f) “Temporary job site” means a location where operations are performed and where sources of radiation may be stored, other than the location or locations of use authorized on the license or registration.

(g) “Tenth-value layer (TVL)” means the thickness of a specified material that attenuates X-radiation or gamma radiation to the extent that the air kerma rate, exposure rate, or absorbed dose rate is reduced to one-tenth of the value measured without the material at the same point.

(h) “Termination of irradiation” means the stopping of irradiation in a fashion not permitting the continuance of irradiation without the resetting of operating conditions at the control panel.

(i) “Test” means the process of verifying compliance with an applicable regulation.

(j) “Therapeutic dosage” means a dosage of unsealed by-product material that is intended to deliver a radiation dose to a patient or human research subject for palliative or curative treatment.

(k) “Therapeutic dose” means a radiation dose delivered from a source containing by-product material to a patient or human research subject for palliative or curative treatment.

(l) “Therapeutic-type tube housing” means the following:

(1) For X-ray equipment not capable of operating at 500 kVp or above, an X-ray tube housing constructed so that the leakage radiation, at a distance of one meter from the source, does not exceed one roentgen in an hour when the tube is operated at its maximum rated continuous current for the maximum rated tube potential; and

(2) for X-ray equipment capable of operating at 500 kVp or above, an X-ray tube housing constructed so that the leakage radiation, at a distance of one meter from the source, does not exceed 0.1 percent of the useful beam dose rate at one meter from the source for any of the tube's operating conditions.

Areas of reduced protection shall be acceptable if the average reading over any area of 100 cm², at a distance of one meter from the source, does not exceed any of the values specified in this subsection.

(m) "These regulations" means article 35 in its entirety.

(n) "Tomogram" means the depiction of the X-ray attenuation properties of a section through the body.

(o) "Total effective dose equivalent" and "TEDE" mean the sum of the effective dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

(p) "Total organ dose equivalent" and "TODE" mean the sum of the deep dose equivalent and the committed dose equivalent delivered to the organ receiving the highest dose.

(q) "Traceable to a national standard" means that a quantity or a measurement has been compared to a national standard directly or indirectly through one or more intermediate steps and that all comparisons are documented.

(r) "Transport index" means the dimensionless number, rounded up to the first decimal place, placed on the label of a package to designate the degree of control to be exercised by the carrier during transportation. The transport index is the maximum radiation level in millirems per hour at one meter from the external surface of the package.

(s) "Tritium neutron-generator-target source" means a tritium source used within a neutron generator tube to produce neutrons for use in well-logging applications.

(t) "Tube" means an X-ray tube, unless otherwise specified.

(u) "Tube housing assembly" means the tube housing with a tube installed, including high-voltage transformers or filament transformers, or both, and other appropriate elements when contained within the tube housing.

(v) "Treatment site" means the anatomical description of the tissue intended to receive a radiation dose, as specified in a written directive.

(w) "Tube rating chart" means the set of curves that describes the rated limits of operation of the tube in terms of the technique factors.

(x) "Type A package" means packaging that, together with the radioactive contents limited to A₁ or A₂ as appropriate, is designed to retain the integrity of containment and shielding under normal conditions of transport as demonstrated by the tests specified in 49 CFR 173.465 or 49 CFR 173.466, as appropriate.

(y) "Type B package" and "type B transport container" mean packaging that meets the applicable requirements specified in 10 CFR 71.51. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1603 and 48-1607; effective Dec. 30, 2005; amended March 18, 2011.)

28-35-135u. Definitions. As used in these regulations, each of the following terms shall have the meaning specified in this regulation: (a) "Underwater irradiator" means an irradiator in which the sources always remain shielded underwater and humans do not have access to the sealed sources or the space that is subject to irradiation without entering the pool.

(b) "Underwater radiography" means industrial radiography performed when the radiographic exposure device or the related equipment is beneath the surface of the water.

(c) "Unit dose" means a dosage prepared for medical use for administration to a patient or human research subject as a single dosage, without any further manipulation of the dosage after the dosage is initially prepared.

(d) "Unrefined and unprocessed ore" means ore in its natural form before any processing, including grinding, roasting, beneficiating, and refining. "Processing" shall not include sieving or the encapsulation of ore or preparation of samples for laboratory analysis.

(e) "Unrestricted area" means an area to which access is neither limited nor controlled by the licensee or registrant. For purposes of these regulations, "uncontrolled area" shall be considered an equivalent term.

(f) "Useful beam" means the part of the radiation that passes through a window, aperture, cone, or other collimating device. (Authorized by K.S.A. 48-1607; implementing K.S.A. 2017 Supp. 48-1603 and K.S.A. 48-1607; effective Dec. 30, 2005; amended May 4, 2018.)

28-35-135v. Definitions. As used in these regulations, each of the following terms shall have the meaning assigned in this regulation: (a) "Variable-aperture beam-limiting device" means

a beam-limiting device that has the capacity for stepless adjustment of the X-ray field size at a given SID.

(b) "Very high radiation area" means an area that is accessible to individuals, in which radiation levels could result in an individual receiving an absorbed dose in excess of five Gy (500 rad) in one hour at one meter from a source of radiation or from any surface that the radiation penetrates.

(c) "Virtual source" means the point from which radiation appears to originate.

(d) "Visible area" means that portion of the input surface of the image receptor over which incident X-ray photons produce a visible image. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1603 and 48-1607; effective Dec. 30, 2005.)

28-35-135w. Definitions. As used in these regulations, each of the following terms shall have the meaning assigned in this regulation: (a) "Waste" means any low-level radioactive waste that is acceptable for disposal in a land disposal facility. Low-level radioactive waste shall mean radioactive waste that meets both of the following conditions:

(1) Is not classified as any of the following:

(A) High-level radioactive waste;

(B) spent nuclear fuel;

(C) "byproduct material," as defined in paragraphs (2), (3), and (4) in the definition of "byproduct material" in 10 CFR 20.1003, dated December 1, 2009;

(D) uranium or thorium tailings; and

(E) transuranic waste; and

(2) is classified as low-level radioactive waste consistent with existing law and in accordance with paragraph (a)(1) by the nuclear regulatory commission.

(b) "Waste-handling licensee" means any person licensed to receive and store radioactive wastes before disposal, any person licensed to dispose of radioactive waste, or any person licensed to both receive and dispose of radioactive waste.

(c) "Wedge filter" means an added filter effecting continuous, progressive attenuation of all or part of the useful beam.

(d) "Week" means seven consecutive days, starting on Sunday.

(e) "Weighting factor (w_T) for an organ or tissue (T)" means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calcu-

lating the effective dose equivalent, the values of w_T shall be as follows:

ORGAN OR TISSUE DOSE WEIGHTING FACTORS	
Organ or Tissue (T)	w_T
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder organs	0.30 ^a
Whole body	1.00 ^b

^a0.30 results from 0.06 for each of the five remainder organs that receive the highest doses, excluding the skin and the lens of the eye.

^bFor the purpose of weighting the external whole body dose in determining the total effective dose equivalent, a single weighting factor, $w_T = 1.0$, is specified. The use of other weighting factors for external exposure may be approved by the secretary if the licensee or registrant demonstrates that the effective dose to be received is within the limits specified in these regulations.

(f) "Well bore" means a drilled hole in which wireline service operations and subsurface tracer studies are performed.

(g) "Well logging" means the lowering and raising of measuring devices or tools that could contain sources of radiation into well bores or cavities for the purpose of obtaining information about the well or adjacent formations.

(h) "Wet-source-change irradiator" means an irradiator whose sources are replaced underwater.

(i) "Wet-source-storage irradiator" means an irradiator whose sources are stored underwater.

(j) "Whole body," for purposes of external exposure, means the head and trunk, including the male gonads, and shall include the arms above the elbow and the legs above the knee.

(k) "Wireline" means a cable containing one or more electrical conductors that is used to raise and lower logging tools in the well bore.

(l) "Wireline service operation" means any evaluation or mechanical service that is performed in the well bore using devices on a wireline.

(m) "Worker" means an individual, contractor, or subcontractor engaged in work that is performed under a license or registration, or both, issued by the department and that is controlled by a licensee or registrant, or both. This term shall not include a specific licensee or registrant.

(n) "Working level (WL)" means any combination of short-lived radon daughters in one liter

of air that will result in the ultimate emission of $1.3E+5$ MeV of potential alpha particle energy. The short-lived radon daughters are the following:

- (1) For radon-222, the following:
 - (A) Polonium-218;
 - (B) lead-214;
 - (C) bismuth-214; and
 - (D) polonium-214; and
- (2) for radon-220, the following:
 - (A) Polonium-216;
 - (B) lead-212;
 - (C) bismuth-212; and
 - (D) polonium-212.
- (o) "Working-level month (WLM)" means an exposure to one working level for 170 hours.

(p) "Written directive" means a written order for a specific patient that is dated and signed by an authorized user before the administration of a radiopharmaceutical or radiation and that contains any of the following sets of information:

- (1) For any administration of quantities greater than 1.11 megabecquerels (30 μ Ci) of sodium iodide I-125 or I-131, the radionuclide and dosage;
- (2) for a therapeutic administration of a radiopharmaceutical other than sodium iodide I-125 or I-131, the radiopharmaceutical, dosage, and route of administration;
- (3) for gamma stereotactic radiosurgery, the target coordinates, collimator size, plug pattern, and total dose;
- (4) for teletherapy, the total dose, dose per fraction, treatment site, and overall treatment period;
- (5) for high dose-rate remote afterloading brachytherapy, the radionuclide, treatment site, and total dose; or
- (6) for all other brachytherapy, the following information:

(A) Before implantation, the radionuclide, number of sources, and source strengths; and

(B) after implantation but before completion of the procedure, the radionuclide, treatment site, and either the total source strength and exposure time or the total dose. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1603 and 48-1607; effective Dec. 30, 2005; amended March 18, 2011.)

28-35-135x. Definitions. As used in these regulations, each of the following terms shall have the meaning assigned in this regulation:

(a) "X-ray control" means a device that controls input power to the X-ray high-voltage generator or the X-ray tube, including timers, phototim-

ers, automatic brightness stabilizers, and similar devices that control the technique factors of an X-ray exposure.

(b) "X-ray equipment" means an X-ray system or subsystem, or component of the system or subsystem, which may be mobile, stationary, or portable.

(c) "X-ray exposure control" means a device, switch, button, or other similar means by which an operator initiates or terminates the radiation exposure. The X-ray exposure control may include associated equipment including timers and back-up timers.

(d) "X-ray field" means that area of the intersection of the useful beam and any one of the set of planes parallel to and including the plane of the image receptor, whose perimeter, as established by the beam-limiting device, is the locus of points at which the exposure rate is one-fourth of the maximum in the intersection.

(e) "X-ray high-voltage generator" means a device that transforms electrical energy from the potential supplied by the X-ray control to the X-ray tube. The device may also include the means for transforming alternating current to direct current, filament transformers for the X-ray tube or tubes, high voltage switches, electrical protective devices, and other appropriate elements.

(f) "X-ray system" means an assemblage of components for the controlled production of X-rays. The X-ray system shall include, at a minimum, an X-ray high-voltage generator, an X-ray control, a tube housing assembly, a beam-limiting device, and supporting structures. Additional components that function with the system shall be considered integral parts of the system.

(g) "X-ray table" means a patient-support device used during radiography and fluoroscopy. This term shall include any stretcher equipped with a radiolucent panel and any table equipped with a cassette tray or bucky, cassette tunnel, image intensifier, or spot-film device beneath the tabletop.

(h) "X-ray tube" means any electron tube that is designed for the conversion of electrical energy into X-ray energy. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1603 and 48-1607; effective Dec. 30, 2005.)

28-35-135y. Definition. As used in these regulations, "year" shall have the meaning assigned in this regulation.

“Year” means the period of time beginning in January and consisting of four consecutive quarters, as defined in K.A.R. 28-35-135q, that is used to determine compliance with the provisions of these regulations. Any licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant if the change is made at the beginning of the year and if no day is omitted or duplicated in any consecutive year. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1603 and 48-1607; effective Dec. 30, 2005.)

28-35-136. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective Jan. 1, 1970; amended Jan. 1, 1972; amended May 1, 1976; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985; revoked Dec. 30, 2005.)

28-35-137. Records. Each licensee or registrant shall keep records showing the receipt, transfer, and disposal of all sources of radiation, and any other records specifically required by these regulations. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective Jan. 1, 1970; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985.)

28-35-138. Inspections. (a) Each licensee or registrant shall afford, at all reasonable times, the secretary or the secretary’s duly authorized representative the opportunity to inspect sources of radiation and the premises and installations in which such sources of radiation are used or stored.

(b) Each licensee or registrant, upon reasonable notice, shall make available, for inspection by the secretary or the secretary’s duly authorized representative records maintained pursuant to these regulations. (Authorized by K.S.A. 1984 Supp. 48-1607; implementing K.S.A. 1984 Supp. 48-1607, 48-1609; effective Jan. 1, 1970; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985.)

28-35-139. Testing and surveys. (a) Each licensee or registrant shall make, or cause to be made, those surveys that are necessary for the licensee or registrant to comply with these regulations.

(b) Each licensee or registrant shall perform, upon instructions from the department, or shall permit the department to perform, such reasonable tests as the department deems appropriate or necessary, including, but not limited to, tests of:

- (1) Sources of radiation;
- (2) installations in which sources of radiation are used or stored;
- (3) radiation detection and monitoring instruments; and
- (4) other equipment and devices employed during use or storage of licensed or registered sources of radiation. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective Jan. 1, 1970; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985.)

28-35-140. Exemptions. (a) Carriers. Each common carrier, each contract carrier, each freight forwarder, and each U.S. postal service carrier that only transports or stores radioactive material in the regular course of carriage or storage shall be exempt from parts 3, 4, 6, 7, 10, 11, and 12 of these regulations and from K.A.R. 28-35-700.

(b) U.S. department of energy contractors and U.S. nuclear regulatory commission contractors. Each U.S. department of energy contractor or subcontractor and each U.S. nuclear regulatory commission contractor or subcontractor operating in Kansas shall be exempt from these regulations to the extent that the contractor or subcontractor, under the contract, receives, possesses, uses, transfers, or acquires sources of radiation and if the contractor or subcontractor is included in one of the following categories:

(1) Prime contractors performing work for the U.S. department of energy at sites owned or controlled by the U.S. government, including the transportation of sources of radiation to or from these sites and the performance of contract services during temporary interruptions of transportation;

(2) prime contractors of the U.S. department of energy performing research in, or development, manufacture, storage, testing, or transportation of, atomic weapons or components of atomic weapons;

(3) prime contractors of the U.S. department of energy using or operating nuclear reactors or other nuclear devices in a U.S. government-owned vehicle or vessel; and

(4) any other prime contractor or subcontractor of the U.S. department of energy or the U.S. nuclear regulatory commission if the secretary determines that, under the terms of the contract or subcontract, there is adequate assurance that the work can be accomplished without undue risk to the public health and safety. (Authorized by and implementing K.S.A. 48-1607; effective Jan. 1,

1970; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985; amended May 4, 2018.)

28-35-141. Additional requirements. At the time of registration, at the time of action upon application for license or amendment to the license, or upon inspection, the department shall specify any requirements or conditions of use, or both, that are necessary to ensure compliance with these regulations under the particular usage to which the licensee or registrant proposes to put the source of radiation. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective Jan. 1, 1970; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985.)

28-35-142. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended May 1, 1976; revoked, T-85-43, Dec. 19, 1984; revoked May 1, 1985.)

28-35-143. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective May 1, 1976; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985; revoked Sept. 20, 1993.)

28-35-144. Appendix B—Tests for special form licensed material.

(a) “Free Drop” means releasing material, without thrust, from a point 30 feet above a flat, essentially unyielding, horizontal surface, so that the material strikes the surface.

(b) “Percussion” means impacting material with the flat, circular end of a one inch diameter steel rod weighing three pounds, by releasing the steel rod a distance of forty inches above the surface of the material. The material shall be placed on a sheet of lead, of hardness number 3.5 to 4.5 on the Vickers scale, and not more than one inch thick, supported by a smooth, essentially unyielding surface.

(c) Heating: heating in air to a temperature of 1,475°F. and remaining at that temperature for a period of 10 minutes.

(d) Immersion: immersion for 24 hours in water at room temperature. The water shall be at pH 6—pH 8, with a maximum conductivity of 10 micromhos per centimeter. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective May 1, 1976; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985.)

28-35-144a. (a) As used in these regulations, the quality factors for converting absorbed dose to dose equivalent are shown in table I.

TABLE I
QUALITY FACTORS AND ABSORBED DOSE EQUIVALENCES

TYPE OF RADIATION	Quality Factor (Q)	Absorbed Dose Equal to a Unit Dose Equivalent*
X, gamma, or beta radiation and high-speed electrons	1	1
Alpha particles, multiple-charged particles, fission fragments and heavy particles of unknown charge	20	0.05
Neutrons of unknown energy	10	0.1
High-energy protons	10	0.1

*Absorbed dose in gray equal to 1 Sv or the absorbed dose in rad equal to 1 rem.

(b) If it is more convenient to measure the neutron fluence rate than to determine the neutron dose equivalent rate in sievert per hour or rem per hour, as provided in K.A.R. 28-35-144a(a), 0.01 Sv (1 rem) of neutron radiation of unknown energies may, for purposes of these regulations, be assumed to result from a total fluence of 25 million neutrons per square centimeter incident upon the body. If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee or registrant may use the fluence rate per unit dose equivalent or the appropriate Q value from table II to convert a measured tissue dose in gray or rad to dose equivalent in sievert or rem.

TABLE II
MEAN QUALITY FACTORS, Q, AND FLUENCE PER UNIT DOSE EQUIVALENT FOR MONOENERGETIC NEUTRONS

	Neutron Energy (MeV)	Quality Factor (Q)	Fluence per Unit Dose Equivalent ^b (neutrons cm ⁻² rem ⁻¹)	Fluence per Unit Dose Equivalent ^b (neutrons cm ⁻² Sv ⁻¹)
(thermal)	2.5E-8	2	980E+6	980E+8
	1E-7	2	980E+6	980E+8
	1E-6	2	810E+6	810E+8
	1E-5	2	810E+6	810E+8
	1E-4	2	840E+6	840E+8
	1E-3	2	980E+6	980E+8
	1E-2	2.5	1010E+6	1010E+8
	1E-1	7.5	170E+6	170E+8
	5E-1	11	39E+6	39E+8
	1	11	27E+6	27E+8
	2.5	9	29E+6	29E+8

Neutron Energy (MeV)	Quality Factor ^a (Q)	Fluence per Unit Dose Equivalent ^b (neutrons cm ⁻² rem ⁻¹)	Fluence per Unit Dose Equivalent ^b (neutrons cm ⁻² Sv ⁻¹)
5	8	23E+6	23E+8
7	7	24E+6	24E+8
10	6.5	24E+6	24E+8
14	7.5	17E+6	17E+8
20	8	16E+6	16E+8
40	7	14E+6	14E+8
60	5.5	16E+6	16E+8
1E+2	4	20E+6	20E+8
2E+2	3.5	19E+6	19E+8
3E+2	3.5	16E+6	16E+8
4E+2	3.5	14E+6	14E+8

^a Value of quality factor (Q) at the point where the dose equivalent is maximum in a 30-centimeter diameter cylinder tissue-equivalent phantom.

^b Monoenergetic neutrons incident normally on a 30-centimeter diameter cylinder tissue-equivalent phantom.

(Authorized by and implementing K.S.A. 1993 Supp. 48-1607; effective Oct. 17, 1994.)

28-35-145. Initial license and registration fees. (a) Each person required under part 3 of these regulations to obtain a license for the use of radioactive, by-product, source, or special nuclear materials shall submit to the department an application for a license and the applicable nonrefundable license fees specified in K.A.R. 28-35-147a.

(b) Each person required under part 2 of these regulations to register a radiation machine shall submit to the department a registration form and the applicable nonrefundable registration fees specified in K.A.R. 28-35-147a. The fee for each initial registration made after March 31 shall be prorated by the department based on the number of calendar quarters remaining in the annual registration period.

(c) Each person paying an initial license fee or registration fee specified in this regulation shall make the payment by check, draft, credit card, or money order payable to the Kansas department of health and environment. (Authorized by and implementing K.S.A. 48-1606, as amended by 2004 SB 396, § 1, and K.S.A. 48-1607; effective May 1, 1987; amended Oct. 8, 2004.)

28-35-146. Annual license and registration fees. (a) Payment method. Each licensee or registrant shall make annual fee payments by check, draft, credit card, or money order payable to the Kansas department of health and environment.

(b) Annual license fees. Each licensee shall submit to the department the applicable nonrefundable annual license fees specified in K.A.R. 28-35-147a on or before the last business day of the month corresponding to the anniversary date of the license.

(c) Annual registration fees. Each registrant shall submit to the department a registration form and the applicable nonrefundable annual registration fees specified in K.A.R. 28-35-147a on or before March 1. If March 1 falls on a Saturday, Sunday, or holiday, then the fee payment shall be due on or before the next business day following March 1. (Authorized by and implementing K.S.A. 48-1606, as amended by 2004 SB 396, § 1 and K.S.A. 48-1607; effective May 1, 1987; amended May 1, 1988; amended Oct. 8, 2004.)

28-35-146a. Determination of hourly rate and full cost; fee payments. (a) Hourly rate. If the department charges a fee to provide the following and there is no established fee category in K.A.R. 28-35-147a, the hourly rate charged shall be \$79.00:

(1) Any radiation protection service that the department provides to a nonlicensee or nonregistrant; and

(2) any radiation control program activity.

(b) Full cost. For each full-cost category specified in K.A.R. 28-35-147a(d)(1), the initial application fee, annual fee, and amendment fees shall be paid in accordance with the following requirements:

(1) Each applicant shall pay a nonrefundable initial application fee of \$500,000 to cover the actual costs incurred by the department to review the initial license application.

(A) If the initial application fee exceeds the actual cost of reviewing the initial application, the overage shall be credited to the annual fee for the following fiscal year.

(B) If the initial application fee is less than the actual cost of reviewing the initial application, the difference shall be due within 30 days of receipt of written notification from the secretary. No license shall be issued until all required fees are paid in full.

(2) Each licensee shall pay a nonrefundable annual fee to cover the actual cost incurred by the department to service the license and any amendments to the license.

(A) If the annual fee exceeds the actual cost of servicing the license and any amendments, the overage shall be credited to the annual fee for the following fiscal year.

(B) If the annual fee paid for any fiscal year is less than the actual cost to the department, the difference shall be due within 30 days of receipt of written notification from the secretary.

(c) Fee payments. Each fee payment specified in subsection (b) shall be made in accordance with the following requirements:

(1) Each initial application for which a license fee is required shall be accompanied by the full amount of the fee. Any application for which a fee is not received may be returned to the applicant.

(2) On or before June 1 of the fiscal year preceding the fiscal year for which the annual fee applies, the licensee shall be notified by the secretary of the amount of the annual fee.

(3) Each fee payment shall be submitted within 30 days of receipt of written notification from the secretary of the annual fee or by July 1, whichever date is earlier.

(4) Each fee payment shall be made by check, draft, money order, or electronic fund transfer payable to the department. (Authorized by and implementing K.S.A. 2018 Supp. 48-1606; effective Oct. 8, 2004; amended Feb. 22, 2019.)

28-35-147. (Authorized by and implementing K.S.A. 1990 Supp. 48-1606; effective May 1, 1987; amended May 1, 1988; amended March 16, 1992; revoked Oct. 8, 2004.)

28-35-147a. Schedule of fees. Each fee for an initial license application or initial registration shall be equal to the sum of the annual fees for all applicable categories. Each annual fee for a license or registration shall be equal to the sum of the annual fees for all applicable categories. The following fees shall be paid as specified in K.A.R. 28-35-145 and 28-35-146:

(a) Special nuclear material.

(1) Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems.

Annual fee \$950.00

(2) Any licenses not otherwise specified in this regulation for possession and use of special nuclear material, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical mass.

Annual fee \$2,250.00

(b) Source material.

(1) Licenses that authorize only the possession, use, or installation of source material for shielding.

Annual fee \$365.00

(2) All other source material licenses not otherwise specified in this regulation.

Annual fee \$5,700.00

(c) Radioactive material or by-product material.

(1) Licenses of broad scope for possession and use of radioactive material or by-product material issued for processing or manufacturing items containing radioactive material or by-product material for commercial distribution.

Annual fee \$10,900.00

(2) Other licenses for possession and use of radioactive material or by-product material issued for processing or manufacturing items containing radioactive material or by-product material for commercial distribution.

Annual fee \$3,300.00

(3) Licenses authorizing the processing or manufacturing and the distribution or redistribution of radiopharmaceuticals, generators, reagent kits, sources, or devices containing radioactive material or by-product material. This category shall include the possession and use of source material for shielding when included on the same license.

Annual fee \$5,450.00

(4) Licenses and approvals authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, sources, or devices not involving processing of radioactive material or by-product material. This category shall include the possession and use of source material for shielding when included on the same license.

Annual fee \$2,350.00

(5) Licenses for possession and use of radioactive material or by-product material in sealed sources for irradiation of items in self-shielded units in which the source is not removed from its shield.

Annual fee \$1,800.00

(6) Licenses for possession and use of less than 10,000 curies of radioactive material or by-product material in sealed sources for irradiation of items in which the source is exposed for irradiation purposes. This category shall include underwater irradiators for irradiation of items in which the source is not exposed for irradiation purposes.

Annual fee \$3,300.00

(7) Licenses for possession and use of 10,000 curies or more of radioactive material or by-product material in sealed sources for irradiation of items in which the source is exposed for irradiation purposes. This category shall include underwater irradiators for irradiation of items in which the source is not exposed for irradiation purposes.

Annual fee \$12,050.00

(8) Licenses issued to distribute items containing radioactive material or by-product material that require device review to persons exempt from licensing, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from licensing.

Annual fee \$3,000.00

(9) Licenses issued to distribute items containing radioactive material or by-product material or quantities of radioactive material or by-product material that do not require device review to persons exempt from licensing, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from licensing.

Annual fee \$3,050.00

(10) Licenses issued to distribute items containing radioactive material or by-product material that require a safety review of the sealed source or device to any person with a general license, except specific licenses authorizing redistribution of items that have been authorized for distribution to any person with a general license.

Annual fee \$1,100.00

(11) Licenses issued to distribute items containing radioactive material or by-product material or quantities of radioactive material or by-product material that do not require a safety review of the sealed source or device to any person with a general license, except specific licenses authorizing redistribution of items that have been authorized for distribution to any person with a general license.

Annual fee \$700.00

(12) Licenses of broad scope for possession and use of radioactive material or by-product material issued for research and development that do not authorize commercial distribution.

Annual fee \$5,900.00

(13) Other licenses for possession and use of radioactive material or by-product material issued for research and development that do not authorize commercial distribution.

Annual fee \$2,800.00

(14) Licenses that authorize services for other licensees, except the following:

(A) Licenses that authorize only calibration or leak-testing services, or both, shall be subject to the fee specified in paragraph (c)(16).

(B) Licenses that authorize waste disposal services shall be subject to the applicable fees specified in subsection (d).

Annual fee \$3,050.00

(15) Licenses for possession and use of radioactive material or by-product material for industrial radiography. This category shall include the possession and use of source material for shielding when authorized on the same license.

Annual fee \$6,100.00

(16) All other specific radioactive material or by-product material licenses not otherwise specified in this regulation.

Annual fee \$1,250.00

(17) Registration of general licenses for devices or sources.

Annual fee \$225.00

(d) Waste disposal and processing.

(1) Licenses authorizing the possession and use of radioactive material, including by-product material, source material, and special nuclear material, for a commercial, low-level radioactive waste disposal facility.

Annual fee full cost,
as specified in K.A.R. 28-35-146a

(A) Amendment to license concerning safety and environmental issues.

Amendment fee full cost,
as specified in K.A.R. 28-35-146a

(B) Amendment to license concerning administrative questions with no safety or environmental issues.

Amendment fee full cost,
as specified in K.A.R. 28-35-146a

(2) Licenses specifically authorizing the receipt of radioactive material, including by-product material, source material, and special nuclear material, from other persons for the purpose of packaging or repackaging the radioactive material. The licensee shall dispose of the radioactive material by transfer to another person authorized to receive or dispose of the radioactive material.

Annual fee \$5,150.00

(3) Licenses specifically authorizing the receipt of prepackaged radioactive material, including by-product material, source material, and special nuclear material, from other persons. The licensee shall dispose of the radioactive material by transfer to another person authorized to receive or dispose of the radioactive material.

Annual fee \$3,700.00

(e) Well logging.

(1) Licenses for possession and use of radioactive material or by-product material, source material, or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies.

Annual fee	\$2,350.00	Annual fee	\$650.00
(2) Licenses for possession and use of radioactive material or by-product material for field flooding tracer studies.		(i) Device, product, or sealed source safety evaluation.	
Annual fee	\$2,350.00	(1) Safety evaluation review of each device or product containing radioactive material or by-product material, source material, or special nuclear material, except any reactor fuel device, for commercial distribution. This fee shall apply to each device or product.	
(f) Nuclear laundries.		Fee.....	\$3,500.00
Licenses for commercial collection and laundry of items contaminated with radioactive material or by-product material, source material, or special nuclear material.		(2) Safety evaluation review of each device or product containing radioactive material or by-product material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except any reactor fuel device. This fee shall apply to each device or product.	
Annual fee	\$11,550.00	Fee.....	\$3,500.00
(g) Medical licenses.		(3) Safety evaluation of each sealed source containing radioactive material or by-product material, source material, or special nuclear material, except reactor fuel, for commercial distribution. This fee shall apply to each sealed source.	
(1) Licenses issued for human use of radioactive material or by-product material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category shall include the possession and use of source material for shielding when authorized on the same license.		Fee.....	\$1,100.00
Annual fee	\$5,500.00	(4) Safety evaluation of each sealed source containing radioactive material or by-product material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant. This fee shall apply to each sealed source.	
(2) Licenses of broad scope issued to medical institutions or two or more physicians authorizing research and development, including human use of radioactive material or by-product material, except licenses for radioactive material or by-product material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category shall include the possession and use of source material for shielding when authorized on the same license. Separate annual fees shall not be assessed for pacemaker licenses issued to medical institutions that also hold nuclear medicine licenses under categories in this paragraph or paragraph (g)(3).		Fee.....	\$365.00
Annual fee	\$12,350.00	(j) Reciprocity.	
(3) Other licenses issued for human use of radioactive material or by-product material, source material, or special nuclear material, except licenses for radioactive material or by-product material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category shall include the possession and use of source material for shielding when authorized on the same license. Separate annual fees shall not be assessed for pacemaker licenses issued to medical institutions that also hold nuclear medicine licenses under categories in this paragraph or paragraph (g)(2).		(1) Licensees who conduct activities under a reciprocal agreement.	
Annual fee	\$2,300.00	Annual fee	\$750.00
(h) Civil defense.		(2) Registrants who conduct activities under a reciprocal agreement.	
Licenses for possession and use of radioactive material or by-product material, source material, or special nuclear material for civil defense activities.		Annual fee	\$200.00
		(k) X-ray machines.	
		(1) Base registration fee per facility.	
		Annual fee	\$200.00
		(2) Registration fee for each x-ray tube at a facility. This fee shall be in addition to the base registration fee.	
		Annual fee per x-ray tube	\$50.00
		(l) Particle accelerators.	
		Annual fee	\$300.00
		(m) Noncontiguous sites.	
		(1) An additional annual fee of 50 percent of the annual fee specified in this regulation shall be assessed for each noncontiguous site where radioactive material is stored or used under the same license, per category.	

(2) "Noncontiguous site" shall have the meaning specified in K.S.A. 2018 Supp. 48-1606, and amendments thereto. (Authorized by and implementing K.S.A. 2018 Supp. 48-1606; effective Oct. 8, 2004; amended March 29, 2013; amended Feb. 22, 2019.)

28-35-148. Deliberate misconduct. (a) This regulation shall apply to the following:

- (1) Each licensee;
- (2) each registrant;
- (3) each applicant for a license;
- (4) each employee of a licensee, registrant, or applicant; and
- (5) each contractor, including each supplier, consultant, subcontractor, and employee of a contractor or subcontractor of any licensee, registrant, or applicant for a license.

(b) Each individual specified in subsection (a) who knowingly provides to any licensee, applicant, registrant, contractor, or subcontractor any components, equipment, materials, or other goods or services that relate to a licensee's, registrant's, or applicant's activities in this article shall be prohibited from engaging in deliberate misconduct, as defined in K.A.R. 28-35-135d.

(c) Any person who violates the requirements of this regulation may be subject to enforcement action pursuant to K.S.A. 48-1613, and amendments thereto. (Authorized by and implementing K.S.A. 48-1607 and 48-1613; effective Dec. 30, 2005.)

PART 2. RADIATION PRODUCING MACHINES

28-35-152. Persons registered. Any person possessing a registrable item shall register with the department in accordance with the rules and regulations in this part. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective Jan. 1, 1970; amended May 1, 1976; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985.)

28-35-153. Initial registration. Any person who is not registered and who acquires possession of a registrable item shall register with the department, within 30 days of the date of acquiring the item. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective Jan. 1, 1970; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985.)

28-35-154. Renewal of registration. Each registrant who possesses a radiation-producing device shall reregister with the department annually. This registration shall be submitted on or before March 1 of each year. (Authorized by and im-

plementing K.S.A. 48-1607; effective Jan. 1, 1970; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985; amended Dec. 30, 2005.)

28-35-155. Registration form. Registration shall be made upon forms devised and furnished by the department. Each registrant shall provide all the information called for by the form and any additional information requested by the department. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective Jan. 1, 1970; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985.)

28-35-156. Separate installations. Except as otherwise provided in K.A.R. 28-35-157, and any amendment to that rule and regulation, a separate registration form shall be completed for each installation. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective Jan. 1, 1970; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985.)

28-35-157. Special registration. If the reporting of each installation, or other information called for, is impractical, the secretary, upon the written request of a person and upon a finding that the public health and safety would not be adversely affected, may approve registration in such special form as the secretary may prescribe. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective Jan. 1, 1970; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985.)

28-35-158. Report of change. If a change is made on any x-ray equipment or other device producing radiation, or to any installation, so that information on file with the department is no longer accurate, the registrant shall notify the department, in writing, of the change, within 30 days of the date the change was made. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective Jan. 1, 1970; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985.)

28-35-159. Registration shall not imply approval. A person shall not refer, in any form of advertisement, to the fact a registrable item is registered with the department, or state or imply that any installation registered with the department is approved by the department. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective Jan. 1, 1970; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985.)

28-35-160. Vendor notification. (a) Each distributor, retailer, or other person who sells, leases, transfers, or lends any registrable item or items shall notify the department, at 90-day intervals, of the following:

(1) The names and addresses of all persons who have received the item or items;

(2) the name of the manufacturer and the model number of the item or items transferred; and

(3) the date on which the registrable item or items were transferred.

(b) No person shall make, sell, lease, transfer, lend, assemble, or install radiation machines or the supplies used in connection with these machines unless the machines and supplies, when properly placed in operation and used, meet the requirements of these regulations. (Authorized by and implementing K.S.A. 48-1607; effective Jan. 1, 1970; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985; amended Dec. 30, 2005.)

28-35-161. Discontinuance of use. If a registrant ceases to use a registrable item or items, for any reason, the registrant or the duly authorized representative of the registrant's estate shall give written notice to the department of the cessation of use. The notice shall be provided within 30 days of the date that the registrant ceases to use the registrable item or items, and shall state the date on which use of the item or items was discontinued and the manner in which the registrable item or items were disposed. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective Jan. 1, 1970; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985.)

28-35-162. Exclusion from registration. The following equipment shall not be required to be registered: (a) Electronic equipment that produces radiation incidental to its operation for other purposes, if the dose equivalent rate averaged over an area of 10 square centimeters does not exceed five μSv (0.5 millirem) per hour at five centimeters from any accessible surface of the equipment.

(b) radiation-producing equipment that is in transit or is in storage incident to transit; and

(c) domestic television receivers. (Authorized by and implementing K.S.A. 48-1607; effective Jan. 1, 1970; amended May 1, 1976; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985; amended Dec. 30, 2005.)

28-35-163. Excluded possessors. (a) Except as provided in subsection (b), a common car-

rier or contract carrier operating within this state who is in possession of a registrable item or items shall be exempt from the provisions of these regulations, if the carrier possesses the registrable item or items for another person, solely for the purpose of transporting or storing the item or items.

(b) Each common carrier or contract carrier shall be subject to the provisions of K.A.R. 28-35-228a and 28-35-229a, and any amendments of those rules and regulations. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective Jan. 1, 1970; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985.)

28-35-164. Temporary use or storage of registrable items. Any person desiring to bring a registrable item into this state for temporary use or storage shall give written notice to the department before bringing the item into this state. The notice shall be given to the department at least five days before the item is to be brought into this state and shall include the type and energy of the radiation source, the nature and scope of the use or storage, the proposed duration of use or storage, and the exact location where the radiation source is to be used or stored. If, in a specific case, the five day period would impose an undue hardship on the person, the person, upon application by letter or telegram to the department, may obtain permission to proceed at an earlier date.

In addition, the person shall:

(a) Comply with all applicable regulations for the department; and

(b) supply the department with such other information as it may request.

If a registrable item is kept in the state for a total of 30 days, in a period of 12 consecutive months, it shall be considered to be permanently located in the state and shall be subject to the registration provision of these regulations. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective Jan. 1, 1970; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985.)

28-35-165. Disposal of registered items. Whenever any person disposes of a registrable item, or items, by any method, the person, or in the event of the person's death, the representative of the person's estate, shall give written notice to the department of the disposal within 30 days. The notice shall include the date of disposal, the method of disposal, and, if transferred to another person, the name and address of the recipient.

(Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective Jan. 1, 1970; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985.)

28-35-166. Shoe fitting, fluoroscopic machines; prohibition of. No person shall install, operate or maintain any device or machine within the state of Kansas which uses fluoroscopic, X-ray or radiation principles for the purpose of fitting shoes. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective Jan. 1, 1970; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985.)

28-35-167. Shielding plan for radiation-producing devices. (a) Before construction, the floor plan or plans, shielding specifications, and equipment arrangement of all new installations, or modifications of existing installations, utilizing ionizing radiation machines shall be submitted to the department for review and consideration for approval, with the information specified in K.A.R. 28-35-168 and K.A.R. 28-35-169 of this part.

(b) If the applicant is not a qualified expert, then the applicant may be required to utilize the services of a qualified expert to determine the shielding specifications before the secretary's review and consideration for approval of the shielding plan.

(c) The approval of the shielding specifications shall not preclude the requirement of additional modifications if a subsequent analysis of operating conditions indicates the possibility that an individual could receive a dose in excess of the limits prescribed in K.A.R. 28-35-212a and K.A.R. 28-35-214a.

(d) After installation of each radiation machine, the registrant shall maintain the following records for inspection by the department:

(1) The maximum rated technique factors of the machine;

(2) a scale drawing of the room in which the stationary radiation machine system is located. This drawing shall indicate the use of areas adjacent to the room and an estimation of the extent of occupancy by an individual in these areas. The drawing shall include either of the following:

(A) The results of a survey for radiation levels present at the operator's position and at points surveyed outside the room, and the specific test conditions used; or

(B) the type and thickness of materials, or the lead equivalency, of each protective barrier.

(e) A qualified expert, who shall be approved by the department, shall be consulted in the design of each particle accelerator installation and shall be called upon to perform a radiation survey when the accelerator is first capable of producing radiation.

(f) Each particle accelerator installation shall be provided with any primary or secondary barriers, or both, that are necessary to ensure compliance with the following:

(1) K.A.R. 28-35-212a;

(2) K.A.R. 28-35-212c;

(3) K.A.R. 28-35-212d;

(4) K.A.R. 28-35-212f;

(5) K.A.R. 28-35-212g;

(6) K.A.R. 28-35-213a;

(7) K.A.R. 28-35-214a; and

(8) K.A.R. 28-35-214b. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005.)

28-35-168. Information on radiation shielding required for plan reviews. Each registrant shall submit the following information as specified in K.A.R. 28-35-167:

(a)(1) Each plan showing, at a minimum, all of the following:

(A) The normal location of the system's radiation port;

(B) the port's travel and traverse limits;

(C) the general direction or directions of the useful beam;

(D) the locations of any windows and doors and any other openings;

(E) the location of the operator's booth; and

(F) the location of the control panel;

(2) the type and thickness of materials, or the lead equivalency, of all walls, doors, partitions, floors, and ceilings of each room;

(3) the dimensions of each room;

(4) the type of occupancy of all adjacent areas, inclusive of the space above and below each room. If there is an exterior wall, the distance to the closest area or areas where individuals are likely to be present shall be shown;

(5) the make and model of the equipment, the maximum technique factors, and the energy waveform; and

(6) each type of examination or treatment, or both, that will be performed with the equipment;

(b) information on the anticipated workload of the system or systems in mA-minutes per week; and

(c) a report showing all basic assumptions used in the development of the shielding specifications. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005.)

28-35-169. Design requirements for an operator's booth. (a) Space requirements.

(1) Each operator shall be allotted adequate room to operate the unit effectively.

(2) In determining whether the allotted space is adequate, any encumbrance by the control panel, overhang, cables, or other similar encroachments shall be evaluated.

(3) The booth shall be located or constructed so that unattenuated direct scattered radiation originating on the examination table or at the wall cassette cannot reach the operator's station in the booth.

(b) Structural requirements. Shielding shall be provided to meet the requirements of K.A.R. 28-35-211a through K.A.R. 28-35-234a of these regulations.

(c) Control placement. The control for the system shall be fixed within the booth.

(1) The operation of the radiation-producing devices shall be possible only from within the booth.

(2) The location of the control shall allow the operator to use the majority of the available viewing systems.

(d) Viewing system requirements.

(1) Each booth shall have at least one viewing device positioned so that both of the following conditions are met:

(A) The operator can view the patient during any exposure.

(B) The operator can have full view of any occupant of the room and anyone who enters the room. If any door allowing access to the room cannot be seen from the booth, that door shall have an interlock control that prevents exposure if the door is not closed.

(2) If the viewing system is a window, the window shall have the same lead equivalence as that required for the booth's wall in which the window is mounted.

(3) If the viewing system is by mirrors, each mirror shall be positioned so that the requirements of K.A.R. 28-35-254(d)(1) are met.

(4) If the viewing system utilizes a camera, both of the following requirements shall be met:

(A) The camera shall be positioned so that the requirements of K.A.R. 28-35-254(d)(1) are met.

(B) An alternate viewing system shall be provided as a backup for the primary system. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005.)

PART 3. LICENSING OF SOURCES OF RADIATION

28-35-175. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended Jan. 1, 1972; amended May 1, 1976; revoked, T-86-37, Dec. 11, 1985; revoked May 1, 1986.)

28-35-175a. Persons licensed. (a) A licensed person shall not manufacture, produce, receive, use, possess, acquire, own, transfer, or dispose of radioactive material, except as authorized in a specific or general license issued pursuant to these regulations. Each manufacturer, producer, or processor of any equipment, device, commodity, or other product containing source or "byproduct material," as defined in 10 CFR 20.1003, dated December 1, 2009, for which subsequent receipt, use, possession, acquisition, ownership, transfer, and disposal by any other person is exempted from these regulations shall obtain authority to transfer possession or control to the other person from the nuclear regulatory commission.

(b) In addition to the requirements of this part, each licensee shall be subject to the requirements of part 1, part 4, and part 10 of these regulations. In addition to being subject to part 1, part 4, and part 10, specific licensees shall be subject to all of the following requirements:

(1) Licensees using radioactive material in the healing arts shall be subject to the requirements of part 6.

(2) Licensees using radioactive material in industrial radiography shall be subject to the requirements of part 7.

(3) Licensees using radioactive material in wire-line and subsurface tracer studies shall be subject to the requirements of part 11 of these regulations. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended Dec. 30, 2005; amended March 18, 2011.)

28-35-176. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended May 1, 1976; revoked, T-86-37, Dec. 11, 1985; revoked May 1, 1986.)

28-35-176a. Types of licenses. Licenses for radioactive materials shall be either of the following types:

(a) Each general license shall be effective without the filing of an application with the department or the issuance of a licensing document to a particular person, although the filing of a certification with the department may be a requirement of the license. Each general licensee shall be subject to all other applicable portions of these regulations and any limitations of the general license. Any licensee may be required by the secretary to register a general license to protect public health and safety and the environment.

(b) Each specific license shall require the submission of an application to the department and the issuance of a licensing document by the department. Each specific licensee shall be subject to all applicable portions of these regulations as well as any limitations specified in the licensing document. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended Dec. 30, 2005.)

28-35-177. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1970; revoked, T-86-37, Dec. 11, 1985; revoked May 1, 1986.)

28-35-177a. General licenses; source material. (a) A general license is hereby issued authorizing commercial and industrial firms, research, educational, and medical institutions, and federal, state, and local government agencies to receive, possess, use, and transfer uranium and thorium, in their natural isotopic concentrations and in the form of depleted uranium, for research, development, educational, commercial, or operational purposes in any of the following forms and quantities:

(1) Uranium and thorium in the following quantities and forms:

(A) Not more than 1.5 kg (3.3 lb) of uranium and thorium in dispersible forms, including gases, liquids, and powders, at any one time. All material processed by the general licensee that alters the chemical or physical form of the material containing source material shall be accounted for as a dispersible form. A person authorized to possess, use, and transfer source material under this paragraph shall not receive more than a total of 7 kg (15.4 lb) of uranium and thorium in any one calendar year; and

(B) not more than 7 kg (15.4 lb) of uranium and thorium at any one time. A person authorized to possess, use, and transfer source material under this paragraph shall not receive more

than 70 kg (154 lb) of uranium and thorium in any one calendar year. A person shall not alter the chemical or physical form of the source material possessed under this paragraph unless the source material is accounted for under the limits of paragraph (a)(1);

(2) not more than 7 kg (15.4 lb) of uranium, removed during the treatment of drinking water, at any one time. A person shall not remove more than 70 kg (154 lb) of uranium from drinking water during a calendar year under this paragraph; or

(3) not more than 7 kg (15.4 lb) of uranium and thorium at laboratories for the purpose of determining the concentration of uranium and thorium contained within the material being analyzed at any one time. A person authorized to possess, use, and transfer source material under this paragraph shall not receive more than 70 kg (154 lb) of source material in any one calendar year.

(b)(1) Each person who receives, possesses, uses, or transfers source material in accordance with the general license in subsection (a) shall be prohibited from the following:

(A) Administering source material, or the radiation from the source material, either externally or internally, to human beings except as authorized by a specific license issued by the department;

(B) abandoning the source material. Source material may be disposed of as follows:

(i) A cumulative total of 0.5 kg (1.1 lb) of source material in a solid, nondispersible form may be transferred each calendar year by a person authorized to receive, possess, use, and transfer source material under the general license to persons receiving the material for permanent disposal. The recipient of source material transferred under this paragraph shall be exempt from the requirements to obtain a license under part 3 of these regulations to the extent that the source material is permanently disposed of. This exemption shall not apply to any person who is in possession of source material under a specific license issued by the department; or

(ii) source material may be disposed in accordance with K.A.R. 28-35-190a; and

(C) exporting the source material to another country except in accordance with a license issued by the nuclear regulatory commission (NRC).

(2) Each person specified in paragraph (b)(1) shall respond to each written request from the department to provide information relating to the general license within 30 calendar days of the date of the request or other time specified

in the request. If the person cannot provide the requested information within the required time, the person shall, within the same time period, request a longer period to supply the information by providing the department with a written justification for the request.

(c) Each person who receives, possesses, uses, or transfers source material in accordance with subsection (a) shall minimize contamination of the facility and the environment. When activities involving source material are permanently ceased at any site, if evidence of significant contamination is identified, the general licensee shall notify the department about the contamination and may consult with the department regarding the appropriateness of sampling and restoration activities to ensure that any contamination or residual source material remaining at the site where source material was used under this general license is not likely to result in exposures that exceed the limits in these regulations.

(d) Each person who receives, possesses, uses, or transfers source material in accordance with the general license granted in subsection (a) shall be exempt from parts 4 and 10 of these regulations to the extent that the receipt, possession, use, and transfer are within the terms of this general license, except that the person shall meet the requirements of paragraph (b)(1)(B) and subsection (c). This exemption shall not apply to any person who also holds a specific license issued by the department.

(e) No person shall initially transfer or distribute source material to persons generally licensed under paragraph (a)(1) or (2) or equivalent regulations of an agreement state, unless authorized by a specific license issued by the NRC or equivalent provisions of an agreement state. This subsection shall not apply to analytical laboratories returning any processed sample to the client who initially provided the sample. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended Dec. 30, 2005; amended July 27, 2007; amended May 4, 2018.)

28-35-178. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended Jan. 1, 1972; amended May 1, 1976; revoked, T-86-37, Dec. 11, 1985; revoked May 1, 1986.)

28-35-178a. General license; certain ionization devices. (a) Each commercial and in-

dustrial firm, research, educational, and medical institution, individual in the conduct of the individual's business, and federal, state, or local government agency shall be deemed to have been issued a general license to acquire, receive, possess, use, or transfer radioactive material incorporated in any device or equipment as described in this subsection, if the device or equipment is manufactured, tested, and labeled by a manufacturer in accordance with the specifications of a specific license issued to the manufacturer by the secretary, the U.S. nuclear regulatory commission, or an agreement state. This general license shall apply to the following:

(1) Static elimination devices that are designed for ionization of air and that contain, as a sealed source or sources, radioactive material containing a total of not more than 500 microcuries of polonium-210 per device; and

(2) ion-generating tubes that are designed for ionization of air and that contain, as a sealed source or sources, radioactive material consisting of a total of not more than 500 microcuries of polonium-210 per device or a total of not more than 50 millicuries of hydrogen-3 (tritium) per device.

(b) The general license specified in subsection (a) shall be subject to the following regulations:

(1) K.A.R. 28-35-137 through 28-35-139;

(2) K.A.R. 28-35-192b;

(3) K.A.R. 28-35-184a;

(4) K.A.R. 28-35-190a;

(5) K.A.R. 28-35-191a;

(6) K.A.R. 28-35-196a; and

(7) all of parts 4 and 10 of these regulations. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended Dec. 30, 2005; amended July 27, 2007.)

28-35-178b. General license; certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere. (a)(1) Subject to the provisions of subsections (b) and (c), each commercial and industrial firm, research, educational, and medical institution, individual in the conduct of the individual's business, and federal, state, or local government agency shall be deemed to have been issued a general license to acquire, receive, possess, use, or transfer radioactive material that is contained in any device designed, manufactured, and used for one or more of the following purposes:

(A) Detecting, measuring, gauging, or controlling thickness, density, level interface location, radiation leakage, or qualitative or quantitative chemical composition; or

(B) producing light or an ionized atmosphere.

(2) The general license specified in paragraph (1) of this subsection shall apply only to radioactive material contained in any device that has been manufactured and labeled by a manufacturer in accordance with the specifications of a specific license issued to that manufacturer by the secretary, the nuclear regulatory commission, or an agreement state.

(3) The general license specified in paragraph (1) of this subsection shall not apply to radioactive material in any device containing at least 370MBq (10 mCi) of cesium-137, 3.7 MBq (0.1 mCi) of strontium-90, 37 MBq (1 mCi) of cobalt-60, 3.7 MBq (0.1 mCi) of radium-226, or 37MBq (1mCi) of americium-241 or any other transuranic element, based on the activity indicated on the label.

(4) Each device shall have been received from one of the specific licensees described in paragraph (a)(2) or through a transfer made under paragraph (b)(9).

(b) Each person who acquires, receives, possesses, uses, or transfers radioactive material in a device pursuant to the general license specified in subsection (a) shall comply with all of the following requirements:

(1) Each person subject to this subsection shall ensure that all labels affixed to the device at the time of receipt and bearing a statement that removal of the label is prohibited are maintained and shall comply with all instructions and precautions provided by these labels.

(2) Each person subject to this subsection shall ensure that the device is tested for leakage of radioactive material and proper operation of the on-off mechanism and indicator, if any, at no longer than six-month intervals or at any other intervals specified in any manufacturer's label affixed to the device, except as follows:

(A) The person shall not be required to test devices containing only krypton for leakage of radioactive material.

(B) The person shall not be required to test, for any purpose, any device containing only tritium, not more than 100 microcuries of other beta-emitting or gamma-emitting material, or 10 microcuries of alpha-emitting material or any device held in storage in the original shipping container before initial installation.

(3) Each person subject to this subsection shall ensure that the tests required by paragraph (b) (2) and other operations involving testing, installation, servicing, and removal from installation of the radioactive material, its shielding, or containment are performed in compliance with one of the following:

(A) In accordance with instructions provided on labels affixed to the device; or

(B) by a person holding a specific license issued under this part or equivalent regulations of NRC or an agreement state to perform the tests and other operations.

(4)(A) Each person subject to this subsection shall maintain records showing compliance with the requirements of paragraphs (b)(2) and (b) (3). The records shall show the results of each test. The records also shall show the dates of the testing, installation, servicing, or removal from installation of the radioactive material, its shielding, or containment and the name of each person performing one or more of these tests and other operations.

(B) Each person shall maintain records of tests for leakage of radioactive material required by paragraph (b)(2) for three years after the next required leak test is performed or until the sealed source is transferred or disposed of. Each person shall maintain records of tests of the on-off mechanism and indicator, as required by paragraph (b) (2), for three years after the next required test of the on-off mechanism and indicator is performed or until the sealed source is transferred or disposed of. Each person shall maintain the records required by paragraph (b)(3) for three years from the date of the recorded event or until the device is transferred or disposed of.

(5) Upon a failure of or damage to, or any indication of a possible failure of or damage to, the shielding of the radioactive material or the on-off mechanism or indicator, or upon the detection of 0.005 microcurie or more removable radioactive material, each person subject to this subsection shall take the following actions:

(A) Immediately suspend operation of the device until either of the following conditions is met:

(i) The device has been repaired by the manufacturer or other person holding a specific license issued under this part or equivalent regulations of NRC or an agreement state to repair the device; or

(ii) the device is transferred to a person authorized by a specific license to receive the radioactive material contained in the device;

(B) within 30 days, furnish to the secretary a report containing a brief description of the event and the remedial action taken; and

(C) within 30 days, if contamination of the premises or the environs is likely, furnish to the secretary a plan for ensuring that the premises and environs are acceptable for unrestricted use. The criteria for unrestricted use specified in K.A.R. 28-35-205 may be applicable, as determined by the secretary.

(6) A person subject to this subsection shall not abandon the device.

(7) A person shall not export any device containing radioactive material except in accordance with 10 CFR part 110.

(8) (A) Each person shall transfer or dispose of any device containing radioactive material only by export as provided in paragraph (b)(7), by transfer to another general licensee as authorized in paragraph (b)(9), or to a person authorized to receive the device by a specific license issued under this part or equivalent regulations of NRC or an agreement state.

(B) Each person shall furnish a report to the department within 30 days after the export of the device or the transfer of the device to a specific licensee. The report shall contain the following information:

- (i) The identification of the device by manufacturer's name, model number, and serial number;
- (ii) the name, address, and license number of the person receiving the device; and
- (iii) the date of the transfer.

(C) Each person shall obtain written department approval before transferring the device to any other specific licensee not specifically identified in paragraph (b)(8)(A). The holder of a specific license may transfer a device for possession and use under its own specific license without approval, if the holder performs the following:

(i) Either verifies that the specific license authorizes the possession and use or applies for and obtains an amendment to the license authorizing the possession and use;

(ii) ensures that the device is labeled in compliance with these regulations. The label shall retain the name of the manufacturer, the model number, and the serial number;

(iii) obtains the manufacturer's or initial transferor's information concerning maintenance, including leak testing procedures that are applicable under the specific license; and

(iv) reports the transfer as required by paragraph (b)(8)(B).

(9) Any person subject to this subsection may transfer the device to another general licensee only if either of the following conditions is met:

(A) The device remains in use at a particular location. In this case, the transferor shall give the transferee a copy of this regulation and any safety documents identified in any label affixed to the device and, within 30 days of the transfer, provide a written report to the secretary containing identification of the device by manufacturer's name, model number, and serial number; the name and address of the transferee; and the name, telephone number, and position of an individual who can be contacted by the secretary concerning the device.

(B) The device is held in storage in the original shipping container at its intended location of use before initial use by a general licensee.

(10) Each person subject to this subsection shall comply with the provisions of K.A.R. 28-35-228a and K.A.R. 28-35-229a relating to reports of radiation incidents, theft, or loss of licensed material, but shall be exempt from the other requirements of parts 4 and 10 of these regulations.

(11) Each person shall respond to all written requests from the department to provide information relating to the general license within 30 calendar days of the date of the request or on or before any other deadline specified in the request. If the person cannot provide the requested information within the allotted time, the person, within that same time period, shall request a longer period to supply the information by submitting a letter to the department and shall provide written justification as to why the person cannot comply.

(12) Each general licensee shall appoint an individual responsible for having knowledge of the appropriate regulations and requirements and the authority for taking required actions to comply with appropriate regulations and requirements. The general licensee, through this individual, shall ensure day-to-day compliance with the appropriate regulations and requirements. This appointment shall not relieve the general licensee of any of the licensee's responsibility in this regard.

(13)(A) Each person shall register, in accordance with paragraph (b)(13)(B), each device generally licensed as required by this regulation. Each address for a location of use, as described in paragraph (b)(13)(B)(iv), shall represent a separate general licensee and shall require a separate registration and fee.

(B) In registering each device, the general licensee shall furnish the following information

and any other information specifically requested by the department:

(i) The name and mailing address of the general licensee;

(ii) information about each device as indicated on the label, including the manufacturer's name, the model number, the serial number, and the radioisotope and activity;

(iii) the name, title, and telephone number of the responsible person appointed as a representative of the general licensee under paragraph (b)(12);

(iv) the address or location at which each device is used or stored, or both. For each portable device, the general licensee shall provide the address of the primary place of storage;

(v) certification by the responsible representative of the general licensee that the information concerning each device has been verified through a physical inventory and a check of the label information; and

(vi) certification by the responsible representative of the general licensee that the person is aware of the requirements of the general license.

(14) Each person shall report any change in the mailing address for the location of use, including any change in the name of the general licensee, to the department within 30 days of the effective date of the change. For a portable device, a report of address change shall be required only for a change in the primary place of storage of the device.

(15) No person may store a device that is not in use for longer than two years. If any device with shutters is not being used, the shutters shall be locked in the closed position. The testing required by paragraph (b)(2) shall not be required to be performed during the period of storage only. If the device is put back into service or transferred to another person and was not tested at the required test interval, the device shall be tested for leakage before use or transfer, and all shutters shall be tested before use. Each device kept in storage for future use shall be excluded from the two-year time limit if the general licensee performs quarterly physical inventories of the device while the device is in storage.

(c) Nothing in this regulation shall be deemed to authorize the manufacture or import of any device containing radioactive material.

(d) The general license specified in subsection (a) shall be subject to the provisions of K.A.R. 28-35-184a and K.A.R. 28-35-184b. (Authorized by and implementing K.S.A. 48-1607; effective,

T-86-37, Dec. 11, 1985; effective May 1, 1986; amended Nov. 1, 1996; amended March 24, 2006; amended July 27, 2007; amended March 18, 2011.)

28-35-178c. General license to install devices generally licensed in K.A.R. 28-35-178b.

Any person who holds a specific license issued by the U.S. nuclear regulatory commission or an agreement state authorizing the holder to manufacture, install, or service a device described in K.A.R. 28-35-178b is hereby granted a general license to install and service such a device in this state, if:

(a) The device has been manufactured, labeled, installed and serviced in accordance with the provisions of the specific licenses issued in regard to manufacturing, labeling, installing and servicing the device; and

(b) Such person assures that all labels required to be affixed to the device are in place. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986.)

28-35-178d. Luminous safety devices for use in aircraft.

(a) A general license is hereby issued to acquire, possess, and use tritium or promethium-147 contained in luminous safety devices for use in aircraft if:

(1) the device contains not more than 10 curies of tritium or 300 millicuries of promethium-147; and

(2) the device has been manufactured, assembled or imported in accordance with a specific license, issued under the provisions of section 32.53 of the regulations of the United States nuclear regulatory commission or manufactured or assembled in accordance with a specific license issued by an agreement state, which authorizes manufacture or assembly of the device for distribution to persons generally licensed by the agreement state.

(b) Persons who acquire, possess or use luminous safety devices pursuant to the general license issued in subsection (a) of this regulation shall be exempt from the requirements of parts 4 and 10 of these regulations, except that they shall comply with the provisions of K.A.R. 28-35-228a and 28-35-229a.

(c) The general license issued in this regulation shall not authorize the manufacture, assembly or repair, or the importation or exportation,

of luminous safety devices containing tritium or promethium-147.

(d) The general license issued in this regulation shall not authorize the acquisition, possession or use of promethium-147 contained in instrument dials. (Authorized by and implementing K.S.A. 1985; effective May 1, 1986.)

28-35-178e. Americium-241 or radium-226 in the form of calibration or reference sources. (a) A general license to acquire, possess, use and transfer, in accordance with the provisions of subsections (b) and (c), americium-241 or radium-226 in the form of calibration or reference sources is hereby issued to any person who holds a specific license issued by the nuclear regulatory commission that authorizes the agency to acquire, possess, use, and transfer by-product material, source material, or special nuclear material.

(b) The general license issued in subsection (a) shall apply only to calibration or reference sources that have been manufactured or initially transferred in accordance with the specifications contained in a specific license issued by the secretary, the nuclear regulatory commission, or an agreement state.

(c) The general license issued in subsection (a) shall be subject to the provisions of K.A.R. 28-35-184a, and to all of the provisions of parts 4 and 10 of these regulations. In addition, persons who acquire, possess, use, and transfer one or more calibration or reference sources pursuant to this general license shall meet the following requirements:

(1) Not possess, at any one time, at any one location of storage or use, more than 5 microcuries of either americium-241 or radium-226 in such sources;

(2) not receive, possess, use, or transfer such a source unless the source, or the storage container, bears a label that includes the following statement or a substantially similar statement that contains the information called for in the following statement:

“The receipt, possession, use and transfer of this source, Model _____, Serial No. _____, are subject to a general license and the regulations of the United States Nuclear Regulatory Commission or of a State with which the commission has entered into an agreement for the exercise of regulatory authority. Do not remove this label.

CAUTION—RADIOACTIVE MATERIAL—THIS SOURCE CONTAINS AMERICIUM-241 (or RADIUM-226). DO NOT TOUCH RADIOACTIVE PORTION OF THIS SOURCE.

(Name of manufacturer or initial transferor)”;

(3) not transfer, abandon, or dispose of such source except by transfer to a person authorized by a license issued by the secretary, the nuclear regulatory commission, or an agreement state to receive the source;

(4) store such source, except when the source is being used, in a closed container designed and constructed to contain either americium-241 or radium-226 that might otherwise escape during storage; and

(5) not use the source for any purpose other than the calibration of radiation detectors or the standardization of other sources.

(d) The general license issued in this regulation shall not authorize the manufacture, or the importation or exportation, of calibration or reference sources containing either americium-241 or radium-226. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended March 18, 2011.)

28-35-178f. General license to own radioactive material. A general license is hereby issued to own radioactive material without regard to quantity. However, a general licensee under this regulation is not authorized to manufacture, produce, transfer, receive, possess, use, import or export radioactive material, except as authorized in a specific license. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986.)

28-35-178g. General license for strontium-90 in ice detection devices. (a) A general license is hereby issued to own, acquire, possess, use and transfer strontium-90 contained in ice detection devices if each device contains not more than 50 microcuries of strontium-90 and if each device is manufactured or initially transferred in accordance with the specifications contained in a license issued to the manufacturer by the secretary, the U.S. nuclear regulatory commission or an agreement state.

(b) Persons who own, acquire, possess, use, or transfer strontium-90 contained in ice detection devices pursuant to the general license issued in subsection (a) of this section:

(1) Shall, if visually observable damage to the device occurs, including a bend or crack or discoloration from overheating, discontinue use of the device until it has been inspected, tested for leakage and repaired by a person holding a specific license issued by the secretary, the U.S. nuclear regulatory

commission or an agreement state to manufacture or service the device, or shall dispose of the device pursuant to the provisions of K.A.R. 28-35-223a;

(2) Shall assure that all labels affixed to the device at the time of receipt, and which bear a statement that prohibits removal of the labels, are maintained thereon;

(3) Shall be exempt from the requirements of parts 4 and 10 of these regulations, except that such persons shall comply with the provisions of K.A.R. 28-35-223a, 28-35-228a and 28-35-229a.

(c) This general license shall not authorize the manufacture, assembly, disassembly or repair, or the importation or exportation, of strontium-90 in ice detection devices. (Authorized by and implementing K.A.R. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986.)

28-35-178h. General license for use of by-product material for certain in vitro clinical or laboratory testing. (a) A general license is hereby issued to any physician, veterinarian in the practice of veterinary medicine, clinical laboratory or hospital to acquire, possess, use and transfer in accordance with the provisions of subsections (b), (c), (d), (e), and (f) of this section, the following radioactive materials in prepackaged units for use in any of the following stated tests:

(1) Iodine-125, in units not exceeding 10 microcuries each, for use in in vitro clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals.

(2) Iodine-131, in units not exceeding 10 microcuries each, for use in in vitro clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals.

(3) Carbon-14, in units not exceeding 10 microcuries each, for use in in vitro clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals.

(4) Hydrogen-3 (tritium), in units not exceeding 50 microcuries each, for use in in vitro clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals.

(5) Iron-59, in units not exceeding 20 microcuries each, for use in in vitro clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals.

(6) Selenium-75, in units not exceeding 10 microcuries each, for use in in vitro clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals.

(7) Mock Iodine-125 reference or calibration sources, in units not exceeding 0.05 microcuries of Iodine-129 and 0.005 microcurie of americium-241 each, for use in in vitro clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals.

(8) Cobalt-57, in units not exceeding 10 microcuries each, for use in in vitro clinical or laboratory tests not involving internal or external administration of radioactive material or the radiation therefrom, to human beings or animals.

(b)(1) A person shall not acquire, possess, use or transfer radioactive material pursuant to the general license issued in subsection (a) of this section until the person has filed form RH-31, "Registration Certificate—In Vitro Testing with Radioactive Material Under General License," with the secretary and has received from the secretary a validated copy of the form, with a registration number assigned, or until the person has been authorized pursuant to K.A.R. 28-35-181d(d) to use radioactive material under the general license issued in subsection (a) of this regulation.

(2) Each person who files a form RH-31 shall provide all the information requested by that form.

(c) Each person who acquires, possesses, or uses radioactive material pursuant to the general license issued in subsection (a) of this section:

(1) Shall not possess, at any one time, at any one location of storage or use, a total amount of iodine-125, iodine-131, selenium-75, cobalt-57 or iron-59 in excess of 200 microcuries;

(2) shall store the radioactive material, until used, in the original shipping container or in a container providing equivalent radiation protection;

(3) shall use the radioactive material only for the uses authorized in subsection (a) of this section;

(4) shall not transfer the radioactive material except by transfer to a person authorized to receive it under a license issued by the secretary, the U.S. nuclear regulatory commission or an agreement state, and shall not transfer the radioactive material in any manner other than in the unopened, labeled shipping container as received from a supplier; and

(5) shall dispose of mock iodine-125 reference

or calibration sources in accordance with the requirements of K.A.R. 28-35-223a.

(d) Each general licensee shall not receive, acquire, possess, or use radioactive material pursuant to subsection (a) of this section:

(1) Except as prepackaged units which are labeled in accordance with the provisions of a specific license issued by the secretary, the U.S. nuclear regulatory commission, or an agreement state; and

(2) Unless the following statement, or a substantially similar statement which contains the information called for in the following statement, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

“This radioactive material may be received, acquired, possessed, and used only by physicians, veterinarians in the practice of veterinary medicine, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use, and transfer are subject to the regulations and a general license of the U.S. nuclear regulatory commission or of a state with which the commission has entered into an agreement for the exercise of regulatory authority.

(Name of Manufacturer)”

(e) Each person possessing or using radioactive materials under the general license issued in subsection (a) of this section shall file a written report with the secretary of any change in the information furnished on form RH-31. The report shall be filed within 30 days after the effective date of any change.

(f) Any person using radioactive material pursuant to the general license issued in paragraph (1) of subsection (a) shall be exempt from the requirements of parts 4 and 10 of these regulations with respect to radioactive materials covered by that general license, except that any person using Mock Iodine-125 shall comply with the provisions of K.A.R. 28-35-223a, 28-35-228a and 28-35-229a. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986.)

28-35-178i. General licenses for certain units of radium-226. (a) Subject to the limitations in subsections (b), (c) and (d), a general license is hereby issued to any person to acquire, possess, use, and transfer radium-226 contained in the following products if manufactured before the effective date of this regulation:

(1) Antiquities originally intended for use by the general public. For the purposes of this paragraph, “antiquities” shall mean products originally intended for use by the general public and distributed in the late 19th and early 20th centuries, including radium emanator jars, revigators, radium water jars, radon generators, refrigerator cards, radium bath salts, and healing pads;

(2) intact timepieces containing more than 0.037 megabecquerel (1 microcurie), nonintact timepieces, and timepiece hands and dials no longer installed in timepieces;

(3) luminous items installed in air, marine, or land vehicles;

(4) all other luminous products not listed in this subsection, if not more than 100 items are used or stored at the same location at any one time; and

(5) small radium sources containing not more than 0.037 megabecquerel (1 microcurie) of radium-226.

(b) A person shall not acquire, possess, use, or transfer radium-226 pursuant to the general license issued in subsection (a) until the person has filed form RH-37 with the secretary and has received from the secretary a validated copy of the form, with a certification number assigned. Each person filing a form RH-37 shall provide all the information required by that form.

(c) Each person who acquires, receives, possesses, uses, or transfers by-product material in accordance with the general license issued in subsection (a) shall meet the following requirements:

(1) Notify the department of any indication of possible damage to the product that indicates a potential loss of the radioactive material. A report containing a brief description of the event and the remedial action taken shall be provided to the department within 30 days of the incident;

(2) not abandon any products containing radium-226. The product and any radioactive material from the product shall be disposed of only according to K.A.R. 28-35-165 or by transfer to a person authorized by a specific license to receive the radium-226 in the product or as otherwise approved by the department;

(3) not export any products containing radium-226 except in accordance with K.A.R. 28-35-178b;

(4) dispose of any products containing radium-226 at a disposal facility authorized to dispose of radioactive material in accordance with any federal or state solid or hazardous waste law, including the solid waste disposal act of 1965, 42 U.S.C.

6901 through 6992k as amended, as authorized under 42 U.S.C. 15801 et seq., by transfer to a person authorized to receive radium-226 by a specific license issued under K.A.R. 28-35-180a or equivalent regulations of an agreement state, or as otherwise approved by the department; and

(5) respond to any written request from the department to provide information relating to the general license within 30 calendar days of the date of the request or other time specified in the request. If the general licensee cannot provide the requested information within the allotted time, that licensee shall, within that same time period, request a longer period to supply the information by submitting a letter to the department and shall provide written justification as to why the person cannot comply.

(d) Each general licensee under this regulation shall file with the secretary a written report of any changes in the information filed in form RH-37. The report shall be furnished within 30 days after the effective date of the change.

(e) Each general licensee under this regulation shall be exempt from the requirements of parts 4 and 10 of these regulations with respect to the radioactive material covered by the general license.

(f) The general license specified in subsection (a) shall not authorize the manufacture, assembly, disassembly, repair, or import of any products containing radium-226, except that timepieces may be disassembled and repaired.

(g) Any general licensee under this regulation who is an individual member of the public may submit an application to the department for a waiver from the general license fee prescribed in K.A.R. 28-35-147a. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended May 4, 2018.)

28-35-178j. General license for use of radioactive material for certain in vivo clinical or laboratory testing. (a) Except as provided in subsections (b) and (c), each person shall be exempt from the license requirements in part 3 and part 6 of these regulations if the person receives, possesses, uses, transfers, owns, or acquires any capsules containing 37 kBq (1 μ Ci) of carbon-14 urea, allowing for nominal variation that may occur during the manufacturing process for in vivo diagnostic use for humans.

(b) Before using the capsules specified in subsection (a) for research involving human subjects,

each person shall apply and shall be considered for approval for a specific license. Each person shall be required to have a specific license before engaging in the research specified in this subsection.

(c) Before manufacturing, preparing, processing, producing, packaging, repackaging, or transferring the capsules specified in subsection (a) for commercial distribution, each person shall apply and shall be considered for approval for a specific license. Each person shall be required to have a specific license before performing any of the actions specified in this subsection.

(d) Nothing in this regulation shall exempt any person from applicable FDA requirements, other federal requirements, and state requirements governing receipt, administration, and use of drugs. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005; amended March 18, 2011.)

28-35-179. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1970; revoked, T-86-37, Dec. 11, 1985; revoked May 1, 1986.)

28-35-179a. Application for specific license; renewal or amendment. (a) Any person may file a written application with the secretary for a specific license to acquire, possess, use, or transfer radioactive material. Each person shall file a written application with the secretary to renew or amend any specific license. Each application for a specific license, or a renewal or an amendment of an existing license, shall be submitted on the appropriate form furnished by the secretary. Each person filing an application shall provide all the information requested on the application form, and any additional relevant information requested by the secretary.

(b) Each application filed with the secretary shall be signed by the applicant or licensee, or by a person authorized to act for or on behalf of the applicant or licensee.

(c) Any application may incorporate, by reference, information provided in applications, reports, or other documents previously filed with the secretary. Each reference to information previously filed with the secretary shall be clear and specific.

(d) Any application for a specific license may include a request for a license authorizing activity at one or more installations or locations.

(e) Except as provided in subsections (f), (g), and (h), each application for a specific license to use radioactive material in the form of a sealed

source or in a device that contains the sealed source shall include either of the following:

(1) Identification of the sealed source or device by manufacturer and model number as registered with the department, nuclear regulatory commission (NRC), or an agreement state; or

(2) sufficient information about the design, manufacture, prototype testing, quality control program, labeling, proposed uses, and leak testing to provide reasonable assurance that the radiation safety properties of the sealed source or device are adequate to protect health and minimize danger to life and property. For a device, the application shall also include sufficient information about installation, service and maintenance, operating and safety instructions, and potential hazards, to provide reasonable assurance that the radiation safety properties of the sealed source or device are adequate to protect health and minimize danger to life and property.

(f) For any sealed source or device manufactured before October 23, 2012 that is not registered with the department, NRC, or an agreement state and for which the applicant is unable to provide the information specified in this regulation, the application shall include the following:

(1) All available information specified in K.A.R. 28-35-181e, concerning the sealed source, and, if applicable, the device; and

(2) sufficient additional information to demonstrate reasonable assurance that the radiation safety properties of the sealed source or device are adequate to protect health and minimize danger to life and property. The information shall include a description of the sealed source or device, a description of radiation safety features, the intended use and associated operating experience, and the results of the most recent leak test.

(g) For sealed sources and devices allowed to be distributed without the registration of safety information as required in this regulation, the applicant may supply only the name of the manufacturer, model number, and radionuclide quantity.

(h) If it is not feasible to identify each sealed source and device individually, the applicant may propose constraints on the number and type of sealed sources and devices to be used and the conditions under which the sealed sources and devices will be used, instead of identifying each sealed source and device. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended May 4, 2018.)

28-35-180. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1970; revoked, T-86-37, Dec. 11, 1985; revoked May 1, 1986.)

28-35-180a. General requirements for the issuance of specific licenses. Each application for a specific license shall be approved only if the application meets the requirements of these regulations.

(a) Each applicant shall be required to be qualified by reason of training and experience to use the material in question for the purpose requested, in accordance with these regulations, and in a manner that will protect public health and safety and the environment.

(b) The proposed equipment, facilities, and procedures used by each applicant shall protect public health and safety and the environment.

(c) A specific license shall be approved only if the secretary determines that the license is protective of public health and safety and the environment.

(d) Each applicant shall meet the requirements in these regulations for the particular license sought.

(e)(1) Each application for a license for commercial waste disposal, source material milling, or any other operation that the secretary determines will affect the environment shall meet the requirement specified in this paragraph. Each application shall include information that permits the secretary to weigh the environmental, economic, technical, and other benefits against the environmental costs and alternatives to ensure the protection of public health and safety and the environment.

(2) The approval of each application specified in paragraph (e)(1) shall be based upon the following:

(A) The information specified in paragraph (e)(1) and other information as necessary; and

(B) the information required by 10 C.F.R. 51.45, as in effect on April 30, 1992.

(f) Each applicant shall be authorized to begin construction only after the issuance of the license. Commencement of construction before issuance of the license shall be grounds for denial of the license application. "Commencement of construction," as used in this regulation, shall mean any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site.

(g) Each applicant for a license, other than a renewal, shall describe in the application how the

facility design and procedures for operation will minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize, to the extent practicable, the generation of radioactive waste.

(h) Each licensee who manufactures a nationally tracked source shall assign a unique serial number to each nationally tracked source manufactured by the licensee. Each serial number shall be composed only of alphanumeric characters.

(i) Each licensee shall conduct operations to minimize the introduction of residual radioactivity into the facility out to the site boundary, including the subsurface, in accordance with the existing radiation protection requirements and radiological criteria for license termination in these regulations. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended Sept. 20, 1993; amended Nov. 1, 1996; amended Dec. 30, 2005; amended July 27, 2007; amended May 4, 2018.)

28-35-180b. Financial assurance for decommissioning. (a) Each applicant for a specific license authorizing the possession and use of unsealed radioactive material with a half-life greater than 120 days and in quantities exceeding 10^5 times the applicable quantities specified in K.A.R. 28-35-201 shall submit a decommissioning funding plan as described in subsection (e) of this regulation. Each applicant shall also submit the decommissioning funding plan if a combination of isotopes is involved and if R divided by 10^5 is greater than one, where R is defined here as the sum of the ratios of the quantity of each isotope to the applicable value specified in K.A.R. 28-35-201.

(b) Each applicant for a specific license authorizing the possession and use of radioactive material with a half-life greater than 120 days and in quantities specified in table I shall submit either of the following:

(1) A decommissioning funding plan as described in subsection (e); or

(2) a certification that financial assurance for decommissioning has been provided in the amount prescribed by table I, using one of the methods described in subsection (f). The certification may state that the appropriate assurance is to be obtained after the application has been approved and the license has been issued, but before the receipt of licensed material. If the applicant defers execution of the financial instrument required under subsection (f) until after the license has been

issued, a signed original of the financial instrument shall be submitted to the department before the applicant receives the licensed material. If the applicant does not defer execution of the financial instrument required under subsection (f), the applicant shall submit to the department, as part of the certification, a signed original of the financial instrument.

(c) Each holder of a specific license that is a type specified in subsection (a) or (b) shall provide financial assurance for decommissioning in accordance with the following requirements:

(1) Each holder of a specific license that is a type specified in subsection (a) shall submit a decommissioning funding plan as specified in subsection (e) or a certification of financial assurance for decommissioning in an amount equal to at least \$1,125,000.00. Each licensee shall submit the plan or certification to the department in accordance with the criteria specified in this regulation. If the licensee submits a certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

(2) Each holder of a specific license that is a type specified in subsection (b) shall submit a decommissioning funding plan as specified in subsection (e) or a certification of financial assurance for decommissioning. Each licensee shall submit the plan or certification to the department, in accordance with the requirements specified in this regulation.

(d) The amounts of financial assurance required for decommissioning, by quantity of material, shall be those specified in table I.

Table I
Financial assurance for decommissioning
by quantity of material

If the possession limit is greater than 10^4 but less than or equal to 10^5 times the applicable quantities specified in K.A.R. 28-35-201, in unsealed form	\$1,125,000.00
For a combination of isotopes, in unsealed form, if R, as defined in subsection (a), divided by 10^4 is greater than one, but R divided by 10^5 is equal to or less than one	\$1,125,000.00
If the possession limit is greater than 10^3 but less than or equal to 10^4 times the applicable quantities specified in K.A.R. 28-35-201, in unsealed form	\$225,000.00
For a combination of isotopes, in unsealed form, if R, as defined in subsection (a), divided by 10^3 is greater than one, but R divided by 10^4 is less than or equal to one	\$225,000.00

If the possession limit is greater than 10^{10} times the applicable quantities specified in K.A.R. 28-35-201, in sealed sources or foils	\$113,000.00
For a combination of isotopes, in sealed sources or foils, if R, as defined in subsection (a), divided by 10^{10} is greater than one.....	\$113,000.00

(e) Each decommissioning funding plan shall contain the following:

(1) A cost estimate for decommissioning in an amount including the following:

(A) The cost of an independent contractor to perform all decommissioning activities;

(B) the cost of meeting the requirements for unrestricted use specified in K.A.R. 28-35-205. However, if the applicant or licensee can demonstrate the ability to meet the provisions of K.A.R. 28-35-205a, the cost estimate may be based on meeting the requirements in K.A.R. 28-35-205a;

(C) the volume of on-site subsurface material containing residual radioactivity that will require remediation to meet the requirements for license termination; and

(D) a contingency factor;

(2) identification of and justification for using the key assumptions contained in the decommissioning cost estimate;

(3) a description of the method of ensuring funds for decommissioning from subsection (f), including means for adjusting cost estimates and associated funding levels periodically over the life of the facility;

(4) a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning;

(5) a signed original of the financial instrument obtained to satisfy the requirements in subsection (f); and

(6) at the time of license renewal and at intervals not longer than three years, the decommissioning funding plan with adjustments necessary to account for changes in costs and the extent of contamination. The amount of financial assurance shall not be reduced without first obtaining the approval of an updated decommissioning funding plan. The decommissioning funding plan shall update the information submitted with the original or prior approved plan and shall specifically consider the effect of the following events on decommissioning costs:

(A) Spills of radioactive material producing additional residual radioactivity in on-site subsurface material;

(B) waste inventory exceeding the amount previously estimated;

(C) waste disposal costs exceeding the amount previously estimated;

(D) facility modifications;

(E) changes in authorized possession limits;

(F) actual remediation costs exceeding the previous cost estimate;

(G) on-site disposal; and

(H) use of a settling pond.

(f) Each licensee shall provide financial assurance for decommissioning by one or more of the following methods:

(1) Prepayment. "Prepayment" shall mean the deposit of cash or liquid assets before the start of operation into a trust account acceptable to the secretary that is segregated from the licensee's assets and outside of the licensee's administrative control. The deposit shall consist of an amount that is sufficient to pay decommissioning costs. The adequacy of the trust funds shall be based on an assumed annual rate of return of one percent on the funds deposited into the trust.

(2) A surety instrument, insurance policy, or other guarantee method. The licensee may use a surety instrument, insurance policy, or other similar means to guarantee that decommissioning costs will be paid. A surety instrument may be in the form of a surety bond, letter of credit, or line of credit. A parent company's guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test meet the requirements of K.A.R. 28-35-203. A parent company's guarantee shall not be used in combination with other financial methods to meet the requirements in this regulation. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test meet the requirements of K.A.R. 28-35-203. A guarantee by the applicant or licensee shall not be used in combination with any other financial methods to meet the requirements in this regulation or in any situation in which a parent company of the applicant or licensee holds majority control of the voting stock of the company. Each surety instrument or insurance policy used to provide financial assurance for decommissioning shall contain the following requirements:

(A) The surety instrument or insurance policy shall be open-ended or, if written for a specified term, shall be renewed automatically, unless 90 days or more before the renewal date, the insurer

notifies the department, the beneficiary, and the licensee of the insurer's intention not to renew. The surety instrument or insurance policy shall also provide that the full face amount will be paid to the beneficiary automatically before the expiration without proof of forfeiture if the licensee fails to provide a replacement that meets the requirements of this regulation within 30 days after receipt of notification of cancellation.

(B) The surety instrument or insurance policy shall be payable to an approved trust established for decommissioning costs. The trustee may include an appropriate state or federal agency or an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(C) The surety instrument or insurance policy shall remain in effect until the license is terminated by the department.

(3) External sinking fund. A licensee may provide financial assurance for decommissioning through an external sinking fund in which deposits are made at least annually, coupled with a surety instrument or insurance policy. The value of the surety instrument or insurance policy may decrease by the amount accumulated in the sinking fund. "External sinking fund" shall mean a fund that meets both of the following conditions:

(A) Is established and maintained by setting aside funds periodically in an account segregated from the licensee's assets and outside the licensee's administrative control; and

(B) contains a total amount of funds sufficient to pay the decommissioning costs when termination of the operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provisions shall meet the requirements specified in this subsection.

(4) Statement of intent. Any federal, state, or local government licensee may submit a statement of intent containing a cost estimate for decommissioning or an amount based on table I of this regulation and indicating that funds for decommissioning will be obtained when necessary.

(g) Each person licensed under subsections (a) through (f) shall keep records of all information that is relevant to the safe and effective decommissioning of the facility. The records shall be kept in an identified location until the license is terminated by the department. If records of relevant information are kept for other purposes,

the licensee may refer to these records and the location of these records within the records kept pursuant to this subsection.

(h) Each licensee shall maintain decommissioning records, which shall consist of the following information:

(1) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to records of instances in which contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants could have spread to inaccessible areas. These records shall include any known information identifying the nuclides, quantities, forms, and concentrations involved in the spill or occurrence;

(2) drawings of the following, both as originally built and, if applicable, as modified:

(A) The structures and equipment in restricted areas where radioactive materials are used or stored, or both; and

(B) the locations of possible inaccessible contamination. If the licensee refers to required drawings other than those kept pursuant to this regulation, the licensee shall not be required to index each relevant document individually. If drawings are not available, the licensee shall substitute available information concerning these areas and locations;

(3) a list of the following information, which shall be contained in a single document and updated every two years:

(A) All areas designated and formerly designated as restricted areas;

(B) all areas outside of restricted areas that require the documentation specified in this subsection;

(C) all areas outside of restricted areas where current and previous wastes have been buried and documented as specified in K.A.R. 28-35-227j; and

(D) all areas outside of restricted areas that contain material so that, if the license expired, the licensee would be required either to decontaminate the area to unrestricted release levels or to apply for approval for disposal as specified in K.A.R. 28-35-225a.

Those areas containing sealed sources only shall not be included in the list if the sources have not leaked, no contamination remains in the area after any leak, or the area contains only radioactive materials having half-lives of less than 65 days; and

(4) the following records:

(A) Records of the cost estimate performed for the decommissioning funding plan or records of the amount certified for decommissioning; and

(B) if either a funding plan or certification is used, records of the funding method used for as-suring funds.

(i) Each applicant for a specific license shall make available a long-term care fund necessary to provide for the long-term surveillance and care of the radioactive material or waste. Each applicant for any of the following types of specific licenses shall establish the long-term care fund before the issuance of the license or before the termination of the license if the applicant chooses, by providing a surety instrument in lieu of a long-term care fund:

(1) Waste-handling licenses;

(2) source material milling licenses; and

(3) licenses for any facilities formerly licensed by the U.S. atomic energy commission or the nuclear regulatory commission (NRC), if required.

(j)(1) Each applicant shall agree to notify the department, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of title 11, bankruptcy, of the United States code by or against any of the following:

(A) The licensee;

(B) any person controlling the licensee or listing the license or licensee as property of the estate; or

(C) any affiliate of the licensee.

(2) The bankruptcy notification shall indicate the following:

(A) The name of the bankruptcy court in which the petition for bankruptcy was filed; and

(B) the date on which the petition was filed. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005; amended March 18, 2011; amended May 4, 2018.)

28-35-181. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended Jan. 1, 1972; amended May 1, 1976; revoked, T-86-37, Dec. 11, 1985; revoked May 1, 1986.)

28-35-181a. Specific licenses for human use of radioactive material in medical institutions. An application for a specific license for human use of radioactive material in institutions shall not be approved unless all of the following conditions are met:

(a) The applicant has appointed a radiation safety committee as specified in 10 CFR 35.24(f), which is adopted by reference in K.A.R. 28-35-264.

(b) The applicant possesses adequate facilities for the clinical care of patients.

(c) The physician or physicians designated on the application as the user or users have substantial experience in handling and administering radioactive materials and, if applicable, clinical management of radioactive patients.

(d) If the application is for a license to use unspecified quantities or multiple types of radioactive material, the applicant or applicant's staff has substantial experience in the use of a variety of radioactive materials for a variety of human uses. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended March 18, 2011.)

28-35-181b. Specific licenses to individual physicians for human use of radioactive material. (a) A specific license for the human use of radioactive materials outside of a medical institution shall not be issued to an individual physician unless:

(1) The applicant has access to a hospital and adequate facilities are available for the hospitalization and monitoring of the applicant's radioactive patients when such action is advisable; and

(2) the applicant has extensive experience in the proposed use, handling and administration of radioactive material, and where applicable, clinical management of radioactive patients. The physician shall furnish evidence of this experience with the application for the specific license.

(b) The secretary shall not approve an application by an individual physician or group of physicians for a specific license to receive, possess, or use radioactive material on the premises of a medical institution unless:

(1) The use of radioactive material is limited to:

(A) The administration of radiopharmaceuticals for diagnostic or therapeutic purposes;

(B) the performance of diagnostic studies on patients to whom a radiopharmaceutical has been administered;

(C) the performance of in vitro diagnostic studies; and

(D) calibration and quality control checks of radioactive assay instrumentation, radiation safety instrumentation and diagnostic instrumentation;

(2) the physician brings the radioactive material to the institution for each use and removes the radioactive material from the institution after each use; and

(3) the medical institution or institutions at which the radioactive materials are to be used by the phy-

sician or physicians do not hold a specific license under K.A.R. 28-35-181a. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986.)

28-35-181c. Specific license for human use of radioactive material in sealed sources.

(a) A specific license for human use of radioactive materials in sealed sources shall not be issued unless the applicant, or if the application is made by an institution, each individual user of the radioactive material:

(1) Has specialized training in the diagnostic or therapeutic use of the sealed source device or extensive experience in the use of the device; and

(2) is a physician.

(b) The applicant shall furnish evidence of the training or experience required by subsection (a) at the time of filing the application for the specific license. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986.)

28-35-181d. Specific licenses for one or more groups of medical uses.

(a) Any institution, person, or group of persons meeting the requirements of K.A.R. 28-35-181a or 28-35-181b may file a written application with the secretary for a specific license to use radioactive material for any group or groups of medical uses. Each application shall meet the requirements of K.A.R. 28-35-179a and shall designate the intended group or groups of uses for the radioactive material.

(b) Each application for a specific license to use radioactive material for any group or groups of medical uses shall meet all of the following requirements:

(1) The applicant, or the physician or physicians designated in the application as the individual user or users, has adequate clinical experience in performing the medical use or uses for which application is made.

(2) The applicant's proposed radiation detection instrumentation is adequate for conducting the medical procedures specified in the group or groups of uses for which application is made.

(3) The applicant's radiation safety operating procedures are adequate for the proper handling and disposal of radioactive material involved in the group or groups of uses for which application is made.

(4) The applicant, or the physician or physicians designated in the application as the individual user or users, and all other personnel who will be

involved in the preparation and use of the radioactive material have adequate training and experience in the handling of radioactive material. The training and experience shall be appropriate for the conduct of the uses included in the group or groups of uses for which application is made.

(c) Each licensee who is licensed under this regulation shall be subject to the following limitations:

(1) A licensee who has been issued a license for group I, II, IV, or V uses shall not receive, possess, or use radioactive material, except those radiopharmaceuticals manufactured in the form to be administered to the patient, and labeled, packaged, and distributed in accordance with a specific license issued by the secretary, or the United States nuclear regulatory commission or an agreement state.

(2) A licensee who has been issued a license for group III uses shall not receive, possess, or use generators or reagent kits containing radioactive material and shall not use reagent kits that do not contain radioactive material to prepare radiopharmaceuticals containing radioactive material, except for the following:

(A) Reagent kits not containing radioactive material that are approved by the secretary, the United States nuclear regulatory commission, or an agreement state for use by persons licensed pursuant to this regulation for group III medical uses; or

(B) generators or reagent kits containing radioactive material that are manufactured, labeled, packaged, and distributed in accordance with a specific license issued by the secretary, the United States nuclear regulatory commission, or an agreement state.

(3) Each licensee who has been issued a license for group III uses and who uses generators or reagent kits shall elute the generator or process radioactive material with the reagent kit in accordance with instructions that are approved by the secretary, the United States nuclear regulatory commission, or an agreement state and furnished by the manufacturer on the label attached to, or in the leaflet or brochure that accompanies, the generator or reagent kit.

(4) Each licensee who has been issued a license for groups I, II, or III uses and who uses the radioactive material for clinical procedures other than those specified in the product labeling or package insert shall comply with the product labeling regarding the following:

(A) Chemical and physical form;

(B) route of administration; and

(C) dosage range.

(5) A licensee who has been issued a license for group IV uses shall not receive, possess, or use radioactive material unless contained in a source or device that has been manufactured, labeled, packaged, and distributed in accordance with a specific license issued by the secretary, the United States nuclear regulatory commission, or an agreement state.

(d) Each licensee who is licensed under this regulation shall be authorized to use radioactive material under the general license issued in K.A.R. 28-35-178h for the specified in vitro uses, without filing form RH-31 as otherwise required by that regulation. However, the licensee shall be subject to the other requirements of K.A.R. 28-35-178h.

(e) Each licensee who is licensed under this regulation shall be authorized, subject to the provisions of subsections (f) and (g), to receive, possess, and use the following for calibration and reference standards:

(1) Any radioactive material listed in groups I, II, or III that has a half-life of 100 days or less, in amounts not exceeding 15 millicuries;

(2) any radioactive material listed in group I, II, or III that has a half-life greater than 100 days, in amounts not exceeding 200 microcuries;

(3) technetium-99m, in amounts not exceeding 30 millicuries; and

(4) any radioactive material, in amounts not exceeding three millicuries per source, contained in calibration or reference sources that have been manufactured, labeled, packaged, and distributed in accordance with a specific license issued by the secretary, the United States nuclear regulatory commission, or an agreement state.

(f)(1) Each licensee who possesses sealed sources as calibration or reference sources pursuant to subsection (e) shall cause each sealed source containing radioactive material, other than hydrogen 3, that has a half-life greater than 30 days and that is in any form other than gas to be tested for leakage, contamination, or both at intervals not exceeding six months. In the absence of a certificate from a transferor indicating that a leak test has been made within six months before the transfer of a particular sealed source, that sealed source shall not be used until tested, unless one of the following conditions is met:

(A) The source contains 100 microcuries or less of beta-emitting, gamma-emitting, or beta-emitting and gamma-emitting material, or 10 microcuries or less of alpha-emitting material.

(B) The sealed source is stored and is not being used.

(2) Each leak test required under paragraph (f)(1) shall be capable of detecting the presence of 0.005 microcurie of radioactive material on the test sample. The test sample shall be taken from sealed source or from the surfaces of the device in which the sealed source is permanently mounted or stored and on which contamination might be expected to accumulate. Records of leak test results shall be kept in units of microcuries and shall be maintained for inspection by the department.

(3) If the leak test reveals the presence of 0.005 microcurie or more of removable contamination, the licensee shall immediately withdraw the sealed source from use and shall cause it to be decontaminated and repaired, or to be disposed of in accordance with parts 3 and 4 of these regulations. A report shall be filed with the secretary within five days of the test, describing the equipment involved, the test results, and the corrective action taken.

(g) Each licensee who possesses and uses calibration and reference sources pursuant to subsection (e) shall perform the following:

(1) Follow radiation safety and handling instructions that are approved by the secretary, the United States nuclear regulatory commission, or an agreement state and furnished by the manufacturer on the label attached to the source, or permanent container thereof, or in the leaflet or brochure that accompanies the source;

(2) maintain the instructions referenced in paragraph (g)(1) in a legible and conveniently available form; and

(3) conduct a quarterly physical inventory to account for all sources received and possessed. Records of the inventories shall be maintained for inspection by the department and shall include the quantities and kinds of radioactive material, location of sources, and the date of the inventory. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended July 27, 2007.)

28-35-181e. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended Dec. 30, 2005; revoked March 18, 2011.)

28-35-181f. Special licenses for the introduction of radioactive material into products in exempt concentrations. (a) An application for a specific license to introduce ra-

radioactive material into a product or material and to transfer the product or material to any person who is exempt from regulation under K.A.R. 28-35-192b(a) shall not be approved unless the applicant submits with the application for the specific license:

(1) A description of the product or material into which the radioactive material is to be introduced;

(2) an explanation of the intended use of the radioactive material;

(3) the method by which the radioactive material is to be introduced;

(4) the concentration of the radioactive material to be introduced;

(5) the control method or methods to be employed to assure that no more than the specified concentration is introduced;

(6) the estimated time interval between introduction of radioactive material into the product or material and the transfer of the product or material;

(7) the estimated concentration of radioactive material that will be present in the product or material at the time of transfer; and

(8) reasonable assurances that:

(A) the concentrations of radioactive material at the time of transfer will not exceed the limitations prescribed in K.A.R. 28-35-198a, Schedule C;

(B) reconcentration of the radioactive material concentrations exceeding the limitations prescribed in K.A.R. 28-35-198a, Schedule C is not likely to occur;

(C) use of lower concentrations of radioactive material is not practical or feasible; and

(D) the product or material is not likely to be incorporated in any food, beverage, cosmetic, drug or other commodity or product designed for ingestion or inhalation by, or application to, a human being.

(b)(1) Each person licensed under subsection (a) of this regulation shall file an annual report with the secretary describing the type and quantity of each product or material into which radioactive material has been introduced during the reporting period; the name and address of the person to whom possession of the product of material into which radioactive material has been introduced was transferred; the type and quantity of radioactive material which was introduced into each product or material; and the initial concentration of radioactive material in the product or material at time of transfer of the radioactive material by the licensee.

(2) If no transfers of radioactive materials have been made during a reporting period, the report shall indicate this fact.

(3) Each report shall cover the 12-month period commencing on July 1 of each year. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986.)

28-35-181g. Licensing for industrial radiography operations. (a) Each application for a specific license shall be considered for approval for the use of licensed material for industrial radiography only if the application contains the following:

(1) A description of a program for training radiographers and radiographer's assistants that meets the requirements of part 7 in these regulations;

(2) the procedures for verifying and documenting the certification status of radiographers and for ensuring that the certification of individuals acting as radiographers remains valid;

(3) the written operating and emergency procedures as specified in part 7 in this article;

(4) a description of a program for inspections of the job performance of each radiographer and radiographer's assistant at intervals not to exceed six months;

(5) a program for inspection and maintenance of radiographic exposure devices, equipment, and storage containers to ensure proper functioning;

(6) a description of the applicant's overall organizational structure as it applies to the radiation safety responsibilities in industrial radiography, including specified delegation of authority and responsibility;

(7) the qualifications of the individual designated as the radiation safety officer;

(8) if the applicant intends to perform leak testing of sealed sources or exposure devices containing depleted uranium (DU) shielding, a description of the procedures for performing the test. The description shall include the following:

(A) The methods of collecting the samples;

(B) the qualifications of the individual who analyzes the samples;

(C) the instruments to be used; and

(D) the methods of analyzing the samples;

(9) if the applicant intends to perform calibrations of survey instruments and alarming ratemeters, a description of the methods to be used and the experience of each person who will perform the calibrations. All calibrations shall be performed

according to the procedures described and at the intervals specified in part 7 in these regulations;

(10) identification and description of the location of each field station and permanent radiographic installation;

(11) identification of each location where all records required by this part and the other parts of these regulations will be maintained; and

(12) if the applicant intends to perform underwater radiography, a description of the following:

(A) Radiation safety procedures and radiographer responsibilities unique to the performance of underwater radiography;

(B) radiographic equipment and radiation safety equipment unique to underwater radiography; and

(C) methods of gas-tight encapsulation of equipment.

(b) Each licensee shall retain the records of each inspection for review by the department, for two years from the date the inspection is performed. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended Dec. 30, 2005.)

28-35-181h. Specific licenses to manufacture and distribute the devices specified in K.A.R. 28-35-178b.

An application for a specific license to manufacture and distribute one or more of the devices specified in K.A.R. 28-35-178b shall not be approved unless the applicant meets the requirements of subsections (a) and (b) of this regulation in addition to meeting all of the additional applicable requirements specified in these regulations.

(a) Each applicant shall submit information about the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions, and potential hazards of the device to provide reasonable assurance that the following conditions are met:

(1) The device can be safely operated by individuals not having training in radiological protection;

(2) under ordinary conditions of handling, storage, and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and it is unlikely that any individual will receive a dose in excess of 10 percent of the limits specified in K.A.R. 28-35-212a; and

(3) under accident conditions, including fire and explosion, associated with handling, storage, and use of the device, it is unlikely that any individual

will receive an external radiation dose or dose commitment in excess of the following organ doses:

(A) Whole body; head and trunk; active blood-forming organs; gonads; or lens of eye 15 rems

(B) Hands and forearms; feet and ankles; localized areas of skin averaged over areas no larger than 1 square centimeter 200 rems

(C) Other organs 50 rems.

(b)(1) Each device shall bear a durable, legible, clearly visible label or labels that contain, in clearly identified and separate statements, the following information:

(A) Instructions and precautions necessary to ensure safe installation, operation, and servicing of the device. Operating and service manuals may be identified in the label and used to provide this information;

(B) specification of whether or not leak testing or testing of any on-off mechanism and indicator is required. The information shall include the maximum allowable time intervals between tests and shall identify the radioactive material by isotope, quantity of radioactivity, and date that the quantity was determined; and

(C) the information required in one of the following statements, as appropriate, in the same or a substantially similar form:

(i) "The receipt, possession, use, and transfer of this device, model _____, serial no. _____, are subject to a general license or the equivalent and the regulations of the U.S. nuclear regulatory commission or a state with which the U.S. nuclear regulatory commission has entered into an agreement for the exercise of regulatory authority. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited.

CAUTION—RADIOACTIVE MATERIAL

(Name of manufacturer or distributor)";

or

(ii) "The receipt, possession, use, and transfer of this device, model _____, serial no. _____, are subject to a general license or the equivalent, and the regulations of a licensing state. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited.

CAUTION—RADIOACTIVE MATERIAL

(Name of manufacturer or distributor)"

(2) The model, serial number, and name of the manufacturer or distributor may be omitted from the requirements specified in paragraphs (b)(1)(C)(i) and (ii) if the information is elsewhere specified in labeling affixed to the device.

(3) Each device having a separate source housing that provides the primary shielding for the source shall also bear, on the source housing, a durable label containing the device model number and serial number, the isotope and quantity, the words "Caution — Radioactive Material," the radiation symbol described in part 4 of these regulations, and the name of the manufacturer or initial distributor.

(4) Each device containing at least 370 Mbq (10 mCi) of cesium-137, 3.7 Mbq (0.1 mCi) of strontium-90, 37 Mbq (1 mCi) of americium-241 or any other transuranic element based on the activity indicated on the label shall meet the following criteria:

(A)(i) Bear a permanent label affixed to the source housing if the source housing is separable, including the words "Caution — Radioactive Material"; or

(ii) bear a permanent label affixed to the device if the source housing is not separable, including the words "Caution — Radioactive Material"; and

(B) if practicable, bear the radiation symbol described in part 4 of these regulations.

(C) If the device is required to be tested at intervals longer than six months, either for proper operation of the on-off mechanism and indicator, if any, or for leakage of radioactive material, or for both, the applicant shall include in the application sufficient information to demonstrate that the longer interval is justified by the performance characteristics of the device or of similar devices and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the device or failure of the on-off mechanism and indicator. In determining the acceptable interval for the test for leakage of radioactive material, the applicant shall address the following in the application:

(1) The primary containment of the source capsule;

(2) protection of the primary containment;

(3) the methods of sealing the primary containment;

(4) the containment construction materials;

(5) the form of contained radioactive material;

(6) the maximum temperature withstood during prototype tests;

(7) the maximum pressure withstood during prototype tests;

(8) the maximum quantity of contained radioactive material;

(9) the radiotoxicity of contained radioactive material; and

(10) any prior operating experience with identical devices or similarly designed and constructed devices.

(d) If the general licensee under K.A.R. 28-35-178b, or under equivalent regulations of an agreement state, is authorized to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the on-off mechanism and indicator, or remove the device, the applicant shall include in the application the written instructions to be followed by the general licensee, the estimated calendar-quarter doses associated with each operation, and the bases for the estimates. The submitted information shall demonstrate that performance of the specified operations by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices under the general license, is unlikely to cause that individual to receive a dose in excess of 10 percent of the annual limits specified in part 4 of these regulations.

(e) Each device shall be listed on the nuclear regulatory commission's sealed source and device registry. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended Dec. 30, 2005; amended May 4, 2018.)

28-35-181i. Special license to manufacture, distribute, assemble, or repair luminous safety devices for use in aircraft. Each applicant for a specific license to manufacture, assemble, or repair luminous safety devices containing tritium or promethium-147, for use in aircraft, and to distribute these devices to persons generally licensed under K.A.R. 28-35-178d shall meet the requirements of 10 C.F.R. 32.53, 32.54, 32.55, and 32.56, as in effect on December 2, 2015, which are hereby adopted by reference, except that wherever the term "commission" appears within the text of the federal regulations adopted by reference in this regulation, that term shall be replaced with the term "department." (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended May 4, 2018.)

28-35-181j. Specific licenses to manufacture and distribute calibration sources containing americium-241 or radium-226.

(a) An application for a specific license to manufacture or initially transfer calibration or reference sources containing americium-241 or radium-226 for distribution to persons generally licensed under K.A.R. 28-35-178e shall not be approved unless the following requirements are met:

(1) The applicant shall satisfy the general requirements of part 3 of these regulations.

(2) The applicant shall submit sufficient information regarding each type of calibration or reference source pertinent to evaluation of the potential radiation exposure, including the following:

(A) Chemical and physical form and maximum quantity of americium-241 or radium-226 in the source;

(B) details of construction and design;

(C) details of the method of incorporation and binding of the americium-241 or radium-226 in the source;

(D) procedures for and results of prototype testing of sources that are designed to contain more than 0.005 microcurie of americium-241 or radium-226, to demonstrate that the americium-241 or radium-226 contained in each source will not be released or be removed from the source under normal conditions of use;

(E) details of quality control procedures to be followed in manufacture of the source;

(F) description of labeling to be affixed to the source or the storage container for the source; and

(G) any additional information, including experimental studies and tests, required by the department to facilitate a determination of the safety of the source.

(3) Each source shall contain no more than 5 μ Ci of americium-241 or radium-226.

(4) The method of incorporation and binding of more than 0.005 μ Ci of the americium-241 or radium-226 in the source shall prevent the release or removal of americium-241 or radium-226 from the source under normal conditions of use and handling of the source.

(5) The applicant shall conduct prototype tests, in the order listed, on each of five prototypes of the source containing more than 0.185 kilobecquerel (0.005 microcurie) of americium-241 or radium-226, and the five prototype sources shall have passed the prototype test, as follows:

(A) Initial measurement. The quantity of radio-

active material deposited on the source shall be measured by direct counting of the source.

(B) Dry wipe test. The entire radioactive surface of the source shall be wiped with filter paper with the application of moderate finger pressure. Removal of radioactive material from the source shall be determined by measuring the radioactivity on the filter paper or by direct measurement of the radioactivity on the source following the dry wipe.

(C) Wet wipe test. The entire radioactive surface of the source shall be wiped with filter paper, moistened with water, with the application of moderate finger pressure. Removal of radioactive material from the source shall be determined by measuring the radioactivity on the filter paper after the paper has dried or by direct measurement of the radioactivity on the source following the wet wipe.

(D) Water soak test. The source shall be immersed in water at room temperature for 24 consecutive hours. The source shall then be removed from the water. Removal of radioactive material from the source shall be determined by direct measurement of the radioactivity on the source after the source has dried or by measuring the radioactivity in the residue obtained by evaporation of the water in which the source was immersed.

(E) Dry wipe test. On completion of the water soak test, the dry wipe test described in paragraph (a)(5)(B) shall be repeated.

(F) Observations. Removal of more than 0.005 microcurie of radioactivity in any test prescribed by paragraph (a)(5) shall be cause for rejection of the source design. Results of prototype tests submitted to the nuclear regulatory commission shall be given in terms of radioactivity in microcuries and percent of removal from the total amount of radioactive material deposited on the source.

(6) Each source or storage container for the source shall have a label affixed that contains sufficient information about safe use and storage of the source and includes the following or an equivalent statement:

"The receipt, possession, use and transfer of this source, Model _____, Serial No. _____, are subject to a general license and the regulations of the United States Nuclear Regulatory Commission or of a State with which the commission has entered into an agreement for the exercise of regulatory authority. Do not remove this label.

CAUTION—RADIOACTIVE MATERIAL—THIS SOURCE CONTAINS AMERICIUM-241 (or RADIUM-226). DO NOT TOUCH RADIOACTIVE PORTION OF THIS SOURCE.

(Name of manufacturer or initial transferor)."

(b) Each person licensed under this regulation shall perform a dry wipe test upon each source containing more than 3.7 kilobecquerels (0.1 microcurie) of americium-241 or radium-226 before transferring the source to a general licensee in accordance with K.A.R. 28-35-178e or equivalent regulations of an agreement state or the nuclear regulatory commission. This test shall be performed by wiping the entire radioactive surface of the source with a filter paper with the application of moderate finger pressure.

The radioactivity on the paper shall be measured by using radiation detection instrumentation capable of detecting 0.185 kilobecquerel (0.005 microcurie) of americium-241 or radium-226. If this test discloses more than 0.185 kilobecquerel (0.005 microcurie) of radioactive material, the source shall be deemed to be leaking or losing americium-241 or radium-226 and shall not be transferred to a general licensee in accordance with K.A.R. 28-35-178e or equivalent regulations of an agreement state or the nuclear regulatory commission. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended March 18, 2011.)

28-35-181k. Specific licenses to manufacture and distribute ice detection devices. Each applicant for a specific license to manufacture ice detection devices and to distribute those devices to persons generally licensed under K.A.R. 28-35-178g shall meet the requirements of 10 C.F.R. 32.61 and 32.62, as in effect on December 2, 2015, which are hereby adopted by reference, except that wherever the term “commission” appears within 10 C.F.R. 32.61, that term shall be replaced with the term “department.” (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended May 4, 2018.)

28-35-181l. Specific licenses to manufacture and distribute industrial products and devices containing depleted uranium.

(a) An application to manufacture industrial products and devices containing depleted uranium for mass-volume applications and to distribute those products or devices to persons generally licensed under K.A.R. 28-35-177a(c) shall not be approved unless all of the following conditions, in addition to all of the applicable requirements specified in these regulations, are met:

(1) The applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses, and potential hazards of the industrial product or device to provide reasonable assurance that the possession, use, or transfer of the depleted uranium in the product or device is not likely to cause any individual to receive a radiation dose in excess of 10 percent of the limits specified in K.A.R. 28-35-212a.

(2) The applicant submits sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass-volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

(3) The secretary finds that the product or device combines a high degree of utility with a low probability of uncontrolled disposal or dispersal of significant quantities of depleted uranium into the environment.

(4) The application states clearly the use or uses for which the product or device is intended.

(b) Each person licensed pursuant to subsection (a) of this regulation shall meet the following requirements:

(1) In the manufacture of the industrial product or device and in the installation of the depleted uranium into the product or device, maintain the level of quality control required by the license;

(2) label or mark each unit to meet the following requirements:

(A) Identify the manufacturer of the product or device and the number of the license under which the product or device was manufactured, identify the fact that the product or device contains depleted uranium, and indicate the quantity of depleted uranium in each product or device; and

(B) state that the receipt, possession, use, and transfer of the product or device are subject to a general license and the regulations issued by the secretary, the U.S. nuclear regulatory commission, or an agreement state;

(3) ensure that the depleted uranium, before being installed in each product or device, has been impressed with the following legend clearly legible through any plating or other covering: “depleted uranium”;

(4)(A) Furnish a copy of K.A.R. 28-35-177a and a form specified by the department to each person to whom the applicant transfers depleted uranium

in a product or device for use pursuant to the general license issued under K.A.R. 28-35-177a(c); or

(B) furnish the following to each person to whom the applicant transfers depleted uranium in a product or device for use pursuant to a general license issued by the U.S. nuclear regulatory commission or an agreement state:

(i) A copy of the regulation of the U.S. nuclear regulatory commission or an agreement state that is equivalent to K.A.R. 28-35-177a(c) and a copy of the certificate of the U.S. nuclear regulatory commission or agreement state;

(ii) a copy of K.A.R. 28-35-177a and a copy of the form specified by the department; and

(iii) a note explaining that the use of the product or device is regulated by the U.S. nuclear regulatory commission or an agreement state under requirements substantially the same as those in K.A.R. 28-35-177a;

(5) report to the department all transfers of industrial products or devices to another person for use under the general license specified in K.A.R. 28-35-177a(c). This report shall identify each general licensee by providing the following information:

(A) The name and address;

(B) the name of an individual, by name and position, if any, who shall be a point of contact between the department and the general licensee;

(C) the type and model number of the device transferred; and

(D) the quantity of depleted uranium contained in the product or device. Each licensee shall submit a report within 30 days after the end of each calendar quarter. If no transfers have been made to persons generally licensed under K.A.R. 28-35-177a(c) during the reporting period, the report shall indicate this fact;

(6)(A) Report to the U.S. nuclear regulatory commission all transfers of industrial products or devices to persons for use under a U.S. nuclear regulatory commission general license that is equivalent to the license specified in K.A.R. 28-35-177a(c);

(B) report to the appropriate state agency of each agreement state all transfers of devices manufactured and distributed pursuant to this regulation for use under a general license issued by that particular agreement state; and

(C) identify the following in each report required under paragraph (b) (6)(A) or (b) (6)(B):

(i) Each general licensee by name and address;

(ii) the name of an individual, by name and position, if any, who shall be a point of contact be-

tween the commission or state agency and the general licensee;

(iii) the type and model number of the device transferred; and

(iv) the quantity of depleted uranium contained in the product or device.

Each licensee shall submit the report within 30 days after the end of each calendar quarter. If no transfers are made to U.S. nuclear regulatory commission licensees during any reporting period, this information shall be reported to the U.S. nuclear regulatory commission. If no transfers are made to general licensees within a particular agreement state during the reporting period, this information shall be reported to the appropriate agency of the agreement state;

(7) keep and maintain, for two years, records showing the name, address, and point of contact for each general licensee to whom a transfer of depleted uranium in industrial products or devices has been made, including the date of the transfer and the quantity of depleted uranium in the product or device transferred; and

(8) keep and maintain, for two years, records showing compliance with the reporting requirements of this subsection. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended Dec. 30, 2005.)

28-35-181m. Specific licenses to manufacture, prepare, or distribute radiopharmaceuticals containing radioactive material for medical use. An application for a specific license to manufacture, prepare, or distribute radiopharmaceuticals containing radioactive material and used by persons as specified in part 6 of these regulations shall not be approved unless the applicant meets the requirements of this regulation and all other applicable requirements of these regulations.

(a) Each applicant shall meet the requirements in K.A.R. 28-35-180a.

(b) Each applicant shall submit evidence of either of the following:

(1) The radiopharmaceutical containing radioactive material is subject to the federal food, drug and cosmetic act or the public health service act and will be manufactured, labeled, and packaged in accordance with a new drug application (NDA) approved by the food and drug administration (FDA), a biologic product license issued by the FDA, or a "notice of claimed investigational exemption for a new drug" (IND) accepted by the FDA.

(2) The manufacture and distribution of the radiopharmaceutical containing radioactive material is not subject to the federal food, drug, and cosmetic act or the public health service act.

(c) Each applicant shall submit evidence of at least one of the following:

(1) The applicant is registered or licensed with the U.S. food and drug administration as a drug manufacturer.

(2) The applicant is registered or licensed with a state agency as a drug manufacturer.

(3) The applicant is licensed as a pharmacy by the state board of pharmacy.

(4) The applicant is operating as a nuclear pharmacy within a federal medical institution.

(5) The applicant is operating a positron emission tomography (PET) drug production facility.

(d) Each applicant shall submit the following information on the radionuclide:

(1) The chemical and physical form of the material;

(2) the packaging in which the radionuclide is shipped, including the maximum activity per package; and

(3) evidence that the shielding provided by the packaging of the radioactive material is appropriate for the safe handling and storage of radiopharmaceuticals by group licensees.

(e)(1) Each applicant shall submit a description of the following:

(A) A label that shall be affixed to each transport radiation shield, whether the shield is constructed of lead, glass, plastic, or other material, of a radioactive drug to be transferred for commercial distribution. The label shall include the following:

(i) The radiation symbol and the words "CAUTION—RADIOACTIVE MATERIAL" or "DANGER—RADIOACTIVE MATERIAL";

(ii) the name of the radioactive drug and the abbreviation; and

(iii) the quantity of radioactivity at a specified date and time. For radioactive drugs with a half-life greater than 100 days, the time may be omitted; and

(B) a label that shall be affixed to each syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution. The label shall include the radiation symbol and the words "CAUTION — RADIOACTIVE MATERIAL" or "DANGER — RADIOACTIVE MATERIAL" and an identifier that ensures that the syringe, vial, or other container can be correlated with the information on the transport radiation shield label.

(2) The labels, leaflets, or brochures required by this regulation shall be made in addition to the labeling required by the FDA. The labels, leaflets, or brochures may be separate from the FDA labeling, or with the approval of the FDA, the labeling may be combined with the labeling required by the FDA.

(f) All of the following shall apply to each licensee described in paragraph (c)(3) or (c)(4), or both:

(1) The licensee may prepare radioactive drugs for medical use, if each radioactive drug is prepared by either an authorized nuclear pharmacist, as specified in paragraphs (2) and (4) of this subsection, or an individual under the supervision of an authorized nuclear pharmacist.

(2) The licensee may allow a pharmacist to work as an authorized nuclear pharmacist if at least one of the following conditions is met:

(A) The pharmacist meets the requirements in 10 C.F.R. 35.55(b) and 35.59 as adopted by reference in K.A.R. 28-35-264, and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist.

(B) The pharmacist is designated as an authorized nuclear pharmacist in accordance with paragraph (4) of this subsection.

(3) The actions authorized in paragraphs (1) and (2) of this subsection shall be permitted in spite of more restrictive language in license conditions.

(4) The licensee may designate a pharmacist as an authorized nuclear pharmacist if at least one of the following conditions is met:

(A) The individual was a nuclear pharmacist preparing only radioactive drugs containing accelerator-produced radioactive material.

(B) The individual practiced at a government agency or federally recognized Indian tribe pharmacy before November 30, 2007 or at any other pharmacy before August 8, 2009.

(5) Each licensee shall provide a copy of the state pharmacy license or registration for an individual to work as an authorized nuclear pharmacist and one of the following documents to the department:

(A) The individual's certification by a specialty board whose certification process has been recognized as specified in 10 C.F.R. 35.55(a), as adopted by reference in K.A.R. 28-35-264;

(B) a department, NRC, or agreement state license listing the individual as an authorized nuclear pharmacist;

(C) an NRC master materials licensee permit listing the individual as an authorized nuclear pharmacist;

(D) a permit issued by a licensee of broad scope or an NRC master materials permittee or the authorization from a commercial nuclear pharmacy that is authorized to list its own authorized nuclear pharmacist; or

(E) documentation that only accelerator-produced radioactive materials were used in the practice of nuclear pharmacy at a government agency or federally recognized Indian tribe before November 30, 2007 or at all other locations of use before August 8, 2009, or an earlier date noticed by the NRC as permitted by 10 C.F.R. 35.13(b)(5).

(g) Each licensee shall possess and use instrumentation to measure the radioactivity of radioactive drugs. Each licensee shall have procedures for using the instrumentation. Each licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha-, beta-, or photon-emitting radioactive drugs before transfer for commercial distribution. Each licensee shall meet the following requirements:

(1) Perform tests before initial use, periodically, and following repair on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument, and make adjustments if necessary; and

(2) check each instrument for constancy and proper operation at the beginning of each day of use.

(h) Each application from a medical facility, an educational institution, or a federal facility to produce positron emission tomography (PET) radioactive drugs for noncommercial transfer to licensees within the applicant's consortium authorized for medical use under part 6 of these regulations or equivalent agreement state requirements shall include the following:

(1) A request for authorization for the production of PET radionuclides or evidence of an existing license issued under these regulations or equivalent NRC or agreement state requirements for a PET radionuclide production facility within the applicant's consortium from which the applicant receives PET radionuclides;

(2) evidence that the applicant is qualified to produce radioactive drugs for medical use by meeting the requirements of this regulation;

(3) the name of each individual authorized to prepare PET radioactive drugs if the applicant is a

pharmacy and documentation that each individual meets the requirements of an authorized nuclear pharmacist; and

(4) the name of each PET radioactive drug for production and noncommercial distribution to the applicant's consortium, including the chemical and physical form of each drug.

(i) Nothing in these regulations shall exempt the licensee from the requirement to comply with applicable FDA requirements and other federal and state requirements governing radioactive drugs. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended Dec. 30, 2005; amended July 27, 2007; amended March 18, 2011; amended May 4, 2018.)

28-35-181n. Specific licenses to manufacture and distribute generators or reagent kits for preparation of radiopharmaceuticals containing radioactive material. Each application for a specific license to manufacture and distribute generators or reagent kits containing radioactive material for preparation of radiopharmaceuticals by persons licensed as specified in K.A.R. 28-35-181d for the uses listed in group III shall meet the requirements of subsections (a), (b), (c), and (d).

(a) Each applicant shall meet the general requirements specified in K.A.R. 28-35-180a.

(b) Each applicant shall submit documentation of one of the following:

(1) The generator or reagent kit is subject to the federal food, drug and cosmetic act or the public health service act and will be manufactured, labeled, and packaged in accordance with a new drug application (NDA) approved by the food and drug administration (FDA), a biologic product license issued by FDA, or a "notice of claimed investigational exemption for a new drug" (IND) accepted by FDA.

(2) The manufacture and distribution of the generator or reagent kit is not subject to the federal food, drug, and cosmetic act and the public health service act.

(c) Each applicant shall submit information on the following:

(1) The radionuclide;

(2) the chemical and physical form of the material;

(3) packaging, including maximum activity per package; and

(4) shielding provided by the packaging of the radioactive material contained in the generator or reagent kit.

(d) The label affixed to the generator or reagent kit shall contain information on the radionuclide, quantity, and date of assay.

(e) The label affixed to the generator or reagent kit, or the leaflet or brochure that accompanies the generator or reagent kit, shall contain the following:

(1) Adequate information, from a radiation safety standpoint, on the procedures to be followed and the equipment and shielding to be used in eluting the generator or processing radioactive material with the reagent kit; and

(2) a statement that "this generator or reagent kit, as appropriate, is approved for use by persons licensed by the department according to K.A.R. 28-35-181d for group III uses, or under equivalent licenses of the United States nuclear regulatory commission or another agreement state." The labels, leaflets, or brochures required by this paragraph shall be in addition to the labeling required by the FDA. The labels, leaflets, or brochures may be separate from FDA labeling, or with the approval of FDA, the labeling may be combined with the labeling required by the FDA. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended July 27, 2007.)

28-35-181o. Specific licenses to manufacture and distribute sources and devices for use as a calibration, transmission, or reference source or for certain medical uses. (a)

Each application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed as specified in K.A.R. 28-35-181d for use as a calibration, transmission, or reference source or for one or more of the uses listed in 10 C.F.R. 35.400, 35.500, 35.600, and 35.1000, as adopted by reference in K.A.R. 28-35-264, shall include the following information regarding each type of source or device:

(1) The radioactive material contained, its chemical and physical form, and amount;

(2) details of design and construction of the source or device;

(3) procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and in accidents;

(4) for devices containing radioactive material, the radiation profile for a prototype device;

(5) details of quality control procedures to ensure that the production sources and devices meet the standards of the design and prototype tests;

(6) procedures and standards for calibrating sources and devices;

(7) legend and methods for labeling sources and devices as to their radioactive content;

(8) radiation safety instructions for handling and storing the source or device. These instructions shall be included on a durable label attached to the source or device. However, instructions that are too lengthy for the label may be summarized on the label and printed in detail on a brochure that is referenced on the label;

(9) the label that is to be affixed to the source or device or to the permanent storage container for the source or device. The label shall contain information on the radionuclide, quantity, and date of assay, and a statement that the source or device is licensed by the department for distribution to persons licensed under K.A.R. 28-35-181d or under an equivalent license of the nuclear regulatory commission (NRC) or an agreement state. Labeling for sources that do not require long-term storage may be on a leaflet or brochure that is to accompany the source; and

(10) documentation that the source or device is listed on the nuclear regulatory commission's sealed source and device registry.

(b)(1) If the applicant wants to have the source or device required to be tested for leakage of radioactive material at intervals longer than six months, the applicant shall include in the application sufficient information to demonstrate that the longer interval is justified by performance characteristics of the source or device, or similar sources or devices, and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the source.

(2) In determining the acceptable interval between tests for leakage of radioactive material, information that includes the following shall be considered by the secretary:

(A) The nature of the primary containment;

(B) the method for protection of the primary containment;

(C) the method of sealing the containment;

(D) containment construction materials;

(E) the form of the contained radioactive material;

(F) the maximum temperature withstood during prototype tests;

(G) the maximum pressure withstood during prototype tests;

(H) the maximum quantity of contained radioactive material;

(I) the radiotoxicity of contained radioactive material; and

(J) the applicant's operating experience with identical sources or devices or with similarly designed and constructed sources or devices. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended July 27, 2007; amended March 18, 2011; amended May 4, 2018.)

28-35-181p. Specific license to manufacture or distribute radioactive material for use by persons generally licensed under K.A.R. 28-35-178h. An application for a specific license to manufacture or distribute, or to manufacture and distribute radioactive material for use by persons generally licensed under K.A.R. 28-35-178h, shall not be approved unless the applicant meets the requirements of subsections (a),(b),(c) and (d) of this regulation.

(a) The radioactive material shall be prepared for distribution in prepackaged units of:

(1) iodine-125 in units not exceeding 10 microcuries each;

(2) iodine-131 in units not exceeding 10 microcuries each;

(3) carbon-14 in units not exceeding 10 microcuries each;

(4) hydrogen-3 (tritium) in units not exceeding 50 microcuries each;

(5) iron-59 in units not exceeding 20 microcuries each;

(6) selenium-75 in units not exceeding 10 microcuries each;

(7) mock iodine-125 in units not exceeding 0.05 microcuries of iodine-129 and 0.005 microcuries of americium-241; or

(8) cobalt-57 in units not exceeding 10 microcuries each.

(b) Each prepackaged unit shall bear a durable clearly visible label:

(1) identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed:

(A) 10 microcuries of iodine-125, iodine-131, carbon-14, cobalt-57, or selenium-75;

(B) 50 microcuries of hydrogen-3 (tritium);

(C) 20 microcuries of iron-59; or

(D) 0.05 microcurie of iodine-129 and 0.005 microcurie of americium-241 each; and

(2) Displaying the radiation caution symbol described in K.A.R. 28-35-219a and the words, "CAUTION—RADIOACTIVE MATERIAL",

and "not for internal or external use in humans or animals".

(c) The following statement, or a substantially similar statement, shall appear on a label affixed to each prepackaged unit, or in a leaflet or brochure to accompany the package:

"The radioactive material may be received, acquired, possessed, and used only by physicians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use, and transfer are subject to the regulations and a general license of the United States nuclear regulatory commission or of a state with which the commission has entered into an agreement for the exercise of regulatory authority.

Name of manufacturer"

(d) The label to be affixed to the unit, or a leaflet or brochure which is to accompany the package, shall contain information concerning the precautions to be observed in handling and storing the radioactive material and regarding the waste disposal requirements of K.A.R. 28-35-223a. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986.)

28-35-181q. Special licenses concerning gas and aerosol detectors containing radioactive material other than by-product, source or special nuclear material. (a) An application for a specific license to manufacture, process, produce or transfer gas and aerosol detectors which contain radioactive material other than source, by-product, or special nuclear material, and which are designed to protect life or property from fires and airborne hazards, shall not be approved unless the applicant submits the information required by the United States nuclear regulatory commission under 10 CFR sections 32.26 and 32.27, as in effect on March 31, 1983, for similar devices containing by-product material.

(b) Each person issued a license under subsection (a) of this regulation shall:

(1) develop and carry out adequate control procedures in the manufacture of the product to assure that each production lot meets quality control standards approved by the department;

(2) agree to label or mark each unit so that the manufacturer of the product and the radioactive material in the product can be identified and provide other information with each unit that may be required by the department, including disposal instruction when appropriate; and

(3) agree to file an annual report with the department, which shall include the following information on products imported for sale or distribution or transferred to other persons for use under K.A.R. 28-35-192a or an equivalent regulation of the United States nuclear regulatory commission or an agreement state:

(A) A description or identification of the type of each product imported or transferred;

(B) for each radionuclide in each type of product, the total quantity of the radionuclide imported or transferred; and

(C) the number of units of each type of product imported or transferred during the reporting period. If no imports or transfers of radioactive material have been made during a reporting period, the report shall so indicate.

(c) The report required by paragraph (3) of subsection (b) of this regulation shall cover the 12-month period commencing on July 1, and ending on June 30, and shall be filed by July 31 of each year. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986.)

28-35-181r. Special licenses to manufacture, process, import, distribute or transfer certain radioactive material to persons exempt from regulation pursuant to K.A.R. 28-35-192a.

(a) An application for a specific license to manufacture, process, produce, import, package, repackage, or transfer quantities of radioactive material other than source, byproduct, or special nuclear material for commercial distribution to persons exempt from these regulations pursuant to K.A.R. 28-35-192a or an equivalent regulation of the United States nuclear regulatory commission or an agreement state shall not be approved unless the applicant submits the information required in 10 CFR sections 32.18 and 32.19, as in effect on March 31, 1983.

(b) Each person licensed under subsection (a) of this regulation shall maintain records identifying, by name and address, each person to whom the licensee transfers radioactive material and stating the kinds and quantities of radioactive material transferred. An annual summary report stating the total quantity of each isotope transferred shall be filed with the department. Each report shall cover the 12-month period commencing on July 1 and ending June 30 and shall be filed by July 31 of each year. If no transfers of radioactive material have been made during a reporting period, the re-

port shall indicate this fact. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986.)

28-35-181s. Specific licenses for well logging. Each application for a specific license for the use of licensed material in well logging shall be considered for approval only if the application contains the following:

(a) A description of the training program for logging supervisors and logging assistants that includes the following:

(1) The content of and method for initial training;

(2) on-the-job training;

(3) annual safety reviews provided by the licensee;

(4) the means that the applicant will use to demonstrate the logging supervisor's knowledge and understanding of and ability to comply with these regulations, the license conditions, and the applicant's operating and emergency procedures; and

(5) the means that the applicant will use to demonstrate the logging assistant's knowledge and understanding of and ability to comply with the applicant's operating and emergency procedures;

(b) a copy of the written operating and emergency procedures required by K.A.R. 28-35-383 or an outline or a summary of the procedures that includes the radiation safety aspects;

(c) a description of the program, which shall include records, for annual inspections of the job performance of each logging supervisor to ensure that these regulations, the license conditions, and the applicant's operating and emergency procedures are followed. The inspection records shall be retained for three years after each annual internal inspection;

(d) a description of the applicant's overall organizational structure as it applies to the radiation safety responsibilities in well logging, including any delegation of authority and responsibility; and

(e) the manufacturer's name and model numbers of the leak test kits to be used, if an applicant desires to perform leak testing of the sealed sources. If the applicant desires to analyze the applicant's own wipe samples, the application shall include a copy of the procedures to be followed. The procedures shall include the following:

(1) The instruments to be used;

(2) the methods of performing the analysis; and

(3) the applicable experience of the person who will analyze the wipe samples. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005.)

28-35-181t. Requirements for license to initially transfer source material for use under the small quantities of source material general license.

(a) Each person submitting an application for a specific license to initially transfer source material for use in accordance with K.A.R. 28-35-177a, or equivalent regulations of an agreement state or the nuclear regulatory commission (NRC), shall meet the following requirements:

(1) Meet the general requirements specified in K.A.R. 28-35-190a; and

(2) provide information documenting that the NRC approves the methods for quality control, labeling, and providing safety instructions to recipients.

(b) Each person licensed under this regulation shall meet the following requirements:

(1) Label the immediate container of each quantity of source material with the type of source material, the quantity of source material, and the words "radioactive material";

(2) ensure that the quantities and concentrations of source material are labeled and indicated in any transfer records;

(3) provide the following information to each person to whom source material is transferred for use under K.A.R. 28-35-177a or equivalent regulations of an agreement state or the NRC before the source material is transferred for the first time in each calendar year to each person:

(A) A copy of K.A.R. 28-35-177a and K.A.R. 28-35-190a or relevant equivalent regulations of an agreement state or the NRC; and

(B) appropriate radiation safety precautions and instructions relating to the handling, use, storage, and disposal of the material;

(4) report transfers as follows, on or before January 31 of each year covering all transfers for the previous calendar year:

(A) File a report with the department. The report shall include the following information:

(i) The name, address, and license number of the person who transferred the source material;

(ii) the name and address of the general licensee to whom source material is distributed, a responsible agent by name or position, or both, the phone number of the general licensee to whom the material was sent, and the type, physical form, and quantity of source material transferred; and

(iii) the total quantity of each type and physical form of source material transferred in the reporting period to all generally licensed recipients; and

(B) file a report with each agreement state or the NRC if the transfer is to a person licensed by the NRC that identifies all persons operating under provisions equivalent to K.A.R. 28-35-177a to whom more than 50 grams (0.11 lb) of source material has been transferred within a single calendar quarter. The report shall include the following information:

(i) The name, address, and license number of the person who transferred the source material;

(ii) the name and address of the general licensee to whom source material was distributed, a responsible agent by name or position, or both, the phone number of the general licensee to whom the material was sent, and the type, physical form, and quantity of source material transferred; and

(iii) the total quantity of each type and physical form of source material transferred in the reporting period to each generally licensed recipient within the agreement state; and

(5) maintain all information that supports the reports required by this subsection concerning each transfer to a general licensee for one year after the transfer is included in a report to the NRC or to an agreement state.

(c) If no transfers were made to any person generally licensed under K.A.R. 28-35-177a, under an equivalent agreement state, or under NRC provisions during the period specified in paragraph (B)(4) of this regulation, a report shall be submitted to the NRC indicating that no transfers were made. If no transfers have been made to any general licensee in a particular agreement state during the reporting period, this information shall be reported to the agreement state upon request of the agency. (Authorized by and implementing K.S.A. 48-1607; effective May 4, 2018.)

28-35-182. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1970; revoked, T-86-37, Dec. 11, 1985; revoked May 1, 1986.)

28-35-182a. Specific licenses of broad scope; types of specific licenses.

(a) A "type A specific license of broad scope" is a specific license which is issued to a person who meets the requirements of K.A.R. 28-35-182b and which authorizes that person to acquire, own, possess, use and transfer radioactive material in a quantity not exceeding the quantity specified in the license.

(b)(1) A "type B specific license of broad scope" is a specific license issued to a person who meets the requirements of K.A.R. 28-35-182c and which authorizes that person to acquire, own,

possess, use and transfer a specified amount of one or more of the radionuclides listed in K.A.R. 28-35-200a.

(2) If only one radionuclide is acquired, owned, possessed, used and transferred, the quantity allowed under a type B specific license of broad scope shall be the quantity specified in column I of K.A.R. 28-35-200a.

(3) If two or more radionuclides are acquired, owned, possessed, used and transferred, the quantity of all the radionuclides allowed shall be determined as follows:

(A) Determine the ratio of the quantity of each radionuclide to the quantity of that radionuclide specified in column I of K.A.R. 28-35-200a.

(B) Add the ratios.

(C) The sum of those ratios shall not exceed unity.

(c)(1) A "type C specific license of broad scope" is a specific license which is issued to a person who meets the requirements of K.A.R. 28-35-182d and which authorizes that person to acquire, own, possess, use and transfer a specified amount of one or more of the radionuclides listed in K.A.R. 28-35-200a.

(2) If only one radionuclide is acquired, owned, possessed, used and transferred, the quantity allowed under a type C specific license of broad scope shall be the quantity specified in column II of K.A.R. 28-35-200a.

(3) If two or more radionuclides are acquired, owned, possessed, used and transferred, the quantity of all radionuclides allowed shall be determined as follows:

(A) Determine the ratio of the quantity of each radionuclide to the quantity of that radionuclide specified in column II of K.A.R. 28-35-200a.

(B) Add the ratios.

(C) The sum of the ratios shall not exceed unity. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986.)

28-35-182b. Qualifications for a type A specific license of broad scope. A type A specific license of broad scope shall be issued only to an applicant who:

(a) has previously engaged in activities involving the use of radioactive materials. The applicant shall submit a summary of the previous activities that involved the use of radioactive materials; and

(b) has established administrative controls and provisions relating to organization and manage-

ment, procedures, record-keeping, material control and accounting, and management review to assure safe operations. These controls shall include:

(1) The establishment of a radiation safety committee composed of a radiation safety officer, a representative of management, and persons trained and experienced in the safe use of radioactive material;

(2) the appointment of a radiation safety officer who is qualified by training and experience in radiation protection, and who is available for advice and assistance on radiation safety matters; and

(3) the establishment of appropriate administrative procedures. These procedures shall assure that:

(A) the procurement and use of radioactive material is controlled;

(B) safety evaluations of proposed uses of radioactive material are completed. These evaluations shall take into consideration the adequacy of facilities and equipment, training and experience of the user, and proper operating or handling procedures; and

(C) prior to the use of the radioactive material, the safety evaluation of proposed uses, prepared in accordance with paragraph (3)(B) of this subsection, is reviewed, approved and recorded by the radiation safety committee. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986.)

28-35-182c. Qualifications for a type B specific license of broad scope. A type B specific license of broad scope shall be issued only to an applicant who has established controls and provisions relating to organization and management, procedures, recordkeeping, material control and accounting, and management review that are sufficient to ensure safe operation. These controls and provisions shall include the following:

(a) The appointment of a radiation safety officer who is qualified by training and experience in radiation protection and who is available for advice and assistance on radiation safety matters; and

(b) the establishment of appropriate administrative procedures. These procedures shall ensure that all of the following conditions are met:

(1) The procurement and use of radioactive material are controlled.

(2) Safety evaluations of proposed uses of radioactive material are completed. These evaluations shall take into consideration the adequacy of facili-

ties and equipment, training and experience of the user, and proper operating or handling procedures.

(3) Before use of the radioactive material, the safety evaluation of proposed uses, prepared in accordance with paragraph (b)(2), is reviewed, approved, and recorded by the radiation safety officer. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended July 27, 2007.)

28-35-182d. Qualifications for a type C specific license of broad scope. A type C specific license of broad scope shall be issued only to an applicant who:

(a) submits a statement that radioactive material will only be used by, or under the direct supervision of, an individual or individuals who have:

(1) at least a bachelor's degree or equivalent training and experience in a physical or biological science or in engineering; and

(2) at least 40 hours of training and experience in the safe handling of radioactive materials, and in the characteristics of ionizing radiation, units of radiation dose and quantities, radiation detection instrumentation, and biological hazards of exposure to radiation. Such training and experience shall be appropriate to the type and forms of radioactive material to be used; and

(b) has established administrative controls and provisions relating to procurement of radioactive materials, procedures, record-keeping, material control and accounting, and management review to assure safe operations. These control provisions shall include appropriate administrative procedures which assure that:

(1) procurement and use of radioactive material is controlled; and

(2) safety evaluations of proposed uses of radioactive material are completed. Such evaluations shall take into consideration the adequacy of facilities and equipment and proper operating or handling procedures. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986.)

28-35-182e. Restrictions on specific licenses of broad scope. (a) Any person who has been issued any type of specific license of broad scope shall not:

(1) Conduct tracer studies in the environment involving direct release of radioactive material;

(2) receive, acquire, own, possess, use, or transfer devices containing 100,000 curies or more of

radioactive material as sealed sources used for irradiation of materials;

(3) conduct activities for which a particular specific license is required; or

(4) add, or cause the addition of, radioactive material to any food, beverage, cosmetic, drug, or other product designed for ingestion or inhalation by, or application to, a human being.

(b) Any radionuclide or radionuclides possessed under a type A specific license of broad scope shall be only used by, or under the direct supervision of, a person or persons approved by a licensee's radiation safety committee.

(c) Any radionuclide or radionuclides possessed under a type B specific license of broad scope shall be only used by, or under the direct supervision of, a person or persons approved by a licensee's radiological safety officer.

(d) Any radionuclide or radionuclides possessed under a type C specific license of broad scope shall be used only by, or under the direct supervision of, a person or persons who meet the requirements of K.A.R. 28-35-182d(a). (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986.)

28-35-183. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended May 1, 1976; revoked, T-86-37, Dec. 11, 1985; revoked May 1, 1986.)

28-35-183a. Conditions imposed upon any specific license. (a) Upon determining that an application meets the requirements of the act and these regulations, the secretary shall issue a specific license authorizing the activity proposed by the applicant and may impose any limitations or conditions to the specific license as the secretary deems appropriate or necessary.

(b) The secretary may incorporate in any license, at the time of its issuance or thereafter, any requirements and conditions with respect to the licensee's receipt, possession, use, or transfer of radioactive material as the secretary deems appropriate or necessary in order to:

(1) Protect health or to minimize danger to life and property;

(2) assure the proper reporting, record-keeping and inspection of activities by the licensee; and

(3) prevent loss or theft of material subject to these regulations. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986.)

28-35-184. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended May 1, 1970; revoked, T-86-37, Dec. 11, 1985; revoked May 1, 1986.)

28-35-184a. Specific conditions on all licenses. (a) No license and no right under any license shall be assigned or otherwise transferred except as authorized under the act or these regulations and approved by the secretary in writing. Each request to assign or transfer a license shall include the following:

(1) The name and the technical and financial qualifications of the proposed transferee; and

(2) the financial assurance for decommissioning information required by K.A.R. 28-35-180b.

(b) Each person authorized under these regulations shall confine the use and possession of the radioactive material licensed to the locations and purposes authorized in the license.

(c) No person shall introduce radioactive material into any product or material knowing or having reason to believe that the product or material will be transferred to a person exempt from these regulations under K.A.R. 28-35-192a, 28-35-192b, 28-35-192c, 28-35-192e, 28-35-192f, or 28-35-192g or the equivalent regulations of the nuclear regulatory commission (NRC) or an agreement state, except in accordance with a specific license issued under K.A.R. 28-35-181f or the general license issued under K.A.R. 28-35-194a.

(d) Each licensee shall file written notice with the secretary 30 days before vacating any facility when the licensee decides to permanently discontinue all activities involving licensed materials authorized in that facility under the license.

(e) Each licensee authorized under K.A.R. 28-35-181h to distribute devices to generally licensed persons shall perform the following:

(1) Report to the department all sales or transfers of those devices to persons generally licensed under K.A.R. 28-35-178b. The report shall identify each general licensee by name and address, the type of device transferred, and the quantity and type of radioactive material contained in the device. A report shall be submitted within 90 days of the sale or transfer; and

(2) furnish, to each general licensee to whom the licensee transfers any such device, a copy of the general license issued under K.A.R. 28-35-178b.

(f)(1) Each general licensee that is required by this part to register and each specific licensee shall notify the department, in writing, immediately

following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of title 11, bankruptcy, of the United States code by or against any of the following:

(A) The licensee;

(B) any person controlling the licensee or listing the license or licensee as property of the estate; or

(C) any affiliate of the licensee.

(2) The notification specified in paragraph (f)(1) shall indicate the following:

(A) The name of the bankruptcy court in which the petition for bankruptcy was filed; and

(B) the date of the filing of the petition.

(g) Each portable gauge licensee shall use at least two independent physical controls that form tangible barriers to secure each portable gauge from unauthorized removal whenever the portable gauge is not under the control and constant surveillance of the licensee. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended Dec. 30, 2005; amended July 27, 2007; amended May 4, 2018.)

28-35-184b. Reporting requirements. (a) Immediate report. Each licensee shall notify the department as soon as possible but not later than four hours after the discovery of any of the following types of events:

(1) An event that prevents immediate protective actions necessary to avoid exposures to radiation or radioactive materials that could exceed regulatory limits; or

(2) an event involving a release of licensed material that could exceed regulatory limits.

(b) Twenty-four hour report. Each licensee shall notify the department within 24 hours after the discovery of any of the following events involving licensed material:

(1) An unplanned contamination event in which the following conditions are met:

(A) Access to the contaminated area, by workers or the public, is restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area;

(B) the quantity of material involved is greater than five times the lowest annual limit on intake specified for the material in appendix B of the "Appendices to part 4: standards for protection against radiation," effective April 1994; and

(C) access to the area is restricted for a reason other than to allow isotopes with a half-life of less than 24 hours to decay before decontamination;

(2) an event in which equipment is disabled or fails to function as designed when the following conditions are met:

(A) The equipment is required by regulation or license condition to prevent releases exceeding regulatory limits, to prevent exposures to radiation and radioactive materials exceeding regulatory limits, or to mitigate the consequences of an accident;

(B) the equipment is required to be available and operable at the time the equipment is disabled or fails to function; and

(C) no redundant equipment is available and operable to perform the required safety function;

(3) an event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual or the individual's clothing; and

(4) an unplanned fire or explosion damaging any licensed material or any device, container, or equipment containing licensed material when the following conditions are met:

(A) The quantity of material involved is greater than five times the lowest annual limit of intake specified for the material in appendix B of the "appendices to part 4: standards for protection against radiation," effective April 1994; and

(B) the damage affects the integrity of the licensed material or its container.

(c) Preparation and submission of reports. Each report made by a licensee submitting reports in response to the requirements of this regulation shall meet the following requirements:

(1) Each licensee shall submit the reports required by subsections (a) and (b) of this regulation by telephone to the Kansas department of health and environment, bureau of air and radiation, radiation control program. Each report shall include the following information, to extent it is available:

(A) The caller's name and a callback number;

(B) a description of the event, including the date and time;

(C) the exact location of the event;

(D) the isotopes, quantities, and chemical and physical forms of the licensed material involved; and

(E) any personnel radiation exposure data available.

(2) Each licensee submitting any report required by subsection (a) or (b) of this regulation shall submit a written follow-up report within 30 days of each initial report. A written report sub-

mitted pursuant to other requirements of these regulations shall be considered to fulfill this requirement if the report contains all of the information required by this paragraph. The report shall include the following:

(A) A description of the event, including the probable cause, and the name of the manufacturer and the model number, if applicable, of any equipment that failed or malfunctioned;

(B) a description of the exact location of the event;

(C) the isotopes, quantity, and chemical and physical form of the licensed material involved;

(D) the date and time of the event;

(E) a description of the corrective actions taken or planned and the results of any evaluations or assessments; and

(F) a description of the extent to which individuals were exposed to radiation or to radioactive materials, without identifying any individuals by name. (Authorized by and implementing K.S.A. 48-1607; effective Nov. 1, 1996; amended Dec. 30, 2005.)

28-35-185. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1970; revoked, T-86-37, Dec. 11, 1985; revoked May 1, 1986.)

28-35-185a. Expiration of licenses. (a) Except as provided in K.A.R. 28-35-186a(b), each specific license shall expire at end of the day, in the month and year stated on the license.

(b) With respect to the possession of radioactive material and residual radioactive contamination, each specific license shall continue in effect beyond the expiration date until the department has notified the licensee, in writing, that the license is terminated, even if any of the following occurs:

(1) The licensee decides not to renew the license.

(2) No application for license renewal is submitted.

(3) An application for renewal is denied.

(4) The department modifies or suspends a license.

(c) After the expiration date specified in the license, each licensee to whom this regulation applies who possesses radioactive material, including residual radioactive material, shall meet the following requirements:

(1) Limit the licensee's actions involving radioactive material to those related to decommissioning; and

(2) continue to control entry to restricted areas until the areas meet the requirements of K.A.R. 28-35-205 or K.A.R. 28-35-205a. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended Dec. 30, 2005.)

28-35-186. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1970; revoked, T-86-37, Dec. 11, 1985; revoked May 1, 1986.)

28-35-186a. Renewal of licenses. (a) Each application for the renewal of a specific license shall be filed in accordance with K.A.R. 28-35-179a.

(b) When a licensee, not less than 30 days prior to the expiration of the licensee's existing license, has filed an application in proper form for renewal of the existing license, the existing license shall not expire until final action on the application has been made by the secretary. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986.)

28-35-187. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1970; revoked, T-86-37, Dec. 11, 1985; revoked May 1, 1986.)

28-35-187a. Amendment of licenses at request of licensee. Each application for the amendment of an existing license shall be filed in accordance with K.A.R. 28-35-179a and shall specify the respects in which the licensee desires the license to be amended and the grounds for the amendment. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986.)

28-35-188. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1970; revoked, T-86-37, Dec. 11, 1985; revoked May 1, 1986.)

28-35-188a. Department action on application to renew or amend. In considering whether to grant or deny an application to renew an existing license, the secretary shall apply the criteria which are applied to determine whether an initial license should be granted or denied. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986.)

28-35-189. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1970; revoked, T-86-37, Dec. 11, 1985; revoked May 1, 1986.)

28-35-189a. Advance notification of transport of nuclear waste. (a) Prior to the transport of any nuclear waste outside the confines of the licensee's facility or any other place of use or storage, or prior to the delivery of any nuclear waste to a carrier for transport, each licensee shall provide advance notification of such transport to the governor, or the governor's designee, of each state through which the waste will be transported. For the purpose of this regulation, "nuclear waste" means any large quantity of source, by-product, or special nuclear material required to be in type B packaging while transported to, through, or across state boundaries to a disposal site, or to a collection point for transport to a disposal site.

(b) Each advance notification required by this regulation shall contain the following information:

(1) the name, address, and telephone number of the shipper, carrier and receiver of the shipment;

(2) a description of the nuclear waste contained in the shipment as required by regulation of the U.S. department of transportation 49 CFR 172.202 and 172.203(d), as in effect July 1, 1984;

(3) the point of origin of the shipment and the seven day period during which departure of the shipment is estimated to occur;

(4) the seven day period during which arrival of the shipment at state boundaries is estimated to occur;

(5) the destination of the shipment, and the seven day period during which arrival of the shipment is estimated to occur; and

(6) a point of contact with a telephone number for current shipment information.

(c) The notification required by this regulation shall be made in writing to the office of each appropriate governor or the governor's designee and to the Kansas department of health and environment. A notification delivered by mail shall be postmarked at least seven days before the beginning of the seven day period during which departure of the shipment is estimated to occur. A notification delivered by messenger shall reach the office of each governor, or the governor's designee, at least four days before the beginning of the seven day period during which departure of the shipment is estimated to occur. A copy of the notification shall be retained by the licensee for one year.

(d) The licensee shall notify each appropriate governor, or the governor's designee, and the Kansas department of health and environment of any changes to the schedule information provided

pursuant to this regulation. Such notification shall be by telephone to a responsible individual in the office of each appropriate governor, or to the governor's designee. The licensee shall maintain for one year a record of the name of the individual contracted.

(e) Each licensee who cancels a nuclear waste shipment for which advance notification has been sent shall send a cancellation notice to the governor, or the governor's designee, of each appropriate state and to the Kansas department of health and environment. A copy of the notice shall be retained by the licensee for one year.

(f) A list of the mailing addresses of each governor and each designee is available upon request from the director, office of state programs, U.S. nuclear regulatory commission, Washington, D.C. 20555. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986.)

28-35-190. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended May 1, 1976; revoked, T-86-37, Dec. 11, 1985; revoked May 1, 1986.)

28-35-190a. Transfer of material. (a) A licensee shall not transfer radioactive material except as authorized in this regulation.

(b) Any licensee may transfer radioactive material, subject to the acceptance of the transferee:

(1) To the department;

(2) to the United States nuclear regulatory commission or its successor;

(3) to any person exempt from these regulations under K.A.R. 28-35-192a, 28-35-192b, 28-35-192c, 28-35-192d, 28-35-192e, 28-35-192f and 28-35-192g, as permitted under those regulations;

(4) to any person authorized to receive the material under an appropriate general or specific license issued by the secretary, the United States nuclear regulatory commission or an agreement state, or to any person otherwise authorized to receive the material by the federal government or any agency thereof, the secretary or an agreement state; or

(5) as otherwise authorized in writing by the secretary; or

(6) to the U.S. department of energy.

(c) Before transferring radioactive material to a specific licensee or to a general licensee who is required to register with the department, the United States nuclear regulatory commission, or an agreement state, the licensee transferring the

material shall verify that the transferee's license authorizes receipt of the type, form, and quantity of radioactive material to be transferred.

(d) The following methods for the verification required by subsection (c) shall be acceptable.

(1) The transferor may obtain, and read, a current copy of the transferee's specific license or registration certificate.

(2) The transferor may obtain a written certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date;

(3) For emergency shipments, the transferor may accept oral certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred. The oral certification shall include the license or registration certificate number, the issuing agency, and expiration date. The oral certification shall be confirmed in writing within 10 days following the oral certification.

(4) The transferor may obtain other sources of information compiled by a reporting service from official records of the department, United States nuclear regulatory commission, or an agreement state as to the identity of licensees and the scope and expiration dates of licenses and registration.

(5) When none of the methods of verification described in paragraphs (1) to (4) are readily available, or when a transferor desires to verify that information received by one of those methods is correct or up-to-date, the transferor may obtain and record confirmation, from the department, the United States nuclear regulatory commission or an agreement state, that the transferee is licensed to receive the radioactive material.

(e) The radioactive material shall be prepared for shipment and transport in accordance with K.A.R. 28-35-196a. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986.)

28-35-191. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1970; revoked, T-86-37, Dec. 11, 1985; revoked May 1, 1986.)

28-35-191a. Modification, revocation, and termination of licenses. (a) Any license may be suspended or revoked by reason of amend-

ment to the act or these regulations or by an order of the secretary.

(b) Any license may be revoked, suspended, or modified, in whole or in part:

(1) For any material false statement in the application or any statement of fact required under provision of the act or these regulations;

(2) because of any condition, revealed by the application, or any statement of fact, or any report, record, or inspection or other means, which would warrant the denial of an original application; or

(3) for violation of, or failure to observe, any of the terms and conditions of the license, or any requirement of the act, or any rule and regulation or order of the secretary.

(c) Except in cases in which the public health, interest, or safety requires otherwise, no license shall be modified, suspended, or revoked unless, prior to the institution of such proceedings:

(1) those facts or conduct which appear to warrant such action have been called to the attention of the licensee in writing; and

(2) the licensee has been accorded an opportunity to demonstrate or achieve compliance with all lawful requirements.

(d) The secretary may revoke a specific license upon written request of a licensee. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986.)

28-35-192. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended Jan. 1, 1972; amended May 1, 1976; revoked, T-86-37, Dec. 11, 1985; revoked May 1, 1986.)

28-35-192a. Exemptions; source material. (a) Each person who only acquires, possesses, uses, or transfers source material in any chemical mixture, compound, solution, or alloy in which the source material, by weight, is less than 0.05 percent of the mixture, compound, solution, or alloy shall be exempt from these regulations.

(b) Each person who only acquires, possesses, uses, or transfers unrefined and unprocessed ore containing source material and does not refine or process the ore shall be exempt from these regulations.

(c) Each person who only acquires, possesses, uses, or transfers any of the following shall be exempt from the requirements for a license in part 3 of these regulations and the requirements of parts 4 and 10 of these regulations:

(1) Any quantities of thorium contained in any of the following:

(A) Incandescent gas mantles;

(B) vacuum tubes;

(C) welding rods;

(D) electric lamps for illuminating purposes, if each lamp does not contain more than 50 milligrams of thorium;

(E) germicidal lamps, sunlamps, and lamps for outdoor or industrial lighting, if each lamp does not contain more than two grams of thorium;

(F) rare earth metals and compounds, mixtures, and products containing not more than 0.25 percent thorium or uranium, or both, by weight; or

(G) personnel neutron dosimeters, if each dosimeter does not contain more than 50 milligrams of thorium;

(2) source material contained in any of the following:

(A) Glazed ceramic tableware, if the glaze contains not more than 20 percent source material, by weight;

(B) glassware containing not more than two percent of source material by weight or, for glassware manufactured before August 27, 2013, 10 percent of source material by weight. This exemption shall not include commercially manufactured glass brick, pane glass, ceramic tile or other glass, or ceramic used in construction;

(C) glass enamel or glass enamel frit that contains not more than 10 percent of source material, by weight, and that was imported or ordered for importation into the United States, or initially distributed by manufacturers in the United States, before July 25, 1983; or

(D) piezoelectric ceramic containing not more than two percent of source material by weight;

(3) photographic film, negatives, and prints containing uranium or thorium;

(4) any finished product or part of a product fabricated of, or containing, tungsten or magnesium-thorium alloys if the thorium content of the alloy does not exceed four percent, by weight. The exemption contained in this paragraph shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of any product or part of a product;

(5) uranium used as shielding and constituting part of any shipping container. The uranium shielding shall be conspicuously and legibly impressed with the words "CAUTION—RADIOACTIVE SHIELDING—URANIUM" and shall be enclosed in steel containing no more than 0.25

percent carbon, or another equally fire-resistant metal, with a minimum wall thickness of one-eighth inch (3.2 mm);

(6) thorium or uranium contained in finished optical lenses, if each lens does not contain more than 30 percent of thorium or uranium by weight or, if manufactured after August 27, 2013, 10 percent of thorium or uranium by weight. The exemption in this paragraph shall not be deemed to authorize either of the following:

(A) The shaping, grinding, or polishing of the lens or any manufacturing processes other than the assembly of the lens into optical systems and devices without any alteration of the lens; or

(B) the receipt, possession, use, or transfer of thorium or uranium contained in contact lenses, or in eyeglasses, or in eyepieces in binoculars or other optical instruments;

(7) uranium contained in detector heads for use in fire detection units, if each detector head contains not more than 0.005 microcurie of uranium; or

(8) thorium contained in any finished aircraft engine part containing nickel-thoria alloy, if both of the following conditions are met:

(A) The thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (thorium dioxide); and

(B) the thorium content in the nickel-thoria alloy does not exceed four percent by weight.

(d)(1) Each person who acquires, possesses, uses, or transfers uranium contained in counterweights installed in aircraft, rockets, projectiles or missiles or stored or handled in connection with installation or removal of these counterweights, except counterweights manufactured before December 31, 1969 under a specific license issued by the atomic energy commission and impressed with the legend required by that license, shall be exempt from the requirements for a license in part 3 of these regulations and the requirements of parts 4 and 10 of these regulations if both of the following conditions are met:

(A) Each counterweight has been impressed in a manner that is clearly legible through any plating or covering with the following words: "DEPLETED URANIUM."

(B) Each counterweight is durably and legibly labeled or marked with the identification of the manufacturer and the following words: "UNAUTHORIZED ALTERATIONS PROHIBITED."

(2) The exemption specified in this subsection shall not be deemed to authorize the chemical,

physical, or metallurgical treatment or processing of any counterweights, other than repair or restoration of any plating or other covering.

(e)(1) No person shall initially transfer for sale or distribution a product containing source material to any persons exempt under subsections (c) and (d) or equivalent regulations of an agreement state, unless authorized by a license issued by the nuclear regulatory commission (NRC) to initially transfer the products for sale or distribution.

(2) Each person authorized by an agreement state to manufacture, process, or produce materials or products containing source material and each person who imports finished products or parts for sale or distribution shall be authorized by a license issued by the NRC for distribution only. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended May 4, 2018.)

28-35-192b. Exemptions; exempt concentrations of radioactive materials. (a) Except as provided in K.A.R. 28-35-184a(e), a person shall be exempt from these regulations to the extent that the person acquires, possesses, uses, transfers, or owns products or materials containing radioactive material in concentrations not exceeding those specified in K.A.R. 28-35-198a.

(b) A person shall be exempt from these regulations to the extent that the person acquires, possesses, uses, or transfers products containing naturally occurring radionuclides of elements with an atomic number less than 82, in isotopic concentrations not in excess of those that occur naturally.

(c) This regulation shall not be deemed to authorize the import of radioactive material or products containing radioactive material.

(d) A person who manufactures, processes, or produces a product or material shall be exempt from the requirements for a license as set forth in these regulations to the extent that the transfer of the radioactive material contained in the product or material is in concentrations not in excess of the amounts specified in K.A.R. 28-35-198a and is introduced into the product or material by a licensee holding a specific license issued by the department expressly authorizing such introduction. This exemption shall not apply to the transfer of radioactive material contained in any food, beverage, cosmetic, drug, or other commodity or product designed for ingestion or inhalation by, or application to, a human being.

(e) No person shall introduce radioactive material into a product or material knowing, or having reason to believe, that the product or material will be transferred to a person exempt from these regulations under subsection (a) or under an equivalent regulation of the nuclear regulatory commission or an agreement state, except in accordance with a specific license issued under K.A.R. 28-35-181e or the general license issued in K.A.R. 28-35-194a. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended March 18, 2011.)

28-35-192c. Exceptions; other radioactive material. Except for persons who apply tritium, promethium-147, or radium to, or persons who incorporate tritium, promethium-147, or radium into, the products listed in this regulation, each person who only acquires, possesses, uses, or transfers any of the following products shall be exempt from these regulations:

(a) Timepieces or hands or dials containing radium, or timepieces, hands, or dials containing not more than the following specified quantities of other radioactive materials:

- (1) 25 millicuries of tritium per timepiece;
- (2) 5 millicuries of tritium per hand;
- (3) 15 millicuries of tritium per dial. Bezels, when used, shall be considered as part of the dial;
- (4) 100 microcuries of promethium-147 per watch or 200 microcuries of promethium-147 per any other timepiece;
- (5) 20 microcuries of promethium-147 per watch hand or 40 microcuries of promethium-147 per hand on other timepieces;
- (6) 60 microcuries of promethium-147 per watch dial or 120 microcuries of promethium-147 per dial on other timepieces. Bezels, when used, shall be considered as part of the dial. The levels of radiation from hands and dials containing promethium-147 shall not exceed the following, when measured through 50 milligrams per square centimeter of absorber:

(A) For wrist watches, 0.1 millirad per hour at 10 centimeters from any surface;

(B) for pocket watches, 0.1 millirad per hour at one centimeter from any surface; and

(C) for any other timepiece, 0.2 millirad per hour at 10 centimeters from any surface; and

(7) for intact timepieces manufactured before November 30, 2007, 0.037 megabecquerel (1 microcurie) of radium-226 per timepiece;

(b) balances of precision containing not more than one millicurie of tritium per balance or not more than 0.5 millicurie of tritium per balance part manufactured before December 17, 2007;

(c) marine compasses containing not more than 750 millicuries of tritium gas and other marine navigational instruments containing not more than 250 millicuries of tritium gas manufactured before December 17, 2007;

(d) ionization chamber smoke detectors containing not more than one microcurie (μCi) of americium-241 per detector in the form of a foil and designed to protect life and property from fires;

(e) electron tubes. The levels of radiation from each electron tube containing radioactive material shall not exceed one millirad per hour at one centimeter from any surface when measured through seven milligrams per square centimeter of absorber. For purposes of this subsection, "electron tubes" shall include spark gap tubes, power tubes, gas tubes including glow lamps, receiving tubes, microwave tubes, indicator tubes, pickup tubes, radiation detection tubes, and any other completely sealed tube that is designed to conduct or control electrical currents. An electron tube shall not contain more than one of the following specified quantities of radioactive material:

(1) 150 millicuries of tritium per microwave receiver protector tube or 10 millicuries of tritium per any other electron tube;

(2) 1 microcurie cobalt-60;

(3) 5 microcuries nickel-63;

(4) 30 microcuries krypton-85;

(5) 5 microcuries cesium-137; or

(6) 30 microcuries promethium-147; and

(f) ionizing radiation-measuring instruments containing, for purposes of internal calibration or standardization, sources of radioactive material. No source shall exceed the applicable quantity specified in K.A.R. 28-35-197b. No single instrument shall contain more than 10 sources. For the purposes of this subsection, 0.05 μCi of Am-241 shall be considered an exempt quantity. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended March 18, 2011; amended May 4, 2018.)

28-35-192d. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; revoked March 18, 2011.)

28-35-192e. Exemptions; gas and aerosol detectors containing radioactive material.

(a) Except for persons who manufacture, process, or produce gas and aerosol detectors containing radioactive material or who initially transfer these products for sale or distribution, each person who acquires, receives, owns, possesses, uses, or transfers radioactive material in gas and aerosol detectors designed to protect life or property from fires and airborne hazards shall be exempt from these regulations. Each detector shall have been manufactured, processed, produced, imported, or initially transferred in accordance with a specific license issued by the secretary pursuant to K.A.R. 28-35-181q or a license issued by the nuclear regulatory commission or by an agreement state pursuant to an equivalent regulation of the nuclear regulatory commission or the agreement state.

(b) Gas and aerosol detectors previously manufactured and distributed before November 30, 2007 to general licensees in accordance with a specific license issued by an agreement state shall be exempt under subsection (a) if the device is labeled in accordance with the specific license authorizing distribution of the general licensed device and if the detectors meet the requirements of K.A.R. 28-35-181r.

(c) Each person who desires to manufacture, process, or produce gas and aerosol detectors containing radioactive material, or to initially transfer these products for use pursuant to this regulation, shall apply for a license pursuant to K.A.R. 28-35-181q. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended March 18, 2011.)

28-35-192f. Exemptions; self-luminous products containing tritium, krypton-85 or promethium-147.

(a) Except for persons who manufacture, process, or produce self-luminous products containing tritium, krypton-85, or promethium-147 and except as provided in subsection, (b) any person shall be exempt from these regulations to the extent that person acquires, possesses, uses, or transfers, tritium, krypton-85, or promethium-147 in self-luminous products manufactured, processed, produced, imported, or transferred in accordance with a specific license issued by the United States nuclear regulatory commission pursuant to Section 32.22 of Title 10 CFR 31, which authorizes the transfer of the product to persons who are exempt from regulatory requirements.

(b) The exemption in subsection (a) shall not apply to tritium, krypton-85, or promethium-147 used in toys, adornments, or similar items. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986.)

28-35-192g. Exemptions; exempt quantities. (a) Except as provided in subsections (c) through (e), each person who acquires, possesses, uses, owns, receives, or transfers radioactive material in individual quantities that do not exceed the applicable quantity specified in K.A.R. 28-35-197b shall be exempt from these regulations.

(b) Each person who possesses radioactive material received or acquired before January 1, 1972 under the general license then provided in K.A.R. 28-35-178a shall be exempt from these regulations to the extent that the person possesses, uses, owns, or transfers that radioactive material. This exemption shall not apply to radium-226.

(c) This regulation shall not authorize the production, packaging, repackaging, or transfer of radioactive material for purposes of commercial distribution, or the incorporation of radioactive material into products intended for commercial distribution.

(d) No person shall, for purposes of commercial distribution, transfer radioactive material in the individual quantities specified in K.A.R. 28-35-197b knowing, or having reason to believe, that those quantities of radioactive material will be transferred to a person exempt under this regulation or an equivalent regulation of the nuclear regulatory commission (NRC) or an agreement state, except in accordance with a specific license issued by the secretary under K.A.R. 28-35-181r, an equivalent regulation of the NRC, or an equivalent regulation of an agreement state.

(e) No person shall, for purposes of producing an increased radiation level, combine quantities of radioactive material covered by this exemption so that the aggregate quantity exceeds the individual quantities specified in K.A.R. 28-35-197b. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended March 18, 2011; amended May 4, 2018.)

28-35-192h. Certain industrial devices.

(a) Except as specified in subsections (b) and (c), each person who receives, possesses, uses, transfers, owns, or acquires any industrial device con-

taining by-product material designed and manufactured for either of the following purposes shall be exempt from these regulations:

(1) Detecting, measuring, gauging, or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition; or

(2) producing an ionized atmosphere if the industrial device is manufactured, processed, produced, or initially transferred in accordance with a specific license issued by the nuclear regulatory commission (NRC).

(b) Each person who manufactures, processes, produces, or initially transfers for sale or distribution any industrial device containing by-product material designed and manufactured for either of the following purposes shall be excluded from the exemption in subsection (a):

(1) Detecting, measuring, gauging, or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition; or

(2) producing an ionized atmosphere.

(c) The exemption in subsection (a) shall exclude any source not incorporated into an industrial device, including calibration and reference sources.

(d) Each person who manufactures, processes, produces, or initially transfers for sale or distribution any industrial device containing by-product material for use under subsection (a) shall apply for a license and a certificate of registration from the NRC. (Authorized by and implementing K.S.A. 48-1607; effective May 4, 2018.)

28-35-193. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1970; revoked, T-86-37, Dec. 11, 1985; revoked May 1, 1986.)

28-35-193a. Pre-licensing inspections. The department may request verification of information provided in any application or request additional information that is necessary to make a determination as to whether a license should be granted or denied and whether any special conditions should be attached to the license. This information may be obtained by visiting the facility or location where radioactive materials would be possessed or used, and by discussing details of proposed possession or use of the radioactive material with the applicant or the applicant's designated representatives. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986.)

28-35-193b. (Authorized by and implementing K.S.A. 48-1607; effective Nov. 1, 1996; revoked Dec. 30, 2005.)

28-35-194. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended Jan. 1, 1972; amended May 1, 1976; revoked, T-86-37, Dec. 11, 1985; revoked May 1, 1986.)

28-35-194a. Reciprocal recognition of licenses. (a) Subject to other provisions in this regulation, any person may apply for a general license to conduct activities within this state without obtaining a specific license from the secretary, if all of the following conditions are met:

(1) The person possesses a specific license issued by the nuclear regulatory commission or an agreement state, other than this state, that authorizes the proposed activities.

(2) The person does not conduct any activities authorized by any general license issued under this regulation for a period totalling more than 180 days in a calendar year.

(3) The specific license does not limit the activity authorized to a specified installation or location.

(4) The person notifies the department in writing at least five days before engaging in the activity. The notification shall indicate the location, period, and type of proposed possession and use within the state and shall be accompanied by a copy of the specific license. If, for a specific case, the five-day period would impose an undue hardship, the person may, upon application to the department, obtain permission by letter, facsimile, or electronic communication to proceed.

(5) The person complies with all applicable regulations of the secretary and with all the terms and conditions of the specific license, except any term or condition of the license that is inconsistent with these regulations.

(6) The person supplies any information requested by the department.

(7) The person does not transfer or dispose of radioactive material possessed or used under the general license provided in this regulation except by transfer to a person who meets either of the following conditions:

(A) Is specifically licensed by the department or the nuclear regulatory commission to receive the material; or

(B) is exempt from the requirements for a license for that material under K.A.R. 28-35-192a,

28-35-192b, 28-35-192c, 28-35-192d, 28-35-192e, 28-35-192f, or 28-35-192g.

(b) Any person who holds a specific license issued by the nuclear regulatory commission, or an agreement state that authorizes the person to manufacture, transfer, install, or service a device described in K.A.R. 28-35-178b within areas subject to the jurisdiction of the licensing body is issued a general license to manufacture, install, transfer, or service those devices in this state subject to the following requirements:

(1) The person shall satisfy the requirements of K.A.R. 28-35-184a(e)(1) and (2).

(2) The device shall be manufactured, labeled, installed, and serviced in accordance with the provisions of the specific license issued to the person by the nuclear regulatory commission or the agreement state.

(3) The person shall ensure that any labels required to be affixed to the device, under regulations of the authority that licensed the manufacture of the device, and that bear the statement "Removal of this label is prohibited" are affixed to the device.

(4) The person shall furnish to each general licensee to whom the person transfers the device, or on whose premises the person installs the device, a copy of the general license issued in K.A.R. 28-35-178b.

(c) Acceptance of any specific license recognized under this regulation or any product distributed pursuant to such a license may be withdrawn, limited, or qualified by the secretary, upon determining that the action is necessary in order to protect health or minimize danger to life or property. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended March 18, 2011.)

28-35-195. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended Jan. 1, 1972; amended May 1, 1976; revoked, T-86-37, Dec. 11, 1985; revoked May 1, 1986.)

28-35-195a. Intrastate transportation of radioactive materials.

(a) Each common or contract carrier shall be deemed to have been issued a general license to transport and store radioactive material in the regular course of its carriage for another, if the transportation and storage are performed in accordance with the regulations of the U.S. department of transportation. Each person who transports and stores radioactive material pursuant to the general license specified in this

subsection shall be exempt from the requirements of parts 4 and 10 of these regulations.

(b) Each private carrier shall be deemed to have been issued a general license to transport radioactive material, if the transportation is performed in accordance with the regulations of the U.S. department of transportation. Each person who transports radioactive material under the general license issued in this subsection shall be exempt from the requirements of parts 4 and 10 of these regulations.

(c) Each physician shall be exempt from the requirements of subsection (b) of this regulation to the extent that the physician transports radioactive material for use in the practice of medicine. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended Dec. 30, 2005.)

28-35-196. (Authorized by K.S.A. 1975 Supp. 48-1607; effective May 1, 1976; revoked, T-86-37, Dec. 11, 1985; revoked May 1, 1986.)

28-35-196a. Preparation of radioactive material for transport.

(a) A licensee shall not deliver any radioactive material to a carrier for transport, or transport radioactive material as a private carrier, unless:

(1) The licensee complies with the applicable requirements of the regulations of the U.S. department of transportation that are appropriate to the mode of transport and that are related to the packing of radioactive material, and to the monitoring, marking, and labeling of those packages;

(2) the licensee has established procedures for opening and closing packages in which radioactive material is transported to provide safety and to assure that, prior to the delivery to a carrier for transport, each package is properly closed for transport; and

(3) prior to delivery of a package to a carrier for transport, the licensee has assured that any special instructions needed to safely open the package are sent to, or are available to, the consignee.

(b) The requirements in subsection (a) of this regulation shall not apply to the transportation of licensed material, or to the delivery of licensed material to a carrier for transport, when the transportation is subject to regulations of the U.S. postal service. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986.)

28-35-196b. Transportation of radioactive material. (a) No person shall deliver radio-

active material to a carrier for transport or transport radioactive material except as authorized in a general or specific license issued by the department unless:

(1) That person's activities are exempted from licensure by Section 28-35-140(b) of these regulations;

(2) each of the packages delivered to a carrier for transport or transported contains radioactive materials bearing a specific activity of less than, or equal to, 0.002 microcurie (74 Bq) per gram; or

(3) the packages delivered to a carrier for transport are subject to the regulations of the U.S. Postal Service. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986.)

28-35-197. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended Jan. 1, 1972; amended May 1, 1976; revoked, T-86-37, Dec. 11, 1985; revoked May 1, 1986.)

28-35-197a. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; revoked May 4, 2018.)

28-35-197b. Schedule B; exempt quantities of radioactive material. The provisions of 10 C.F.R. 30.71, as in effect on November 30, 2007, are hereby adopted by reference, except that the word "byproduct" shall be replaced with "radioactive." (Authorized by and implementing K.S.A. 48-1607; effective May 4, 2018.)

28-35-198. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended Jan. 1, 1972; amended May 1, 1976; revoked, T-86-37, Dec. 11, 1985; revoked May 1, 1986.)

28-35-198a. Schedule C; Exempt concentrations.

Element (atomic number)	Isotope	Column I	Column II
		Gas Concentration uCi/ml ^l	Liquid and Solid Concentration uCi/ml ²
Antimony (51)	Sb 122		3 × 10 ⁻⁴
	Sb 124		2 × 10 ⁻⁴
	Sb 125		1 × 10 ⁻³
Argon (18)	Ar 37	1 × 10 ⁻³	
	Ar 41	4 × 10 ⁻⁷	
Arsenic (33)	As 73		5 × 10 ⁻³
	As 74		5 × 10 ⁻⁴
	As 76		2 × 10 ⁻⁴
	As 77		8 × 10 ⁻⁴

Element (atomic number)	Isotope	Column I	Column II
		Gas Concentration uCi/ml ^l	Liquid and Solid Concentration uCi/ml ²
Barium (56)	Ba 131		2 × 10 ⁻³
	Ba 140		3 × 10 ⁻⁴
Beryllium (4)	Be7		2 × 10 ⁻²
Bismuth (83)	Bi 206		4 × 10 ⁻⁴
Bromine (35)	Br 82	4 × 10 ⁻⁷	3 × 10 ⁻³
Cadmium (48)	Cd 109		2 × 10 ⁻³
	Cd 115m		3 × 10 ⁻⁴
	Cd 115		3 × 10 ⁻⁴
Calcium (20)	Ca 45		9 × 10 ⁻⁵
	Ca 47		5 × 10 ⁻⁴
Carbon (6)	C 14	1 × 10 ⁻⁶	8 × 10 ⁻³
Cerium (58)	Ce 141		9 × 10 ⁻⁴
	Ce 143		4 × 10 ⁻⁴
	Ce 144		1 × 10 ⁻⁴
Cesium (55)	Cs 131		2 × 10 ⁻²
	Cs 134m		6 × 10 ⁻²
	Cs 134		9 × 10 ⁻⁵
	Cs 137		4 × 10 ⁻³
Chlorine (17)	Cl 38	9 × 10 ⁻⁷	4 × 10 ⁻³
Chromium (24)	Cr 51		2 × 10 ⁻²
Cobalt (27)	Co 57		5 × 10 ⁻³
	Co 58		1 × 10 ⁻³
	Co 60		5 × 10 ⁻⁴
Copper (29)	Cu 64		3 × 10 ⁻³
Dysprosium (66)	Dy 165		4 × 10 ⁻³
	Dy 166		4 × 10 ⁻⁴
Erbium (68)	Er 169		9 × 10 ⁻⁴
	Er 171		1 × 10 ⁻³
Europium (63)	Eu 152 (T/2=9.2 Hrs)		6 × 10 ⁻⁴
	Eu 155		2 × 10 ⁻³
	Eu 154		8 × 10 ⁻³
Fluorine (9)	F 18	2 × 10 ⁻⁶	8 × 10 ⁻³
Gadolinium (64)	Gd 153		2 × 10 ⁻³
	Gd 159		8 × 10 ⁻⁴
Gallium (31)	Ga 72	4 × 10 ⁻⁴	
Germanium (32)	Ge 71	2 × 10 ⁻²	
Gold (79)	Au 196	2 × 10 ⁻³	
	Au 198	5 × 10 ⁻⁴	
	Au 199	2 × 10 ⁻³	
Hafnium (72)	Hf 181		7 × 10 ⁻⁴
Hydrogen (1)	H 3	5 × 10 ⁻⁶	3 × 10 ⁻²
Indium (49)	In 113m		1 × 10 ⁻²
	In 114m		2 × 10 ⁻⁴
Iodine (53)	I 126	3 × 10 ⁻⁹	2 × 10 ⁻⁵
	I 131	3 × 10 ⁻⁹	2 × 10 ⁻⁵
	I 132	8 × 10 ⁻⁸	6 × 10 ⁻⁴
	I 133	1 × 10 ⁻⁸	7 × 10 ⁻⁵
	I 134	2 × 10 ⁻⁷	1 × 10 ⁻³
Iridium (77)	Ir 190		2 × 10 ⁻³
	Ir 192	4 × 10 ⁻⁴	
Iron (26)	Ir 194	3 × 10 ⁻⁴	
	Fe 55	8 × 10 ⁻³	
Krypton (36)	Fe 59		6 × 10 ⁻⁴
	Kr 85m	1 × 10 ⁻⁶	
Lanthanum (57)	Kr 85	3 × 10 ⁻⁶	
	La 140		2 × 10 ⁻⁴
Lead (82)	Pb 203	4 × 10 ⁻³	
Lutetium (71)	Lu 177	1 × 10 ⁻³	
Manganese (25)	Mn 52	3 × 10 ⁻⁴	

Element (atomic number)	Isotope	Column I	Column II	Element (atomic number)	Isotope	Column I	Column II
		Gas Concentration uCi/ml ¹	Liquid and Solid Concentration uCi/ml ²			Gas Concentration uCi/ml ¹	Liquid and Solid Concentration uCi/ml ²
	Mn 54	1×10^{-3}			Tc 96		1×10^{-3}
	Mn 56	1×10^{-3}		Tellurium (52)	Te 125m		2×10^{-3}
Mercury (80)	Hg 197m	2×10^{-3}			Te 127m		6×10^{-4}
	Hg 197	3×10^{-3}			Te 127		3×10^{-3}
	Hg 203	2×10^{-4}			Te 129m		3×10^{-4}
Molybdenum (42)	Mo 99	2×10^{-3}			Te 131m		6×10^{-4}
Neodymium (60)	Nd 147	6×10^{-4}			Te 132		3×10^{-4}
	Nd 149	2×10^{-3}		Terbium (65)	Tb 160		4×10^{-4}
Nickel (28)	Ni 65	1×10^{-3}		Thallium (81)	Tl 200		4×10^{-3}
Niobium (Columbium) (41)	Nb 95	1×10^{-3}			Tl 201		3×10^{-3}
	Nb 97	9×10^{-3}			Tl 202		1×10^{-3}
					Tl 204		1×10^{-3}
Osmium (76)	Os 185	7×10^{-4}		Thulium (69)	Tm 170		5×10^{-4}
	Os 191m	3×10^{-2}			Tm 171		5×10^{-3}
	Os 191	2×10^{-3}		Tin (50)	Sn 113		9×10^{-4}
	Os 193	6×10^{-4}			Sn 125		2×10^{-4}
Palladium (46)	Pd 103	3×10^{-3}		Tungsten (Wolf ram) (74)	W 181		4×10^{-3}
	Pd 109	9×10^{-4}			W 187		7×10^{-4}
Phosphorus (15)	P 32		2×10^{-4}	Vanadium (23)	V 48		3×10^{-4}
Platinum (78)	Pt 191	1×10^{-3}		Xenon (54)	Xe 131m	4×10^{-6}	
	Pt 193m	1×10^{-2}			Xe 133	3×10^{-6}	
	Pt 197m	1×10^{-2}			Xe 135	1×10^{-6}	
	Pt 197	1×10^{-3}		Ytterbium (70)	Yb 175	1×10^{-3}	
Polonium (84)	Po 210		7×10^{-6}	Yttrium (39)	Y 90		2×10^{-4}
Potassium (19)	K 42		3×10^{-3}		Y 91m		3×10^{-2}
Praseodymium (59)	Pr 142		3×10^{-4}		Y 91		3×10^{-4}
	Pr 143		5×10^{-4}		Y 92		6×10^{-4}
	Pr 147		2×10^{-3}		Y 93		3×10^{-4}
Promethium (61)	Pm 149		4×10^{-4}	Zinc (30)	Zn 65		1×10^{-3}
					Zn 69m		7×10^{-4}
Radium (88)	Ra 226		1×10^{-7}		Zn 69		2×10^{-2}
	Ra 228		3×10^{-7}	Zirconium (40)	Zr 95		6×10^{-4}
Rhenium (75)	Re 183		6×10^{-3}		Zr 97		2×10^{-4}
	Re 186		9×10^{-4}				1×10^{-6}
	Re 188		6×10^{-4}	Beta or gamma or both emitting radioac- tive material not listed above with half-life less than 3 years.		1×10^{-10}	
Rhodium (45)	Rh 103m		1×10^{-1}				
	Rh 105		1×10^{-3}				
Rubidium (37)	Rb 86		7×10^{-4}				
Ruthenium (44)	Ru 97		4×10^{-3}				
	Ru 103		8×10^{-4}				
	Ru 105		1×10^{-3}				
	Ru 106		1×10^{-4}				
	Ru 106		1×10^{-4}				
Samarium (62)	Sm 153		8×10^{-4}				
Scandium (21)	Sc 46		4×10^{-4}				
	Sc 47		9×10^{-4}				
	Sc 48		3×10^{-4}				
Selenium (34)	Se 75		3×10^{-3}				
Silicon (14)	Si 31		9×10^{-3}				
Silver (47)	Ag 05		1×10^{-3}				
	Ag 110m		3×10^{-4}				
	Ag 111		4×10^{-4}				
Sodium (11)	Na 24		2×10^{-3}				
Strontium (38)	Sr 89		1×10^{-4}				
	Sr 85		1×10^{-3}				
	Sr 91		7×10^{-4}				
	Sr 92		7×10^{-4}				
Sulfur (16)	S 35	9×10^{-5}	6×10^{-4}				
Tantalum (73)	Ta 182		4×10^{-4}				
Technetium (43)	Tc 96m		1×10^{-1}				

NOTE 1: Many radioisotopes disintegrate into isotopes which are also radioactive. In expressing the concentrations in 28-35-198a, Schedule C, the activity state is that of the parent isotope and takes into account the daughters.

NOTE 2: For purposes of 28-35-192b, when a combination of isotopes is involved, the limit for the combination shall be derived as follows: Determine for each isotope in the product the ratio between the concentration present in the product and the exempt concentration established in 28-35-198a, Schedule C, for the specific isotope when not in combination. The sum of those ratios may not exceed "1" (i.e., unity).

¹ Values are given only for those materials normally used as gases.

² uCi/gm for solids. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986.)

28-35-199. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended Jan. 1, 1972; amended May 1, 1976; revoked, T-86-37, Dec. 11, 1985; revoked May 1, 1986.)

28-35-199a. (Authorized by and implementing K.S.A. 1993 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended Oct. 17, 1994; revoked Dec. 30, 2005.)

28-35-200. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended May 1, 1976; revoked, T-86-37, Dec. 11, 1985; revoked May 1, 1986.)

28-35-200a. Schedule E; Possession limits authorized under types b & c specific licenses of broad scope.

RADIOACTIVE MATERIAL	Column I CURIES	Column II CURIES
Antimony 122	1	0.01
Antimony 124	1	0.01
Antimony 125	1	0.01
Arsenic 73	10	0.1
Arsenic 74	1	0.01
Arsenic 76	1	0.01
Arsenic 77	10	0.1
Barium 131	10	0.1
Barium 140	1	0.01
Beryllium 7	10	0.1
Bismuth 210	0.1	0.001
Bromine 82	10	0.1
Cadmium 109	1	0.01
Cadmium 115m	1	0.01
Cadmium 115	10	0.1
Calcium 45	1	0.01
Calcium 47	10	0.1
Carbon 14	100	1.
Cerium 141	10	0.1
Cerium 143	10	0.1
Cerium 144	0.1	0.001
Cesium 131	100	1.
Cesium 134m	100	1.
Cesium 134	0.1	0.001
Cesium 135	1	0.01
Cesium 136	10	0.1
Cesium 137	0.1	0.001
Chlorine 36	1	0.01
Chlorine 38	100	1.
Chromium 51	100	1.
Cobalt 57	10	0.1
Cobalt 58m	100	1.

RADIOACTIVE MATERIAL	Column I CURIES	Column II CURIES
Cobalt 58	1	0.01
Cobalt 60	0.1	0.001
Copper 64	10	0.1
Dysprosium 165	100	1.
Dysprosium 166	10	0.1
Erbium 169	10	0.1
Erbium 171	10	0.1
Europium 152 9.2 h	10	0.1
Europium 152 13 y	0.1	0.001
Europium 154	0.1	0.001
Europium 155	1	0.01
Fluorine 18	100	1.
Gadolinium 153	1	0.01
Gadolinium 159	10	0.1
Gallium 72	10	0.1
Germanium 71	100	1.
Gold 198	10	0.1
Gold 199	10	0.1
Hafnium 181	1	0.01
Holmium 166	10	0.1
Hydrogen 3	100	1.
Indium 113m	100	1.
Indium 114m	1	0.01
Indium 115m	100	1.
Indium 115	1	0.01
Iodine 125	0.1	0.001
Iodine 126	0.1	0.001
Iodine 129	0.1	0.001
Iodine 131	0.1	0.001
Iodine 132	10	0.1
Iodine 133	1	0.01
Iodine 134	10	0.1
Iodine 135	1	0.01
Iridium 192	1	0.01
Iridium 194	10	0.1
Iron 55	10	0.1
Iron 59	1	0.01
Krypton 85	100	1.
Krypton 87	10	0.1
Lanthanum 140	1	0.01
Lutetium 177	10	0.1
Manganese 52	1	0.01
Manganese 54	1	0.01
Manganese 56	10	0.1
Mercury 197m	10	0.1
Mercury 197	10	0.1
Mercury 203	1	0.01
Molybdenum 99	10	0.1
Neodymium 147	10	0.1
Neodymium 149	10	0.1
Nickel 59	10	0.1
Nickel 63	1	0.01
Nickel 65	10	0.1
Niobium 93m	1	0.01
Niobium 95	1	0.01
Niobium 97	100	1.

RADIOACTIVE MATERIAL	Column I CURIES	Column II CURIES	RADIOACTIVE MATERIAL	Column I CURIES	Column II CURIES
Osmium 185	1	0.01	Tellurium 127	10	0.1
Osmium 191m	100	1.	Tellurium 129m	1	0.01
Osmium 191	10	0.1	Tellurium 129	100	1.
Osmium 193	10	0.1	Tellurium 131m	10	0.1
Palladium 103	10	0.1	Tellurium 132	1	0.01
Palladium 109	10	0.1	Terbium 160	1	0.01
Phosphorus 32	1	0.01	Thallium 200	10	0.1
Platinum 191	10	0.1	Thallium 201	10	0.1
Platinum 193m	100	1.	Thallium 202	10	0.1
Platinum 193	10	0.1	Thallium 204	1	0.01
Platinum 197m	100	1.	Thulium 170	1	0.01
Platinum 197	10	0.1	Thulium 171	1	0.01
Polonium 210	0.01	0.0001	Tin 113	1	0.01
Potassium 42	1	0.01	Tin 125	1	0.01
Praseodymium 142	10	0.1	Tungsten 181	1	0.01
Praseodymium 143	10	0.1	Tungsten 185	1	0.01
Promethium 147	1	0.01	Tungsten 187	10	0.1
Promethium 149	10	0.1	Vanadium 48	1	0.01
Radium 226	0.01	0.0001	Xenon 131m	1,000	10.
Rhenium 186	10	0.1	Xenon 133	100	1.
Rhenium 188	10	0.1	Xenon 135	100	1.
Rhodium 103m	1,000	10.	Ytterbium 175	10	0.1
Rhodium 105	10	0.1	Yttrium 90	1	0.01
Rubidium 86	1	0.01	Yttrium 91	1	0.01
Rubidium 87	1	0.01	Yttrium 92	10	0.1
Ruthenium 97	100	1.	Yttrium 93	1	0.01
Ruthenium 103	1	0.01	Zinc 65	1	0.01
Ruthenium 105	10	0.1	Zinc 69m	10	0.1
Ruthenium 106	0.1	0.001	Zinc 69	100	1.
Samarium 151	1	0.01	Zirconium 93	1	0.01
Samarium 153	10	0.1	Zirconium 95	1	0.01
Scandium 46	1	0.01	Zirconium 97	1	0.01
Scandium 47	10	0.1	Any radioactive material other than alpha emitting radioactive material not listed above.	0.1	0.001
Scandium 48	1	0.01			
Selenium 75	1	0.01			
Silicon 31	10	0.1			
Silver 105	1	0.01			
Silver 110m	0.1	0.001			
Silver 111	10	0.1			
Sodium 22	0.1	0.001			
Sodium 24	1	0.01			
Strontium 85m	1,000	10.			
Strontium 85	1	0.01			
Strontium 89	1	0.01			
Strontium 90	0.01	0.0001			
Strontium 91	10	0.1			
Strontium 92	10	0.1			
Sulphur 35	10	0.1			
Tantalum 182	1	0.01			
Technetium 96	10	0.1			
Technetium 97m	10	0.1			
Technetium 97	10	0.1			
Technetium 99m	100	1.			
Technetium 99	1	0.01			
Tellurium 125m	1	0.01			
Tellurium 127m	1	0.01			

(Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986.)

28-35-201. Schedule F. (a) Single isotope quantities.

Material	Microcuries
Americium-241.....	.01
Antimony-122.....	100
Antimony-124.....	10
Antimony-125.....	10
Arsenic-73.....	100
Arsenic-74.....	10
Arsenic-76.....	10
Arsenic-77.....	100
Barium-131.....	10

Material	Microcuries	Material	Microcuries
Barium-133.....	10	Iodine-129.....	0.1
Barium-140.....	10	Iodine-131.....	1
Bismuth-210.....	1	Iodine-132.....	10
Bromine-82.....	10	Iodine-133.....	1
Cadmium-109.....	10	Iodine-134.....	10
Cadmium-115m.....	10	Iodine-135.....	10
Cadmium-115.....	100	Iridium-192.....	10
Calcium-45.....	10	Iridium-194.....	100
Calcium-47.....	10	Iron-55.....	100
Carbon-14.....	100	Iron-59.....	10
Cerium-141.....	100	Krypton-85.....	100
Cerium-143.....	100	Krypton-87.....	10
Cerium-144.....	1	Lanthanum-140.....	10
Cesium-131.....	1,000	Lutetium-177.....	100
Cesium-134m.....	100	Manganese-52.....	10
Cesium-134.....	1	Manganese-54.....	10
Cesium-135.....	10	Manganese-56.....	10
Cesium-136.....	10	Mercury-197m.....	100
Cesium-137.....	10	Mercury-197.....	100
Chlorine-36.....	10	Mercury-203.....	10
Chlorine-38.....	10	Molybdenum-99.....	100
Chromium-51.....	1,000	Neodymium-147.....	100
Cobalt-58m.....	10	Neodymium-149.....	100
Cobalt-58.....	10	Nickel-59.....	100
Cobalt-60.....	1	Nickel-63.....	10
Copper-64.....	100	Nickel-65.....	100
Dysprosium-165.....	10	Niobium-93m.....	10
Dysprosium-166.....	100	Niobium-95.....	10
Erbium-169.....	100	Niobium-97.....	10
Erbium-171.....	100	Osmium-185.....	10
Europium-152 9.2hr.....	100	Osmium-191m.....	100
Europium-152 13yr.....	1	Osmium-191.....	100
Europium-154.....	1	Osmium-193.....	100
Europium-155.....	10	Palladium-103.....	100
Fluorine-18.....	1,000	Palladium-109.....	100
Gadolinium-153.....	10	Phosphorus-32.....	10
Gadolinium-159.....	100	Platinum-191.....	100
Gallium-72.....	10	Platinum-193m.....	100
Germanium-71.....	100	Platinum-193.....	100
Gold-198.....	100	Platinum-197m.....	100
Gold-199.....	100	Platinum-197.....	100
Hafnium-181.....	10	Plutonium-239.....	.01
Holmium-166.....	100	Polonium-210.....	.1
Hydrogen-3.....	1,000	Potassium-42.....	10
Indium-113m.....	100	Praseodymium-142.....	100
Indium-114m.....	10	Praseodymium-143.....	100
Indium-115m.....	100	Promethium-147.....	10
Indium-115.....	10	Promethium-149.....	10
Iodine-125.....	1	Radium-226.....	.01
Iodine-126.....	1	Rhenium-186.....	100

Material	Microcuries	Material	Microcuries
Rhenium-188.....	100	Tungsten-185.....	10
Rhodium-103m.....	100	Tungsten-187.....	100
Rhodium-105.....	100	Uranium (natural) ²	100
Rubidium-86.....	10	Uranium-233.....	.01
Rubidium-87.....	10	Uranium 234-uranium 235.....	.01
Ruthenium-97.....	100	Vanadium-48.....	10
Ruthenium-103.....	10	Xenon-131m.....	1,000
Ruthenium-105.....	10	Xenon-133.....	100
Ruthenium-106.....	1	Xenon-135.....	100
Samarium-151.....	10	Ytterbium-175.....	100
Samarium-153.....	100	Yttrium-90.....	10
Scandium-46.....	10	Yttrium-91.....	10
Scandium-47.....	100	Yttrium-92.....	100
Scandium-48.....	10	Yttrium-93.....	100
Selenium-75.....	10	Zinc-65.....	10
Silicon-31.....	100	Zinc-69m.....	100
Silver-105.....	10	Zinc-69.....	1,000
Silver-110m.....	1	Zirconium-93.....	10
Silver-111.....	100	Zirconium-95.....	10
Sodium-24.....	10	Zirconium-97.....	10
Strontium-85.....	10	Any alpha-emitting radionuclide not listed above or any mixture of alpha-emitters of unknown composition.....	.01
Strontium-89.....	1	Any radionuclide other than an alpha- emitting radionuclide that is not listed above or any mixture of beta-emitters of unknown composition.....	.1
Strontium-90.....	.1		
Strontium-91.....	10		
Strontium-92.....	10		
Sulfur-35.....	100		
Tantalum-182.....	10		
Technetium-96.....	10		
Technetium-97m.....	100		
Technetium-97.....	100		
Technetium-99m.....	100		
Technetium-99.....	10		
Tellurium-125m.....	10		
Tellurium-127m.....	10		
Tellurium-127.....	100		
Tellurium-129m.....	10		
Tellurium-129.....	100		
Tellurium-131m.....	10		
Tellurium-132.....	10		
Terbium-160.....	10		
Thallium-200.....	100		
Thallium-201.....	100		
Thallium-202.....	100		
Thallium-204.....	10		
Thorium (natural) ¹	100		
Thulium-170.....	10		
Thulium-171.....	10		
Tin-113.....	10		
Tin-125.....	10		
Tungsten-181.....	10		

¹ Based on an alpha disintegration rate of Th-232, Th-230, and their daughter products.

² Based on an alpha disintegration rate of U-238, U-234, and U-235.

(b) Combinations of isotopes. For the purposes of K.A.R. 28-35-180b, when a combination of isotopes in known amounts is involved, the limit for the combination shall be derived by determining, for each isotope in the combination, the ratio between the quantity present in the combination and the limit otherwise established for the specific isotope when not in combination. The sum of the ratios for all the isotopes in the combination shall not exceed one, which is also referred to as "unity." (Authorized by and implementing K.S.A. 48-1607; effective Nov. 1, 1996; amended July 27, 2007.)

28-35-202. (Authorized by and implementing K.S.A. 48-1607; effective Nov. 1, 1996; revoked July 27, 2007.)

28-35-203. Schedule G; Criteria relating to use of financial tests and parent company guarantees for providing reasonable assur-

ance of funds for decommissioning. (a) Each applicant or licensee providing assurance of the availability of funds for decommissioning based on a parent company guarantee that funds will be available for decommissioning costs based on a demonstration that the parent company passes a financial test shall meet the following standards:

(b) Each licensee or applicant applying to the department for recognition of a parent company guarantee for the purposes of complying with the requirements of K.A.R. 28-35-180b shall be required to show that the parent company guarantee meets the following criteria:

(1) Each parent company shall meet two of the following three ratios:

(A) A ratio of total liabilities to net worth that is less than 2.0;

(B) a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities that is greater than 0.1; or

(C) a ratio of current assets to current liabilities that is greater than 1.5.

(2) Each parent company shall have net working capital and tangible net worth each of which is equal a minimum of six times the current decommissioning cost estimates, or the prescribed amount if a certification is used based on the requirements of K.A.R. 28-35-180b.

(3) Each parent company shall have assets located in the United States amounting to at least 90 percent of the company's total assets or at least six times the current decommissioning cost estimates, or at least six times the prescribed amount if a certification is used based on the requirements of K.A.R. 28-35-180b.

(4) Each parent company shall have the following:

(A) A current rating for the company's most recent bond issuance of AAA, AA, A, or BBB as issued by standard and poor's or Aaa, Aa, A, or Baa as issued by moody's;

(B) a tangible net worth at least six times the current decommissioning cost estimate, or the prescribed amount if a certification is used based on the requirements of K.A.R. 28-35-180b;

(C) a tangible net worth of at least \$10 million; and

(D) assets located in the United States amounting to at least 90 percent of the company's total assets or at least six times the current decommissioning cost estimates, or at least six times the prescribed amount if certification is used based on the requirements of K.A.R. 28-35-180b.

(c) The parent company's independent certified public accountant shall compare the data used by the parent company in the financial test, which shall be derived from the independently audited, year-end financial statements for the latest fiscal year, with the amounts in the financial statement. If any matters come to the auditor's attention that cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test, the licensee shall notify the department within 90 days of the date the auditor identifies the matter.

(d) After the initial financial test, the parent company shall be required to pass the test within 90 days after the close of each succeeding fiscal year.

(1) If the parent company no longer meets the requirements of subsection (a), the licensee shall notify the department of the licensee's intent to establish alternate financial assurance as specified in these regulations.

(2) The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data shows that the parent company no longer meets the financial test requirements.

(3) The licensee shall provide alternate financial assurance within 120 days after the end of a fiscal year for which the year-end financial data shows that the parent company no longer meets the financial test requirements.

(e) Each parent company guarantee obtained by an applicant or licensee shall contain terms that provide the following information:

(1) The parent company guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and the department. The guarantee shall not be canceled during the 120 days beginning on the date of receipt of the notice of cancellation by both the licensee and the department, as evidenced by the return receipts.

(2) If the licensee fails to provide alternate financial assurance within 90 days after receipt of a notice of cancellation of the parent company guarantee by the licensee and the department, the guarantor shall provide the alternative financial assurance in the name of the licensee.

(3) The parent company guarantee and financial test provisions shall remain in effect until the secretary has terminated the license.

(4) If a trust is established for decommissioning costs, the trustee and trust shall be acceptable to the secretary. An acceptable trustee may be an ap-

appropriate state or federal government agency or an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. (Authorized by and implementing K.S.A. 48-1607; effective Nov. 1, 1996; amended July 27, 2007.)

28-35-204. Decommissioning plan. (a) Each licensee shall submit a decommissioning plan if at least one of the following conditions is met:

(1) The licensee intends to terminate the license using radiological criteria specified in K.A.R. 28-35-205a or K.A.R. 28-35-205b.

(2) A decommissioning plan is otherwise required by these regulations.

(3) A decommissioning plan is required by a license condition.

(4) The procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the department, and these procedures could increase the potential health and safety impact on workers or on the public, including any of the following types of procedures:

(A) Procedures that would involve techniques not applied routinely during cleanup or maintenance operations;

(B) procedures permitting workers to enter areas not normally occupied where surface contamination and radiation levels are higher than routinely encountered during the operation for which the license was issued;

(C) procedures that could result in greater airborne concentrations of radioactive materials than are present during operation;

(D) procedures that could result in greater releases of radioactive material to the environment than those associated with the operation for which the license was issued; or

(E) procedures with a potential health and safety impact that could be carried out before approval of the decommissioning plan.

(b) The proposed decommissioning plan for the facility or site, or separate building or outdoor area, shall include the following:

(1) A description of the conditions of the facility or site sufficient to evaluate the acceptability of the plan;

(2) a description of the planned decommissioning operations;

(3) a description of the methods used to ensure the protection of workers and the environment against radiation hazards during decommissioning;

(4) a description of the radiation survey planned to demonstrate compliance with subsection (e) or with K.A.R. 28-35-205; and

(5) an updated, detailed cost estimate of decommissioning, comparison of that estimate with the present funds set aside for decommissioning, and a plan for ensuring the availability of adequate funds for completion of the decommissioning.

(c) For decommissioning plans calling for completion of decommissioning more than 24 months after plan approval, the plan shall include a justification for the delay. The proposed decommissioning plan shall not be approved unless the licensee demonstrates that the decommissioning will be completed as soon as practicable and that the health and safety of the workers and the public will be protected.

(d) Each licensee shall complete the decommissioning of the facility or site as soon as practicable but not more than 24 months following the initiation of decommissioning, unless an alternate schedule addressing the factors specified in subsection (f) is approved.

(e) If decommissioning involves the entire site, the licensee shall request license termination upon completion of the decommissioning operations.

(f) For decommissioning plans calling for the completion of decommissioning more than 24 months after plan approval, the plan shall include a written justification for the decommissioning schedule warranted by consideration of the following:

(1) Whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(2) whether waste disposal capacity is available to allow the completion of decommissioning within the allotted 24-month period;

(3) whether a volume reduction of wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(4) whether a reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(5) whether other site-specific factors exist. These factors may include the regulatory requirements of other government agencies, lawsuits, groundwater treatment operations, monitored natural groundwater restoration, and actions that could result in more environmental harm than deferred cleanup.

(g) Each licensee shall perform the following final steps in decommissioning:

(1) Conduct a radiation survey of the premises where the licensed operations were carried out and submit a report of the results of this survey, unless the licensee demonstrates that the premises are suitable for release in some other manner. Each licensee shall complete the following, as appropriate:

(A) Report the levels of gamma radiation in units of millisieverts or microrems per hour at one meter from surfaces and report the levels of radioactivity, including alpha and beta, in units of megabecquerels, disintegrations per minute, or microcuries per milliliter for water, and becquerels or picocuries per gram for solids, including soil and concrete; and

(B) specify the survey instrument or instruments used and certify that each instrument is calibrated and tested.

(2) Each licensee shall certify the disposition of all licensed material, including accumulated wastes, by submitting a completed form specified by the department or the equivalent information to the department. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005.)

28-35-205. Termination of a license without restriction. (a) A site shall be considered acceptable for unrestricted use if both of the following conditions are met:

(1) The residual radioactivity that is distinguishable from background radiation results in a TEDE to an average member of the critical group that does not exceed 0.25 millisievert or 25 mrem per year, including the residual radioactivity from groundwater sources of drinking water.

(2) The residual radioactivity has been reduced to levels that are as low as reasonably achievable (ALARA). Any detriment, including any deaths from transportation accidents that could result from decontamination and waste disposal, shall be taken into consideration by the secretary.

(b) Each specific license, including any expired license, shall be terminated upon written notice to the licensee if the secretary determines that all of the following conditions are met:

(1) All radioactive material has been properly disposed of.

(2) A reasonable effort has been made to eliminate the residual radioactive contamination, if present.

(3) Documentation has been provided to the department demonstrating one of the following:

(A) A radiation survey has been performed and shows that the premises meet the requirements of this regulation.

(B) The other information submitted by the licensee is sufficient to show that the premises are suitable for release in accordance with this regulation. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005.)

28-35-205a. License termination under restricted conditions. A site may be considered by the secretary to be acceptable for license termination under restricted conditions if all of the following conditions are met:

(a)(1) The licensee demonstrates that further reductions in residual radioactivity necessary to comply with the provisions of K.A.R. 28-35-205(a) would result in public or environmental harm or were not being made because the residual levels associated with restricted conditions are ALARA. The demonstration shall reflect the licensee's consideration of any detriment that could result from decontamination and waste disposal; and

(2) the licensee has made provisions for legally enforceable institutional controls that provide reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 0.25 millisievert or 25 mrem per year, including that from groundwater sources of drinking water.

(b) The licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site. Each of the following financial assurance mechanisms shall be acceptable:

(1) Funds placed into an account segregated from the licensee's assets and outside the licensee's administrative control as specified in K.A.R. 28-35-180b;

(2) a surety method, insurance policy, or other guarantee method as described in K.A.R. 28-35-180b;

(3) a statement of intent in the case of federal, state, or local government licensees, as described in K.A.R. 28-35-180b; or

(4) when a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by the governmental entity.

(c) The licensee has submitted a decommissioning plan to the department indicating the licens-

ee's intent to decommission in accordance with K.A.R. 28-35-204 and specifying that the licensee intends to decommission by restricting the use of the site. The licensee shall document in the decommissioning plan how the advice of individuals and institutions in the community who could be affected by the decommissioning has been sought and incorporated, as appropriate, following analysis of that advice.

(1) Each licensee proposing to decommission by restricting the use of the site shall seek advice from the affected parties regarding the following matters concerning the proposed decommissioning:

(A) Whether the provisions for institutional controls proposed by the licensee will provide reasonable assurance of the following:

(i) That the TEDE from residual radioactivity distinguishable from background to the average member of the critical population will not exceed the applicable limit specified in part 4 of these regulations;

(ii) that the controls are enforceable; and

(iii) that the controls do not impose undue burdens on the local community or other affected parties; and

(B) whether or not the licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out the responsibilities for any necessary control and maintenance of the site.

(2) In seeking advice on the issues identified in this subsection, the licensee shall provide for the following:

(A) Participation by representatives of a broad cross section of community interests who could be affected by the decommissioning;

(B) an opportunity for a comprehensive, collective discussion of the issues by the participants represented; and

(C) a publicly available summary of the results of all discussions specified in paragraph (c)(2)(B), including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues.

(d) Residual radioactivity at the site has been reduced so that if the institutional controls were no longer in effect, there is reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group is as low as reasonably achievable and would not exceed either of the following:

(1) 1 millisievert (100 mrem) per year; or

(2) 5 millisieverts (500 mrem) per year if the licensee demonstrates the following:

(A) Further reductions in residual radioactivity necessary to comply with the limit specified in paragraph (d)(1) are not technically achievable, would be prohibitively expensive, or would result in additional public or environmental harm;

(B) provisions for ongoing, enforceable institutional controls exist; and

(C) sufficient financial assurance exists to enable a responsible government entity or independent third party, including a governmental custodian of a site, to carry out periodic rechecks of the site at least every five years to ensure that the institutional controls remain in place as necessary to meet the requirements in this regulation and to assume and carry out the responsibilities for any necessary controls and maintenance of those controls. The financial assurance mechanisms shall be those specified in subsection (b).

(e)(1) If the department receives a decommissioning plan from the licensee or a proposal by the licensee for the release of a site pursuant to this regulation or K.A.R. 28-35-205b, the following shall be notified by the department and solicited for comments:

(A) The local and state governments in the vicinity of the site and any Indian nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning; and

(B) the EPA, if the licensee proposes to release a site pursuant to K.A.R. 28-35-205b.

(2) Subsequent notifications and solicitations for comments of the entities specified in paragraphs (e)(1)(A) and (B) may be made by the department if the secretary deems these actions to be in the public interest.

(3) The notifications specified in this subsection shall be published in the Kansas register and in a forum, which may consist of a local newspaper, letter to a state or local organization, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site, and solicit comments from affected parties. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005.)

28-35-205b. Alternate criteria for license termination. A license shall be terminated by the secretary using alternate criteria greater than the dose criteria specified in K.A.R. 28-35-

205a only if the licensee provides all of the following information:

(a) Evidence that public health and safety and the environment would continue to be protected and that it is unlikely that the dose from all man-made sources combined, other than medical, could be more than the limit of one millisievert per year or 100 mrem per year specified in part 4 of these regulations, by submitting an analysis of the possible sources of exposure;

(b) restrictions, to the extent practical, on site use according to the provisions of K.A.R. 28-35-205a to minimize exposure at the site;

(c) evidence that doses have been reduced to ALARA levels, taking into consideration any detriment, including any traffic accidents that could result from decontamination and waste disposal;

(d) a decommissioning plan indicating the licensee's intent to decommission in accordance with this part and specifying that the licensee proposes to decommission by the use of alternate criteria. The licensee shall document in the decommissioning plan how the advice of individuals and institutions in the community who might be affected by the decommissioning has been sought and addressed, as appropriate, following analysis of that advice. In seeking this advice, the licensee shall provide for the following:

(1) Participation by representatives of a broad cross section of community interests who could be affected by the decommissioning;

(2) an opportunity for comprehensive, collective discussions of the issues by the participants represented; and

(3) a publicly available summary of the results of all the discussions specified in paragraph (d) (2), including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement on the issues among the participants; and

(e) sufficient financial assurance, as specified in K.A.R. 28-35-180b, to enable an independent third party, including a governmental custodian of a site, to assume and carry out the responsibilities for any necessary control and maintenance of the site. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005; amended May 4, 2018.)

28-35-206. Applicability of decommissioning requirements following license termination. If, after a site has been decommissioned and associated license has been terminated, new information shows that the requirements

specified in these regulations were not met or that the residual radioactivity at the site could result in a significant threat to public health and safety and the environment, then the former licensee shall be required to perform any additional decontamination that is deemed necessary by the secretary. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005.)

PART 4. STANDARDS FOR PROTECTION AGAINST RADIATION

28-35-211. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1970; revoked, T-85-43, Dec. 19, 1984; revoked May 1, 1985.)

28-35-211a. Persons to whom the standards apply. (a) Except as specifically provided in other parts of these regulations, these regulations shall apply to persons licensed or registered by the department to receive, possess, use, transfer, or dispose of sources of radiation. The limits in these regulations shall not apply to:

(1) doses due to background radiation;

(2) exposure of patients to radiation for the purpose of medical diagnosis or therapy; or

(3) voluntary participation in medical research programs.

(b) Nothing in these regulations shall be construed as limiting actions that may be necessary to protect health and safety. (Authorized by and implementing K.S.A. 1993 Supp. 48-1607; effective, T-85-43, Dec. 19, 1984; effective May 1, 1985; amended Oct. 17, 1994.)

28-35-211b. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-85-43, Dec. 19, 1984; effective May 1, 1985; revoked Sept. 20, 1993.)

28-35-211c. (Authorized by and implementing K.S.A. 1993 Supp. 48-1603, 48-1607; effective Oct. 17, 1994; revoked Dec. 30, 2005.)

28-35-211d. Radiation protection programs. (a) Each licensee or registrant shall develop, document, and implement a radiation protection program sufficient to ensure compliance with the provisions of these regulations.

(b) Each licensee or registrant shall use, to the extent practicable, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and public doses that are as low as is reasonably achievable (ALARA).

(c) To implement the ALARA requirements of this regulation and the requirements in K.A.R. 28-35-214a, each licensee or registrant shall establish a constraint on the air emissions of radioactive material to the environment, excluding radon-222 and its daughters, so that the individual member of the public likely to receive the highest dose is not expected to receive a total effective dose equivalent in excess of 10 mrem (0.1 mSv) per year from these emissions. If a licensee or registrant subject to this requirement exceeds this dose constraint, the licensee or registrant shall report the exceedance as specified in K.A.R. 28-35-230a and shall take appropriate corrective action to ensure against recurrence.

(d) Each licensee or registrant shall, at intervals not to exceed 12 months, review the radiation protection program content and implementation. (Authorized by and implementing K.S.A. 48-1607; effective Oct. 17, 1994; amended Dec. 30, 2005.)

28-35-212. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended May 1, 1976; revoked, T-85-43, Dec. 19, 1984; revoked May 1, 1985.)

28-35-212a. Occupational dose limits for adults. (a) Each licensee or registrant shall control the occupational dose to individual adults, except for planned special exposures to the following dose limits:

(1) The annual limit shall be the more limiting of either of the following:

(A) The total effective dose equivalent being equal to 0.05 Sv (5 rem); or

(B) the sum of the deep dose equivalent and the committed dose equivalent to any individual organ or tissue other than the lens of the eye being equal to 0.50 Sv (50 rem).

(2) The annual limits to the lens of the eye, to the skin, and to the extremities shall be the following:

(A) An eye dose equivalent of 0.15 Sv (15 rem); and

(B) a shallow dose equivalent of 0.50 Sv (50 rem) to the skin or to any extremity.

(b) Doses received in excess of the annual limits, including doses received during accidents, emergencies, and planned special exposures, shall be subtracted from the limits for planned special exposures that the individual could receive during the current year and during the individual's lifetime.

(c) When the external exposure is determined by measurement with an external personal monitoring device, the deep dose equivalent shall be used in place of the effective dose equivalent, unless the effective dose equivalent is determined by a dosimetry method approved by the secretary. The assigned deep dose equivalent shall be for the portion of the body receiving the highest exposure. The assigned shallow dose equivalent shall be the dose averaged over the contiguous 10 square centimeters of skin receiving the highest exposure.

(1) The deep dose equivalent, eye dose equivalent, and shallow dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure or the results of individual monitoring are unavailable.

(2) If a protective apron is worn by medical fluoroscopists performing special and interventional fluoroscopic procedures and monitoring is conducted as specified in K.A.R. 28-35-217a, the use of weighting factors in determining the effective dose equivalent for external radiation may be approved by the secretary upon receipt of a written request. In no case shall the use of weighting factors be approved unless the request is accompanied by a list of the procedures to be used to ensure that exposures are maintained ALARA and the effective dose equivalent is determined as follows:

(A) If only one individual monitoring device is used and the device is located at the neck outside the protective apron, the reported deep dose equivalent shall be the effective dose equivalent for external radiation.

(B) If only one individual monitoring device is used, the device is located at the neck outside the protective apron, and the reported dose exceeds 25 percent of the limit specified in this regulation, then the reported deep dose equivalent value multiplied by 0.3 shall be the effective dose equivalent for external radiation.

(C) If individual monitoring devices are worn, both under the protective apron at the waist and outside the protective apron at the neck, the effective dose equivalent for external radiation shall be assigned the value of the sum of the deep dose equivalent reported for the individual monitoring device located at the waist under the protective apron multiplied by 1.5 and the deep dose equivalent

lent reported for the individual monitoring device located at the neck outside the protective apron multiplied by 0.04.

(3) All individuals who are associated with the operation of an X-ray system shall be subject to the occupational exposure limits and the requirements for the determination of the doses that are specified in this regulation. In addition, each individual shall meet the following requirements:

(A) When protective clothing or devices are worn on portions of the body and one or more monitoring devices are required, at least one monitoring device shall be utilized as follows:

(i) When an apron is worn, the monitoring device shall be worn at the collar outside of the apron;

(ii) the dose to the device, if one is used, shall be recorded as the whole-body dose based on the maximum dose attributed to any one critical organ, including the gonads, the blood-forming organs, the head and trunk, and the lens of the eye. If more than one device is used and a record is made of the data, each dose shall be identified with the area where the device was worn on the body;

(4) Exposure of a personnel-monitoring device to deceptively indicate a dose delivered to an individual shall be prohibited.

(5) If the individual is exposed during procedures not specifically approved, weighting factors shall not be applied.

(d) Derived air concentration (DAC) and annual limit on intake (ALI) values, in appendix B, table I, published in "appendices to part 4: standards for protection against radiation," which is adopted in K.A.R. 28-35-135a, shall be used to determine the individual's dose and to demonstrate compliance with the occupational dose limits.

(e) Notwithstanding the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to 10 milligrams in a week in consideration of chemical toxicity, in accordance with footnote 3 of appendix B published in "appendices to part 4: standards for protection against radiation," which is adopted in K.A.R. 28-35-135a.

(f) Each licensee or registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received while employed by any other person. (Authorized by and implementing K.S.A. 48-1607; effective, T-85-43, Dec. 19, 1984; effective May 1, 1985; amended Sept. 20, 1993; amended Oct. 17, 1994; amended Dec. 30, 2005; amended March 18, 2011.)

28-35-212b. Compliance with requirements for summation of external and internal doses. (a) If the licensee or registrant is required to monitor pursuant to both K.A.R. 28-35-217a (a) and (d), the licensee or registrant shall demonstrate compliance with the dose limits by summing external and internal doses.

(1) If the licensee or registrant is required to monitor pursuant to only K.A.R. 28-35-217a(a) or K.A.R. 28-35-217a(d), then the summation shall not be required to demonstrate compliance with the dose limits.

(2) The dose equivalents for the lens of the eye, the skin, and the extremities shall not be included in the summation and shall be subject to separate limits.

(b) Any licensee or registrant may demonstrate compliance with the requirements for summation of external and internal doses pursuant to the following:

(1) Intake by inhalation. If the only intake of radionuclides is by inhalation, the total effective dose equivalent limit shall not be deemed to be exceeded if the sum of the deep dose equivalent divided by the total effective dose equivalent limit, and one of the following, does not exceed one:

(A) The sum of the fractions of the inhalation ALI for each radionuclide;

(B) The total number of derived air concentration-hours (DAC-hours) for all radionuclides divided by 2,000; or

(C) the sum of the calculated committed effective dose equivalents to all significantly irradiated organs or tissues (T) calculated from bioassay data using appropriate biological models and expressed as a fraction of the annual limit. For purposes of this requirement, an organ or tissue shall be deemed to be significantly irradiated if, for that organ or tissue, the product of the weighting factors, w_T , and the committed dose equivalent, $H_{T,50}$, per unit intake is greater than 10 percent of the maximum weighted value of H_{50} .

(2) Intake by oral ingestion. If the occupationally exposed individual receives an intake of radionuclides by oral ingestion greater than 10 percent of the applicable oral ALI, the licensee or registrant shall account for this intake and include it in demonstrating compliance with the limits.

(3) Intake through wounds or absorption through skin. The licensee or registrant shall evaluate and, to the extent practical, account for intakes through wounds or skin absorption. The intake through intact skin is included in the cal-

culution of DAC for hydrogen-3 and shall not be required to be evaluated or accounted for pursuant to this subsection. (Authorized by and implementing K.S.A. 48-1607; amended Sept. 20, 1993; amended Oct. 17, 1994; amended Dec. 30, 2005.)

28-35-212c. Determination of external dose from airborne radioactive material.

(a) When determining the dose from airborne radioactive material, the licensee or registrant shall include the contribution to the deep dose equivalent, eye dose equivalent, and shallow dose equivalent from external exposure to the radioactive cloud.

(b) Airborne radioactivity measurements and DAC values shall not be used as the primary means to assess the deep dose equivalent when the airborne radioactive material includes radionuclides other than noble gases or if the cloud of airborne radioactive material is not relatively uniform. The determination of the deep dose equivalent to an individual shall be based upon measurements using instruments or individual monitoring devices. (Authorized by and implementing K.S.A. 1993 Supp. 48-1607; effective Oct. 17, 1994.)

28-35-212d. Determination of internal exposure.

(a) When assessing the dose used to determine compliance with occupational dose equivalent limits, each licensee or registrant shall, when required pursuant to K.A.R. 28-35-217b, take suitable and timely measurements of any of the following:

(1) Concentrations of radioactive materials in the air in work areas;

(2) quantities of radionuclides in the body;

(3) quantities of radionuclides excreted from the body; or

(4) any combination of the measurements specified in paragraphs (a)(1) through (3).

(b) Unless respiratory protective equipment is used, as specified in K.A.R. 28-35-212g, or the assessment of intake is based on bioassays, the licensee or registrant shall assume that an individual inhales radioactive material at the airborne concentration in which the individual is present.

(c) If specific information on the physical and biochemical properties of the radionuclides taken into the body or the behavior of the material in an individual is known, the licensee or registrant may perform the following:

(1) Use that information to calculate the committed effective dose equivalent, and if used, the

licensee or registrant shall document that information in the individual's record;

(2) before approval of the secretary, adjust the DAC or ALI values to reflect the actual physical and chemical characteristics of airborne radioactive material; and

(3) separately assess the contribution of fractional intakes of class D, W, or Y compounds of a given radionuclide to the committed effective dose equivalent.

(d) If the licensee or registrant chooses to assess intakes of class Y material using the measurements given in paragraph (a)(2) or (3), the licensee or registrant may delay the recording and reporting of the assessments for up to seven months, unless otherwise required by K.A.R. 28-35-229a or K.A.R. 28-35-230a, in order to make additional measurements basic to the assessments.

(e) If the identity and concentration of each radionuclide in a mixture are known, the fraction of the DAC applicable to the mixture for use in calculating DAC-hours shall be either of the following:

(1) The sum of the ratios of the concentration to the appropriate DAC value, from appendix B published in "appendices to part 4: standards for protection against radiation," as adopted in K.A.R. 28-35-135a, for each radionuclide in the mixture; or

(2) the ratio of the total concentration for all radionuclides in the mixture to the most restrictive DAC value for any radionuclide in the mixture.

(f) If the identity of each radionuclide in a mixture is known but the concentration of one or more of the radionuclides in the mixture is not known, the DAC for the mixture shall be the most restrictive DAC of any radionuclide in the mixture.

(g) If a mixture of radionuclides in air exists, a licensee or registrant may disregard certain radionuclides in the mixture if all of the following conditions are met:

(1) The licensee or registrant uses the total activity of the mixture in demonstrating compliance with the dose limits in K.A.R. 28-35-212b and in complying with the monitoring requirements in K.A.R. 28-35-217a (d).

(2) The concentration of any radionuclide disregarded is less than 10 percent of its DAC.

(3) The total concentration of all of the radionuclides disregarded in the mixture does not exceed 30 percent.

(h) When determining the committed effective dose equivalent, the following information may be considered.

(1) In order to calculate the committed effective dose equivalent, the licensee or registrant may assume that the inhalation of one ALI, or an exposure of 2,000 DAC-hours, results in a committed effective dose equivalent of 0.05 Sv (5 rem) for radionuclides that have their ALIs or DACs based on the committed effective dose equivalent.

(2) For an ALI and the associated DAC determined by the nonstochastic organ dose limit of 0.50 Sv (50 rem), the intake of radionuclides that would result in a committed effective dose equivalent of 0.05 Sv (5 rem), which is the stochastic ALI, is listed in parentheses in appendix B, table I in "appendices to part 4: standards for protection against radiation," as adopted in K.A.R. 28-35-135a. The licensee or registrant may, as a simplifying assumption, use the stochastic ALI to determine the committed effective dose equivalent. However, if the licensee or registrant uses the stochastic ALI, the licensee or registrant shall also demonstrate that the limit in K.A.R. 28-35-212a(1)(B) is met. (Authorized by and implementing K.S.A. 48-1607; effective Oct. 17, 1994; amended Dec. 30, 2005.)

28-35-212e. Determination of prior occupational dose. (a) For each individual who could enter the licensee's or registrant's restricted or controlled area and is likely to receive, in a year, an occupational dose requiring monitoring pursuant to K.A.R. 28-35-217a, the licensee or registrant shall perform the following:

(1) Determine the occupational radiation dose received during the current year; and

(2) attempt to obtain the records of lifetime cumulative occupational radiation dose.

(b) Before permitting an individual to participate in a planned special exposure, the licensee or registrant shall determine all of the following:

(1) The internal and external doses from all previous planned special exposures;

(2) all doses in excess of the limits, including the doses received during accidents and emergencies, by the individual; and

(3) all of the lifetime cumulative occupational radiation dose.

(c) In complying with the requirements of this regulation, a licensee or registrant may perform the following:

(1) Accept, as a record of the occupational dose that the individual received during the current year, a written signed statement from the individual, or from the individual's most recent employer

for work involving radiation exposure, that discloses the nature and the amount of any occupational dose that the individual received during the current year;

(2) accept, as the record of the lifetime cumulative radiation dose, an up-to-date record on a form prescribed by the department or an equivalent form, signed by the individual and countersigned by an appropriate official of the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant; and

(3) obtain reports of the individual's dose equivalent from the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant, by telephone, telegram, facsimile, electronic mail, or letter. The licensee or registrant shall request a written verification of the dose data if the authenticity of the transmitted report cannot be established.

(d)(1) The licensee or registrant shall record the exposure history on a form prescribed by the department, or on a clear and legible record that includes all the information required on that form. The form or record shall show each period in which the individual received occupational exposure to radiation or radioactive material and shall be signed by the individual who received the exposure. For each period for which the licensee obtains reports, the licensee or registrant shall use the dose shown in the report in preparing the history. For any period in which the licensee or registrant does not obtain a report, the licensee or registrant shall place a notation in the history indicating the periods of time for which data are not available.

(2) A licensee or registrant shall not be required to reevaluate the separate external dose equivalents and internal committed dose equivalents or intakes of radionuclides assessed before January 1, 1994. Although occupational exposure histories obtained and recorded before January 1, 1994 did not include effective dose equivalent, the histories may be used in the absence of specific information on the intake of radionuclides by the individual.

(e) If the licensee or registrant is unable to obtain a complete record of an individual's current and previously accumulated occupational dose, the licensee or registrant shall assume the following:

(1) That, in establishing administrative controls under K.A.R. 28-35-212a(f) for the current year, the allowable dose limit for the individual has been

reduced by 12.5 mSv (1.25 rem) for each quarter for which records were unavailable and the individual was engaged in activities that could have resulted in occupational radiation exposure; and

(2) that the individual is not available for planned special exposures.

(f) Each licensee or registrant shall retain the records of exposure history until the secretary terminates each pertinent license or registration requiring this record. Each licensee or registrant shall retain the information used in preparing records of exposure history for three years after the record is made. (Authorized by and implementing K.S.A. 48-1607; effective Oct. 17, 1994; amended Dec. 30, 2005.)

28-35-212f. Planned special exposures.

(a) A licensee or registrant may authorize an adult worker to receive doses in addition to and accounted for separately from the doses received under the limits specified in K.A.R. 28-35-212a.

(b) The authorization of doses under K.A.R. 28-35-212f(a), called planned special exposure, shall only be permitted if each of the following conditions is satisfied.

(1) The licensee or registrant shall authorize a planned special exposure only in an exceptional situation when alternatives that might avoid the higher exposure are unavailable or impractical.

(2) The licensee or registrant, and employer if the employer is not the licensee or registrant, shall specifically authorize the planned special exposure, in writing, before the exposure occurs.

(3) Before a planned special exposure, the licensee or registrant shall ensure that each individual involved is:

(A) informed of the purpose of the planned operation;

(B) informed of the estimated doses and associated potential risks and specific radiation levels or other conditions that might be involved in performing the task; and

(C) instructed in the measures to be taken to keep the dose ALARA considering other risks that may be present.

(4) Prior to permitting an individual to participate in a planned special exposure, the licensee or registrant shall ascertain prior doses as required by K.A.R. 28-35-212e during the lifetime of the individual for each individual involved.

(5) Subject to K.A.R. 28-35-212a(b), the licensee or registrant shall not authorize a planned special exposure that would cause an individual to

receive a dose from all planned special exposures and all doses in excess of the limits to exceed:

(A) the numerical values of any of the dose limits in K.A.R. 28-35-212a in any year; or

(B) five times the annual dose limits in K.A.R. 28-35-212a during the individual's lifetime.

(6) The licensee or registrant shall maintain records of the conduct of a planned special exposure in accordance with K.A.R. 28-35-227g and shall submit a written report in accordance with K.A.R. 28-35-230c.

(7) The licensee or registrant shall record the best estimate of the dose resulting from the planned special exposure in the individual's record and shall inform the individual, in writing, of the dose within 30 days from the date of the planned special exposure. The dose from planned special exposures shall not be considered in controlling future occupational dose of the individual pursuant to K.A.R. 28-35-212a but shall be included in evaluations required by K.A.R. 28-35-212f(b)(4) and (5). (Authorized by and implementing K.S.A. 1993 Supp. 48-1607; effective Oct. 17, 1994.)

28-35-212g. Respiratory protection and controls to restrict internal exposure in restricted areas.

(a) Use of process or other engineering controls. The licensee or registrant shall use, to the extent practicable, process or other engineering controls, such as containment or ventilation, to control the concentrations of radioactive material in air.

(b) Use of other controls. When it is not practicable to apply process or other engineering controls to control the concentrations of radioactive material in air to values below those that define an airborne radioactivity area, the licensee or registrant shall, consistent with maintaining the total effective dose equivalent ALARA, increase monitoring and limit intakes by one or more of the following means:

(1) control of access;

(2) limitation of exposure times;

(3) use of respiratory protection equipment; or

(4) other controls.

(c) Use of individual respiratory protection equipment. (1) If the licensee or registrant uses respiratory protection equipment to limit intakes pursuant to K.A.R. 28-35-212g(b), the following conditions shall apply.

(A) Except as provided in K.A.R. 28-35-212g(c)(1)(B), the licensee or registrant shall use only respiratory protection equipment that is tested and

certified or had certification extended by the national institute for occupational safety and health and the mine safety and health administration (NIOSH/MSHA).

(B) If the licensee or registrant wishes to use equipment that has not been tested or certified by the NIOSH/MSHA or has not had certification extended by the NIOSH/MSHA, or for which there is no schedule for testing extended by the NIOSH/MSHA, or for which there is no schedule for testing or certification, the licensee or registrant shall submit an application for authorized use of that equipment, including a demonstration by testing, or a demonstration on the basis of reliable test information, that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use.

(C) The licensee or registrant shall implement and maintain a respiratory protection program that includes:

(i) air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate exposures;

(ii) surveys and bioassays, as appropriate, to evaluate actual intakes;

(iii) testing of respirators for operability immediately prior to each use;

(iv) written procedures regarding selection, fitting, issuance, maintenance, and testing of respirators, including testing for operability immediately prior to each use; supervision and training of personnel; monitoring, including air sampling and bioassays; and recordkeeping; and

(v) determination by a physician prior to initial fitting of respirators, and at least every 12 months thereafter, that the individual user is physically able to use the respiratory protection equipment.

(D) The licensee or registrant shall issue a written policy statement on respirator usage covering:

(i) the use of process or other engineering controls, instead of respirators;

(ii) routine, nonroutine, and emergency use of respirators; and

(iii) length of periods of respirator use and relief from respirator use.

(E) The licensee or registrant shall advise each respirator user that the user may leave the area at any time for relief from respirator use in the event of equipment malfunction, physical or psychological distress, procedural or communication failure, significant deterioration of operating conditions,

or any other conditions that might require such relief; and

(F) the licensee or registrant shall use respiratory protection equipment within the equipment manufacturer's expressed limitations for type and mode of use and shall provide proper visual, communication, and other special capabilities, such as adequate skin protection, when needed.

(2) When estimating exposure of individuals to airborne radioactive materials, the licensee or registrant may make allowance for respiratory protection equipment used to limit intakes pursuant to K.A.R. 28-35-212g(b), provided that the following conditions, in addition to those in K.A.R. 28-35-212g(c)(1), are satisfied.

(A) (i) The licensee or registrant shall select respiratory protection equipment that provides a protection factor, specified in appendix A protection factor for registrant published in "Kansas Department of Health and Environment Appendices to Part 4: Standards for Protection Against Radiation," effective April, 1994, greater than the multiple by which peak concentrations of airborne radioactive materials in the working area are expected to exceed the values specified in appendix B, table I, column 3 published in "Kansas Department of Health and Environment Appendices to Part 4 Standards for Protection Against Radiation," effective April, 1994. However, if the selection of respiratory protection equipment with a protection factor greater than the peak concentration is inconsistent with the goal specified in K.A.R. 28-35-212g(b) of keeping the total effective dose equivalent ALARA, the licensee or registrant may select respiratory protection equipment with a lower protection factor provided that such a selection would result in a total effective dose equivalent that is ALARA.

(ii) The concentration of radioactive material in the air that is inhaled when respirators are worn may be initially estimated by dividing the average concentration in air, during each period of uninterrupted use, by the protection factor. If the exposure is later found to be greater than initially estimated, the corrected value shall be used; if the exposure is later found to be less than initially estimated, the corrected value may be used.

(B) The licensee or registrant shall obtain authorization from the department before assigning respiratory protection factors in excess of those specified in K.A.R. 28-35-232a appendix A. The department may authorize a licensee or registrant

to use higher protection factors on receipt of an application that:

(i) describes the situation for which a need exists for higher protection factors; and

(ii) demonstrates that the respiratory protection equipment provides these higher protection factors under the proposed conditions of use.

(3) In an emergency, the licensee or registrant shall use as emergency equipment only respiratory protection equipment that has been specifically certified or had certification extended for emergency use by the NIOSH/MSHA.

(4) The licensee or registrant shall notify the department in writing at least 30 days before the date that respiratory protection equipment is first used pursuant to either K.A.R. 28-35-212g(1) or (2). (Authorized by and implementing K.S.A. 1993 Supp. 48-1607; effective Oct. 17, 1994.)

28-35-213. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended May 1, 1976; revoked, T-85-43, Dec. 19, 1984; revoked May 1, 1985.)

28-35-213a. Occupational dose limits for minors. The annual occupational dose limit for a minor shall be 10 percent of the annual occupational dose limits specified for an adult worker in K.A.R. 28-35-212a. (Authorized by and implementing K.S.A. 1993 Supp. 48-1607; effective, T-85-43, Dec. 19, 1984; effective May 1, 1985; amended Sept. 20, 1993; amended Oct. 17, 1994.)

28-35-213b. Dose to an embryo or fetus.

(a) Each licensee or registrant shall ensure that the dose to an embryo or fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed 5 mSv (0.5 rem).

(b) Each licensee or registrant shall make efforts to avoid substantial variation above a uniform monthly exposure rate to a declared pregnant woman in order to satisfy the limit in subsection (a).

(c) The dose to an embryo or fetus shall be the sum of the following:

(1) The dose to the embryo or fetus from radionuclides in the embryo or fetus and radionuclides in the declared pregnant woman; and

(2) either of the following doses that is more representative of the dose to the embryo or fetus from external radiation:

(A) If multiple measurements have not been made, assignment of the highest deep dose equivalent for the declared pregnant woman shall be the dose to the embryo or fetus as specified in K.A.R. 28-35-212e; or

(B) if multiple measurements have been made, assignment of the deep dose equivalent for the declared pregnant woman from the individual monitoring device that is most representative of the dose to the embryo or fetus shall be the dose of the embryo or fetus. Assignment of the highest deep dose equivalent for the declared pregnant woman to the embryo or fetus shall not be required unless that dose is also the most representative deep dose equivalent for the region of the embryo or fetus.

(d) If by the time the woman declares pregnancy to the licensee or registrant, the dose to the embryo or fetus has exceeded 4.5 mSv (0.45 rem), the licensee or registrant shall be deemed to be in compliance with subsection (a) if the additional dose to the embryo or fetus does not exceed 0.50 mSv (0.05 rem) during the remainder of the pregnancy. (Authorized by and implementing K.S.A. 48-1607; effective Oct. 17, 1994; amended Dec. 30, 2005.)

28-35-214. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended May 1, 1976; revoked, T-85-43, Dec. 19, 1984; revoked May 1, 1985.)

28-35-214a. Dose limits for individual members of the public. (a) Each licensee or registrant shall conduct operations so that:

(1) the total effective dose equivalent to individual members of the public from the licensed or registered operation does not exceed 1 mSv (0.1 rem) in a year, exclusive of the dose contribution from the licensee's or registrant's disposal of radioactive material into sanitary sewerage in accordance with K.A.R. 28-35-224a; and

(2) the dose in any unrestricted area from external sources does not exceed 0.02 mSv (0.002 rem) in any one hour.

(b) If the licensee or registrant permits members of the public to have access to controlled areas, the limits for members of the public shall continue to apply to those individuals.

(c) A licensee, registrant, or an applicant for a license or registration may apply for prior department authorization to operate up to an annual dose limit for an individual member of the public of 5 mSv (0.5 rem). This application shall include the following information:

(A) If multiple measurements have not been made, assignment of the highest deep dose equivalent for the declared pregnant woman shall be the dose to the embryo or fetus as specified in K.A.R. 28-35-212e; or

(B) if multiple measurements have been made, assignment of the deep dose equivalent for the declared pregnant woman from the individual monitoring device that is most representative of the dose to the embryo or fetus shall be the dose of the embryo or fetus. Assignment of the highest deep dose equivalent for the declared pregnant woman to the embryo or fetus shall not be required unless that dose is also the most representative deep dose equivalent for the region of the embryo or fetus.

(1) demonstration of the need for and the expected duration of operations in excess of the limit in K.A.R. 28-35-214a(a)(1) or (2);

(2) the licensee's or registrant's program to assess and control dose within the 5 mSv (0.5 rem) annual limit; and

(3) the procedures to be followed to maintain the dose ALARA. (Authorized by and implementing K.S.A. 1993 Supp. 48-1607; effective, T-85-43, Dec. 19, 1984; effective May 1, 1985; amended Sept. 20, 1993, amended Oct. 17, 1994.)

28-35-214b. Compliance with dose limits for individual members of the public. (a) The licensee or registrant shall make or cause to be made surveys of radiation levels in unrestricted and controlled areas and radioactive materials in effluents released to unrestricted and controlled areas to demonstrate compliance with the dose limits for individual members of the public in K.A.R. 28-35-214a.

(b) A licensee or registrant shall show compliance with the annual dose limit in K.A.R. 28-35-214a by:

(1) demonstrating by measurement or calculation that the total effective dose equivalent to the individual likely to receive the highest dose from the licensed or registered operation does not exceed the annual dose limit; or

(2) demonstrating that:

(A) the annual average concentrations of radioactive material released in gaseous and liquid effluents at the boundary of the unrestricted area do not exceed the values specified in appendix B, table II published in "Kansas Department of Health and Environment Appendices to Part 4: Standards for Protection Against Radiation," effective April, 1994; and

(B) if an individual were continually present in an unrestricted area, the dose from external sources would not exceed 0.02 mSv (0.002 rem) in an hour and 0.50 mSv (0.05 rem) in a year.

(c) Upon approval from the department, the licensee or registrant may adjust the effluent concentration values in appendix B, table II published in "Kansas Department of Health and Environment Appendices to Part 4: Standards for Protection Against Radiation," effective April, 1994, for members of the public, to take into account the actual physical and chemical characteristics of the effluents, including aerosol size distribution, solubility, density, radioactive decay equilibrium, and chemical form. (Authorized by

and implementing K.S.A. 1993 Supp. 48-1607; effective Oct. 17, 1994.)

28-35-215. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended May 1, 1976; revoked, T-85-43, Dec. 19, 1984; revoked May 1, 1985.)

28-35-215a. (Authorized by and implementing K.S.A. 1992 Supp. 48-1607; effective, T-85-43, Dec. 19, 1984; effective May 1, 1985; amended Sept. 20, 1993; revoked Oct. 17, 1994.)

28-35-216. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1970; revoked, T-85-43, Dec. 19, 1984; revoked May 1, 1985.)

28-35-216a. Testing for leakage or contamination of sealed sources. (a) Each licensee in possession of any sealed source shall ensure that all of the following requirements are met:

(1) Each sealed source, except as specified in subsection (b), shall be tested for leakage or contamination, and the test results shall be received before the sealed source is put into use, unless the licensee has a certificate from the transferor indicating that the sealed source was tested within six months before transfer to the licensee.

(2) Each sealed source that is not designed to emit alpha particles shall be tested for leakage or contamination at intervals not to exceed six months or at alternative intervals approved by the secretary, an agreement state, a licensing state, or the nuclear regulatory commission.

(3) Each sealed source designed to emit alpha particles shall be tested for leakage or contamination at intervals not to exceed three months or at alternative intervals approved by the secretary, an agreement state, a licensing state, or the nuclear regulatory commission.

(4) For each sealed source required to be tested for leakage or contamination, whenever there is reason to suspect that the sealed source might have been damaged or might be leaking, the licensee shall ensure that the sealed source is tested for leakage or contamination before further use.

(5) Tests for leakage for all sealed sources shall be capable of detecting the presence at 185 Bq (0.005 μ Ci) of radioactive material on a test sample. Test samples shall be taken from the sealed source or from the surfaces of the container in which the sealed source is stored or mounted and on which one might expect contamination to accumulate. For a sealed source contained in a device,

test samples shall be obtained when the source is in the “off” position.

(b) The following sealed sources shall be exempt from testing for leakage and contamination:

(1) Sealed sources containing only radioactive material with a half-life of fewer than 30 days;

(2) sealed sources containing only radioactive material as a gas;

(3) sealed sources containing 3.7 Mbq (100 μ Ci) or less of beta-emitting or photon-emitting material or 370 kBq (10 μ Ci) or less of alpha-emitting material;

(4) sealed sources containing only hydrogen-3;

(5) seeds of iridium-192 encased in nylon ribbon; and

(6) sealed sources, except sources used in radiation therapy, that are stored, are not being used, and are identified as being in storage. The sources exempted from this test shall be tested for leakage before any use or transfer to another person, unless the source has been leak-tested within six months before the date of the use or transfer. The sources in storage shall be physically inventoried every six months and listed in the radioactive materials inventory. Each source in storage shall be tested for leakage at least every 10 years.

(c) Each test for leakage or contamination from sealed sources shall be performed by a person specifically authorized by the secretary, an agreement state, a licensing state, or the nuclear regulatory commission to perform these services.

(d) All test results shall be recorded in units of becquerel or microcurie and maintained for inspection by the department.

(e) If any test reveals the presence of 0.005 microcurie or more of removable contamination, the licensee shall immediately withdraw the sealed source from use and shall cause the source to be decontaminated and repaired or to be disposed of in accordance with these regulations. The licensee shall file a report within five days of the test with the radiation control program, Kansas department of health and environment, describing the equipment involved, the test results, and the corrective action taken. (Authorized by and implementing K.S.A. 48-1607; effective, T-85-43, Dec. 19, 1984; effective May 1, 1985; amended Dec. 30, 2005; amended July 27, 2007; amended March 18, 2011.)

28-35-217. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1970; revoked, T-85-43, Dec. 19, 1984; revoked May 1, 1985.)

28-35-217a. Conditions requiring individual monitoring of external and internal occupational dose.

(a) Each licensee or registrant shall monitor exposures from sources of radiation at levels sufficient to demonstrate compliance with the occupational dose limits of these regulations. At a minimum, each licensee or registrant shall monitor occupational exposure to radiation and shall supply and require the use of individual monitoring devices by the following:

(1) Any adult likely to receive, in one year from sources external to the body, a dose in excess of 10 percent of the limits specified in K.A.R. 28-35-212a;

(2) any minor or declared pregnant woman likely to receive, in one year from sources external to the body, a dose in excess of 10 percent of any of the applicable limits specified in K.A.R. 28-35-213a or K.A.R. 28-35-213b; and

(3) any individual entering a high or very high radiation area.

(b) Except as specified in this regulation, each personnel-monitoring device that requires processing to determine the radiation dose and is utilized by the licensee or registrant to comply with this regulation, with other applicable parts of these regulations, or with conditions specified in a license or a registration shall be processed and evaluated by a dosimetry processor accredited by the “national voluntary laboratory accreditation program” of the national institute of standards and technology, and approved in this accreditation process for each type of radiation that most closely approximates each type of radiation for which the individual wearing the dosimeter is monitored.

(c) The requirements of subsection (b) in this regulation shall not apply to personnel-monitoring devices used to measure the dose to hands and forearms or to feet and ankles.

(d) To determine compliance with K.A.R. 28-35-212d, each licensee or registrant shall monitor the occupational intake of radioactive material by and assess the committed effective dose equivalent to the following:

(1) Any adult likely to receive, in one year, an intake in excess of 10 percent of the applicable ALI in appendix B, table I, columns 1 and 2 in “appendices to part 4: standards for protection against radiation,” as adopted in K.A.R. 28-35-135a; and

(2) any minor or declared pregnant woman likely to receive, in one year, a committed effective dose equivalent in excess of 0.50 mSv (0.05 rem). (Authorized by and implementing K.S.A. 48-1607;

effective, T-85-43, Dec. 19, 1984; effective May 1, 1985; amended Sept. 20, 1993; amended Oct. 17, 1994; amended Dec. 30, 2005.)

28-35-217b. General monitoring requirements. (a) Each licensee or registrant shall make, or cause to be made, surveys of each area of use, including the subsurface, that meet the following requirements:

(1) Provide measurements or evaluations demonstrating compliance with these regulations; and

(2) are necessary under the circumstances to evaluate the following:

(A) Radiation and radiological contamination levels;

(B) concentrations or quantities of radioactive material; and

(C) the potential radiological hazards that could be present.

(b) Records from surveys describing the location and amount of subsurface residual radioactivity identified at the facility out to the site boundary shall be kept on file with records required for decommissioning.

(c) Each licensee or registrant shall ensure that instruments and equipment used for quantitative radiation measurements are calibrated at intervals not to exceed 12 months, for the type of radiation measured.

(d) Each licensee or registrant shall ensure that adequate precautions are taken to prevent a deceptive exposure of an individual-monitoring device.

(e) All personnel dosimeters, except for direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to the extremities that require processing to determine the radiation dose and are used by licensees to comply with these regulations or with conditions specified in a license, shall be processed and evaluated by a dosimetry processor that meets the following requirements:

(1) Holds current personnel dosimetry accreditation from the national voluntary laboratory accreditation program (NVLAP) of the national institute of standards and technology; and

(2) is accredited for the type of radiation or radiations included in the NVLAP program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored. (Authorized by and implementing K.S.A. 48-1607; effective Oct. 17, 1994; amended May 4, 2018.)

28-35-218. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1970; revoked, T-85-43, Dec. 19, 1984; revoked May 1, 1985.)

28-35-218a. Bioassays. Where necessary or desirable in order to aid in determining the extent of an individual's exposure to concentrations of radioactive material, a licensee may be required by the department, through license provisions or an order, to make available to the individual appropriate bioassay services and to furnish a copy of the reports of those services to the department. (Authorized by and implementing K.S.A. 1992 Supp. 48-1607; effective, T-85-43, Dec. 19, 1984; effective May 1, 1985; amended Sept. 20, 1993.)

28-35-219. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended May 1, 1976; revoked, T-85-43, Dec. 19, 1984; revoked May 1, 1985.)

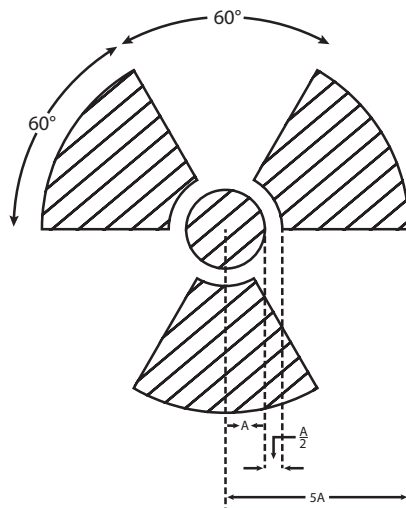
28-35-219a. Caution signs and labels. (a) General.

(1) Except as otherwise authorized by the department, the symbol prescribed by this regulation shall use the conventional radiation caution colors, which are magenta, purple, or black on a yellow background. The symbol shall be the conventional three-blade design with the phrases and graphic as follows:

CAUTION (or DANGER)
RADIATION SYMBOL

(A) Cross-hatch area shall be magenta, purple, or black.

(B) Background shall be yellow.



(2) In addition to the contents of signs and labels prescribed in this regulation, any licensee or registrant may provide on or near signs and labels any additional information that is appropriate in aiding individuals to minimize exposure to radiation.

(b) Radiation areas. Each radiation area shall be conspicuously posted with a sign or signs bearing the radiation caution symbol and the following words:

**CAUTION (or DANGER)
RADIATION AREA**

(c) High radiation areas.

(1) Each high radiation area shall be conspicuously posted with a sign or signs bearing the radiation caution symbol and the following words:

**CAUTION (or DANGER)
HIGH RADIATION AREA**

(2) Each registrant or licensee shall ensure that the entrance or access point to a high radiation area meets one or more of the following conditions:

(A) Is equipped with a control device that, upon entry into the area, causes the level of radiation to be reduced below that at which an individual might receive a deep dose equivalent of 100 millirems (1.0 mSv) in one hour at 30 centimeters from any surface that the radiation penetrates; or

(B) Is equipped with a control device that energizes a conspicuous visible or audible alarm signal in such a manner that the individual entering the high radiation area and the licensee or a supervisor of the activity is made aware of the entry; or

(C) Is required to be locked except during periods when access to the area is required, with positive control over each individual entry.

(3) The controls required by paragraphs (c)(2) and (d)(2) shall be established so that no individual will be prevented from leaving a high radiation area or a very high radiation area.

(4) If a high radiation area is established for a period of 30 days or less, direct surveillance to prevent unauthorized entry may be substituted for the controls required by paragraph (c)(2) of this regulation.

(5) Any licensee or registrant may apply to the department for approval of methods not included in paragraphs (c)(2), (4), and (6) of this regulation. The proposed alternatives shall be approved by the secretary if the licensee or registrant demonstrates that the alternative methods of control will prevent unauthorized entry into a high radiation area, and that the requirement of paragraph (c)(3) of this regulation is met.

(6) In place of the controls required by this regulation for a high radiation area, the licensee or registrant may substitute continuous direct or electronic surveillance that is capable of preventing unauthorized entry.

(7) The licensee or registrant shall not be required to control each entrance or access point to a room or other area that is a high radiation area solely because of the presence of radioactive materials prepared for transport and packaged and labeled in accordance with the regulations of the U.S. department of transportation if the following conditions are met:

(A) The packages do not remain in the area longer than three days.

(B) The dose rate at one meter from the external surface of any package does not exceed 0.1 mSv (0.01 rem) per hour.

(8) The licensee or registrant shall not be required to control entrance or access to rooms or other areas in hospitals solely because of the presence of patients containing radioactive material if there are personnel in attendance who are taking the necessary precautions to prevent the exposure of individuals to radiation or radioactive material in excess of the established limits in these regulations and to operate within the ALARA provisions of the licensee's or registrant's radiation protection program.

(9) The registrant shall not be required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a high radiation area as described in this regulation if the registrant has met all the specific requirements for access and control specified in other applicable regulations, part 7 for industrial radiography, part 5 for X-rays in the healing arts, and part 9 for particle accelerators.

(d) Very high radiation areas.

(1) Each very high radiation area shall be conspicuously posted with a sign or signs bearing the radiation caution symbol and the following words:

**GRAVE DANGER
VERY HIGH RADIATION AREA**

(2) Each registrant or licensee shall institute measures to ensure that an individual is not able to gain unauthorized or inadvertent access to an area in which radiation levels could be encountered at five Gy (500 rad) or more in one hour at one meter from a source of radiation or any surface through which the radiation penetrates. This area is called a very high radiation area.

(A) Paragraph (d)(2) shall not apply to rooms or areas in which diagnostic X-ray systems are the only source of radiation, or to non-self-shielded irradiators.

(B) The registrant or licensee shall not be required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a very high radiation area, as described in this regulation, if the registrant or licensee has met all the specific requirements for access and control specified in part 7 for industrial radiography, part 5 for X-rays in the healing arts, and part 9 for particle accelerators.

(3) Control of access to very high radiation areas; irradiators.

(A) Paragraph (d)(3) shall apply to licensees or registrants with sources of radiation in non-self-shielded irradiators and shall not apply to sources of radiation used in teletherapy, in industrial radiography, or in completely self-shielded irradiators in which the source of radiation is both stored and operated within the same shielding radiation barrier and, in the designed configuration of the irradiator, is always physically inaccessible to any individual and cannot create a high level of radiation in an area that is accessible to any individual.

(B) Each area in which there could exist radiation levels in excess of five Gy (500 rad) in one hour at one meter from a source of radiation that is used to irradiate materials shall be equipped with entry control devices that perform the following:

(i) Function automatically to prevent any individual from inadvertently entering a very high radiation area;

(ii) permit deliberate entry into the area only after a control device is actuated that causes the radiation level within the area, from the source of radiation, to be reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of 1 mSv (0.1 rem) in one hour; and

(iii) prevent operation of the source of radiation if the source would produce radiation levels in the area that could result in a deep dose equivalent to an individual in excess of one mSv (0.1 rem) in one hour.

(C) Additional control devices shall be provided so that, upon failure of the entry control devices to function as required in this regulation, both of the following will occur:

(i) The radiation level within the area, from the source of radiation, is reduced below the level at

which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour.

(ii) Conspicuous visible and audible alarm signals are generated to make an individual attempting to enter the area aware of the hazard and at least one other authorized individual who is physically present, familiar with the activity, and prepared to render or summon assistance aware of the failure of the entry control devices.

(D) The licensee or registrant shall provide control devices so that, upon the failure or removal of physical radiation barriers other than the sealed sources shielded storage container, both of the following will occur:

(i) The radiation level from the source of radiation is reduced below the level at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour.

(ii) Conspicuous visible and audible alarm signals are generated to make potentially affected individuals aware of the hazard and to make the licensee, registrant, or at least one other individual who is familiar with the activity and prepared to render or summon assistance aware of the failure or removal of the physical barrier.

(E) If the shield for stored sealed sources is a liquid, the licensee or registrant shall provide the means to monitor the integrity of the shield and to automatically signal the loss of adequate shielding.

(F) Physical radiation barriers that comprise permanent structural components, including walls, that have no credible probability of failure or removal in ordinary circumstances shall not be required to meet the requirements of paragraphs (d)(3)(D) and (E).

(G) Each area shall be equipped with devices that automatically generate conspicuous visible and audible alarm signals to alert personnel in the area before the source of radiation can be put into operation and in time for any individual in the area to operate a clearly identified control device, which shall be installed in the area and which shall prevent the source of radiation from being put into operation.

(H) Each area shall be controlled by the use of any administrative procedures and devices necessary to ensure that the area is cleared of personnel before each use of the source of radiation.

(I) Each area shall be checked by a measurement of the radiation to ensure that, before the first individual's entry into the area after any use

of the source of radiation, the radiation level from the source of radiation in the area is below the level at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour.

(J) The entry control devices required in paragraph (d)(3) shall be tested for proper functioning.

(i) Testing shall be conducted before initial operation with the source of radiation on any day, unless operations were continued uninterrupted from the previous day.

(ii) Testing shall be conducted before resuming operation of the source of radiation after any unintentional interruption.

(iii) The licensee or registrant shall submit and adhere to a schedule for periodic tests of the entry control and warning systems.

(K) The licensee or registrant shall not conduct operations, other than those necessary to place the source of radiation in safe condition or to effect repairs on controls, unless the control devices are functioning properly.

(L) Entry and exit portals that are used in transporting materials to and from the irradiation area and that are not intended for use by individuals shall be controlled by those devices and administrative procedures necessary to physically protect and warn against inadvertent entry by any individual through these portals. Exit portals for irradiated materials shall be equipped to detect and signal the presence of any loose radioactive material that is carried toward such an exit and automatically to prevent any loose radioactive material from being carried out of the area.

(4) Licensees, registrants, or applicants for licenses or registrations for sources of radiation subject to paragraph (d)(3) that will be used in a variety of positions or in locations including open fields or forests that make it impracticable to comply with certain requirements of this regulation, including those for the automatic control of radiation levels, may apply to the department for approval of alternative safety measures. Alternative safety measures that are at least equivalent to those specified in paragraph (d)(3) shall be provided. At least one of the alternative measures shall include an entry-preventing interlock control based on a measurement of the radiation that ensures the absence of high radiation levels before an individual can gain access to the area where such sources of radiation are used.

(e) Airborne radioactivity areas. Each airborne radioactivity area shall be conspicuously posted

with a sign or signs bearing the radiation caution symbol and the following words:

**CAUTION (or DANGER)
AIRBORNE RADIOACTIVITY AREA**

(f) Additional requirements.

Each area or room in which any radioactive material is used or stored in an amount exceeding 10 times the quantity of radioactive material listed in appendix C in "appendices to part 4: standards for protection against radiation," as adopted by reference in K.A.R. 28-35-135a, shall be conspicuously posted with a sign or signs bearing the radiation caution symbol and the following words:

**CAUTION (or DANGER)
RADIOACTIVE MATERIAL**

(g) Containers.

(1) Except as otherwise provided in this subsection, each container of radioactive material shall bear a durable, clearly visible label identifying the radioactive contents.

(2) Each label required by paragraph (g) (1) shall bear the radiation caution symbol specified in paragraph (a) (1) and the following words:

**CAUTION (or DANGER)
RADIOACTIVE MATERIAL**

Each label shall also provide sufficient information to permit the individuals handling or using the containers, or working in the vicinity of the containers, to take precautions to avoid or minimize exposure. As appropriate, the label information may include radiation levels, description of the contents, an estimate of the activity, and the date for which the activity is estimated.

(3) The labeling required under paragraph (g) (1) of this regulation shall not be required for any of the following:

(A) Containers that do not contain radioactive material in quantities greater than the applicable quantities listed in appendix C in "appendices to part 4: standards for protection against radiation," which is adopted by reference in K.A.R. 28-35-135a;

(B) containers that do not contain radioactive material in concentrations greater than the applicable concentrations listed in appendix B, table I, column 2 in "appendices to part 4: standards for protection against radiation," which is adopted by reference in K.A.R. 28-35-135a;

(C) containers attended by an individual who takes the precautions necessary to prevent the exposure of any individual to radiation or radioac-

tive material in excess of the limits established by these regulations;

(D) containers in transport and packaged and labeled in accordance with the U.S. department of transportation regulations;

(E) containers that are accessible only to individuals authorized to handle or use the containers or to work in the containers' vicinity, if the contents are identified to those individuals by a readily available written record, including containers in water-filled canals, storage vaults, hot cells, and similar locations; or

(F) manufacturing and process equipment, including piping and tanks.

(4) Before disposing of an empty uncontaminated container in an unrestricted area, each licensee shall remove or deface the radioactive material label or otherwise clearly indicate that the container no longer contains radioactive material.

(h) Each radiation machine shall be labeled in a manner cautioning individuals that radiation is produced when the machine is being operated. (Authorized by and implementing K.S.A. 48-1607; effective, T-85-43, Dec. 19, 1984; effective May 1, 1985; amended Sept. 20, 1993; amended Oct. 17, 1994; amended Dec. 30, 2005.)

28-35-220. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended Jan. 1, 1972; amended May 1, 1976; revoked, T-85-43, Dec. 19, 1984; revoked May 1, 1985.)

28-35-220a. Exceptions from posting, labeling, and color requirements. (a) Notwithstanding the provisions of K.A.R. 28-35-219, the posting of a caution sign shall not be required in an area or room containing radioactive material for periods of less than eight hours if both of the following conditions are met:

(1) The material is constantly attended during those periods by an individual who takes the precautions necessary to prevent the exposure of any individual to radiation or radioactive material in excess of the limits established in this part.

(2) The area or room is subject to the licensee's or registrant's control.

(b) Notwithstanding the requirements of K.A.R. 28-35-219a, licensees and registrants shall be allowed to label sources, source holders, or device components containing sources of radiation that are subject to high temperatures, with conspicuously etched or stamped radiation caution symbols without a color requirement.

(c) The posting of a caution sign shall not be required in any room or other area in a hospital that is occupied by patients if either of the following occurs:

(1) A patient being treated with a permanent implant could be released from confinement pursuant to part 6.

(2) A patient being treated with a therapeutic radiopharmaceutical could be released from confinement pursuant to part 6.

(d) The posting of a caution sign shall not be required in any room or area because of the presence of a sealed source if the radiation levels at 30 centimeters from the surface of the sealed source or housing do not exceed 0.05 mSv (0.005 rem) per hour.

(e) The posting of a caution sign shall not be required in any room or area because of the presence of radiation machines used solely for diagnosis in the healing arts, dentistry, or podiatry. (Authorized by and implementing K.S.A. 48-1607; effective, T-85-43, Dec. 19, 1984; effective May 1, 1985; amended Sept. 20, 1993; amended Oct. 17, 1994; amended Dec. 30, 2005.)

28-35-221. (Authorized by K.S.A. 1975 Supp. 48-1607; effective May 1, 1976; revoked, T-85-43, Dec. 19, 1984; revoked May 1, 1985.)

28-35-221a. Procedures for picking up, transporting, receiving, and opening packages. (a)(1) Each licensee or registrant who expects to receive a package containing quantities of radioactive material in excess of the type A quantities specified in K.A.R. 28-35-221b shall meet one of the following requirements:

(A) If the package is to be delivered to the licensee's or registrant's facility by the carrier, make arrangements to receive the package when it is offered for delivery by the carrier; or

(B) if the package is to be picked up by the licensee or registrant at the carrier's terminal, make arrangements to receive notification from the carrier of the arrival of the package, at the time of arrival.

(2) Each licensee or registrant who picks up a package of radioactive material from a carrier's terminal shall pick up the package upon receipt of notification from the carrier of the arrival of the package.

(b) Each licensee or registrant shall ensure that external radiation levels around any package specified in subsection (a) and, if applicable, external

radiation levels around the vehicle transporting the package do not exceed 200 millirems per hour (2 mSv/hr) at any point on the external surface of the package or vehicle at any time during transportation. The transport index shall not exceed 10.

(c)(1) For the purpose of this subsection, “exclusive use” shall have the meaning specified in 10 C.F.R. 71.4, dated January 1, 2015 and hereby adopted by reference.

(2) For each package specified in subsection (a) and transported in exclusive use, radiation levels external to the package may exceed the limits specified in subsection (d) but shall not exceed any of the following:

(A) 200 millirems per hour (2 mSv/hr) on the accessible external surface of the package unless the following conditions are met, in which case the limit shall be 1,000 millirems per hour (10 mSv/hr):

(i) The shipment is made in a closed transport vehicle. For the purposes of this subsection, “closed transport vehicle” shall mean a vehicle or conveyance equipped with a securely attached exterior enclosure that, during normal transportation, restricts the access of unauthorized persons to the cargo space containing a package specified in subsection (a). The enclosure can be either temporary or permanent and, in the case of packaged materials, can be the see-through type that limits access from top, sides, and bottom;

(ii) the package is secured so that its position within the closed transport vehicle remains fixed during transportation; and

(iii) no loading or unloading operations occur between the beginning and end of the transportation;

(B) 200 millirems per hour (2 mSv/hr) at any point on the outer surface of the closed transport vehicle, including the upper and lower surfaces, or for a flatbed-style closed transport vehicle with a personnel barrier, at any point on the vertical planes projected from the outer edges of the closed transport vehicle, on the upper surface of the load, and on the lower external surface of the closed transport vehicle;

(C) 10 millirems per hour (0.1 mSv/hr) at any point two meters from the vertical planes represented by the outer lateral surfaces of the closed transport vehicle, or, in the case of a flatbed-style closed transport vehicle, at any point two meters from the vertical planes projected from the outer edges of the closed transport vehicle; or

(D) two millirems per hour (0.02 mSv/hr) in any normally occupied positions in the closed

transport vehicle, except that this paragraph shall not apply to private motor carriers if each person occupying any of these positions in the closed transport vehicle is provided with a personnel-monitoring device and training in accordance with K.A.R. 28-35-333.

(d) Each licensee or registrant, upon receipt of any package of radioactive material, shall monitor the external surfaces of each package labeled with the U.S. department of transportation radioactive white I or radioactive yellow II or III labels, as specified in 49 C.F.R. 172.403 and 172.436-440, for radioactive contamination caused by leakage of the radioactive contents. Each licensee or registrant shall also monitor for radiation levels of each package containing quantities of radioactive materials that are equal to or more than the type A quantity specified in 10 C.F.R. part 71, appendix A, which is adopted by reference in K.A.R. 28-35-221b. Each licensee or registrant shall monitor each package known to contain radioactive materials for radioactive contamination and radiation levels if there is evidence of degradation of package integrity. The monitoring shall be performed as soon as practicable after receipt, but not later than three hours after the package is received at the licensee’s facility if received during the licensee’s normal working hours or three hours from the beginning of the next working day if received after normal working hours. The licensee or registrant shall immediately notify the final delivery carrier and, by telephone, the department under either of the following conditions:

(1) Removable radioactive surface contamination exceeds the following maximum permissible limits:

Contaminant	Maximum Permissible Limits		
	Bq/cm ²	uCi/cm ²	dpm/cm ²
Beta and gamma emitters and low-toxicity alpha emitters	4	10 ⁻⁴	220
All other alpha-emitting radionuclides	0.4	10 ⁻⁵	22

(2) External radiation levels exceed the limits specified in 10 C.F.R. part 71, appendix A, which is adopted by reference in K.A.R. 28-35-221b.

(e) Each licensee or registrant shall establish and maintain procedures for safely opening packages in which radioactive material is received and shall ensure that these procedures are followed and any special instructions are followed for the type of package being opened.

(f) Each licensee or registrant transferring special form sources in vehicles owned or operated by the licensee or registrant to and from a work site shall be exempt from the contamination monitoring requirements of this regulation. However, the licensee or registrant shall not be exempt from the monitoring requirement in this regulation for measuring radiation levels that ensures that the source is still properly lodged in its shield. (Authorized by and implementing K.S.A. 48-1607; effective, T-85-43, Dec. 19, 1984; effective May 1, 1985; amended Sept. 20, 1993; amended Oct. 17, 1994; amended May 4, 2018.)

28-35-221b. Appendix A; determination of A₁, A₂, and B quantities. The provisions of 10 C.F.R. part 71, appendix A, as in effect on July 13, 2015, are hereby adopted by reference, with the changes specified in this regulation.

(a) Wherever the term “commission” appears within 10 C.F.R. part 71, appendix A, that term shall be replaced with the term “department.”

(b) In 10 C.F.R. part 71, appendix A, paragraph II(c) shall be replaced with the following text: “The licensee shall submit requests for prior approval, described under paragraphs II(a) and II(b) of this appendix, to the department.” (Authorized by and implementing K.S.A. 48-1607; effective Sept. 20, 1993; amended Oct. 17, 1994; amended May 4, 2018.)

28-35-222. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1970; revoked, T-85-43, Dec. 19, 1984; revoked May 1, 1985.)

28-35-222a. Security and control of sources of radiation. (a) Each licensee or registrant shall secure from unauthorized removal or access all licensed or registered sources of radiation that are stored in controlled or unrestricted areas.

(b) Each licensee or registrant shall control, maintain constant surveillance of, and use devices or administrative procedures to prevent the unauthorized use of all licensed or registered radioactive material that is in an unrestricted area and that is not in storage.

(c) Each registrant shall maintain control of radiation machines that are in a controlled or unrestricted area and that are not in storage. (Authorized by and implementing K.S.A. 48-1607; effective, T-85-43, Dec. 19, 1984; effective May 1, 1985; amended Sept. 20, 1993; amended Oct. 17, 1994; amended Dec. 30, 2005.)

28-35-223. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1970; revoked, T-85-43, Dec. 19, 1984; revoked May 1, 1985.)

28-35-223a. Waste disposal; general requirements. (a) A licensee shall not dispose of any radioactive material except by one of the following means:

(1) By transferring the material to an authorized recipient as provided in K.A.R. 28-35-190a;

(2) pursuant to K.A.R. 28-35-214b, 28-35-223a(c)(1), or 28-35-224a; or

(3) by decay in storage.

(b) A person shall be specifically licensed or registered to receive waste containing licensed or registered material from other persons for any of the following:

(1) Treatment before disposal;

(2) treatment or disposal by incineration;

(3) decay in storage;

(4) disposal at a land disposal facility licensed pursuant to these regulations; or

(5) storage until transferred to a storage or disposal facility authorized to receive the waste.

(c)(1) Any person may apply to the secretary for consideration for approval of proposed procedures to dispose of radioactive material in a manner not otherwise authorized in this part. Each applicant shall include a description of the radioactive material, including the following:

(A) The quantities and kinds of radioactive material;

(B) the levels of radioactivity involved; and

(C) the proposed manner and conditions of disposal.

(2) The application, when appropriate, shall also include an analysis and evaluation of pertinent information concerning the following:

(A) A description of the waste containing the licensed or registered material to be disposed of, including the physical and chemical properties that have an impact on risk evaluation, and the proposed manner and conditions of waste disposal;

(B) the nature of the environment, including topographical, geological, meteorological, and hydrological characteristics;

(C) the usage of groundwater and surface waters in the general area;

(D) the nature and location of other potentially affected facilities; and

(E) the procedures to be observed to minimize the risk of unexpected or hazardous exposures.

(3) An application for a license to receive radioactive material from other persons for disposal on land not owned by a state or the federal government shall not be approved by the secretary.

(d)(1) Any licensee may dispose of the following licensed materials without regard to its radioactivity:

(A) 0.05 microcuries (1.850 kBq) or less of hydrogen-3 or carbon-14, per gram of medium used for liquid scintillation counting; and

(B) 0.05 microcuries or less of hydrogen-3 or carbon-14, per gram of animal tissue averaged over the weight of the entire animal. Tissue shall not be disposed of under this regulation in a manner that would permit its use either as food for humans or as animal feed.

(2) This regulation shall not exempt any licensee or registrant from the requirement to maintain records showing the receipt, transfer, and disposal of the radioactive material as specified in K.A.R. 28-35-227c.

(3) This regulation shall not exempt any licensee or registrant from the requirement to comply with other applicable federal, state, and local regulations governing any other toxic or hazardous property of waste materials. (Authorized by and implementing K.S.A. 48-1607; effective, T-85-43, Dec. 19, 1984; effective May 1, 1985; amended Sept. 20, 1993; amended Oct. 17, 1994; amended Dec. 30, 2005.)

28-35-223b. Waste classification. (a) Classification of waste for near surface disposal. In classifying radiation waste, consideration shall be given to the concentration of long-lived radionuclides (and their shorter-lived precursors) whose potential hazard will persist long after such precautions as institutional controls, improved waste form, and deeper disposal have ceased to be effective. Consideration shall also be given to the concentration of short-lived radionuclides for which requirements on institutional controls, waste form, and disposal methods are efficient.

(b) Classes of waste.

(1) "Class A waste" is waste that is segregated from other waste classes at the disposal site. The physical form and characteristics of class A waste shall meet the minimum requirements set forth in K.A.R. 28-35-223c(a). If class A waste also meets the stability requirements set forth in K.A.R. 28-35-223c(b), the requirement that such wastes be separated shall be waived.

(2) "Class B waste" is waste that must meet

more rigorous requirements as to waste form to insure stability after disposal. The physical form and characteristics of class B waste shall meet both the minimum and stability requirements set forth in K.A.R. 28-35-223c.

(3) "Class C waste" is waste that must meet more rigorous requirements as to waste form to insure stability and that also requires additional measures at the disposal facility to protect against inadvertent intrusion. The physical form and characteristics of class C waste shall meet both the minimum and stability requirements set forth in K.S.A. 28-35-223c.

(4) "Waste that is not generally acceptable for near-surface disposal" is waste for which waste form and disposal methods must be different, and in general more stringent, than those specified for class C wastes. In the absence of specific requirements in this part, proposals for disposal of this waste may be submitted to the department for approval.

(c) Classification determined by long-lived radionuclides. If radioactive waste contains only radionuclides listed in Table 1, classification shall be determined as follows:

(1) If the concentration does not exceed 0.1 times the value in Table 1, the waste shall be assigned to Class A.

(2) If the concentration exceeds 0.1 times the value in Table 1, the waste shall be assigned to Class C.

(3) If the concentration exceeds the value in Table 1, the waste shall not be generally acceptable for near-surface disposal.

(4) For wastes containing mixtures of radionuclides listed in Table 1, the total concentration shall be determined by the sum of fractions rule described in subsection (g) of this regulation.

(d) Classification determined by short-lived radionuclides.

(1) If the radionuclides are not listed in Table 1, classification shall be determined based on the concentrations shown in Table 2. If a radionuclide is not listed in Table 2, it shall not be considered in determining waste classification.

(2) If the concentration does not exceed the value in Column 1 of Table 2, the waste shall be assigned to Class A.

(3) If the concentration exceeds the value in Column 1, Table 2, but does not exceed the value in Column 2, Table 2, the waste shall be assigned to Class B.

Table 1

Radionuclide	Concentration	
	Curies/Cubic Meter	
C-14	8	
C-14 in activated metal	80	
Ni-59 in activated metal	220	
Nb-94 in activated metal	0.2	
Tc-99	3	
Alpha emitting transuranic nuclides with half-life greater than 5 years	100°	
Pu-241	3,500°	
Cm-242	20,000	

*Units are nanocuries per gram

Table 2

Radionuclide	Concentration, Curies/Cubic Meter		
	Column 1	Column 2	Column 3
Total of all nuclides with less than 5 year half-life	700	°°	°°
H-3	40	°°	°°
Co-60	700	°°	°°
Ni-63	3.5	70	700
Ni-63 inactivated metal	35	700	7000
Sr-90	0.04	150	7000
Cs-137	1	44	4600

**There are no limits established for these radionuclides in Class B or Class C wastes. Practical considerations such as the effects of external radiation and internal heat generation on transportation, handling, and disposal will limit the concentrations for these wastes. These wastes shall be Class B unless the concentration of other nuclides in Table 2 independently determine the waste to be Class C.

(4) If the concentration exceeds the value in Column 2, Table 2, but does not exceed the value in Column 3, Table 2, the waste shall be assigned to Class C.

(5) If the concentration exceeds the value in Column 3, the waste is not generally acceptable for near-surface disposal.

(6) For wastes containing mixtures of the nuclides listed in Table 2, the total concentration shall be determined by the sum of fractions rule described in subsection (g) of this regulation.

(e) Classification determined by both long- and short-lived radionuclides. If radioactive wastes contains a mixture of radionuclides, some of which are listed in Table 1, and some of which are listed in Table 2, classification shall be determined as follows:

(1) If the concentration of a nuclide listed in Table 1 is less than 0.1 times the value listed in

Table 1, the class shall be that determined by the concentration of nuclides listed in Table 2.

(2) If the concentration of a nuclide listed in Table 1 exceeds 0.1 times the value listed in Table 1, the waste shall be Class C, if the concentration of nuclides listed in Table 2 does not exceed the value shown in Column 3 of Table 2.

(f) Classification of wastes with radionuclides other than those listed in Tables 1 and 2. If radioactive waste does not contain any nuclides listed in either Table 1 or 2, it shall be assigned to Class A.

(g) The sum of the fractions rule for mixtures of radionuclides. For determining the classification of waste that contains a mixture of radionuclides, it is necessary to determine the sum of fractions by dividing each nuclide's concentration by the appropriate limit and adding the resulting values. The appropriate limits shall all be taken from the same column of the same table. The sum of the fractions for the column shall be less than 1.0 if the waste class is to be determined by that column.

(h) Determination of concentrations in wastes. The concentration of a radionuclide may be determined by indirect methods. Such methods may include use of scaling factors which relate the inferred concentration of one radionuclide to another that is measured, or radionuclide material accountability, if there is reasonable assurance that the indirect methods can be correlated with actual measurements. The concentration of a radionuclide may be averaged over the volume of the waste, or weight of the waste if the units are expressed as nanocuries per gram. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986.)

28-35-223c. Waste characteristics. (a)

The following requirements shall be the minimum requirements for all classes of waste:

(1) Radioactive wastes shall be packaged in conformance with the conditions of the license issued to the site operator to which the waste will be shipped. If the conditions of the site license are more restrictive than the provisions of these regulations, the site license conditions shall govern.

(2) Wastes shall not be packaged for disposal in cardboard or fiberboard boxes.

(3) Liquid waste shall be packaged in sufficient absorbent material to absorb twice the volume of the liquid.

(4) Solid wastes containing liquid shall contain as little free standing and non-corrosive liquid as

is reasonably achievable, but in no case shall the liquid exceed 1% of the volume.

(5) Waste shall not be readily capable of detonation or of explosive decomposition or reaction at normal temperatures and pressures, or of explosive reaction with water.

(6) Waste shall not contain, or be capable of generating, quantities of toxic gases, vapors, or fumes harmful to persons transporting, handling, or disposing of the waste. This requirement shall not apply to radioactive gaseous waste packaged in accordance with paragraph (8) of this subsection.

(7) Waste shall not be pyrophoric. Pyrophoric materials contained in wastes shall be treated, prepared, and packaged to be nonflammable.

(8) Wastes in a gaseous form shall be packaged at a pressure that does not exceed 1.5 atmospheres at 20°C. Total activity shall not exceed 100 curies per container.

(9) Wastes containing hazardous, biological, pathogenic, or infectious material shall be treated to reduce, to the maximum extent practicable, the potential hazard from the non-radiological materials.

(b) The requirements in this section are intended to provide stability of the waste:

(1) Waste shall have structural stability. A structurally stable waste form shall maintain its physical dimensions and its form, under the expected disposal conditions. Such proposed conditions may include weight of overburden and compaction equipment, the presence of moisture, and microbial activity, and internal factors, including radiation effects and chemical changes. Structural stability may be provided by the waste form itself, by processing the waste to a stable form, or by placing the waste in a disposal container or structure that provides stability after disposal.

(2) Notwithstanding the provisions of K.A.R. 28-35-223c(a)(2) and (3), liquid wastes, or wastes containing liquid, shall be converted into a form that contains as little free-standing and noncorrosive liquid as reasonably achievable. In no case shall the liquid exceed 1% of the volume of the waste when the waste is in a disposal container designed to ensure stability, or 0.5% of the volume of the waste for waste processed to a stable form.

(3) Void spaces within the waste and between the waste and its package shall be reduced to the extent practicable. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986.)

28-35-223d. Labeling. Each package of waste must be clearly labeled to identify whether it is Class A waste, Class B waste, or Class C waste, in accordance with K.A.R. 28-35-223b. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986.)

28-35-224. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1970; revoked, T-85-43, Dec. 19, 1984; revoked May 1, 1985.)

28-35-224a. Disposal by release into sanitary sewage systems. (a) A licensee shall not discharge radioactive material into a sanitary sewage system unless the following requirements are met:

(1) The radioactive material shall be readily soluble or readily dispersible biological material, in water.

(2) The quantity of any radioactive material released into the system by the licensee in any month shall not exceed the quantity that, if diluted by the average monthly quantity of sewage released into the sewer by the licensee, would result in an average concentration no greater than the limits specified in appendix B, table III, as published in "appendices to part 4: standards for protection against radiation," which is adopted by reference in K.A.R. 28-35-135a.

(3) If more than one radionuclide is released, the following additional requirements shall be satisfied.

(A) The licensee or registrant shall determine the fraction of the limit in appendix B, table III, as published in "appendices to part 4: standards for protection against radiation" and adopted in K.A.R. 28-35-135a, represented by discharges into sanitary sewerage by dividing the actual monthly average concentration of each radionuclide released by the licensee or registrant into the sewer by the concentration of that radionuclide listed in appendix B, table III, as published in "appendices to part 4: standards for protection against radiation."

(B) The sum of the fractions for each radionuclide required by paragraph (a)(3)(A) shall not exceed one.

(4) The total quantity of licensed or registered radioactive material that the licensee or registrant releases into the sanitary sewerage in a year shall not exceed 185 Gbq (5 Ci) of hydrogen-3, 37 Gbq (1 Ci) of carbon-14, and 37 Gbq (1 Ci) of all other radioactive materials combined.

(b) A licensee shall not discharge radioactive material into an individual sewage disposal system used for the treatment of waste water serving only a single dwelling, office building, industrial plant, or institution except as specifically approved by the secretary pursuant to K.A.R. 28-35-214a and 28-35-223a(c).

(c) Excreta from individuals undergoing medical diagnosis or therapy with radioactive material shall be exempt from any limitations contained in this regulation. (Authorized by and implementing K.S.A. 48-1607; effective, T-85-43, Dec. 19, 1984; effective May 1, 1985; amended Sept. 20, 1993; amended Oct. 17, 1994; amended Dec. 30, 2005.)

28-35-225. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1970; revoked, T-85-43, Dec. 19, 1984; revoked May 1, 1985.)

28-35-225a. Disposal by burial in soil. A licensee shall not dispose of radioactive material by burial in soil except as specifically approved by the department pursuant to K.A.R. 28-35-223a(c). (Authorized by and implementing K.S.A. 1993 Supp. 48-1607; effective, T-85-43, Dec. 19, 1984; effective May 1, 1985; amended Sept. 20, 1993; amended Oct. 17, 1994.)

28-35-225b. Disposal of certain radioactive material. The provisions of 10 CFR 20.2008, as in effect on October 1, 2007, are hereby adopted by reference. (Authorized by and implementing K.S.A. 48-1607; effective March 18, 2011.)

28-35-226. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1970; revoked, T-85-43, Dec. 19, 1984; revoked May 1, 1985.)

28-35-226a. Disposal by incineration. A licensee shall not incinerate radioactive material for the purpose of disposal or preparation for disposal, except as specifically approved by the department pursuant to K.A.R. 28-35-223a(c). (Authorized by and implementing K.S.A. 1993 Supp. 48-1607; effective, T-85-43, Dec. 19, 1984; effective May 1, 1985; amended Sept. 20, 1993; amended Oct. 17, 1994.)

28-35-227. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended Jan. 1, 1972; amended May 1, 1976; revoked, T-85-43, Dec. 19, 1984; revoked May 1, 1985.)

28-35-227a. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective,

T-85-43, Dec. 19, 1984; effective May 1, 1985; revoked Oct. 17, 1994.)

28-35-227b. General provisions. (a) Each licensee or registrant shall use the SI units becquerel, gray, sievert and coulomb per kilogram, or the special unit curie, rad, rem, and roentgen, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by these regulations.

(b) Each licensee or registrant shall make a clear distinction among the quantities entered on the records required by these regulations, including total effective dose equivalent, total organ dose equivalent, shallow dose equivalent, eye dose equivalent, deep dose equivalent, or committed effective dose equivalent. (Authorized by and implementing K.S.A. 1993 Supp. 48-1607; effective Oct. 17, 1994.)

28-35-227c. Records of radiation protection programs. (a) Each licensee or registrant shall maintain records of the radiation protection program, including:

- (1) the provisions of the program; and
- (2) audits and other reviews of program content and implementation.

(b) The licensee or registrant shall retain the records required by K.A.R. 28-35-227c(a)(1) until the department terminates each pertinent license or registration requiring the record. The licensee or registrant shall retain the records required by K.A.R. 28-35-227c(a)(2) for three years after the record is made. (Authorized by and implementing K.S.A. 1993 Supp. 48-1607; effective Oct. 17, 1994.)

28-35-227d. Records of surveys. (a) Each licensee or registrant shall maintain records showing the results of surveys and calibrations required by K.A.R. 28-35-217b and K.A.R. 28-35-221a(b). Each licensee or registrant shall retain each of these records for three years after the record is made.

(b) Each licensee or registrant shall retain each of the following records until the secretary terminates each pertinent license or registration requiring the record:

- (1) Records of the results of surveys to determine the dose from external sources of radiation used, in the absence of or in combination with individual monitoring data, in the assessment of individual dose equivalents;

- (2) records of the results of measurements and calculations used to determine individual intakes

of radioactive material and used in the assessment of internal dose;

(3) records showing the results of air sampling, surveys, and bioassays required pursuant to K.A.R. 28-35-212g; and

(4) records of the results of measurements and calculations used to evaluate the release of radioactive effluents to the environment. (Authorized by and implementing K.S.A. 48-1607; effective Oct. 17, 1994; amended Dec. 30, 2005.)

28-35-227e. Records of tests for leakage or contamination of sealed sources. A record of each test for leakage or contamination of sealed sources shall be kept in units of becquerel or microcurie and maintained for inspection by the department for five years after the record is made. (Authorized by and implementing K.S.A. 1993 Supp. 48-1607; effective Oct. 17, 1994.)

28-35-227f. Records of prior occupational dose. Each licensee or registrant shall retain the records of prior occupational dose and exposure history as specified in K.A.R. 28-35-212e on a form approved by the department, until the department terminates each pertinent license requiring this record. Each licensee or registrant shall retain each of the records used in preparing this form for three years after the record is made. (Authorized by and implementing K.S.A. 48-1607; effective Oct. 17, 1994; amended Dec. 30, 2005.)

28-35-227g. Records of planned special exposures. (a) For each use of the provisions of K.A.R. 28-35-212f for planned special exposures, each licensee or registrant shall maintain records that describe the following:

(1) The exceptional circumstances requiring the use of a planned special exposure;

(2) the name of the management official who authorized the planned special exposure and a copy of the signed authorization;

(3) any actions that were necessary;

(4) the reason why the actions were necessary;

(5) the precautions that were taken to ensure that doses were maintained ALARA;

(6) the expected individual and collective doses; and

(7) the doses actually received in the planned special exposure.

(b) Each licensee or registrant shall retain the records of a planned special exposure until the department terminates each pertinent license or registration requiring these records. (Authorized

by and implementing K.S.A. 48-1607; effective Oct. 17, 1994; amended Dec. 30, 2005.)

28-35-227h. Records of individual monitoring results. (a) Each licensee or registrant shall maintain records of the doses received by all individuals for whom monitoring was required pursuant to K.A.R. 28-35-217a and records of the doses received during planned special exposures, accidents, and emergency conditions. Assessments of dose equivalent and records made using units in effect before January 1, 1994 shall not be required to be changed. These records shall include the following, when applicable:

(1) The deep dose equivalent to the whole body, eye dose equivalent, shallow dose equivalent to the skin, and shallow dose equivalent to the extremities;

(2) the estimated intake of radionuclides;

(3) the committed effective dose equivalent assigned to the intake of radionuclides;

(4) the specific information used to calculate the committed effective dose equivalent pursuant to K.A.R. 28-35-212d(c);

(5) the total effective dose equivalent when required by K.A.R. 28-35-212b; and

(6) the total of the deep dose equivalent and the committed dose to the organ receiving the highest total dose.

(b) Each licensee or registrant shall make entries of the records specified in subsection (a) at least annually.

(c) Each licensee or registrant shall maintain the records specified in subsection (a) either on a form approved by the department and in accordance with the instructions from the department or in clear and legible records containing all the information required by the department-approved form.

(d) Each licensee or registrant shall maintain the records of dose to each embryo or fetus with the records of dose to the declared pregnant woman. The declaration of pregnancy, including the estimated date of delivery, shall also be kept on file, but may be maintained separately from the dose records.

(e) Each licensee or registrant shall retain each required form or record until the department terminates each pertinent license or registration requiring the record. (Authorized by and implementing K.S.A. 48-1607; effective Oct. 17, 1994; amended Dec. 30, 2005.)

28-35-227i. Records of dose to individual members of the public. (a) Each licensee or registrant shall maintain records sufficient to demonstrate compliance with the dose limit for individual members of the public.

(b) The licensee or registrant shall retain the records required by K.A.R. 28-35-227i(a) until the department terminates each pertinent license or registration requiring the record. (Authorized by and implementing K.S.A. 1993 Supp. 48-1607; effective Oct. 17, 1994.)

28-35-227j. Records of waste disposal. (a) Each licensee or registrant shall maintain records of the disposal of licensed or registered materials made pursuant to K.A.R. 28-35-223a, 28-35-223e, 28-35-224a, 28-35-225a, or 28-35-226a, and disposal by burial in soil, including burials authorized by these regulations before May 1, 1986.

(b) Each licensee or registrant shall retain the records required by subsection (a) until the secretary terminates each pertinent license or registration requiring the record. (Authorized by and implementing K.S.A. 48-1607; effective Oct. 17, 1994; amended Dec. 30, 2005.)

28-35-227k. Records of testing entry control devices for very high radiation areas. (a) Each licensee or registrant shall maintain records of tests made pursuant to K.A.R. 28-35-219a(d)(3)(J) on entry control devices for very high radiation areas. These records shall include the date, time, and results of each test of function.

(b) The licensee or registrant shall retain the records required by K.A.R. 28-35-227k(a) for three years after the record is made. (Authorized by and implementing K.S.A. 1993 Supp. 48-1607; effective Oct. 17, 1994.)

28-35-227l. Form of records. (a) Each record required by these regulations shall be legible throughout the specified retention period.

(1) The record shall be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period.

(2) The record may be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period.

(b) Records, including documents, letters, drawings, and specifications, shall include all per-

tinent information, including any stamps, initials, and signatures.

(c) The licensee shall maintain adequate safeguards against tampering with and loss of records. (Authorized by and implementing K.S.A. 1993 Supp. 48-1607; effective Oct. 17, 1994.)

28-35-228. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended Jan. 1, 1972; amended May 1, 1976; revoked, T-85-43, Dec. 19, 1984; revoked May 1, 1985.)

28-35-228a. Reports of theft or loss of sources of radiation. (a) Each licensee or registrant shall report by telephone, telegraph, electronic mail, or facsimile to the department the theft or loss of the following sources of radiation immediately after the occurrence becomes known to the licensee or registrant:

(1) Stolen, lost, or missing licensed or registered radioactive material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in appendix C in "appendices to part 4: standards for protection against radiation," as adopted by reference in K.A.R. 28-35-135a, if an exposure could result to individuals in unrestricted areas; or

(2) a stolen, lost, or missing radiation machine.

(b) The licensee or registrant shall also submit a report, in writing, within 30 days after learning of stolen, lost, or missing sources of radiation described in paragraph (a)(1) or (2).

(c) The licensee or registrant shall submit a report, in writing, within 30 days after learning of any stolen, lost, or missing licensed or registered radioactive material in an aggregate quantity greater than 10 times the quantity specified in appendix C in "appendices to part 4: standards for protection against radiation" that is still missing.

(d) Each licensee or registrant required to make a report pursuant to this regulation shall, within 30 days after making the telephone, telegraph, electronic mail, or facsimile report, submit a written report to the department that provides all of the following information:

(1) A description of the licensed or registered source of radiation involved, including, for radioactive material, the kind, quantity, and chemical and physical form and, for radiation machines, the manufacturer, model and serial numbers, and the type and maximum energy of radiation emitted;

(2) a description of the circumstances under which the loss or theft occurred;

(3) a statement of the disposition, or probable disposition, of the licensed or registered source of radiation involved;

(4) for any exposure of an individual to radiation, the circumstances under which the exposure occurred and the possible total effective dose equivalent to individuals in unrestricted areas;

(5) the actions that have been taken, or will be taken, to recover the source of radiation; and

(6) the procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed or registered sources of radiation.

(e) After filing the written report, the licensee or registrant shall also report to the department, within 30 days of the date on which the information becomes available, any substantive additional information on the theft or loss that becomes available.

(f) Each licensee or registrant shall prepare any report filed with the department pursuant to this regulation so that the names of individuals who could have received exposure to radiation are stated in a separate and detachable portion of the report. (Authorized by and implementing K.S.A. 48-1607; effective, T-85-43, Dec. 19, 1984; effective May 1, 1985; amended Sept. 20, 1993; amended Oct. 17, 1994; amended Dec. 30, 2005.)

28-35-229. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended Jan. 1, 1972; amended May 1, 1976; revoked, T-85-43, Dec. 19, 1984; revoked May 1, 1985.)

28-35-229a. Notification of incidents.

(a) Immediate notification. Each licensee or registrant shall immediately notify the department by telephone, telegraph, mailgram or facsimile of any incident involving any source of radiation possessed by the licensee or registrant which may have caused or threatens to cause:

(1) (A) a total effective dose equivalent to any individual of 25 rems (250 mSv) or more of radiation;

(B) an eye dose equivalent to any individual of 75 rems (.75 Sv) or more of radiation; or

(C) a shallow dose equivalent to the skin or extremities or a total organ dose equivalent to any individual of 250 rad (2.5 Gy) or more of radiation; or

(2) the release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual

could have received an intake five times the occupational ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

(b) Twenty-four hour notification. Each licensee or registrant shall, within 24 hours of the discovery of the event notify the department by telephone, telegraph, mailgram or facsimile of any incident involving any source of radiation possessed by the licensee or registrant which may have caused or threatens to cause:

(1) (A) a total effective dose equivalent to any individual exceeding five rems (50 mSv);

(B) an eye dose equivalent exceeding 15 Rem (0.15 Sv); or

(C) a shallow dose equivalent to the skin or to the extremities or a total organ dose equivalent exceeding 50 Rem (0.5 Sv); or

(2) the release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake in excess of one occupational ALI. This provision shall not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

(c) Each report filed with the department pursuant to this regulation shall be prepared in such a manner that names of individuals who have received excessive doses are stated in a separate and detachable portion of the report.

(d) The provision of K.A.R. 28-35-229a shall not apply to doses that result from planned special exposures, provided such doses are within limits for planned special exposures and are reported pursuant to K.A.R. 28-35-230c. (Authorized by and implementing K.S.A. 1993 Supp. 48-1607; effective, T-85-43, Dec. 19, 1984; effective May 1, 1985; amended Sept. 20, 1993; amended Oct. 17, 1994.)

28-35-230. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended Jan. 1, 1972; amended May 1, 1976; revoked, T-85-43, Dec. 19, 1984; revoked May 1, 1985.)

28-35-230a. Reports of overexposures and excessive levels and concentrations. (a) In addition to any notification required by K.A.R. 28-35-229a, each licensee or registrant shall submit a report to the department, in writing, within 30 days of learning of any of the following occurrences:

(1) Each exposure of an individual to radiation in excess of the applicable standards in K.A.R. 28-35-212a, K.A.R. 28-35-213a, K.A.R. 28-35-213b, K.A.R. 28-35-214a, or the license;

(2) each exposure of an individual to radioactive material in excess of the applicable limits in K.A.R. 28-35-212b (a)(1), K.A.R. 28-35-212b (a)(2), K.A.R. 28-35-213a, K.A.R. 28-35-213b, or K.A.R. 28-35-214a or in the license;

(3) each incident in which levels of radiation or concentrations of radioactive material in a restricted area exceeded any other applicable limit in the license;

(4) any incident for which notification is required by K.A.R. 28-35-229a; and

(5) each incident in which levels of radiation or concentrations of radioactive material in an unrestricted area exceeded 10 times any applicable limit set forth in this part or in the license, whether or not involving excessive exposure of any individual.

(6) For licensees subject to the provisions of the U.S. environmental protection agency's generally applicable environmental radiation standards in 40 CFR part 190, levels of radiation or releases of radioactive material in excess of those standards, or of license conditions related to those standards.

(b) Each report required under this regulation shall describe the extent of exposure of individuals to radiation or to radioactive material, including the following:

(1) The estimate of each individual's dose;

(2) the levels of radiation and concentrations of radioactive material involved;

(3) the cause of the exposure or excessive levels or concentrations; and

(4) the corrective steps taken or planned to ensure against a reoccurrence.

(c) Each report filed with the department under this regulation shall include for each individual exposed the individual's name, social security number, and date of birth, and an estimate of the individual's dose. With respect to the limit for the embryo or fetus specified in K.A.R. 28-35-213b, the identifiers shall be those of the declared pregnant woman. The report shall be prepared so that the identifier are stated in a separate and detachable part of the report. (Authorized by and implementing K.S.A. 48-1607; effective, T-85-43, Dec. 19, 1984; effective May 1, 1985; amended Sept. 20, 1993; amended Oct. 17, 1994; amended Dec. 30, 2005.)

28-35-230b. (Authorized by and implementing K.S.A. 1993 Supp. 48-1607; effective Sept. 20, 1993; amended Oct. 17, 1994; revoked Dec. 30, 2005.)

28-35-230c. Reports of planned special exposures. The licensee or registrant shall submit a written report to the department within 30 days following any planned special exposure conducted in accordance with K.A.R. 28-35-212f, which shall inform the department that a planned special exposure was conducted, indicate the date the planned special exposure occurred and contain the information required by K.A.R. 28-35-227g. (Authorized by and implementing K.S.A. 1993 Supp. 48-1607; effective Oct. 17, 1994.)

28-35-230d. (Authorized by and implementing K.S.A. 48-1607; effective Oct. 17, 1994; amended Dec. 30, 2005; revoked May 4, 2018.)

28-35-230e. Notifications and reports to individuals. (a) When a licensee or registrant is required pursuant to K.A.R. 28-35-230a to report to the department any exposure of an individual to radiation or radioactive material, the licensee or registrant shall also notify the individual.

(b) Notice to the individual shall be transmitted at a time not later than the transmittal to the department, and shall comply with the provisions of K.A.R. 28-35-334 of these regulations. (Authorized by and implementing K.S.A. 1993 Supp. 48-1607; effective Oct. 17, 1994.)

28-35-230f. Reports of leaking or contaminated sealed sources. If a test for leakage or contamination pursuant to K.A.R. 28-35-216a indicates a sealed source is leaking or contaminated, a report of the test shall be filed within five days with the department describing the equipment involved, the test results and the corrective action taken. (Authorized by and implementing K.S.A. 1993 Supp. 48-1607; effective Oct. 17, 1994.)

28-35-230g. Reports of transactions involving nationally tracked sources. (a) Each licensee who manufactures a nationally tracked source shall submit a report on each nationally tracked source containing the following information:

(1) The name, address, and license number of the reporting licensee;

(2) the name of the individual preparing the report;

(3) the manufacturer, the model, and the serial number of the source;

(4) the radioactive material in the source;

(5) the initial source strength in becquerels or curies at the time of manufacture; and

(6) the manufacture date of the source.

(b) Each licensee that transfers a nationally tracked source to another person shall submit a report on each nationally tracked source containing the following information:

(1) The name, address, and license number of the reporting licensee;

(2) the name of the individual preparing the report;

(3) the name and license number of the recipient facility and the shipping address;

(4) the manufacturer, the model, and the serial number of the source or, if not available, other information to uniquely identify the source;

(5) the radioactive material in the source;

(6) the initial or current source strength, in becquerels or curies;

(7) the date for which the source strength is reported;

(8) the shipping date;

(9) the estimated arrival date; and

(10) for nationally tracked sources transferred as waste under a uniform low-level radioactive waste manifest, the waste manifest number and the container identification.

(c) Each licensee that receives a nationally tracked source shall submit a report on each nationally tracked source containing the following information:

(1) The name, address, and license number of the reporting licensee;

(2) the name of the individual preparing the report;

(3) the name, address, and license number of the person that provided the source;

(4) the manufacturer, the model, and the serial number of the source or, if not available, other information to uniquely identify the source;

(5) the radioactive material in the source;

(6) the initial or current source strength, in becquerels or curies;

(7) the date for which the source strength is reported;

(8) the date of receipt; and

(9) for material received under a uniform low-level radioactive waste manifest, the waste manifest number and the container identification.

(d) Each licensee that disassembles a nationally

tracked source shall submit a report on each nationally tracked source containing the following information:

(1) The name, address, and license number of the reporting licensee;

(2) the name of the individual preparing the report;

(3) the manufacturer, the model, and the serial number of the source or, if not available, other information to uniquely identify the source;

(4) the radioactive material in the source;

(5) the initial or current source strength, in becquerels or curies;

(6) the date for which the source strength is reported; and

(7) the date on which the source was disassembled.

(e) Each licensee who disposes of a nationally tracked source shall submit a report on each nationally tracked source containing the following information:

(1) The name, address, and license number of the reporting licensee;

(2) the name of the individual preparing the report;

(3) the waste manifest number;

(4) the container identification;

(5) the date of disposal; and

(6) the method of disposal.

(f) The reports required in subsections (a) through (e) shall be submitted by the close of the next business day after the transaction. A single report may be submitted for multiple sources and transactions. The reports shall be submitted to the nuclear regulatory commission's national source tracking system by one of the following means:

(1) The nuclear regulatory commission's on-line national source tracking system;

(2) electronic transmission, using a computer-readable format;

(3) facsimile;

(4) mail, sent to the address specified on the nuclear regulatory commission's national source tracking transaction report form; or

(5) telephone, with follow-up by facsimile or mail.

(g) Each licensee shall correct any error in previously filed reports or file a new report for any missed transaction within five business days of the discovery of the error or missed transaction. These errors can be detected by methods that may include administrative reviews or physical inventories required by these regulations.

(h) Each licensee shall reconcile the inventory of nationally tracked sources possessed by the licensee against that licensee's data in the national source tracking system. The reconciliation shall be conducted during the month of January in each year. The reconciliation process shall include resolving any discrepancies between the national source tracking system and the actual inventory by filing the reports required by subsections (a) through (e). Each licensee shall submit, to the national source tracking system, confirmation that the data in the national source tracking system is correct. This confirmation shall be submitted on or before January 31 of each year.

(i) Each licensee that possesses category 1 nationally tracked sources shall report its initial inventory of category 1 nationally tracked sources to the national source tracking system on or before November 15, 2007. Each licensee that possesses category 2 nationally tracked sources shall report its initial inventory of category 2 nationally tracked sources to the national source tracking system on or before November 30, 2007. The information may be submitted by using any of the methods specified in subsection (f). The initial inventory report shall include the following information:

(1) The name, address, and license number of the reporting licensee;

(2) the name of the individual preparing the report;

(3) the manufacturer, model, and serial number of each nationally tracked source or, if not available, other information to uniquely identify the source;

(4) the radioactive material in the sealed source;

(5) the initial or current source strength in becquerels or curies; and

(6) the date for which the source strength is reported.

(j) Compliance with the reporting requirements of this regulation shall be required on or before November 15, 2007 for category 1 sources and on or before November 30, 2007 for category 2 sources. (Authorized by and implementing K.S.A. 48-1607; effective July 27, 2007.)

28-35-231. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1970; revoked, T-85-43, Dec. 19, 1984; revoked May 1, 1985.)

28-35-231a. Vacating installations. (a) Notification. Each licensee, before vacating any

installation that could have been contaminated by radioactive material as a result of the licensee's activities, shall notify the department in writing of the intent to vacate, at least 30 days before vacating. Any licensee may be required by the secretary to decontaminate, or have decontaminated, the installation to a degree consistent with subsequent use as an uncontrolled area.

(b) Decommissioning timeliness.

(1) Each licensee in possession of a nonexempt source of radiation who decides to terminate all activities involving that source of radiation shall notify the department immediately, in writing.

(2) Each licensee responsible for a facility or site that includes a nonexempt source of radiation or that could be contaminated by residual radioactivity shall notify the department, in writing, of the intent to vacate, at least 30 days before vacating or relinquishing possession or control of the facility or site.

(3) Each licensee shall notify the department, in writing, within 60 days of the occurrence of any of the following:

(A) The licensee has decided to permanently cease principal operations at the entire site or in any separate building or outdoor area with residual radioactivity that renders the building or outdoor area unsuitable for uncontrolled use in accordance with these regulations.

(B) No principal operations under the license have been conducted during the previous 24 months.

(C) No principal operations have been conducted during the previous 24 months in any separate building or outdoor area with residual radioactivity that renders the building or outdoor area unsuitable for uncontrolled use in accordance with these regulations.

(4) From the date of notification of the department as required in subsections (a) and (b) of this regulation, the licensee shall perform either one of the following:

(A) Begin decommissioning activities; or

(B) within 12 months of notification, submit a decommissioning plan, if required by K.A.R. 28-35-204, and begin decommissioning upon the approval of that plan.

(5) Coincident with the notification of the department required in subsections (a) and (b) of this regulation, the licensee shall maintain in effect all decommissioning financial assurances established by the licensee in conjunction with a license issuance or renewal or as required by

this part. The amount of the financial assurance shall be increased, or may be decreased, in order to cover the detailed cost estimate for decommissioning, as specified in K.A.R. 28-35-204.

(6) An alternate schedule may be approved by the secretary for the submission of plans and for the completion of decommissioning required by this regulation if the secretary determines that both of the following conditions are met:

(A) An alternative schedule is necessary to effectively conduct decommissioning.

(B) An alternative schedule either presents no undue risks to public health and safety or is otherwise in the public interest.

The schedule for decommissioning shall not commence until the secretary has made a determination on the request. (Authorized by and implementing K.S.A. 48-1607; effective, T-85-43, Dec. 19, 1984; effective May 1, 1985; amended Dec. 30, 2005.)

28-35-231b. (Authorized by and implementing K.S.A. 1993 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended Sept. 20, 1993; amended Oct. 17, 1994; revoked Dec. 30, 2005.)

28-35-231c. Transfer for disposal; manifests. The provisions of 10 CFR 20.2006 as in effect on October 1, 2007, including appendix G to 10 CFR part 20 as in effect on November 16, 2005, are hereby adopted by reference. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005; amended March 18, 2011.)

28-35-232. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended May 1, 1976; revoked, T-85-43, Dec. 19, 1984; revoked May 1, 1985.)

28-35-232a. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-85-43, Dec. 19, 1984; effective May 1, 1985; revoked Oct. 17, 1994.)

28-35-233. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended Jan. 1, 1972; amended May 1, 1976; revoked, T-85-43, Dec. 19, 1984; revoked May 1, 1985.)

28-35-233a. (Authorized by and implementing K.S.A. 1992 Supp. 48-1607; effective, T-85-43, Dec. 19, 1984; effective May 1, 1985; amended Sept. 20, 1993; revoked Oct. 17, 1994.)

28-35-234. (Authorized by K.S.A. 1975 Supp. 48-1607; effective May 1, 1976; revoked, T-85-43, Dec. 19, 1984; revoked May 1, 1985.)

28-35-234a. (Authorized by and implementing K.S.A. 1992 Supp. 48-1607; effective, T-85-43, Dec. 19, 1984; effective May 1, 1985; amended Sept. 20, 1993; revoked Oct. 17, 1994.)

PART 5. USE OF X-RAYS IN THE HEALING ARTS

28-35-241. Applicability. This part shall establish requirements for the diagnostic use of X-rays in medicine, dentistry, osteopathy, chiropractic, podiatry, and veterinary medicine. The provisions of this part shall be in addition to, and not in substitution for, the other applicable provisions of these regulations. (Authorized by and implementing K.S.A. 48-1607; effective Jan. 1, 1970; amended Dec. 30, 2005.)

28-35-242. General requirements. (a) Waiver of requirements. Compliance with the specific requirements of these regulations relative to an existing machine or installation may be waived by the secretary if the registrant provides an alternative to the requirement that provides radiation protection equal to that prescribed in part 4 of these regulations.

(b) Responsibility to meet requirements. A person shall not make, sell, lease, transfer, lend, or install X-ray or fluoroscopic equipment, or the supplies used in connection with this equipment, unless both of the following conditions are met:

(1) Those supplies and equipment, when properly placed in operation and properly used, will meet the requirements of parts 1, 4, and 5 and the applicable regulations under parts 7, 8, and 10 of these regulations.

(2) The person delivers, if applicable, cones or collimators, filters, appropriate timers, and fluoroscopic shutters.

(c) Limitations on human use. An individual shall not be exposed to the useful beam, unless the exposure is for healing arts purposes and each exposure has been authorized by one of the following:

(1) A licensed practitioner of the healing arts;

(2) a physician assistant licensed by the state board of healing arts, when working under the supervision and direction of a person licensed to practice medicine or surgery;

(3) an advanced registered nurse practitioner who holds a certificate of qualification from the state board of nursing, when working under the

supervision and direction of a person licensed to practice medicine or surgery; or

(4) an individual licensed to practice dentistry or podiatry within the authority granted to the individual by Kansas licensing laws applying to dentists and podiatrists.

(d) Prohibited uses. Deliberate exposure for the following purposes shall be specifically prohibited:

(1) Exposure of an individual for patient positioning, training, demonstration, or other purposes, unless a healing arts purpose exists and a proper prescription has been provided; and

(2) exposure of an individual for the purpose of healing arts screening without the prior written approval of the department, except mammography screening, if the facility is certified to perform mammography by the food and drug administration. Each person requesting approval for healing arts screening shall submit the information outlined in K.A.R. 28-35-255. Each person requesting approval for a healing arts screening shall notify the department within 30 days if any of the information submitted becomes invalid or outdated. (Authorized by and implementing K.S.A. 48-1607; effective Jan. 1, 1970; amended Jan. 1, 1972; amended May 1, 1976; amended Sept. 20, 1993; amended Dec. 30, 2005; amended March 18, 2011.)

28-35-242a. Administrative requirements. (a) Radiation safety requirements. Each registrant shall be responsible for directing the operation of each X-ray system under the registrant's administrative control. The registrant or the registrant's agent shall ensure that the requirements of this part, which shall include the following requirements, are met.

(1) An X-ray system not meeting the provisions of these regulations shall not be operated for diagnostic purposes.

(2) Each individual who operates any X-ray system shall be instructed in the safe operating procedures and shall be competent in the safe use of the equipment. This instruction shall include the relevant topics specified in K.A.R. 28-35-256. Any combination of interview, observation, and testing may be used by the secretary to determine compliance. Each individual that operates an X-ray system shall be licensed if required by the board of healing arts.

(3) A chart shall be made available to the operator of each diagnostic X-ray system that specifies, for each examination performed with the system, the following information:

(A) The technique factors to be utilized, taking into account the patient's body part and anatomical size, body part thickness, and age;

(B) the type and size of the film or film-screen combination to be used;

(C) the type and focal distance of the grid to be used, if any;

(D) the source-image receptor distance to be used, except for dental intraoral radiography; and

(E) the type and placement of patient shielding to be used.

(4) The registrant of a facility shall create and make available to all X-ray operators written safety procedures, including patient holding procedures and any restrictions on the operating techniques required for the safe operation of the particular X-ray system. The registrant shall ensure that the operator demonstrates familiarity with these procedures.

(5) Except for patients who cannot be moved out of the room, only the staff, ancillary personnel, and any other individuals required for the medical procedure or training shall be in the room during the radiographic exposure. All of the following requirements shall be met for each individual other than the patient being examined:

(A) Each individual shall be positioned so that no part of the body will be struck by the useful beam unless the body part is protected by not less than 0.5 millimeter of lead-equivalent material.

(B) The X-ray operator, other staff, ancillary personnel, and all other individuals required for the medical procedure shall be protected from the direct scattered radiation by protective aprons or whole-body protective barriers of not less than 0.25 millimeter of lead-equivalent material.

(C) All human patients who cannot be removed from the room shall be protected from the direct scattered radiation by whole-body protective barriers of not less than 0.25 millimeter of lead-equivalent material or shall be positioned so that the nearest portion of the body is at least two meters from both the tube head and the nearest edge of the image receptor.

(6) Gonad shielding of not less than 0.5 millimeter of lead-equivalent material shall be used during radiographic procedures in which the gonads are in the useful beam for all human patients who have not passed the reproductive age, except for cases in which this shielding would interfere with the diagnostic procedure.

(7) If a patient or film requires auxiliary support during a radiation exposure, all of the following safety requirements shall be met:

(A) Mechanical holding devices shall be used when the technique permits the use of these devices. The written safety procedures required by this regulation shall list the individual techniques for which holding devices cannot be utilized.

(B) The written safety procedures required by this regulation shall indicate the requirements for selecting a human holder and the procedure that the holder shall follow.

(C) The human holder shall be instructed in personal radiation safety and shall be protected in accordance with these regulations.

(D) No individual shall be used routinely to hold film or patients.

(E) If the patient holds the film, each portion of the body other than the area of clinical interest struck by the useful beam shall be protected by not less than 0.5 millimeter of lead-equivalent material, except during intraoral examinations.

(F) Each facility shall have a sufficient number of leaded aprons and gloves available to provide protection to all personnel who are involved with X-ray operations and who are otherwise not shielded.

(8) The procedures and auxiliary equipment designed to minimize patient and personnel exposure shall be commensurate with the needed diagnostic information and shall be utilized according to all of the following requirements:

(A) The speed of the screen and film combinations used shall be the fastest speed that is consistent with the diagnostic objective of the examinations. Film cassettes without intensifying screens shall not be used for any routine diagnostic imaging, with the exception of veterinary radiography and standard film packets for intraoral use in dental radiography.

(B) The radiation exposure to the patient shall be the minimum exposure required to produce images of good diagnostic quality.

(C) Portable or mobile X-ray equipment shall be used only for examinations during which transferring the patient or patients to a stationary X-ray installation is impractical.

(D) X-ray systems other than fluoroscopic dental intraoral systems and computed tomography X-ray systems shall not be utilized in any procedure in which the source-to-patient distance is less than 30 centimeters, unless specifically approved by the FDA. Veterinary systems shall not be subject to this limitation.

(E) If grids are used between the patient and the image receptor to decrease the amount of

scattered radiation to the film and improve contrast, the grid shall be as follows:

(i) Positioned properly, including the tube side facing the right direction, with the grid centered to the central ray; and

(ii) if of the focused type, positioned at the proper focal distance for the SIDs being used.

(9) Each individual who is associated with the operation of an X-ray system shall be subject to the requirements of part 4 of these regulations.

(b) Records. Each registrant shall maintain the following minimum information for each X-ray system, for inspection by the department:

(1) The maximum rating of technique factors;

(2) the model and serial numbers of all certifiable components;

(3) the aluminum-equivalent filtration of the useful beam, including any routine variation;

(4) tube rating charts and cooling curves;

(5) records of surveys, calibrations, maintenance, and modifications performed on the X-ray system after the effective date of this regulation, with the name of each person who performed these services;

(6) a scale drawing of the room in which a stationary X-ray system is located, indicating the use of areas adjacent to the room and an estimation of the extent of occupancy by any individuals in these areas. In addition, the drawing shall include one of the following:

(A) The results of a survey for radiation levels present at the operator's position and at pertinent points outside the room at specified test conditions; or

(B) the type of thickness of materials, or lead equivalency, of each system; and

(7) a copy of all correspondence with the department regarding that X-ray system.

(c) X-ray utilization log. Except for veterinary facilities, each registrant shall maintain an X-ray log containing each patient's identifier, the type of each examination, and the date on which each examination was performed. When the patient or film is provided with human auxiliary support, the name of the human holder shall be recorded.

(d) X-ray film-processing facilities and practice.

(1) Each facility using a radiographic X-ray system and analog image receptors shall have available suitable equipment for handling and processing radiographic film in accordance with all of the following requirements:

(A) Each manual film-developing system shall meet all of the following requirements:

(i) The processing tanks shall be constructed of mechanically rigid, corrosion-resistant material.

(ii) The temperature of the solutions in the tanks shall be maintained within the range of 60°F to 80°F. All film shall be developed in accordance with the time-temperature relationships recommended by the film manufacturer or, in the absence of these recommendations, with the following time-temperature chart:

Time-Temperature Chart

Thermometer Reading (Degrees)		Minimum Developing Time (Minutes)
°C	°F	
26.7	80	2
26.1	79	2
25.6	78	2 ½
25.0	77	2 ½
24.4	76	3
23.9	75	3
23.3	74	3 ½
22.8	73	3 ½
22.2	72	4
21.7	71	4
21.1	70	4 ½
20.6	69	4 ½
20.0	68	5
19.4	67	5 ½
18.9	66	5 ½
18.3	65	6
17.8	64	6 ½
17.2	63	7
16.7	62	8
16.1	61	8 ½
15.6	60	9 ½

(iii) Devices shall be utilized that indicate the actual temperature of the developer and signal the passage of a preset time appropriate to the developing time required.

(B) Each automatic processor and any other closed processing system shall meet all of the following requirements:

(i) All film shall be developed in accordance with the time-temperature relationships recommended by the film manufacturer. In the absence of these recommendations, the film shall be developed using the following chart:

Developer Temperature	Minimum Immersion Time ^a	Seconds
°C	°F	
35.5	96	19
35	95	20
34.5	94	21
34	93	22
33.5	92	23
33	91	24

Developer Temperature	Minimum Immersion Time ^a	
32	90	25
31.5	89	26
31	88	27
30.5	87	28
30	86	29
29.5	85	30

^a Reflects immersion time only, with no crossover time included.

(ii) The specified developer temperature and immersion time shall be posted in the darkroom or on the automatic processor.

(C) Each deviation from any requirements specified in paragraph (e)(1) shall be documented by the registrant in such a manner that the requirements are shown to be met or exceeded.

(2) In addition to the requirements specified in paragraph (e)(1), all of the following requirements shall be met:

(A) Pass boxes, if provided, shall be constructed to exclude light from the darkroom when cassettes are placed in or removed from the boxes and shall incorporate shielding from stray radiation to prevent any exposure of undeveloped film.

(B) The darkroom shall be lighttight and shall use safe lighting so that any film type exposed in a cassette to X-radiation sufficient to produce an optical density measuring from one to two when processed does not exhibit an increase in density greater than 0.1 when exposed in the darkroom for two minutes with all safe lights on. If daylight film-handling boxes are used, these boxes shall prevent any fogging of the film.

(C) Each darkroom typically used by more than one individual shall be equipped with a method to prevent accidental entry while undeveloped film is handled or processed.

(D) All film shall be stored in a cool, dry place and shall be protected from exposure to stray radiation. Film in open packages shall be stored in a lighttight container.

(E) All film cassettes and intensifying screens shall be inspected periodically and shall be cleaned or replaced as necessary to ensure radiographs of good diagnostic quality.

(F) Outdated X-ray film shall not be used for diagnostic radiographs, unless the film has been stored in accordance with the manufacturer's recommendations and a sample of the film passes a sensitometric test for the normal range of the base optical density plus fogging for the film speed.

(G) All film-developing solutions shall be main-

tained in strength by replenishment or renewal so that full development is accomplished within the time frame specified by the manufacturer. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005.)

28-35-242b. General requirements for all diagnostic X-ray systems. In addition to meeting the other requirements of this part, each diagnostic X-ray system shall meet the following requirements:

(a) Warning label. The control panel containing the main power switch shall bear this or an equivalent warning statement, which shall be legible and accessible to view: "WARNING: This X-ray unit could be dangerous to patient and operator unless safe exposure factors and operating instructions are observed."

(b) Battery charge indicator. On each battery-powered X-ray generator, a visual means shall be provided on the control panel to indicate whether the battery is in a state of charge for proper operation.

(c) Leakage radiation from the diagnostic source assembly. The leakage radiation from the diagnostic source assembly measured at a distance of one meter in any direction from the source shall not exceed 25.8 $\mu\text{C}/\text{kg}$ (100 milliroentgens) in one hour when the X-ray tube is operated at the leakage technique factors specified by the manufacturer. Compliance shall be determined by measuring the leakage radiation averaged over an area of 100 square centimeters, with no linear dimension greater than 20 centimeters.

(d) Radiation from components other than the diagnostic source assembly. The radiation emitted by a component other than the diagnostic source assembly shall not exceed 0.5 $\mu\text{C}/\text{kg}$ (2 milliroentgens) in one hour at five centimeters from an accessible surface of the component in an assembled X-ray system operated under any design conditions. Compliance shall be determined by measuring the radiation averaged over an area of 100 square centimeters, with no linear dimension greater than 20 centimeters.

(e) Beam quality.

(1) Half-value layer.

(A) The half-value layer of a given X-ray tube potential shall not be less than the values shown in table I in this paragraph. Linear interpolation and extrapolation may be used if necessary to determine the half-value layer at an X-ray tube potential that is not listed in table I.

Table I

Operating range (kilovolts peak)	Measured potential (kilovolts peak)	Half-value layer (millimeters of aluminum)
Below 50	30	0.3
	40	0.4
	49	0.5
50 through 70	50	1.2
	60	1.3
	70	1.5
Above 70	71	2.1
	80	2.3
	90	2.5
	100	2.7
	110	3.0
	120	3.2
	130	3.5
	140	3.8
150	4.1	

(B) For capacitor energy storage equipment, compliance shall be determined with the system fully charged and set at 10 mAs for each exposure.

(C) The required minimal half-value layer of the useful beam shall include the filtration contributed by all materials that are permanently located between the source and the patient.

(2) Filtration controls. For each X-ray system that has variable kVp and variable filtration for the useful beam, a device shall link the kVp selector with the filter or filters and shall prevent an exposure, unless the minimum amount of filtration necessary to produce the required HVL is in the useful beam for the given kVp that has been selected.

(f) Multiple tubes. If two or more radiographic tubes are controlled by one exposure switch, each tube that has been selected shall be clearly indicated before initiation of the exposure. This indication shall be both on the X-ray control panel and at or near the tube housing assembly that has been selected.

(g) Mechanical support of the tube head. The tube housing assembly supports shall be adjusted so that the tube housing assembly remains stable during each exposure, unless tube housing movement is a designed function of the X-ray system.

(h) Technique indicators.

(1) The technique factors to be used during each exposure shall be indicated before the exposure begins. If automatic exposure controls are used, the technique factors that are set before the exposure shall be indicated.

(2) The requirements of paragraph (h)(1) may be met by permanent marking on equipment that has fixed technique factors. The indication of

technique factors shall be visible from the operator's position, except in the case of spot films made by the fluoroscopist.

(i) Maintaining compliance. All diagnostic X-ray systems and their associated components used on humans and certified pursuant to the federal X-ray equipment performance standard in 21 CFR part 1020 shall be maintained in compliance with the applicable requirements of that standard.

(j) Locks. All position-locking, holding, and centering devices that are on X-ray system components and systems shall function as intended and shall be maintained according to each manufacturer's recommendations. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005.)

28-35-243. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended Jan. 1, 1972; amended May 1, 1976; revoked Dec. 30, 2005.)

28-35-243a. Fluoroscopic X-ray systems. Each fluoroscopic X-ray system used shall be image-intensified and shall meet the following requirements:

(a) Limitation of useful beam.

(1) Primary barrier.

(A) The fluoroscopic imaging assembly shall be provided with a primary protective barrier that intercepts the entire cross section of the useful beam at any SID.

(B) The X-ray tube used for fluoroscopy shall not produce X-rays unless the barrier is in position to intercept the entire useful beam.

(2) Fluoroscopic beam limitation.

(A) For certified fluoroscopic systems with or without a spot film device, neither the length nor the width of the X-ray field in the plane of the image receptor shall exceed that of the visible area of the image receptor by more than three percent of the SID. The sum of the excess length and the excess width shall be no greater than four percent of the SID.

(B) For uncertified fluoroscopic systems with a spot film device, the X-ray beam with the shutters fully opened during fluoroscopy or spot filming shall be no larger than the largest spot-film size for which the device is designed. Measurements shall be made at the minimum SID available but at a distance of not less than 20 centimeters from the tabletop to the film plane.

(C) For uncertified fluoroscopic systems without a spot film device, the requirements of this regulation shall apply.

(D) Other requirements for fluoroscopic beam limitation shall include the following:

(i) A means shall be provided to permit further limitation of the field. Beam-limiting devices manufactured after May 22, 1979 and incorporated in equipment with a variable SID or a visible area of greater than 300 square centimeters, or both, shall be provided with a means for stepless adjustment of the X-ray field.

(ii) All equipment with a fixed SID and a visible area of 300 square centimeters or less shall be provided either with stepless adjustment of the X-ray field or with a means to further limit the X-ray field size, at the plane of the image receptor, to 125 square centimeters or less.

(iii) If provided, stepless adjustment shall, at the greatest SID, provide continuous field sizes from the maximum attainable to a field size of five centimeters by five centimeters or less.

(iv) For equipment manufactured after February 25, 1978, if the angle between the image receptor and beam axis is variable, a means shall be provided to indicate when the axis of the X-ray beam is perpendicular to the plane of the image receptor.

(v) For noncircular X-ray fields used with circular image receptors, the error in alignment shall be determined along the length and width dimensions of the X-ray field that pass through the center of the visible area of the image receptor.

(3) Spot-film beam limitation. Each spot-film device shall meet the following requirements:

(A) A means shall be provided between the source and the patient for adjustment of the X-ray field size in the plane of the film, to the size of that portion of the film that has been selected on the spot film selector. This adjustment shall be automatically accomplished except when the X-ray field size in the plane of the film is smaller than that of the selected portion of the film. For spot-film devices manufactured after June 21, 1979, if the X-ray field size is less than the size of the selected portion of the film, the means for adjustment of the field size shall be only at the operator's option.

(B) Neither the length nor the width of the X-ray field in the plane of the image receptor shall differ from the corresponding dimensions of the selected portion of the image receptor by more than three percent of the SID when adjusted for full coverage of the selected portion of the image

receptor. The sum of the length and width differences, without regard to sign, shall not exceed four percent of the SID.

(C) It shall be possible to adjust the X-ray field size in the plane of the film to a size smaller than the selected portion of the film. The minimum field size at the greatest SID shall be equal to or less than five centimeters by five centimeters.

(D) The center of the X-ray field in the plane of the film shall be aligned with the center of the selected portion of the film to within two percent of the SID.

(E) For spot-film devices manufactured after February 25, 1978, if the angle between the plane of the image receptor and beam axis is variable, a means shall be provided to indicate when the axis of the X-ray beam is perpendicular to the plane of the image receptor, and compliance shall be determined with the beam axis indicated to be perpendicular to the plane of the image receptor.

(4) Override. Each method used to override any of the automatic X-ray field size adjustments required in paragraphs (a)(2) and (3) shall meet the following requirements:

(A) Be designed for use only if system failure occurs;

(B) incorporate a signal visible at the fluoroscopist's position that indicates whenever the automatic field size adjustment is overridden; and

(C) be clearly and durably labeled with the following, or equivalent wording:

**FOR X-RAY FIELD
LIMITATION SYSTEM FAILURE**

(b) Activation of the fluoroscopic tube. All X-ray production in the fluoroscopic mode shall be controlled by a device that requires continuous manual activation by the fluoroscopist during the entire time of any exposure. When recording serial fluoroscopic images, the fluoroscopist shall be able to terminate the X-ray exposure or exposures at any time, but a means may be provided to permit completion of any single exposure of the series in process.

(c) Exposure rate limits.

(1) Allowable limits for the entrance exposure rate.

(A) Fluoroscopic equipment that is provided with an automatic exposure rate control shall not be operable at any combination of tube potential and current that will result in an exposure rate in excess of 2.6 mC/kg (10 roentgens) per minute at the point where the center of the useful beam en-

ters the patient, except under either of the following conditions:

(i) When fluoroscopic images are being recorded; or

(ii) when an optional high-level control is provided. When provided, the X-ray system shall not be operable at any combination of tube potential and current that will result in an exposure rate in excess of 1.3 mC/kg (5 roentgens) per minute at the point where the center of the useful beam enters the patient, unless the high-level control is activated. A special means of activation of high-level controls shall be required. The high-level control shall be operable only when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high-level control is being employed.

(B) Fluoroscopic equipment that is not provided with an automatic exposure rate control shall not be operable at any combination of tube potential and current that will result in an exposure rate in excess of 1.3 mC/kg (5 roentgens) per minute at the point where the center of the useful beam enters the patient, except during either of the following:

(i) When fluoroscopic images are being recorded; or

(ii) when an optional high-level control is activated. A special means of activation of the high-level control shall be required. The high-level control shall be operable only when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high-level control is being employed.

(C) Fluoroscopic equipment that is provided with both an automatic exposure rate control mode and a manual mode shall not be operable at any combination of tube potential and current that will result in an exposure rate in excess of 2.6 mC/kg (10 roentgens) per minute in either mode at the point where the center of the useful beam enters the patient, except under either of the following conditions:

(i) When fluoroscopic images are being recorded; or

(ii) when the mode or modes have an optional high-level control. The mode or modes shall not be operable at any combination of tube potential and current that will result in an exposure rate in excess of 1.3 mC/kg (5 roentgens) per minute at the point where the center of the useful beam enters the patient, unless the high-level control is activated. A special means of activating

of the high-level control shall be required. The high-level control shall be operable only when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high-level control is being employed.

(D) Fluoroscopic equipment manufactured after May 19, 1995 that can exceed 1.3 mC/kg (5 roentgens) per minute shall be equipped with an automatic exposure rate control. All entrance exposure rate limits shall be 2.6 mC/kg (10 roentgens) per minute with an upper limit of 5.2 mC/kg (20 roentgens) per minute when the high-level control is activated.

(E) Compliance with the requirements of this subsection shall be determined as follows:

(i) If the source is below the X-ray table, the exposure rate shall be measured at one centimeter above the tabletop or cradle.

(ii) If the source is above the X-ray table, the exposure rate shall be measured at 30 centimeters above the tabletop with the end of the beam-limiting device or spacer positioned as closely as possible to the point of measurement.

(iii) For any fluoroscopy system capable of changing the X-ray beam orientation, which is also known as a C-arm system, the exposure rate shall be measured at 30 centimeters from the input surface of the fluoroscopic imaging assembly. The source may be positioned at any available SID, if the end of the beam-limiting device or spacer is no closer than 30 centimeters from the input surface of the fluoroscopic imaging assembly.

(iv) For a lateral-type fluoroscope, the exposure rate shall be measured at a point that is 15 centimeters from the centerline of the X-ray table and in the direction of the X-ray source, with the end of the beam-limiting device or spacer positioned as closely as possible to the point of measurement. A moveable tabletop shall be positioned as closely as possible to the lateral X-ray source, with the end of the beam-limiting device or spacer no closer than 15 centimeters to the centerline of the X-ray table.

(2) Periodic measurements of the entrance exposure rate shall be taken by a qualified expert for both the typical and the maximum values according to all of the following requirements:

(A) The measurements shall be taken annually and after any maintenance of the system that might affect the exposure rate.

(B) The results of these measurements shall be posted at a location where any fluoroscopist has

ready access to the results while using the fluoroscope and in the record required by this regulation. The measurement results shall be stated in coulombs per kilogram (roentgens) per minute and shall include the technique factors used in determining the results. The name of the individual performing the measurements and the date on which the measurements were performed shall be included in the results.

(C) The conditions under which periodic measurements of the entrance exposure rate are taken shall meet the following requirements:

(i) Each measurement shall be made under the conditions that meet the requirements of this regulation.

(ii) The kVp, mA, and other selectable parameters shall be adjusted to those settings typical in clinical use for a patient with an abdomen that is 23 cm thick.

(iii) Each X-ray system that incorporates any automatic exposure rate controls shall have sufficient attenuative material placed in the useful beam to produce milliamperage and kilovoltage that meet the requirements of this regulation.

(D) The conditions under which periodic measurements of the maximum entrance exposure are taken shall meet the following requirements:

(i) The measurement shall be made under the conditions that meet the requirements of this regulation.

(ii) The kVp, mA, and other selectable parameters shall be adjusted to those settings that produce the maximum entrance exposure rate.

(iii) Each X-ray system that incorporates automatic exposure rate controls shall have sufficient attenuative material placed in the useful beam to produce the maximum entrance exposure rate of the system.

(d) Barrier-transmitted radiation rate limits.

(1) The exposure rate due to transmission through the primary protective barrier with the attenuation block in the useful beam, combined with radiation from the image intensifier, if provided, shall not exceed 0.5 μ C/kg (2 milliroentgens) per hour at 10 centimeters from any accessible surface of the fluoroscopic imaging assembly beyond the plane of the image receptor for each mC/kg (4 roentgens) per minute of entrance exposure rate.

(2) Measuring compliance of barrier transmission.

(A) The exposure rate due to transmission through the primary protective barrier combined with radiation from the image intensifier shall be

determined by measuring the radiation averaged over an area of 100 square centimeters, with no linear dimension greater than 20 centimeters.

(B) If the source is below the tabletop, the measurement shall be taken with the input surface of the fluoroscopic imaging assembly positioned at 30 centimeters above the tabletop.

(C) If the source is above the tabletop and the SID is variable, the measurement shall be taken with the end of the beam-limiting device or spacer placed as close to the tabletop as possible, but not closer than 30 centimeters.

(D) All movable grids and compression devices shall be removed from the useful beam during the measurement.

(e) Indication of potential and current. During fluoroscopy and cinefluorography, the kV and the mA shall be continuously indicated.

(f) Source-to-skin distance (SSD). Unless otherwise approved by the food and drug administration, the SSD shall not be less than the following:

(1) 38 centimeters on stationary fluoroscopic systems manufactured on or after August 1, 1974;

(2) 35.5 centimeters on stationary fluoroscopic systems manufactured before August 1, 1974;

(3) 30 centimeters on all mobile fluoroscopes; and

(4) 20 centimeters for all mobile fluoroscopes when used for specific surgical applications.

(g) Fluoroscopic timer.

(1) A method shall be provided to preset the cumulative amount of time during which the fluoroscopic X-ray tube is on. The maximum cumulative amount of time during which the fluoroscopic X-ray tube is on shall not exceed five minutes without resetting the timing device.

(2) A signal audible to the fluoroscopist shall indicate the completion of any preset cumulative time. The signal shall continue to sound while X-rays are produced until the timing device is reset.

(h) Control of scattered radiation.

(1) Each fluoroscopic table, when combined with the medical procedures performed, shall be such that no unprotected part of the body of any staff member or ancillary individual shall be exposed to unattenuated scattered radiation that originates from under the table. The attenuation required shall be not less than 0.25 millimeter lead-equivalent.

(2) The equipment configuration and operating procedures used shall prevent any portion of the body of any staff member or ancillary individual,

except the extremities, from being exposed to the unattenuated scattered radiation emanating from above the tabletop, unless either of the following conditions is met:

(A) The individual is at least 120 centimeters from the center of the useful beam.

(B) The radiation has passed through not less than 0.25 millimeter of lead-equivalent material including drapes, a bucky-slot cover panel, and self-supporting curtains, in addition to any lead equivalency provided by any protective apron.

(3) Exemptions to paragraph (h)(2) may be granted by the secretary if a sterile field does not permit the use of the normal protective barriers. If the use of prefitted sterilized covers for the barriers is practical, an exemption shall not be granted. Exceptions shall be automatically granted for the following fluoroscopic procedures only if a sterile field does not permit the use of the normal protective barriers:

(A) Angiograms;

(B) arthrograms;

(C) biliary drainage procedures;

(D) fluoroscopic biopsy procedures;

(E) myelograms;

(F) percutaneous cholangiograms;

(G) percutaneous nephrostomies;

(H) sinograms or fistulograms; and

(I) T-tube cholangiograms.

(i) Spot-film exposure reproducibility. Each fluoroscopic system equipped with a spot-film mode shall meet the exposure reproducibility requirements of K.A.R. 28-35-244a when operating in the spot-film mode.

(j) Radiation therapy simulation systems. Each radiation therapy simulation system shall be exempt from the requirements of subsection (c) of this regulation. In addition, this type of system shall be exempt from the following:

(1) The requirements of subsections (a) and (d) of this regulation, if the system is designed and used so that no individual other than the patient is in the X-ray room when the system is producing X-rays; and

(2) the requirements of subsection (g) of this regulation, if the system is provided with a means of indicating the cumulative time that an individual patient has been exposed to X-rays. Procedures shall be established to require that the cumulative time be reset between examinations. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005.)

28-35-244. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended May 1, 1976; revoked Dec. 30, 2005.)

28-35-244a. Radiographic systems other than fluoroscopic, dental intraoral, or computed tomography X-ray systems. (a) Beam limitation, except for mammographic systems. Each registrant shall ensure that the useful beam is collimated to the area of clinical interest. This requirement shall be deemed to have been met if a positive beam-limiting device meeting the manufacturer's specifications and the requirements of this regulation has been used or if evidence of collimation is shown on at least three sides or three corners of the film, including projections from the shutters of the collimator, cone cutting at the corners, and borders at the film's edge.

(1) General-purpose stationary and mobile X-ray systems including veterinary systems, other than portable systems, installed after the effective date of these regulations.

(A) Each registrant shall use only X-ray systems provided with the means for independent stepless adjustment of at least two dimensions of the X-ray field.

(B) Each registrant shall ensure that a method is provided for visually defining the perimeter of the X-ray field. The total misalignment of the edges of the visually defined field with the respective edges of the X-ray field along either the length or width of the visually defined field shall not exceed two percent of the distance from the source to the center of the visually defined field when the surface upon which the visually defined field appears is perpendicular to the axis of the X-ray beam.

(C) An exemption from paragraphs (a)(1)(A) and (B) may be granted by the secretary for non-certified X-ray systems if the registrant submits a written application for the exemption and that application meets the following conditions:

(i) Demonstrates that it is impractical to comply with paragraphs (a)(1)(A) and (B); and

(ii) demonstrates that the purpose of paragraphs (a)(1)(A) and (B) will be met by other methods.

(2) Additional requirements for stationary general purpose X-ray systems. In addition to the requirements of paragraph (a)(1), each registrant shall ensure that all stationary general-purpose X-ray systems, both certified and noncertified, meet all of the following requirements:

(A) A method shall be provided to indicate when the axis of the X-ray beam is perpendicular to the

plane of the image receptor, to align the center of the X-ray field with respect to the center of the image receptor to within two percent of the SID, and to indicate the SID to within two percent.

(B) The beam-limiting device shall indicate numerically the field size in the plane of the image receptor to which the device is adjusted.

(C) The indication of the field size dimensions and SID shall be specified in inches or centimeters, or both, and shall be such that aperture adjustments result in X-ray field dimensions in the plane of the image receptor that correspond to X-ray field dimensions indicated by the beam-limiting device to within two percent of the SID when the beam axis is indicated to be perpendicular to the plane of the image receptor.

(3) X-ray systems designed for one size of image receptor. Radiographic equipment designed for only one size of image receptor at a fixed SID shall be provided with the means to limit the field at the plane of the image receptor to dimensions no greater than those of the image receptor and to align the center of the X-ray field with the center of the image receptor to within two percent of the SID, or shall be provided with the means to both adjust the size of and align the X-ray field so that the X-ray field at the plane of the image receptor does not extend beyond any edge of the image receptor.

(4) X-ray systems other than those described in this subsection and veterinary systems installed before the effective date of this regulation and all portable veterinary X-ray systems.

(A) A means shall be provided to limit the X-ray field in the plane of the image receptor so that the field does not exceed each dimension of the image receptor by more than two percent of the SID when the axis of the X-ray beam is perpendicular to the plane of the image receptor.

(B) A means shall be provided to align the center of the X-ray field with the center of the image receptor to within two percent of the SID, or the means shall be provided to both adjust the size of and align the X-ray field so that the X-ray field at the plane of the image receptor does not extend beyond any edge of the image receptor. Compliance shall be determined with the axis of the X-ray beam perpendicular to the plane of the image receptor.

(C) The requirements of paragraphs (a)(4)(A) and (B) may be met with a system that meets the requirements for a general-purpose X-ray system as specified in paragraph (a)(1) or, when align-

ment means are also provided, may be met with either of the following:

(i) An assortment of removable, fixed-aperture, beam-limiting devices sufficient to meet the requirements for each combination of image receptor size and SID for which the system is designed, with each such device having clear and permanent markings to indicate the image receptor size and SID for which the system is designed; or

(ii) a beam-limiting device having multiple fixed apertures sufficient to meet the requirements for each combination of image receptor size and SID for which the system is designed. Permanent, clearly legible markings shall indicate the image receptor size and SID for which each aperture is designed and shall indicate which aperture is in position for use.

(b) Radiation exposure control.

(1) Exposure initiation. A means shall be provided to initiate the radiation exposure by a deliberate action on the part of the operator, including the depression of a switch. Radiation exposure shall not be initiated without such an action. In addition, it shall not be possible to initiate an exposure when the timer is set to a "zero" or "off" position if either position is provided.

(2) Exposure indication. A means shall be provided for visual indication observable at or from the operator's protected position whenever X-rays are produced. In addition, a signal audible to the operator shall indicate that the exposure has terminated.

(3) Exposure termination. A means shall be provided to terminate the exposure at a preset time interval, preset product of current and time, a present number of pulses, or a preset radiation exposure to the image receptor. Except for dental panoramic systems, termination of each exposure shall cause the automatic resetting of the timer to its initial setting or to "zero."

(A) Manual exposure control. An X-ray control shall be incorporated into each X-ray system so that each exposure can be terminated by the operator at any time, except for either of the following:

(i) During any exposure of one-half second or less; or

(ii) during serial radiography, when a means shall be provided to permit the completion of any single exposure of the series in process.

(B) Automatic exposure controls. When an automatic exposure control is provided, all of the following requirements shall be met:

(i) The mode of operation selected shall be indicated on the control panel.

(ii) If the X-ray tube potential is equal to or greater than 50kVp, the minimum exposure time for field emission equipment rated for pulsed operation shall be equal to or less than a time interval equivalent to two pulses.

(iii) The minimum exposure time for all equipment other than that specified in paragraph (b)(2)(B) shall be equal to or less than one-sixtieth of a second or the time interval required to deliver 5 mAs, whichever is greater.

(iv) Either the product of the peak X-ray tube potential, current, and exposure time shall be limited to not more than 60 kWp per exposure, or the product of the X-ray tube current and exposure time shall be limited to not more than 600 mAs per exposure. However, when the X-ray tube potential is less than 50 kVp, the product of the X-ray tube current and exposure time shall be limited to not more than 2,000 mAs per exposure.

(v) A visible signal shall indicate when an exposure has been terminated at the limits required by paragraph (b)(2)(D), and manual resetting shall be required before further automatically timed exposures can be made.

(4) Exposure duration or timer linearity. For systems that provide for the independent selection of exposure time settings, the average ratios (X_1) of exposure to the indicated timer setting, in units of $C\ kg^{-1}s^{-1}$ (mR/s), obtained at any two clinically used timer settings shall not differ by more than 0.10 times their sum. This calculation is written as follows:

$$(X_{-1} - X_2) \leq 0.1 (X_{-1} + X_2)$$

where X_{-1} and X_2 are the average $C\ kg^{-1}s^{-1}$ (mR/s) values.

(5) Exposure control location. The X-ray exposure control shall be placed so that the operator can view the patient while making any exposure.

(6) Operator protection, except for veterinary systems.

(A) Stationary systems. Each stationary X-ray system shall be required to have the X-ray control permanently mounted in a protected area so that the operator is required to remain in that protected area during the entire exposure.

(B) Mobile and portable systems. Each mobile and each portable X-ray system shall meet the following requirements:

(i) If used for one week or more at the same location, including a room or a suite, meet the requirements of paragraph (b)(6)(A); or

(ii) if used for less than one week at the same location, be provided with either a protective barrier that is at least two meters or 6.5 feet high for operator protection during exposures or a means to allow the operator to be at least 2.7 meters or 9 feet from the tube housing assembly during the exposure.

(7) Operator protection for veterinary systems. All stationary, mobile, or portable X-ray systems used for veterinary work shall be provided with either a protective barrier that is at least two meters or 6.5 feet high for operator protection during exposures or a means to allow the operator to be at least 2.7 meters or nine feet from the tube housing assembly during exposures.

(c) Source-to-skin distance. Each mobile or portable radiographic system shall be provided with the means to limit the source-to-skin distance to equal to or greater than 30 centimeters, except for veterinary systems or systems specifically approved by the FDA.

(d) Exposure reproducibility. When all technique factors are held constant, including control panel selections associated with automatic exposure control systems, the coefficient of variation of exposure for both manual and automatic exposure control systems shall not exceed 0.05. This requirement shall apply to all clinically used techniques.

(e) Radiation from capacitor energy storage equipment in standby status. The radiation emitted from the X-ray tube when the system is fully charged and the exposure switch or timer is not activated shall not exceed a rate of 0.5 $\mu\text{C}/\text{kg}$ (2 milliroentgens) per hour at five centimeters from any accessible surface of the diagnostic source assembly, with the beam-limiting device fully open.

(f) Accuracy. Deviation of the measured technique factors from the indicated values of kVp and exposure time shall not exceed the limits specified for each system by its manufacturer. In the absence of manufacturer's specifications, the deviation shall not exceed 10 percent of the indicated value for kVp and 20 percent for exposure time.

(g) mA and mAs linearity. The following requirements shall apply when the equipment is operated with a power supply as specified by the manufacturer for any fixed X-ray tube potential within the range of 40 percent to 100 percent of the maximum rated mA or mAs.

(1) Equipment that provides for the independent selection of X-ray tube current (mA). The average ratios ($X_{.1}$) of exposure to the indicated milliamperere-seconds product $\text{C kg}^{-1} \text{ mAs}^{-1}$ (or mR/mAs) obtained at any two consecutive tube current

settings shall not differ by more than 0.10 times their sum. This calculation is written as follows:

$$(X_{.1} - X_{.2}) \leq 0.10 (X_{.1} + X_{.2})$$

where $X_{.1}$ and $X_{.2}$ are the average values obtained at each of two consecutive tube current settings, or at two settings differing by no more than a factor of two when the tube current selection is continuous.

(2) Equipment that has a combined X-ray tube current-exposure time product (mAs) selector, but not a separate tube current (mA) selector. The average ratios ($X_{.1}$) of exposure to the indicated milliamperere-seconds product, in units of $\text{C kg}^{-1} \text{ mAs}^{-1}$ (or mR/mAs), obtained at any two consecutive mAs selector settings shall not differ by more than 0.10 times their sum. This calculation is written as follows:

$$(X_{.1} - X_{.2}) \leq 0.10 (X_{.1} + X_{.2})$$

where $X_{.1}$ and $X_{.2}$ are the average values obtained at each of two mAs selector settings, or at two settings differing by no more than a factor of two when the mAs selector provides continuous selection.

(3) Measuring compliance. Determination of compliance shall be based on 10 exposures taken within one hour, at each of the two settings specified by this subsection. These two settings may include any two focal spot sizes, unless one is equal to or less than 0.45 millimeters and the other is greater than 0.45 millimeters. For purposes of this requirement, focal spot size shall mean the nominal focal spot size specified by the X-ray tube manufacturer.

(h) Additional requirements applicable to certified systems only. Diagnostic X-ray systems incorporating one or more certified components shall be required to meet the following additional requirements that relate to that certified component or components.

(1) Beam limitation for stationary and mobile general-purpose X-ray systems.

(A) A means of stepless adjustment of the size of the X-ray field shall be provided. The minimum field size at an SID of 100 centimeters shall be equal to or less than five centimeters by five centimeters.

(B) If a light localizer is used to define the X-ray field, the localizer shall provide an average illumination of not less than 160 lux or 15 foot-candles at 100 centimeters or at the maximum SID, whichever is less. The average illumination shall be based on measurements made in the approximate center of each quadrant of the light

field. Radiation therapy simulation systems manufactured on and after May 27, 1980 shall be exempt from this requirement.

(C) The edge of the light field at 100 centimeters or at the maximum SID, whichever is less, shall have a contrast ratio, when corrected for ambient lighting, of not less than four for beam-limiting devices designed for use on stationary equipment and a contrast ratio of not less than three for beam-limiting devices designed for use on mobile equipment. The contrast ratio shall be defined as I_1/I_2 where I_1 is the illumination at three millimeters from the edge of the light field toward the center of the field, and I_2 is the illumination at three millimeters from the edge of the light field away from the center of the field. Compliance shall be determined by using a measuring instrument that has an aperture of one millimeter in diameter.

(2) Beam limitation and alignment on stationary general-purpose X-ray systems equipped with positive beam limitation (PBL). If PBL is being used, all of the following requirements shall be met:

(A) The PBL shall prevent the production of X-rays when either of the following occurs:

(i) The length or width of the X-ray field in the plane of the image receptor differs, except as permitted by paragraph (h)(2)(C), from the corresponding image receptor dimensions by more than three percent of the SID.

(ii) The sum of the length and width differences as stated in paragraph (h)(2)(A)(i), without regard to sign, exceeds four percent of the SID.

(B) Compliance with paragraph (h)(2)(A) shall be determined when the equipment indicates that the beam axis is perpendicular to the plane of the image receptor. Compliance shall be determined no sooner than five seconds after insertion of the image receptor.

(C) The PBL system shall be capable of operation, at the discretion of the operator, so that the size of the field can be made smaller than the size of the image receptor through stepless adjustment of the field size. The minimum field size at an SID of 100 centimeters shall be equal to or less than five centimeters by five centimeters.

(D) The PBL system shall be designed so that if a change in image receptor does not cause an automatic return to PBL function as described in paragraph (h)(2)(A), then any change of image receptor size or SID shall cause the automatic return to PBL function.

(3) Beam limitation for portable X-ray systems. Beam limitation for each portable X-ray system shall meet the beam limitation requirements in paragraph (a)(1) or (h)(2).

(i) Tube stands for portable X-ray systems. A tube stand or other mechanical support shall be used for portable X-ray systems, so that the X-ray tube housing assembly does not need to be hand-held during exposures. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005.)

28-35-245. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended May 1, 1976; revoked Sept. 20, 1993.)

28-35-246. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended May 1, 1976; revoked Sept. 20, 1993.)

28-35-247. (Authorized by and implementing K.S.A. 1992 Supp. 48-1607; effective Jan. 1, 1970; amended Jan. 1, 1972; amended May 1, 1976; amended Sept. 20, 1993; revoked Dec. 30, 2005.)

28-35-247a. Intraoral dental radiographic systems. In addition to K.A.R. 28-35-242a and 28-35-242b, this regulation shall apply to all X-ray equipment and the associated facilities used for dental radiography. The requirements for extraoral dental radiographic systems shall be those requirements specified in K.A.R. 28-35-244a. Each registrant shall use only systems meeting the requirements of this regulation.

(a) Source-to-skin distance (SSD). X-ray systems designed for use with an intraoral image receptor shall be provided with a means to limit the SSD to not less than either of the following:

- (1) 18 centimeters if operable above 50 kVp; or
- (2) 10 centimeters if operable at 50 kVp only.

(b) kVp limitations. Dental X-ray machines with a nominal fixed kVp of less than 50 kVp shall not be used to make diagnostic dental radiographs of humans.

(c) Beam limitation. Each radiographic system designed for use with an intraoral image receptor shall be provided with a means to limit the X-ray beam so that the beam at the minimum SSD is containable in a circle with a diameter of no more than seven centimeters.

(d) Radiation exposure control.

- (1) Exposure initiation.

(A) A means shall be provided to initiate the radiation exposure by a deliberate action on the part of the operator, including the depression of

a switch. Radiation exposure shall not be initiated without such an action.

(B) When the timer is set to a “zero” or “off” position, if either position is provided, an exposure shall not be possible.

(2) Exposure indication. A means shall be provided for a visual indication observable at or from the operator’s protected position whenever X-rays are produced. In addition, a signal audible to the operator shall indicate that the exposure has terminated.

(3) Exposure termination.

(A) A means shall be provided to terminate each exposure at a preset time interval, a preset product of current and time, a preset number of pulses, or a preset radiation exposure to the image receptor.

(B) An X-ray exposure control shall be incorporated into each X-ray system so that each exposure can be terminated by the operator at any time, except for exposures of one-half second or less.

(C) Each termination of an exposure shall cause the automatic resetting of the timer to its initial setting or to “zero.”

(4) Exposure duration or timer linearity. For each system that provides for the independent selection of exposure time settings, the average ratios (X_1) of exposure to the indicated timer setting, in units of $C\text{ kg}^{-1}\text{ s}^{-1}$ (mR/s), obtained at any two clinically used time settings shall not differ by more than 0.10 times their sum. The linearity is calculated using the following equation:

$$(X_1 - X_2) \leq 0.10 (X_1 + X_2)$$

where X_1 and X_2 are the average ratios of exposure to the indicated timer setting.

(5) Exposure control location and operator protection.

(A) Each stationary X-ray system shall be required to have the X-ray exposure control permanently mounted in a protected area so that the operator is required to remain in that protected area during the entire exposure.

(B) Each mobile or portable X-ray system used for one week or longer in the same location, including a room or suite, shall meet the requirements of this regulation.

(C) Each mobile or portable X-ray system used for less than one week in the same location shall be provided either with a protective barrier that is at least two meters (6.5 feet) high for operator protection or with the means to allow the operator to be at least 2.7 meters (9 feet) from the tube housing assembly while making exposures.

(e) Reproducibility. When the equipment is operated with an adequate power supply as specified by the manufacturer, the estimated coefficient of variation of radiation exposures shall be no greater than 0.05 for any specific combination of selected technique factors.

(f) mA and mAs linearity. The requirements specified in this subsection shall apply when the equipment is operated with a power supply as specified by the manufacturer for any fixed X-ray tube potential within the range of 40 percent to 100 percent of the maximum rated mA or mAs.

(1) Equipment that provides for the independent selection of X-ray tube current (mA). The average ratios (X_1) of exposure to the indicated milliamperere-seconds product, in units of $C\text{ kg}^{-1}\text{ mAs}^{-1}$ (or mR/mAs), obtained at any two consecutive tube current settings shall not differ by more than 0.10 times their sum. The linearity is calculated using the following equation:

$$X_1 - X_2 \leq 0.10 (X_1 + X_2)$$

where X_1 and X_2 are the average values obtained at each of two consecutive tube current settings, or at two settings differing by no more than a factor of two if the tube current selection is continuous.

(2) Equipment that has a combined X-ray tube current-exposure time product (mAs) selector but not a separate tube current (mA) selector. The average ratios (X_1) of exposure to the indicated milliamperere-seconds product, in units of $C\text{ kg}^{-1}\text{ mAs}^{-1}$ (or mR/mAs), obtained at any two consecutive mAs selector settings shall not differ by more than 0.10 times their sum. The linearity is calculated using the following equation:

$$X_1 - X_2 \leq 0.10 (X_1 + X_2)$$

where X_1 and X_2 are the average values obtained at any two mAs selector settings, or at two settings differing by no more than a factor of two if the mAs selector provides continuous selection.

(3) Measuring compliance. Determination of compliance shall be based on 10 exposures taken within one hour, at each of two settings. These two settings may include any two focal spot sizes, unless one is equal to or less than 0.45 millimeters and the other is greater than 0.45 millimeters. For purposes of this regulation, “focal spot size” shall mean the nominal focal spot size specified by the X-ray tube manufacturer.

(g) Accuracy. The deviation of technique factors from the indicated values for kVp and exposure time, if time is independently selectable, shall not

exceed the limits specified for that system by its manufacturer. In the absence of manufacturer's specifications, the deviation shall not exceed 10 percent of the indicated value for kVp and 20 percent for time.

(h) Administrative controls.

(1) Patient-holding and film-holding devices shall be used when the techniques permit.

(2) The tube housing and the position indication device (PID) shall not be handheld during an exposure.

(3) Each X-ray system shall be operated so that the useful beam at the patient's skin does not exceed the requirements of this regulation.

(4) Dental fluoroscopy without image intensification shall not be used. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005.)

28-35-248. (Authorized by K.S.A. 1975 Supp. 48-1607; effective May 1, 1976; revoked Sept. 20, 1993.)

28-35-248a. Computed tomography (CT) X-ray systems. (a) Definitions. In addition to the definitions in part 1 of these regulations, the following definitions shall be applicable to this regulation:

(1) "Computed tomography dose index" and "CTDI" mean the integral from -7T to +7T of the dose profile along a line perpendicular to the tomographic plane divided by the product of the normal tomographic section thickness and the number of tomograms produced in a single scan, as follows:

$$\overline{\text{CTDI}} = \frac{1}{nT} \int_{-7T}^{+7T} D(z) dz$$

where:

- z = Position along a line perpendicular to the tomographic plan;
- D(z) = dose at position z;
- T = nominal tomographic section thickness;
- n = number of tomograms produced in a single scan.

This definition assumes that the dose profile is centered around z=0 and that, for a multiple tomogram system, the scan increment between adjacent scans is nT.

(2) "Contrast scale" and "CS" mean the change in the linear attenuation coefficient per CTN relative to water, as follows:

$$\overline{\text{CS}} = \frac{\mu_x - \mu_w}{\overline{\text{CTN}}_x - \overline{\text{CTN}}_w}$$

where:

- μ_x = Linear attenuation coefficient of the material of interest;
- μ_w = linear attenuation coefficient of water;
- $\overline{\text{CTN}}_x$ = average CTN of the material of interest;
- $\overline{\text{CTN}}_w$ = average CTN of water.

(3) "CT conditions of operation" means all selectable parameters governing the operation of a CT X-ray system including nominal tomographic section thickness, filtration, and technique factors.

(4) "CT gantry" means the tube housing assemblies, beam-limiting devices, and detectors and the supporting structures and frames that hold these components.

(5) "CT number" and "CTN" mean the number used to represent the X-ray attenuation associated with each elemental area of the CT image, as follows:

$$\overline{\text{CTN}} = \frac{k(\mu_x - \mu_w)}{\mu_w}$$

where:

- k = A constant, which is normally 1,000 when the Hounsfield scale of CTN is used;
- μ_x = linear attenuation coefficient of the material of interest; and
- μ_w = linear attenuation coefficient of water.

(6) "Dose profile" means the dose as a function of position along a line.

(7) "Elemental area" means the smallest area within a tomogram for which the X-ray attenuation properties of a body are depicted.

(8) "Multiple tomogram system" means a computed tomography X-ray system that obtains X-ray transmission data simultaneously during a single scan to produce more than one tomogram.

(9) "Noise" means the standard deviation of the fluctuations in CTN expressed as a percentage of the attenuation coefficient of water. Noise is estimated using the following equation:

$$S_n = \frac{100 \times \overline{\text{CS}} \times s}{\mu_w}$$

where:

- \overline{CS} = Linear attenuation coefficient of the material of interest;
- μ_w = linear attenuation coefficient of water; and
- s = standard deviation of the CTN of picture elements in a specified area of the CT image.

(10) "Nominal tomographic section thickness" means the full width at half-maximum of the sensitivity profile taken at the center of the cross-sectional volume over which the X-ray transmission data are collected.

(11) "Picture element" means an elemental area of a tomogram.

(12) "Reference plane" means a plane that is displaced from and parallel to the tomographic plane.

(13) "Scan" means the complete process of collecting X-ray transmission data for the production of a tomogram. Data can be collected simultaneously during a single scan for the production of one or more tomograms.

(14) "Scan increment" means the amount of relative displacement of the patient with respect to the CT X-ray system between successive scans measured along the direction of the displacement.

(15) "Scan sequence" means a preselected set of two or more scans performed consecutively under preselected CT conditions of operation.

(16) "Scan time" means the period of time between the beginning and the end of X-ray transmission data accumulation for a single scan.

(17) "Single tomogram system" means a CT X-ray system that obtains X-ray transmission data during a scan to produce a single tomogram.

(18) "Tomographic plane" means the geometric plane that is identified as corresponding to the output tomogram.

(19) "Tomographic section" means the volume of an object whose X-ray attenuation properties are imaged in a tomogram.

(b) Requirements for equipment.

(1) Termination of exposure.

(A) A means shall be provided to terminate the X-ray exposure automatically by either de-energizing the X-ray source or shuttering the X-ray beam if equipment failure affecting data collection occurs. This termination shall occur within an interval that limits the total scan time to no more than 110 percent of its preset value

through the use of either a backup timer or devices that monitor equipment function.

(B) A visible signal shall indicate when the X-ray exposure has been terminated as specified in paragraph (b)(1)(A).

(C) Each operator shall be able to terminate the X-ray exposure at any time during a scan, or series of scans under CT X-ray systems control, of greater duration than one-half second.

(2) Tomographic plane indication and alignment.

(A) For any single tomogram system, a means shall be provided to permit the visual determination of the tomographic plane or a reference plane offset from the tomographic plane.

(B) For any multiple tomogram system, a means shall be provided to permit the visual determination of the location of a reference plane. This reference plane can be offset from the location of the tomographic planes.

(C) If a device using a light source is used, the light source shall provide illumination levels sufficient to permit the visual determination of the location of the tomographic plane or reference plane under ambient light conditions of up to 500 lux.

(3) Beam-on and shutter-status indicators and control switches.

(A) The CT X-ray control and gantry shall provide a visual indication whenever X-rays are produced and, if applicable, whether the shutter is open or closed.

(B) Each emergency button or switch shall be clearly labeled as to its function.

(4) Indication of CT conditions of operation. The CT X-ray system shall be designed so that the CT conditions of operation to be used during a scan or a scan sequence shall be indicated before the initiation of a scan or a scan sequence. This requirement may be met by permanent markings on equipment that has all or some of these conditions of operation at fixed values. An indication of the CT conditions of operation shall be visible from any position from which scan initiation is possible.

(5) Extraneous radiation. When data are not being collected for image production, the radiation adjacent to the tube port shall not exceed the levels permitted in these regulations.

(6) Maximum surface CTDI identification. The angular position where the maximum surface CTDI occurs shall be identified to allow for the reproducible positioning of a CT dosimetry phantom.

(7) Additional requirements applicable to CT X-ray systems containing a gantry manufactured after September 3, 1985.

(A) The total error in the indicated location of the tomographic plane or reference plane shall not exceed five millimeters.

(B) If the X-ray production period is less than one-half second, the indication of X-ray production shall be actuated for at least one-half second. Indicators at or near the gantry shall be discernible from any point external to the patient opening where insertion of any part of the human body into the primary beam is possible.

(C) The deviation of the indicated scan increment versus the actual increment shall not exceed plus or minus one millimeter for any mass weighing from 0 to 100 kilograms and resting on the support device. The patient-support device shall be adjusted in increments from a typical starting position to the maximum distance or 30 centimeters, whichever is less, and then returned to the starting position. Measurement of actual versus indicated scan increment may be taken anywhere along this range of positions.

(D) Premature termination of the X-ray exposure by the operator shall necessitate the resetting of the CT conditions of operation before the initiation of another scan.

(c) Facility design requirements.

(1) Aural communication. Provision shall be made for two-way aural communication between the patient and the operator at the control panel.

(2) Viewing systems.

(A) Windows, mirrors, closed-circuit television, or an equivalent shall be provided to permit continuous observation of the patient during irradiation and shall be located so that the operator can observe the patient from the control panel.

(B) If the primary viewing system is an electronic means, an alternate viewing system, which may be electronic, shall be available for use if the primary viewing system fails.

(d) Surveys, calibrations, spot checks, and operating procedures.

(1) Surveys.

(A) All CT X-ray systems installed after the effective date of this regulation and those systems not previously surveyed shall have a survey performed by, or under the direction of, a qualified expert. In addition, the surveys shall be performed after each change in the facility or equipment that might cause a significant increase in radiation hazard.

(B) Each registrant shall obtain a written report of the survey from the qualified expert. The registrant shall make a copy of the report available to the department upon request.

(2) Radiation calibrations.

(A) The calibration of the radiation output of the CT X-ray system shall be performed by, or under the direction of, a qualified expert who is physically present at the facility during the calibration.

(B) The calibration of each CT X-ray system shall be performed at the intervals specified by a qualified expert and after any change or replacement of components that, in the opinion of the qualified expert, could cause any change in the radiation output.

(C) The calibration of the radiation output of each CT X-ray system shall be performed with a calibrated dosimetry system. The calibration of the system shall be traceable to a national standard. The dosimetry system shall have been calibrated within the preceding two years.

(D) One or more CT dosimetry phantoms shall be used in determining the radiation output of a CT X-ray system. Each phantom shall meet all of the following requirements and conditions of use:

(i) Each CT dosimetry phantom shall consist of right-circular cylinders of polymethyl methacrylate with a density of 1.19 plus or minus 0.01 grams per cubic centimeter. Each phantom shall be at least 14 centimeters in length and shall have a diameter of 32.0 centimeters for testing CT X-ray systems designed to image any section of the body and 16.0 centimeters for systems designed to image the head or for whole-body scanners operated in the head-scanning mode.

(ii) Each CT dosimetry phantom shall provide a means for the placement of one or more dosimeters along the axis of rotation and along a line parallel to the axis of rotation at 1.0 centimeter from the outer surface and within the phantom. A means for the placement of dosimeters or alignment devices at other locations may be provided.

(iii) The effect on the doses measured due to the removal of phantom material to accommodate dosimeters shall be accounted for, through appropriate corrections to the reported data by inclusion in the statement of maximum deviation for the value obtained using the phantom.

(iv) All dose measurements shall be performed with the CT dosimetry phantom placed on the patient couch or support device without additional attenuation materials present.

(E) Calibration shall be required for each type of head, body, or whole-body scan performed at the facility.

(F) Calibration shall meet all of the following requirements:

(i) The dose profile along the center axis of the CT dosimetry phantom for the minimum, maximum, and midrange values of the nominal tomographic section thickness used by the registrant shall be measurable. If fewer than three nominal tomographic thicknesses can be selected, the dose profile determination shall be performed for each available nominal tomographic section thickness.

(ii) The CTDI along the two axes shall be measured. The CT dosimetry phantom shall be oriented so that the measurement point at 1.0 centimeter from the outer surface and within the phantom is in the same angular position within the gantry as the point of maximum surface CTDI identified. The CT conditions of operation shall correspond to typical values used by the registrant.

(iii) The required spot checks shall be made.

(G) The calibration procedures shall be in writing. Records of all calibrations performed shall be maintained for inspection by the department.

(3) Spot checks.

(A) The spot check procedures shall be in writing and shall have been developed by a qualified expert.

(B) The spot check procedures shall incorporate the use of a CT dosimetry phantom that has a capability of providing an indication of contrast scale, noise, nominal tomographic section thickness, and the resolution capability of the system for low-contrast and high-contrast objects, and of measuring the mean CTN for water or other reference material.

(C) All spot checks shall be included in the calibration and shall be made at time intervals and under system conditions specified by a qualified expert.

(D) The spot checks shall include acquisition of images obtained with the CT dosimetry phantom or phantoms using the same processing mode and CT conditions of operation that are used to perform calibrations. The images shall be retained in two forms as follows, until a new calibration is performed:

(i) Photographic copies of the images obtained from the image display device; and

(ii) images stored in digital form on a storage medium compatible with the CT X-ray system.

(E) Written records of the spot checks per-

formed shall be maintained for inspection by the department.

(4) Operating procedures.

(A) The CT X-ray system shall not be operated except by an individual who has been specifically trained in its operation.

(B) Information shall be available at the control panel regarding the operation and calibration of the system. This information shall include the following:

(i) The dates of the latest calibration and spot checks and the location within the facility where the results of those tests can be obtained;

(ii) instructions on the use of the CT dosimetry phantom or phantoms, including the schedule of spot checks appropriate for the system, the allowable variations for the indicated parameters, and the results of at least the most recent spot checks conducted on the system;

(iii) the distance in millimeters between the tomographic plane and the reference plane, if a reference plane is utilized; and

(iv) a current technique chart available at the control panel that specifies, for each routine examination, the CT conditions of operation and the number of scans per examination. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005.)

28-35-249. (Authorized by and implementing K.S.A. 1992 Supp. 48-1607; effective Jan. 1, 1970; amended May 1, 1976; amended Sept. 20, 1993; revoked Dec. 30, 2005.)

28-35-250. (Authorized by K.S.A. 1975 Supp. 48-1607; effective Jan. 1, 1970; amended May 1, 1976; revoked Sept. 20, 1993.)

28-35-250a. (Authorized by and implementing K.S.A. 1992 Supp. 48-1607; effective Sept. 20, 1993; revoked Dec. 30, 2005.)

28-35-251. Veterinary medicine radiography. (a) Equipment.

(1) One or more diaphragms or cones shall be provided for collimating the useful beam to the area of clinical interest.

(2) A device shall be provided to terminate the exposure at a preset time.

(3) A dead-man type of exposure switch shall be provided, together with an electrical cord of sufficient length so that the operator can stand outside of the useful beam and at least two meters or six feet from the animal during each X-ray exposure.

(b) Structural shielding. All wall, ceiling, and floor areas shall be equivalent to, or provided with the shielding or applicable protective barriers that are necessary to ensure compliance with K.A.R. 28-35-212a and K.A.R. 28-35-214a.

(c) Operating procedures.

(1) The operator shall stand outside of the useful beam and away from the animal during each radiographic exposure.

(2) No individual other than the operator shall be in the X-ray room while exposures are being made unless the individual's assistance is required.

(3) When an animal must be held in position during radiography, mechanical supporting or restraining devices shall be used if practical. If the animal must be held by an individual, that individual shall be protected with appropriate shielding devices, which may include protective gloves and an apron, and shall be positioned so that no part of the individual's body will be struck by the useful beam. The thickness of each shielding device used shall be the same as that required by K.A.R. 28-35-242a (a)(5) and (7). The exposure of any individual who consistently assists with restraining animals during radiography shall be monitored. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1970; amended May 1, 1976; amended Sept. 20, 1993; amended Dec. 30, 2005.)

APPENDIX A

28-35-252. (Authorized by K.S.A. 1975 Supp. 48-1607; effective May 1, 1976; revoked Dec. 30, 2005.)

28-35-253. (Authorized by and implementing K.S.A. 1992 Supp. 48-1607; effective Sept. 20, 1993; revoked Dec. 30, 2005.)

28-35-254. (Authorized by and implementing K.S.A. 1992 Supp. 48-1607; effective Sept. 20, 1993; revoked Dec. 30, 2005.)

28-35-255. Healing arts screening. Each person who wants to conduct a healing arts screening program shall be required to obtain the secretary's written approval before initiating the program. Each person requesting that the secretary approve a healing arts screening program shall submit the following information and evaluations:

(a) The name and address of the applicant and, if applicable, the names and addresses of the applicant's agents within this state;

(b) the diseases or conditions for which the X-ray examinations are to be used in diagnoses;

(c) a detailed description of the X-ray examinations proposed in the screening program;

(d) a description of the population to be examined in the screening program, including age, sex, physical condition, and any other relevant information;

(e) an evaluation of any known alternate methods not involving ionizing radiation that could achieve the goals of the screening program and the reason why these methods are not used instead of the X-ray examinations;

(f) an evaluation by a qualified expert of the X-ray system or systems to be used in the screening program. The evaluation by the qualified expert shall show that each system meets all requirements of these regulations;

(g) a description of the quality control program for diagnostic film;

(h) a copy of the technique chart for the X-ray examination procedures to be used;

(i) the qualifications of each individual who would be operating each X-ray system;

(j) the qualifications of the individual who would be supervising the operators of the X-ray systems. The extent of supervision and the method of work performance evaluation shall be specified;

(k) the name and address of the individual who would interpret each radiograph;

(l) a description of all procedures to be used in advising each individual screened and the individual's private practitioner of the healing arts of the results of the screening procedure and any further medical needs indicated;

(m) a description of all procedures to be used for the retention or disposition of the radiographs and other records pertaining to each X-ray examination; and

(n) a specification of the proposed frequency of screening and the proposed duration of the entire screening program. (Authorized by and implementing K.S.A. 48-1607; effective Sept. 20, 1993; amended Dec. 30, 2005.)

28-35-256. Training for X-ray system operators. The following subjects shall be included in the training of X-ray equipment operators, as applicable:

(a) Familiarization with the following:

- (1) Identification of controls;
- (2) the function of each control; and
- (3) how to use technique charts;

(b) radiation protection using the following:

- (1) Collimation;
- (2) filtration;
- (3) gonad shielding and, if used, other patient protection devices;
- (4) restriction of X-ray tube radiation to the image receptor;
- (5) personnel protection; and
- (6) grids;
- (c) film processing, including the following:
 - (1) Film speed as related to the patient's exposure to radiation;
 - (2) film processing parameters; and
 - (3) a quality assurance program;
 - (d) emergency procedures, which shall include the termination of exposure if an automatic timing device fails;
 - (e) the proper use of personnel dosimetry, if required; and
 - (f) understanding the units of radiation. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005.)

PART 6. USE OF SEALED RADIOACTIVE SOURCES IN THE HEALING ARTS

28-35-261. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective Jan. 1, 1970; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985; revoked Dec. 30, 2005.)

28-35-262. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective Jan. 1, 1970; amended May 1, 1976; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985; revoked Dec. 30, 2005.)

28-35-263. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective Jan. 1, 1970; amended May 1, 1976; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985; revoked Dec. 30, 2005.)

28-35-264. General requirements. The provisions of 10 C.F.R. part 35, as in effect on September 9, 2015, are hereby adopted by reference, with the changes specified in this regulation.

- (a) For the purposes of part 6, "byproduct material" shall mean all radioactive material regulated by the department.
- (b) All reports required by this regulation shall be submitted to the department.
- (c) The following sections shall be deleted:
 - (1) 35.1, "purpose and scope";
 - (2) 35.2, "definitions," except that the definitions of the following terms shall be retained:

- (A) "Authorized medical physicist";
- (B) "authorized nuclear pharmacist";
- (C) "authorized user";
- (D) "medical event";
- (E) "prescribed dose"; and
- (F) "radiation safety officer";
- (3) 35.8, "information collection requirements: OMB approval";
 - (4) 35.18, "license issuance";
 - (5) 35.19, "specific exemptions";
 - (6) 35.26(a)(1), "radiation protection program changes";
 - (7) 35.4001, "violations"; and
 - (8) 35.4002, "criminal penalties."
- (d) Wherever the following C.F.R. references occur within 10 C.F.R. part 35, these references shall be replaced with the specified references to regulations and parts in this article:
 - (1) "10 CFR 19.12" shall be replaced with "K.A.R. 28-35-333, 'instructions to workers.'" "
 - (2) "10 CFR part 20" shall be replaced with "part 4, 'standards for protection against radiation.'" "
 - (3) "10 CFR 20.1101" shall be replaced with "K.A.R. 28-35-211d, 'radiation protection programs.'" "
 - (4) "10 CFR 20.1301(a)(1) and 20.1301(c)" shall be replaced with "K.A.R. 28-35-214a."
 - (5) "10 CFR 20.1501" shall be replaced with "K.A.R. 28-35-217b."
 - (6) "10 CFR part 30" shall be replaced with "part 3, 'licensing of sources of radiation.'" "
 - (7) "10 CFR 32.72" shall be replaced with "K.A.R. 28-35-181m, 'specific licenses to manufacture and distribute radiopharmaceuticals containing radioactive material for medical use under group licenses,' and K.A.R. 28-35-181n, 'specific licenses to manufacture and distribute generators or reagent kits for preparation of radiopharmaceuticals containing radioactive material.'" "
 - (8) "10 CFR 32.74" shall be replaced with "K.A.R. 28-35-181o, 'specific licenses to manufacture and distribute sources and devices for use as a calibration or reference source, or for certain medical uses.'" "
 - (9) "10 CFR 33.13" shall be replaced with "K.A.R. 28-35-182b, 'qualifications for a type A specific license of broad scope.'" "
- (e) Wherever the following terms occur within 10 C.F.R. part 35, these terms shall be replaced with "department":
 - (1) "Commission";
 - (2) "NRC operation center"; and
 - (3) "NRC regional office."

(f) The following changes shall be made to the sections specified:

(1) 35.6(b)(1) and (c)(1) shall be replaced with the following text:

“Obtain review and approval of the research as specified in 45 CFR 46.111, ‘criteria for IRB approval of research’; and”.

(2) 35.6(b)(2) and (c)(2) shall be replaced with the following text:

“Obtain informed consent from the human research subject as specified in 45 CFR 46.116, ‘general requirements for informed consent.’”

(3) 35.10, subsection (a) shall be deleted.

(4) In 35.10(d), the date “October 24, 2002” shall be replaced with “the effective date of these regulations.”

(5) 35.12(b)(1) shall be replaced with the following text: “submitting a form specified by the department that includes the facility diagram, equipment, and training and experience qualifications of the radiation safety officer, authorized users, authorized physicists, and authorized pharmacists.”

(6) 35.12(c)(1)(i) shall be replaced with the following text: “a form specified by the department that includes the facility diagram, equipment, and training and experience qualifications of the radiation safety officer, authorized users, authorized physicists, and authorized pharmacists.”

(7) In 35.57(a)(1) and (b)(1), the date “October 24, 2002” shall be replaced with “the effective date of these regulations.”

(8) In 35.57(a)(2) and (b)(2), the date “April 29, 2005” shall be replaced with “the effective date of these regulations.”

(9) In 35.432(a), the date “October 24, 2002” shall be replaced with “the effective date of these regulations.”

(10) In 35.3045, the footnote shall be deleted, and in subsection (a) the words “or any radiation-producing device” shall be added before the words “results in.”

(11) 35.3047(d) shall be replaced with the following text: “The licensee shall submit a written report to the department within 15 days after discovery of a dose to the embryo or fetus, or nursing child that requires a report in paragraphs (a) or (b) in this section.”

(12) In 35.3067, the phrase “with the department” shall be inserted after the word “report” in the first sentence, and the second sentence shall be deleted. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005; amended March 18, 2011; amended May 4, 2018.)

PART 7. SPECIAL REQUIREMENTS FOR INDUSTRIAL RADIOGRAPHIC OPERATIONS

28-35-273. (Authorized by K.S.A. 48-1607; effective Jan. 1, 1970; revoked, T-85-43, Dec. 19, 1984; revoked May 1, 1985.)

28-35-274. Applicability. (a) The regulations in this part shall apply to all persons who utilize sources of radiation for industrial radiography, except those persons who are licensed or registered in the state of Kansas to engage in the practice of the healing arts, dentistry, podiatry, or veterinary medicine. The requirements of this part shall be in addition to, and not in substitution for, the other requirements of these regulations.

(b) The requirements of K.A.R. 28-35-275, K.A.R. 28-35-277a, K.A.R. 28-35-279, K.A.R. 28-35-280, K.A.R. 28-35-287, and K.A.R. 28-35-291 shall apply to sealed radioactive sources only. The requirements of the other regulations in this part shall apply to both radiation machines and sealed radioactive sources. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1601 and K.S.A. 48-1607; effective Jan. 1, 1970; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985; amended Dec. 30, 2005.)

28-35-275. Limits on levels of radiation for radiographic exposure devices and storage containers. Radiographic exposure devices measuring less than four inches from the sealed source storage position to any exterior surface of the device shall have no radiation level in excess of 50 milliroentgens per hour at six inches from any exterior surface of the device. Radiographic exposure devices measuring four or more inches from the sealed source storage position to any exterior surface of the device, and all storage containers for sealed sources or outer containers for radiographic exposure devices, shall have no radiation level in excess of 200 milliroentgens per hour at any exterior surface, or in excess of 10 milliroentgens per hour at one meter from any exterior surface. The radiation level emanating from a device or container shall be measured with the sealed source in the shielded position. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective Jan. 1, 1970; amended May 1, 1976; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985.)

28-35-276. Locking sources of radiation. (a) Each radiographic exposure device shall have a lock or outer locked container designed to prevent

unauthorized or accidental removal of the sealed source from its shielded position. The exposure device or its container, or both, shall be kept locked when not under the direct surveillance of a radiographer or a radiographer's assistant except at permanent radiographic installations as specified in K.A.R. 28-35-285. In addition, during radiographic operations the sealed source assembly shall be secured in the shielded position each time the source is returned to that position.

(b) Each sealed source storage container and source changer shall have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. Storage containers and source changers shall be kept locked when containing sealed sources except when under the direct surveillance of a radiographer or a radiographer's assistant or when being transported.

(c) The control panel of each radiation machine shall be equipped with a lock that prevents the unauthorized use of an X-ray system or the accidental production of radiation. Each radiation machine shall be kept locked with the key removed at all times, except when the machine is under the direct visual surveillance of a radiographer or a radiographer's assistant.

(d) Storage precautions. All locked radiographic exposure devices, storage containers, and source changers shall be physically secured to prevent tampering or removal by unauthorized personnel. (Authorized by and implementing K.S.A. 48-1607; effective Jan. 1, 1970; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985; amended Sept. 20, 1993; amended Dec. 30, 2005.)

28-35-277. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective Jan. 1, 1970; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985; revoked Dec. 30, 2005.)

28-35-277a. Conducting industrial radiographic operations. (a) If radiography is performed at a location other than a permanent radiographic installation, the radiographer shall be accompanied by at least one other qualified radiographer or an individual who has at a minimum met the requirements specified in K.A.R. 28-35-289. The additional qualified individual shall observe the operations and shall be capable of providing immediate assistance to prevent unauthorized entry. Radiography shall not be performed if only one qualified individual is present.

(b) All radiographic operations shall be conducted in a permanent radiographic installation unless otherwise specifically authorized by the secretary.

(c) Except when physically impossible, collimators shall be used in industrial radiographic operations that use radiographic exposure devices that allow the source to be moved out of the device.

(d) Any licensee or registrant may conduct lay-barge, offshore-platform, or underwater radiography only if the licensee's or registrant's procedures have been approved by the secretary, the nuclear regulatory commission, or another agreement state. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005.)

28-35-278. Radiation survey instruments. (a) Each licensee or registrant shall maintain calibrated and operable radiation survey instruments to make physical radiation surveys as required by this part. The instrumentation required by this subsection shall have a range capable of measuring two milliroentgens per hour through one roentgen per hour.

(b) Each radiation survey instrument shall be calibrated as follows:

(1) At energies appropriate for use;

(2) at intervals not to exceed six months and after each instrument servicing;

(3) with a demonstrated accuracy within plus or minus 20 percent; and

(4)(A) For linear scale instruments, at two points located approximately one-third and two-thirds of full scale on each scale;

(B) for logarithmic scale instruments, at mid-range of each decade and at two points of at least one decade; and

(C) for digital instruments, at three points between two and 1,000 mrem per hour.

(c) Each licensee or registrant shall maintain records of the calibrations specified in this regulation for two years after the calibration date. (Authorized by and implementing K.S.A. 48-1607; effective Jan. 1, 1970; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985; amended Dec. 30, 2005.)

28-35-279. Leak testing, repair, tagging, opening, modification, and replacement of sealed sources. (a) The replacement of any sealed source fastened to, or contained in, a radiographic exposure device, leak testing, repair, tagging, opening, and any other action involving a sealed source shall be performed only by persons

specifically authorized to do so by the department, the United States nuclear regulatory commission, or an agreement state.

(b) Each sealed source shall be tested for leakage at intervals not to exceed six months. In the absence of a certificate from a transferor that a leak test has been made within the six-month period before transfer, the sealed source shall not be put into use until leak tested.

(c) The leak test shall be capable of detecting the presence of 0.005 microcuries of removable contamination. Leak tests shall be performed by wiping appropriate accessible surfaces and measuring the level of transferred contamination on the wipes. Records of leak test results shall be kept in units of microcuries and maintained for two years.

(d) If any leak test reveals the presence of 0.005 microcuries or more of removable radioactive material, the sealed source shall be considered to be leaking. The licensee shall immediately withdraw the equipment involved from use and shall cause the equipment to be decontaminated and repaired, or to be disposed of, in accordance with these regulations. Within five days after obtaining results of any leak test indicating a leaking source, the licensee shall file a report with the department describing the equipment involved, the test results, and the corrective action taken, if any.

(e)(1) Each exposure device using depleted uranium (DU) shielding and an S-tube configuration shall be tested for DU contamination at least each 12 months. The test shall be capable of detecting the presence of 0.005 microcuries of radioactive material on the test sample and shall be performed by a person specifically authorized to perform the test by the department, the nuclear regulatory commission, or another agreement state. The records of each DU contamination test shall be retained for two years.

(2) If the test reveals the presence of DU contamination, the exposure device shall be removed from use until an evaluation of any degeneration of the S-tube is made. If the evaluation reveals that the S-tube is worn through, the device shall not be used again. DU-shielded devices shall not be required to be tested for DU contamination while in storage and not in use. Before using or transferring the device, the device shall be tested for DU contamination if the interval of storage exceeded 12 months. (Authorized by and implementing K.S.A. 48-1607; effective Jan. 1, 1970; amended May 1, 1976; amended, T-85-43, Dec.

19, 1984; amended May 1, 1985; amended Dec. 30, 2005.)

28-35-280. Quarterly inventory. Each licensee shall conduct a quarterly inventory to account for all sealed sources and for all devices containing depleted uranium received or possessed by the licensee. The licensee shall maintain these inventory records for two years following the date of the inventory and shall include the following information:

(a) The quantities and kinds of sources and devices containing depleted uranium inventoried;

(b) the location of the sources and devices containing depleted uranium at the time of inventory; and

(c) the date on which the inventory was conducted. (Authorized by and implementing K.S.A. 48-1607; effective Jan. 1, 1970; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985; amended Dec. 30, 2005.)

28-35-281. Utilization logs. (a) Each licensee or registrant shall maintain a log for each source of radiation, which shall contain the following information:

(1) The make and model number, or a detailed description, of the source of radiation or storage container to which the log pertains;

(2) the name and signature of the radiographer to whom the source or container is assigned;

(3) the plant or site where the source or container is used;

(4) the date or dates when the source or container is used; and

(5) the voltage, current, and exposure time for each radiographic exposure made with a radiation machine.

(b) Each licensee or registrant shall retain the logs required by this regulation for three years. (Authorized by and implementing K.S.A. 48-1607; effective Jan. 1, 1970; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985; amended Dec. 30, 2005.)

28-35-282. General requirements. (a) Each radiographer's assistant shall be under the personal supervision of a radiographer when using any radiographic exposure device, any associated equipment, or a sealed source, or while conducting radiation surveys to determine that the sealed source has returned to the shielded position or that the radiation machine is shut off after each exposure. The personal supervision shall include the following:

(1) The radiographer's physical presence at the site where the sources of radiation are being used;

(2) the availability of the radiographer to provide immediate assistance, if required; and

(3) the radiographer's direct observation of the assistant's performance of the operations.

(b) Each licensee or registrant shall conduct an internal audit program to ensure that the agency's radioactive material license conditions and the licensee's or registrant's operating and emergency procedures are followed by each radiographer and radiographer's assistant. These internal audits shall be performed at least quarterly, and each radiographer shall be audited at least quarterly. A record of each internal audit shall be maintained for departmental inspection for two years after the date of the audit. (Authorized by and implementing K.S.A. 48-1607; effective Jan 1, 1970; amended May 1, 1976; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985; amended Sept. 20, 1993; amended Dec. 30, 2005.)

28-35-282a. Inspection and maintenance of radiation machines, radiographic exposure devices, transport and storage containers, associated equipment, source changers, and survey instruments. (a) Each licensee or registrant shall perform visual and operability checks on the survey meters, radiation machines, radiographic exposure devices, each transport and storage container, and any associated equipment and source changers before each day's use, or each work shift, to ensure that all of the following conditions are met:

(1) The equipment is in good working condition.

(2) The sources are shielded.

(3) The required labeling is present.

(b) Survey instrument operability shall be performed by using check sources or other appropriate means.

(c) If equipment problems are found, the equipment shall be removed from service until repaired.

(d) Each licensee or registrant shall have written procedures for and shall perform inspections and routine maintenance on the radiation machines, radiographic exposure devices, source changers, associated equipment, transport and storage containers, and survey instruments. The inspections and maintenance shall occur at least every three months or before the next use to ensure the proper functioning of components

important to safety. If equipment problems are found, the equipment shall be removed from service until repaired.

(e) The licensee's inspection and maintenance program shall include procedures to ensure that type B packages are shipped and maintained in accordance with the certificate of compliance or other type of approval.

(f) Each licensee or registrant shall maintain records of inspection, equipment problems, and any maintenance performed under this regulation for three years. These records shall indicate the following:

(1) The date of the check or inspection;

(2) the name of the inspector;

(3) the equipment modified;

(4) any problems found; and

(5) any repairs needed and any maintenance and equipment problems found. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005.)

28-35-282b. Permanent radiographic installations. (a) Each entrance that is used for access by personnel to the high-radiation area in a permanent radiographic installation shall have either of the following:

(1) An entrance control of the type described in K.A.R. 28-35-219a that causes the radiation level upon entry into the area to be reduced; or

(2) both conspicuous visible and audible warning signals to warn of the presence of radiation. The visible signal shall be actuated by radiation whenever the source is exposed or the machine is energized. The audible signal shall be actuated whenever an attempt is made to enter the installation while the source is exposed or the machine is energized.

(b) The alarm system shall be tested for proper operation with a radiation source each day before the installation is used for radiographic operations. The test shall include a check of both the visible and audible signals. Entrance control devices that reduce the radiation level upon entry as specified in paragraph (a) (1) shall be tested monthly.

(c) If an entrance control device or an alarm is operating improperly, the device or alarm shall be immediately labeled as defective and repaired within seven calendar days. The facility may continue to be used during this seven-day period, if the licensee or registrant implements the continuous surveillance requirements of K.A.R. 28-35-285 and uses an alarming ratemeter.

(d) The test records for entrance controls and audible and visual alarms shall be maintained for three years. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005.)

28-35-282c. Labeling, storage, and transportation. (a) The licensee shall not use a source changer or storage container to store radioactive material unless the source changer or the storage container has securely attached to it a durable, legible, and clearly visible label that meets the following requirements:

- (1) Bears the standard trefoil radiation caution symbol in conventional colors, which shall include magenta, purple, and black on a yellow background;
- (2) has a minimum diameter of 25 mm; and
- (3) displays the following wording:

CAUTION [or "DANGER"]
RADIOACTIVE MATERIAL
NOTIFY CIVIL AUTHORITIES
[or "NAME OF COMPANY"]

(b) The licensee shall not transport radioactive material unless the material is packaged and the package is labeled, marked, and accompanied with appropriate shipping papers in accordance with U.S. department of transportation regulations.

(c) Radiographic exposure devices, source changers, storage containers, and radiation machines shall be physically secured to prevent tampering or removal by unauthorized personnel. The licensee shall store all radioactive material in a manner that will minimize danger from explosion or fire.

(d) The licensee shall lock and physically secure all transport packages containing radioactive material in the transporting vehicle to prevent accidental loss, tampering, and unauthorized removal.

(e) The licensee's name and the name of the city or town where the main business office is located shall be prominently displayed by affixing a durable, clearly visible label on each side of any vehicle used to transport radioactive material or radiation machines for temporary use at a job site. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005.)

28-35-282d. Radiation safety officer. Each radiation safety officer shall ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's or registrant's program.

(a) The minimum qualifications, training, and experience for a radiation safety officer for industrial radiography shall be the following:

- (1) Completion of the training and testing requirements of K.A.R. 28-35-289;
- (2) 2,000 hours of hands-on experience as a qualified radiographer in industrial radiographic operations; and
- (3) formal training in the establishment and maintenance of a radiation protection program.

(b) Alternatives to the requirements specified in subsection (a) may be considered by the secretary if the radiation safety officer has training and experience in the field of ionizing radiation and, in addition, has adequate formal training with respect to the establishment and maintenance of a radiation safety protection program.

(c) The specific duties and authorities of the radiation safety officer shall include the following:

(1) Establishing and overseeing all operating, emergency, and ALARA procedures as required by part 4 of these regulations and reviewing the procedures regularly to ensure that the procedures conform to the department's regulations and to the license or registration conditions;

(2) overseeing and approving the training program for radiographic personnel to ensure that appropriate and effective radiation protection practices are taught;

(3) ensuring that required radiation surveys and leak tests are performed and documented in accordance with these regulations, including any corrective measures when levels of radiation exceed established limits;

(4) ensuring that personnel monitoring devices are calibrated, if applicable, and used properly, that records are kept of the monitoring results, and that timely notifications are made as required by part 4 of these regulations; and

(5) ensuring that operations are conducted safely and for implementing corrective actions including terminating operations.

(d) Each licensee and registrant shall have two years after the effective date of this regulation to meet the requirements of K.A.R. 28-35-282a and K.A.R. 28-35-282b. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005.)

28-35-283. Operating and emergency procedures. (a) At a minimum, the operating and emergency procedures of each licensee or registrant shall include instructions in the following areas:

(1) The proper handling and use of sources of radiation, so that no person is likely to receive a radiation exposure in excess of the limits specified in part 4 of these regulations;

(2) the methods of, and occasions for, conducting radiation surveys;

(3) the methods of controlling access to areas where radiography is being performed;

(4) the methods of, and occasions for, locking and securing sources of radiation, transport containers, storage containers, and exposure devices;

(5) personnel monitoring and the use of personnel-monitoring equipment, including steps that shall be taken immediately by radiography personnel if a pocket dosimeter is found to be off-scale;

(6) transporting sources of radiation to field locations, including packing sources of radiation in a vehicle, posting signs or placards on a vehicle in which a source of radiation is to be transported, and controlling sources of radiation during transportation;

(7) the procedures for minimizing the exposure of individuals if an accident, including a source disconnect, transport accident, or loss of a source of radiation, occurs;

(8) source recovery procedures if the licensee will perform source recoveries;

(9) the procedures for notifying the appropriate persons if an accident occurs;

(10) the maintenance of records; and

(11) the inspection, maintenance, and operability checking of radiographic exposure devices, storage containers, transport containers, radiation machines, survey instruments, and alarming ratemeters.

(b) Each licensee shall maintain a copy of the current operating and emergency procedures until the department terminates the license. A copy of all superceded operating and emergency procedures shall be maintained for three years after the procedures have been superceded. (Authorized by and implementing K.S.A. 48-1607; effective Jan. 1, 1970; amended Jan. 1, 1972; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985; amended Dec. 30, 2005.)

28-35-284. Personnel monitoring. (a) The licensee or registrant shall not permit any individual to act as a radiographer or a radiographer's assistant unless, at all times during radiographic operations, each individual wears on the trunk of the body a personnel-monitoring device

(PMD) as specified in K.A.R. 28-35-217a, a direct reading dosimeter, and an alarming ratemeter. At permanent radiographic installations where other appropriate alarming or warning devices are in routine use and during radiographic operations using radiation machines, the use of an alarming ratemeter shall not be required.

(1) Each pocket ion-chamber dosimeter shall have a range from zero to 200 mrem and shall be recharged at the start of each work shift. Electronic personal dosimeters may be used in place of only pocket ion-chamber dosimeters.

(2) Each PMD shall be assigned to and worn by only one individual.

(3) Each PMD shall be exchanged at least monthly.

(4) After replacement, each PMD shall be returned to the supplier for processing within 14 calendar days after the end of the monitoring period, or as soon as practicable. In circumstances that make it impossible to return each PMD within 14 calendar days, these circumstances shall be documented and available for review by the department.

(b) Direct reading dosimeters, including pocket ion-chamber dosimeters and electronic personal dosimeters, shall be read and the exposures shall be recorded at the beginning and end of each work shift, and records shall be maintained for two years.

(c) All pocket ion-chamber dosimeters and electronic personal dosimeters shall be checked at least each 12 months for the proper response to and the accurate measurement of radiation, and records shall be maintained for two years. An acceptable reading on each dosimeter shall be within plus or minus 30 percent of the true radiation exposure.

(d) If an individual's pocket ion-chamber dosimeter is found to be off-scale or if an electronic personal dosimeter reads greater than 200 mrem, the individual's PMD shall be sent for processing within 24 hours. In addition, the individual shall not resume any work associated with the use of sources of radiation until a determination of the amount of individual's radiation exposure is made. This determination shall be made by the radiation safety officer or the radiation safety officer's designee. The results of this determination shall be included in the records.

(e) If an individual's PMD is lost or damaged, the individual shall cease work immediately until a replacement PMD is provided and the exposure

is calculated for the time period from issuance to loss or damage of the PMD. The results of the calculated exposure and the time period during which the PMD was lost or damaged shall be included in the records.

(f) Each licensee or registrant shall ensure that each alarming ratemeter meets the following requirements:

(1) Is checked to ensure that the alarm functions properly before using at the start of each shift;

(2) is set to give an alarm signal at a preset dose rate of 500 mrem per hour, with an accuracy of plus or minus 20 percent of the true radiation dose rate;

(3) requires a special means to change the pre-set alarm function; and

(4) is calibrated at least each 12 months for the accurate measurement of radiation.

(g) Records of personnel-monitoring procedures. Each licensee or registrant shall maintain the following exposure records:

(1) Direct reading dosimeter readings and yearly operability checks for two years after the record is made;

(2) records of alarm ratemeter calibrations for two years after the record is made;

(3) PMD results received from the accredited NVLAP processor until the department terminates the license; and

(4) records of exposure estimates as a result of any direct reading dosimeter that reads off-scale or any lost or damaged personnel-monitoring equipment, until the department terminates the license. (Authorized by and implementing K.S.A. 48-1607; effective Jan. 1, 1970; amended Jan. 1, 1972; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985; amended Sept. 20, 1993; amended Dec. 30, 2005.)

28-35-285. Surveillance. During each radiographic operation, the radiographer or radiographer's assistant shall maintain direct visual surveillance of the operation to protect against unauthorized entry into the high-radiation area, except under either of the following circumstances:

(a) If the high-radiation area is equipped with a control device or an alarm system as specified in K.A.R. 28-35-219a; or

(b) if the high-radiation area is locked to protect against unauthorized or accidental entry. (Authorized by and implementing K.S.A. 48-1607; effective Jan. 1, 1970; amended, T-85-43, Dec. 19,

1984; amended May 1, 1985; amended Sept. 20, 1993; amended Dec. 30, 2005.)

28-35-286. Posting. Any area in which radiography is being performed shall be conspicuously posted in the manner required by K.A.R. 28-35-219a. (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective Jan. 1, 1970; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985.)

28-35-287. Radiation surveys and survey records. (a) No radiographic operation shall be conducted unless calibrated and operable radiation survey instruments, as specified in K.A.R. 28-35-278, are available and used at each site where radiographic exposures are made.

(b) A survey using a radiation survey instrument shall be made after each radiographic exposure to determine that the sealed source has been returned to its shielded position. The entire circumference of the radiographic exposure device shall be surveyed. If the radiographic exposure device has a source guide tube, the survey shall include the guide tube.

(c) Before securing in a storage area any radiographic exposure device, storage container, or source changer in the manner specified in K.A.R. 28-35-276, a survey using a radiation survey instrument shall be made to determine that each sealed source is in the shielded position.

(d) A record shall be kept of each survey performed for two years to comply with this regulation. (Authorized by and implementing K.S.A. 48-1607; effective Jan. 1, 1970; amended Jan. 1, 1972; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985; amended Sept. 20, 1993; amended Dec. 30, 2005.)

28-35-288. Special requirements and exemptions for enclosed radiography. (a) Each licensee or registrant shall ensure that each system for enclosed radiography that is designed to allow the admittance of any individual meets the following requirements:

(1) Meets all applicable requirements of this part and K.A.R. 28-35-214a if the system is not a certified cabinet X-ray system;

(2) meets all applicable requirements of this part and has been certified by the U.S. food and drug administration (FDA) as compliant with the requirements in 21 C.F.R. 1020.40, if the system is a certified cabinet X-ray system; and

(3) is evaluated, at intervals not to exceed one year, to ensure compliance with the applicable

requirements specified in paragraphs (1) or (2) of this subsection. A record of each evaluation shall be maintained for two years after the evaluation.

(b) Each cabinet X-ray system designed to exclude any individual shall be exempt from the requirements of K.A.R. 28-35-276, K.A.R. 28-35-278, K.A.R. 28-35-281, K.A.R. 28-35-282, K.A.R. 28-35-283, K.A.R. 28-35-284, K.A.R. 28-35-285, K.A.R. 28-35-286, and K.A.R. 28-35-289, with the following exceptions:

(1) Operating personnel shall be provided with personnel-monitoring equipment as specified in K.A.R. 28-35-217a.

(2) A registrant shall not permit any individual to operate a cabinet x-ray system until that individual has received a copy of and instruction in the operating procedures for the unit and has demonstrated competence in its use. A record that demonstrates compliance with this paragraph shall be maintained for inspection by the department until disposition is authorized by the department.

(3) A test for proper operation of each high-radiation area control device or alarm system, where applicable, shall be conducted and recorded as specified in K.A.R. 28-35-288.

(c) Each permanent radiographic installation having any high-radiation area entrance control of the type specified in K.A.R. 28-35-219a shall also meet the following requirements:

(1) Each entrance that is used for personnel access to the high-radiation area in a permanent radiographic installation shall have both a visible and an audible warning signal to warn of the presence of radiation.

(2) The visible signal shall be activated by radiation whenever the source is exposed. The audible signal shall be activated if an attempt is made to enter the installation while the source is exposed.

(d) The control device or alarm system shall be tested for proper operation at the beginning of each period of use. A record of each test shall be prepared quarterly or before the first use after the end of the quarter. Each record shall be maintained for inspection by the department until the secretary authorizes disposal of the record. (Authorized by and implementing K.S.A. 48-1607; effective Jan. 1, 1970; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985; amended Sept. 20, 1993; amended Dec. 30, 2005; amended May 4, 2018.)

28-35-289. Training requirements. (a) The licensee or registrant shall not permit any individual to act as a radiographer until the individual has completed both of the following:

(1) At least 40 hours of training in the subjects specified in subsection (g) of this regulation; and

(2) one of the following types of on-the-job training consisting of hands-on experience under the supervision of a radiographer and certification through a radiographer certification program by a certifying entity as specified in K.A.R. 28-35-293:

(A) If the individual will be performing industrial radiography utilizing radioactive material, on-the-job training that includes at least two months or 320 hours of active participation in the performance of industrial radiography utilizing radioactive material;

(B) if the individual will be performing industrial radiography utilizing radiation machines, on-the-job training that includes at least one month or 160 hours of active participation in the performance of industrial radiography utilizing radiation machines; or

(C) if the individual will be performing industrial radiography utilizing radioactive material and radiation machines, both segments of the on-the-job training specified in paragraphs (a)(2) (A) and (B).

(b) The licensee or registrant shall not permit any individual to act as a radiographer until the individual meets the following requirements:

(1) Has received the following:

(A) A copy of and instruction in the requirements contained in this part;

(B) a copy of the applicable portions of parts 4 and 10 of these regulations;

(C) the license or registration under which the radiographer will perform industrial radiography; and

(D) a copy of the licensee's or registrant's operating and emergency procedures;

(2) has demonstrated an understanding of the material listed in paragraphs (b)(1) (A) through (D) by successful completion of a written or oral examination;

(3) has received training in the use of the registrant's radiation machines, or the licensee's radiographic exposure services and sealed sources, in the daily inspection of devices and associated equipment and in the use of radiation survey instruments; and

(4) has demonstrated an understanding of the use of the equipment specified in paragraph (b)

(3) by successful completion of a practical examination.

(c) The licensee or registrant shall not permit any individual to act as a radiographer's assistant until the individual meets the following requirements:

(1) Has received the following:

(A) A copy of and instruction in the requirements contained in this part;

(B) a copy of the applicable portions of parts 4 and 10 of these regulations;

(C) the license or registration under which the radiographer's assistant will perform industrial radiography; and

(D) a copy of the licensee's or registrant's operating and emergency procedures;

(2) has demonstrated an understanding of the material listed in paragraphs (c)(1) (A) through (D) by successful completion of a written or oral examination;

(3) under the personal supervision of a radiographer, has received training in the use of the registrant's radiation machines, or the licensee's radiographic exposure devices and sealed sources, in the daily inspection of devices and associated equipment and in the use of radiation survey instruments; and

(4) has demonstrated an understanding of the use of the equipment specified in paragraph (c) (3) by successful completion of a practical examination.

(d) Each radiographer and radiographer's assistant shall receive the annual refresher safety training at least every 12 months.

(e) The radiation safety officer or designee shall conduct an inspection program of the job performance of each radiographer and radiographer's assistant to ensure that the department's regulations, the license or registration requirements, and the operating and emergency procedures are followed. Alternatives may be considered by the secretary if the individual serves as both radiographer and radiation safety officer. In those operations in which a single individual serves as both radiographer and radiation safety officer and performs all radiography operations, an inspection program shall not be required. The inspection program shall include the following:

(1) Observation of the performance of each radiographer and radiographer's assistant during an actual industrial radiographic operation, at least every six months; and

(2) a provision that, if a radiographer or a radiographer's assistant has not participated in an

industrial radiographic operation for more than six months since the last inspection, the radiographer shall demonstrate knowledge of the training requirements of paragraph (b)(3) and the radiographer's assistant shall demonstrate knowledge of the training requirements of paragraph (c)(3) by a practical examination before these individuals are allowed to participate in a radiographic operation.

(f) Each licensee or registrant shall maintain the following:

(1) Records of the training of each radiographer and radiographer's assistant. These records shall include radiographer certification documents and verification of certification status, copies of written tests, dates of oral and practical examinations, the names of individuals conducting and receiving the oral and practical examinations, a list of the subjects tested, and the results of the oral and practical examinations; and

(2) records of annual refresher safety training and semiannual inspections of job performance for each radiographer and each radiographer's assistant. These records shall list the topics discussed during the refresher safety training, the date or dates on which the annual refresher safety training was conducted, and the names of the instructors and attendees. For inspections of job performance, the records shall also include a list showing the items checked and any noncompliance observed by the radiation safety officer.

(g) The training of each licensee or registrant shall include information about the following:

(1) Fundamentals of radiation safety, including the following:

(A) The characteristics of gamma radiation and X-radiation;

(B) the units of radiation dose and activity;

(C) the hazards of exposure to radiation;

(D) the levels of radiation from different sources of radiation; and

(E) the methods of controlling radiation dose using time, distance, and shielding;

(2) radiation detection instruments, including the following:

(A) The use, operation, calibration, and limitations of radiation survey instruments;

(B) survey techniques; and

(C) the use of personnel-monitoring equipment;

(3) the equipment to be used, including the following:

(A) The operation and control of radiographic exposure equipment, remote handling equip-

ment, and storage containers, including pictures or models of source assemblies;

(B) the operation and control of radiation machines;

(C) the storage, control, and disposal of sources of radiation; and

(D) inspection and maintenance of equipment;

(4) the requirements of state and federal regulations; and

(5) case histories of accidents in radiography. (Authorized by and implementing K.S.A. 48-1607; effective Jan. 1, 1970; amended May 1, 1976; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985; amended Dec. 30, 2005; amended July 27, 2007.)

28-35-290. Reports of incidents or of lost or stolen sources. (a) Each licensee or registrant shall provide a written report of all events involving radiography devices and licensed material as specified in K.A.R. 28-35-184b, K.A.R. 28-35-228a, K.A.R. 28-35-229a, and K.A.R. 28-35-230a.

(b) In addition to the requirements in subsection (a), each licensee or registrant shall provide a written report to the department within 30 days after the occurrence of any of the following incidents involving radiographic equipment:

(1) Unintentional disconnection of the source assembly from the control cable;

(2) inability to retract the source assembly to its fully shielded position and secure the source assembly in this position; or

(3) failure of any component that is critical to safe operation of the device to perform its intended function.

(c) Each licensee or registrant shall include the following information with each report submitted under subsection (b):

(1) A description of the equipment problem;

(2) a description of the cause of each incident, if known;

(3) the name of the manufacturer and the model number of the equipment involved in the incident;

(4) the place, time, and date of incident;

(5) a description of the actions taken to establish normal operations;

(6) a description of all corrective actions taken or planned to prevent reoccurrence; and

(7) a description of the qualifications of the personnel involved in the incident.

(d) Each report of overexposure submitted pursuant to these regulations that involves failure of the safety components of radiography equipment

shall also include the information specified in subsection (c).

(e) Each licensee or registrant conducting radiographic operations or storing sources of radiation at any location not listed on the license or registration for a period in excess of 180 days in a calendar year shall notify the department before exceeding the 180 days. (Authorized by and implementing K.S.A. 48-1607; effective Nov. 1, 1996; amended Dec. 30, 2005.)

28-35-291. Performance requirements for radiography equipment. (a) Each radiographic exposure device and all associated equipment shall have been certified by the NRC as compliant with the requirements specified in “radiological safety for design and construction of apparatus for gamma radiography,” published by the American national standards institute as NBS handbook 136, issued January 1981, ANSI N432-1980 standards. As an alternative, any licensee or applicant may submit an engineering analysis demonstrating that testing previously performed on similar individual radiography components is adequate to support a finding that the previous testing is an acceptable substitute for that described in the N432-1980 standards.

(b) In addition to the requirements specified in subsection (a), the licensee shall ensure that each radiographic exposure device and all associated equipment meet the following requirements.

(1) Each user of a radiographic exposure device shall attach to the device a durable, legible, clearly visible label bearing the following information:

(A) The chemical symbol and mass number of the radionuclide in the device;

(B) the radioactive activity level and the date on which this activity was last measured;

(C) the model number and serial number of the sealed source;

(D) the manufacturer of the sealed source; and

(E) the licensee’s name, address, and telephone number.

(2) Each radiographic exposure device intended for use as a type B transport container shall have been certified by the NRC as compliant with the applicable requirements of 10 C.F.R. 71.51.

(3) The licensee shall not modify any exposure device or associated equipment in a manner that compromises the design safety features of the system.

(c) In addition to the requirements specified in subsections (a) and (b), the licensee shall ensure that each radiographic exposure device and the

associated equipment that allows the source to be moved out of the device for routine operation meet the following requirements.

(1) The coupling between the source assembly and the control cable shall be designed so that the source assembly cannot become disconnected if cranked outside the guide tube. The coupling shall be designed to prevent an unintentional disconnection under normal conditions and reasonably foreseeable abnormal conditions.

(2) The device shall automatically secure the source assembly when the source assembly is cranked back into the fully shielded position in the device. A deliberate operation on the exposure device shall be required to release the source assembly.

(3) The outlet fitting, lock box, and drive cable fittings on each radiographic exposure device shall be equipped with safety plugs or covers, which shall be installed during storage and transportation to protect the source assembly from water, mud, sand, and other foreign matter.

(4) Each sealed source or source assembly shall have attached to it or engraved on it a durable, legible, visible label with these words: "DANGER RADIOACTIVE." The label shall not interfere with the safe operation of the exposure device or the associated equipment.

(5) Each sealed source that is not fastened to, or contained in, a radiographic exposure device shall have a durable tag permanently attached to the sealed source. The tag shall measure at least one square inch and shall bear the radiation symbol described in K.A.R. 28-35-219a and, at a minimum, the following instructions: "Danger—Radioactive Material—Do Not Handle—Notify Civil Authorities If Found."

(6) The guide tube shall have passed the crushing tests for the control tube as specified in ANSI N432-1980 standards and a kinking resistance test that closely approximates the kinking forces likely to be encountered during use.

(7) Guide tubes shall be used when moving the source out of the device.

(8) An exposure head or similar device shall be used to prevent the source assembly from passing out of the end of the guide tube during radiographic operations.

(9) The guide tube exposure head connection shall be able to withstand the tensile test for control units specified in ANSI N432-1980 standards.

(10) Each source changer shall provide a system for ensuring that the source can not accidentally

be withdrawn from the changer when connecting or disconnecting the drive cable to or from a source assembly.

(d) Each licensee shall ensure that all newly manufactured radiographic exposure devices and the associated equipment acquired after January 10, 1995 meet the requirements of this regulation.

(e) Each licensee shall ensure that all radiographic exposure devices and associated equipment used by the licensee after January 10, 1995 meet the requirements of this regulation.

(f) Any licensee may use equipment in industrial radiographic operations that does not comply with section 8.9.2(c) of the endurance test in ANSI N432-1980 standards, if prototype equipment has been tested using a torque that an individual using the radiography equipment can realistically exert on the lever or crankshaft of the drive mechanism. (Authorized by and implementing K.S.A. 48-1607; effective Nov. 1, 1996; amended Dec. 30, 2005.)

28-35-292. Location of documents and records. (a) Each licensee or registrant shall maintain copies of records required by this part and other applicable parts of these regulations.

(b) Each licensee or registrant shall also maintain current copies of the following documents or records sufficient to demonstrate compliance at each applicable field station and each temporary job site:

(1) The license or registration authorizing the use of sources of radiation;

(2) a copy of parts 1, 4, 7, and 10 of these regulations;

(3) the utilization logs for each source of radiation dispatched from that location;

(4) the records of any equipment problems identified in daily checks of equipment;

(5) the records of alarm systems and entrance control checks, if applicable;

(6) the records of all dosimeter readings;

(7) the operating and emergency procedures;

(8) evidence of the latest calibration of the radiation survey instruments in use at the site;

(9) evidence of the latest calibrations of alarming ratemeters and operability checks of dosimeters;

(10) the survey records for the period of operation at the site;

(11) the shipping papers for the transportation of radioactive materials; and

(12) when operating under reciprocity pursuant to part 3 of these regulations, a copy of the applicable state license or registration, or nuclear

regulatory commission license authorizing the use of sources of radiation. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005; amended July 27, 2007.)

28-35-293. Requirements for an independent certifying organization. (a) Each independent certifying organization shall be required to meet the following conditions in order to be recognized by the secretary:

(1) Be an organization, including a society or association, whose members participate in, or have an interest in, the field of industrial radiography;

(2) make membership in the organization available to the general public nationwide. Membership shall not be restricted because of race, color, religion, sex, age, national origin, or disability;

(3) have a certification program that is open to nonmembers as well as members;

(4) be an incorporated, nationally recognized organization that is involved in setting national standards of practice within its fields of expertise;

(5) have an adequate staff, a viable system for financing its operations, and a policy-making and decision-making review board;

(6) have a set of written organizational bylaws and policies that provide adequate assurance of lack of conflict of interest and a system for monitoring and enforcing those bylaws and policies;

(7) have a committee, whose members shall carry out their responsibilities impartially, to review and approve the certification guidelines and procedures and to advise the organization's staff in implementing the certification program;

(8) have a committee, whose members shall carry out responsibilities impartially, to review complaints against certified individuals and to determine appropriate sanctions;

(9) have written procedures describing all aspects of the organization's certification program and maintain records of the current status of each individual's certification and the administration of the organization's certification program;

(10) have procedures to ensure that certified individuals are provided due process with respect to the administration of its certification program, including the process of becoming certified and any sanctions imposed against certified individuals;

(11) have procedures for proctoring examinations, including qualifications for proctors. These procedures shall ensure that the individuals proctoring each examination are not employed by the same company or corporation, or by a wholly

owned subsidiary of the company or corporation, as that of any of the examinees;

(12) exchange information about certified individuals with the nuclear regulatory commission, other independent certifying organizations, and agreement states and allow periodic review of the organization's certification program and related records; and

(13) provide a description to the nuclear regulatory commission of the organization's procedures for choosing examination sites and for providing an appropriate examination environment.

(b) Each certification program recognized by the secretary shall meet the following requirements:

(1) Require applicants for certification to meet the following requirements:

(A) Receive training in the topics specified in K.A.R. 28-35-289 or in equivalent state or nuclear regulatory commission regulations; and

(B) satisfactorily complete a written examination covering the topics specified in paragraph (b) (1)(A);

(2) require each applicant for certification to provide documentation demonstrating that the applicant meets the following requirements:

(A) Receives training in the topics specified in K.A.R. 28-35-289 or in equivalent state or nuclear regulatory commission regulations;

(B) has satisfactorily completed a minimum period of on-the-job training as specified in K.A.R. 28-35-289; and

(C) receives verification by a state licensee or registrant or a nuclear regulatory commission licensee that the applicant has demonstrated the capability of independently working as a radiographer;

(3) include procedures to ensure that all examination questions are protected from wrongful disclosure;

(4) include procedures for denying an application and for revoking, suspending, and reinstating a certification;

(5) provide a certification period of at least three years and not more than five years;

(6) include procedures for renewing certifications and, if the procedures allow renewals without examination, require evidence of recent full-time employment and annual refresher training; and

(7) provide a timely response to inquiries from members of the public about an individual's certification status; and

(8) have requirements for written examinations that meet the following requirements:

(A) Are designed to test an individual's knowledge and understanding of the topics specified in K.A.R. 28-35-289 or in equivalent state or nuclear regulatory commission regulations;

(B) are written in a multiple-choice format; and

(C) have test items drawn from a question bank containing psychometrically valid questions based on the material specified in K.A.R. 28-35-289. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005.)

PART 8. RADIATION SAFETY REQUIREMENTS FOR ANALYTICAL X-RAY EQUIPMENT

28-35-296. Purpose and scope. This part provides special requirements for analytical x-ray equipment. The requirements of this part are in addition to, and not in substitution for applicable requirements in other parts of these regulations. (Authorized by K.S.A. 1975 Supp. 48-1607; effective May 1, 1976.)

28-35-297. Equipment requirements.

(A) *Safety device.* A device which prevents the entry of any portion of an individual's body into the primary x-ray beam path or which causes the beam to be shut off upon entry into its path shall be provided on all open-beam configurations. A licensee and/or registrant may apply to the department for an exemption from the requirement of a safety device. Such application shall include:

(1) a description of the various safety devices that have been evaluated,

(2) the reason each of these devices cannot be used, and

(3) a description of the alternative methods that will be employed to minimize the possibility of an accidental exposure, including procedures to assure that operators and others in the area will be informed of the absence of safety devices.

(B) *Warning devices.* Open-beam configurations shall be provided with a readily discernible indication of:

(1) x-ray tube status (on-off) located near the radiation source housing, if the primary beam is controlled in this manner; and/or

(2) Shutter status (open-closed) located near each port on the radiation source housing, if the primary beam is controlled in this manner. Warning devices shall be labeled so that their purpose is easily identified. On equipment installed after January 1, 1976, warning devices shall have fail-safe characteristics.

(C) *Ports.* Unused ports on radiation source housings shall be secured in the closed position in a manner which will prevent casual opening.

(D) *Labeling.* All analytical x-ray equipment shall be labeled with a readily discernible sign or signs bearing the radiation symbol and the words:

(1) "CAUTION—HIGH INTENSITY X-RAY BEAM," or words having a similar intent, on the x-ray source housing;

(2) "CAUTION RADIATION—THIS EQUIPMENT PRODUCES RADIATION WHEN ENERGIZED," or words having a similar intent, near any switch that energizes an x-ray tube if the radiation source is an x-ray tube; or

(3) "CAUTION—RADIOACTIVE MATERIAL," or words having a similar intent, on the source housing if the radiation source is a radionuclide.

(E) *Shutters.* On open-beam configurations installed after January 1, 1976, each port on the radiation source housing shall be equipped with a shutter that cannot be opened unless a collimator or a coupling has been connected to the port.

(F) *Warning lights.* An easily visible warning light labeled with the words "X-RAY ON," or words having a similar intent, shall be located:

(1) near any switch that energizes an x-ray tube and shall be illuminated only when the tube is energized; or

(2) in the case of a radioactive source, near any switch that opens a housing shutter, and shall be illuminated only when the shutter is open. On equipment installed after January 1, 1976, warning lights shall have fail-safe characteristics.

(G) *Radiation source housing.* Each x-ray tube housing shall be so constructed that with all shutters closed the leakage radiation measured at a distance of five (5) centimeters from its surface is not capable of producing a dose in excess of 2.5 millirem in one hour at any specified tube rating.

(H) *Generator cabinet.* Each x-ray generator shall be supplied with a protective cabinet which limits leakage radiation measured at a distance of five (5) centimeters from its surface such that it is not capable of producing a dose in excess of 0.25 millirem in one hour. (Authorized by K.S.A. 1975 Supp. 48-1607; effective May 1, 1976.)

28-35-298. Area requirements. (a) Radiation levels. The local components of an analytical X-ray system shall be located and arranged and shall include sufficient shielding or access control so that no radiation levels exist in any area surrounding the local component group that could

result in a dose to an individual present therein in excess of the dose limits specified in K.A.R. 28-35-214a. For systems utilizing X-ray tubes, these levels shall be met at each specified tube rating.

(b) Surveys. Radiation surveys, as specified in K.A.R. 28-35-139(a), of all analytical X-ray systems sufficient to show compliance with K.A.R. 28-35-298(a) shall be performed as follows:

(1) At the time of installation of the equipment;

(2) following any change in the initial arrangement, number, or type of local components in the system;

(3) following any maintenance requiring the disassembly or removal of a local component in the system;

(4) during the performance of maintenance and alignment procedures if the procedures require the presence of a primary X-ray beam when any local component in the system is disassembled or removed;

(5) any time a visual inspection of the local components in the system reveals an abnormal condition; and

(6) whenever personnel-monitoring devices show a significant increase over the previous monitoring period or the readings are approaching the limits specified in these regulations.

(c) Posting. Each area or room containing analytical X-ray equipment shall be conspicuously posted with a sign or signs bearing the radiation symbol and the words "CAUTION—X-RAY EQUIPMENT," or words having a similar meaning. (Authorized by and implementing K.S.A. 48-1607; effective May 1, 1976; amended Dec. 30, 2005.)

28-35-299. Operating requirements. (a) Procedures. Normal operating procedures shall be written and available to all analytical X-ray equipment workers. No person shall be permitted to operate analytical X-ray equipment in any manner other than that specified in the normal operating procedures unless the person has obtained the prior written approval of the radiation safety officer.

(b) Bypassing. No person shall bypass a safety device unless the person has obtained the prior written approval of the radiation safety officer. If a safety device is bypassed, a readily discernible sign bearing the words "SAFETY DEVICE NOT WORKING," or words having a similar meaning, shall be placed on the radiation source housing.

(c) Repair or modification of X-ray tube systems. Except as specified in subsection (b), no op-

eration involving the removal of covers, shielding materials, or tube housings or any modifications to shutters, collimators, or beam stops shall be performed without ascertaining that the tube is off and will remain off until safe conditions have been restored. The main switch, rather than interlocks, shall be used for each routine shutdown in preparation for repairs.

(d) Radioactive source replacement, testing, or repair. Radioactive source housings shall be opened for source replacement, leak testing, or other maintenance or repair procedures only by individuals authorized to specifically conduct these procedures under a license issued by the U.S. nuclear regulatory commission, an agreement state, or a licensing state. (Authorized by and implementing K.S.A. 48-1607; effective May 1, 1976; amended Dec. 30, 2005.)

28-35-300. Personnel requirements. (A) *Instruction.* No person shall be permitted to operate or maintain analytical x-ray equipment unless such person has received instruction in and demonstrated competence as to:

(1) Identification of radiation hazards associated with the use of the equipment;

(2) Significance of the various radiation warning and safety devices incorporated into the equipment, or the reasons they have not been installed on certain pieces of equipment and the extra precautions required in such cases;

(3) Proper operating procedures for the equipment;

(4) Symptoms of an acute localized exposure; and

(5) Proper procedures for reporting an actual or suspected exposure.

(B) *Personnel Monitoring.* Finger or wrist dosimetric devices shall be provided to and shall be used by: (1) Analytical x-ray equipment workers using systems having an open-beam configuration and not equipped with a safety device; and

(2) Personnel maintaining analytical x-ray equipment if the maintenance procedures require the presence of a primary x-ray beam when any local component in the analytical x-ray system is disassembled or removed. (Authorized by K.S.A. 1975 Supp. 48-1607; effective May 1, 1976.)

PART 9. RADIATION SAFETY REQUIREMENTS FOR PARTICLE ACCELERATORS

28-35-308. Applicability. (a) This part, which establishes procedures for the registration

and the use of particle accelerators, shall be in addition to, and not a substitute for, other applicable provisions of these regulations.

(b) In addition to the requirements of this part, all registrants shall be subject to the requirements of parts 1, 2, 4, and 10. Registrants engaged in industrial radiographic operations shall be subject to the requirements of part 7, and registrants engaged in the healing arts shall be subject to the requirements of parts 5, 6, and 14 of these regulations. Registrants engaged in the production of radioactive material shall be subject to the requirements of part 3. (Authorized by and implementing K.S.A. 48-1607; effective May 1, 1976; amended Dec. 30, 2005; amended July 27, 2007.)

28-35-309. Registration requirements.

No person shall receive, possess, use, transfer, own, or acquire a particle accelerator except as authorized in a registration issued pursuant to these regulations or as otherwise provided for in these regulations. The general procedures for registration of particle accelerator facilities are included in part 2 of these regulations. (Authorized by K.S.A. 1975 Supp. 48-1607; effective May 1, 1976.)

28-35-310. General requirements for the issuance of a registration for particle accelerators. In addition to the requirements of part 2, the registrant shall: (A) Be qualified by reason of training and experience to use the accelerator in question for the purpose intended in accordance with this part and part 4 and part 10 of these regulations and in such a manner as to minimize danger to public health and safety or property;

(B) The registrant's proposed equipment, facilities, operating and emergency procedures shall be adequate to protect health and minimize danger to public health and safety or property;

(C) The use of the particle accelerator shall not be inimical to the health and safety of the public and the users shall satisfy any applicable special requirement in regulation 28-35-311 of this regulation;

(D) The registrant shall appoint a radiation safety officer;

(E) The registrant and/or his staff shall have substantial experience in the use of particle accelerators for the intended uses;

(F) The registrant shall establish a radiation safety committee to approve, in advance, proposals for uses of particle accelerators, whenever deemed necessary by the department; and

(G) The registrant shall have an adequate training program for particle accelerator operators. (Authorized by K.S.A. 1975 Supp. 48-1607; effective May 1, 1976.)

28-35-311. Human use of particle accelerators. In addition to the requirements set forth in part 2, the registrant shall: (A) Whenever deemed necessary by the department, the registrant shall appoint a medical committee of at least three (3) members to evaluate all proposals for research, diagnostic, and therapeutic use of a particle accelerator. Membership of the committee should include physicians expert in internal medicine, hematology, therapeutic radiology, and a person experienced in depth dose calculations and protection against radiation;

(B) The individuals designated as the users shall have substantial training and experience in deep therapy techniques or in the use of particle accelerations to treat humans; and

(C) The user must be a physician. (Authorized by K.S.A. 1975 Supp. 48-1607; effective May 1, 1976.)

28-35-312. (Authorized by K.S.A. 1975 Supp. 48-1607; effective May 7, 1976; revoked Dec. 30, 2005.)

28-35-313. Limitations. (A) No registrant shall permit any person to act as a particle accelerator operator until such person:

(1) Has been instructed in radiation safety and shall have demonstrated an understanding thereof;

(2) Has received copies of and instruction in this part and the applicable requirements of part 4 and part 10, pertinent operating conditions and the registrant's operating and emergency procedures, and shall have demonstrated understanding thereof; and

(3) Has demonstrated competence to use the particle accelerator, related equipment, and survey instruments which will be employed in his assignment.

(B) Either the radiation safety committee or the radiation safety officer shall have the authority to terminate the operations at a particle accelerator facility if such action is deemed necessary to protect health and minimize danger to public health and safety or property. (Authorized by K.S.A. 1975 Supp. 48-1607; effective May 1, 1976.)

28-35-314. Shielding and safety design requirements. (a) An expert who is qualified in

shielding and safety design requirements shall be consulted in the design of each particle accelerator installation and shall perform a radiation survey when the accelerator is first capable of producing radiation.

(b) Each particle accelerator installation shall be provided with the primary barriers or secondary barriers, or both, necessary to ensure compliance as specified in K.A.R. 28-35-212a and K.A.R. 28-35-214a. (Authorized by and implementing K.S.A. 48-1607; effective May 1, 1976; amended Dec. 30, 2005.)

28-35-315. Particle accelerator controls and interlock systems. (A) Instrumentation, readouts and controls on the particle accelerator control console shall be clearly identified and easily discernible.

(B) All entrances into a target room or other high radiation area shall be provided with interlocks that shut down the machine under conditions of barrier penetration.

(C) When an interlock system has been tripped, it shall only be possible to resume operation of the accelerator by manually resetting controls at the position where the interlock has been tripped, and lastly at the main control console.

(D) Each safety interlock shall be on a circuit which shall allow its operation independently of all other safety interlocks.

(E) All safety interlocks shall be fail safe, i.e., designed so that any defect or component failure in the interlock system prevents operation of the accelerator.

(F) A scram button or other emergency power cutoff switch shall be located and easily identifiable in all high radiation areas. Such a cutoff switch shall include a manual reset so that the accelerator cannot be restarted from the accelerator control console without resetting the cutoff switch. (Authorized by K.S.A. 1975 Supp. 48-1607; effective May 1, 1976.)

28-35-316. Warning devices. (a) Each location designated as a high-radiation area and each entrance to the high-radiation area shall be equipped with easily observable flashing or rotating warning lights that operate only if radiation is being produced.

(b) Except in facilities designed for human exposure, each high-radiation area shall have an audible warning device that shall be activated for 15 seconds before the possible creation of a high-

radiation area. The warning device shall be clearly discernible in all high-radiation areas and all radiation areas.

(c) All barriers, temporary or permanent, and all pathways leading to high-radiation areas shall be identified as specified in K.A.R. 28-35-219a. (Authorized by and implementing K.S.A. 48-1607; effective May 1, 1976; amended Dec. 30, 2005.)

28-35-317. Operating procedures. (A) Particle accelerators, when not in operation, shall be secured to prevent unauthorized use.

(B) Only a switch on the accelerator control console shall be routinely used to turn the accelerator beam on and off. The safety interlock system shall not be used to turn off the accelerator beam except in an emergency.

(C) All safety and warning devices, including interlocks, shall be checked for proper operability at intervals not to exceed three (3) months. Results of such tests shall be maintained for inspection at the accelerator facility.

(D) Electrical circuit diagrams of the accelerator, and the associated interlock systems, shall be kept current and maintained for inspection by the department and available to the operator at each accelerator facility.

(E) If, for any reason, it is necessary to intentionally bypass a safety interlock or interlocks, such action shall be:

(1) Authorized by the radiation safety committee and/or radiation safety officer;

(2) recorded in a permanent log and a notice posted at the accelerator control console; and

(3) terminated as soon as possible.

(F) A copy of the current operating and the emergency procedures shall be maintained at the accelerator control panel. (Authorized by K.S.A. 1975 Supp. 48-1607; effective May 1, 1976.)

28-35-318. Radiation monitoring requirements. (a) Each particle accelerator facility registrant shall have available the appropriate portable monitoring equipment that is operable and is calibrated for the appropriate types and levels of radiation being produced at the facility. The equipment shall be tested for proper operation daily and calibrated at intervals not to exceed one year, and after each servicing or repair.

(b) A radiation protection survey shall be performed and documented by a qualified expert acceptable to the department each time that changes have been made in the shielding, oper-

ation, or equipment, or in the occupancy of adjacent areas.

(c) Radiation levels in each high-radiation area shall be continuously monitored. Each monitoring device shall be electrically independent of the accelerator control and interlock systems and capable of providing a remote and local readout with visual alarms or audible alarms, or both, at both the control panel and the entrance to high-radiation areas, and other appropriate locations, so that people entering or present become aware of the existence of the hazard.

(d) All area monitors shall be calibrated at intervals not to exceed one year, and after each servicing or repair.

(e) Whenever applicable, the registrant shall make periodic surveys to determine the amount of airborne particulate radioactivity present in areas of airborne hazards.

(f) Whenever applicable, the registrant shall make periodic smear surveys to determine the degree of contamination in target and other pertinent areas.

(g) All area surveys shall be made in accordance with the written procedures established by a qualified expert or by the radiation safety officer of the particle accelerator facility.

(h) Records of all radiation protection surveys, calibration results, instrumentation tests, and smear results shall be kept current and on file at each accelerator facility. (Authorized by and implementing K.S.A. 48-1607; effective May 1, 1976; amended Dec. 30, 2005.)

28-35-319. Ventilation systems. (a) Adequate ventilation shall be provided in areas where airborne radioactivity could be produced.

(b) No registrant shall vent, release, or otherwise discharge airborne radioactive material to an uncontrolled area, except as specified in K.A.R. 28-35-214b. (Authorized by and implementing K.S.A. 48-1607; effective May 1, 1976; amended Dec. 30, 2005.)

PART 10. NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS; INSPECTIONS

28-35-331. Persons required to meet the requirements of this part. The requirements of this part apply to all persons who receive, possess, use, own or transfer material licensed by or registered with the department pursuant to part 2 or 3 of these regulations. (Authorized by K.S.A. 1984 Supp. 48-1607; implementing K.S.A. 1984 Supp. 48-1604,

48-1607, 48-1609; effective May 1, 1976; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985.)

28-35-332. Posting of notices to workers.

(a) Each licensee or registrant shall post current copies of the following documents:

(1) The regulations in this part and part 4;

(2) the license, or certificate of registration, including any conditions on the license and any document or documents incorporated into the license by reference and also any amendment to the license;

(3) the operating procedures applicable to work under the license or registration; and

(4) any notice of violation involving radiological working conditions, any order issued pursuant to Part 1, and any response from the licensee or registrant.

(b) If the posting of a document specified in paragraph (a)(1), (2), or (3) is not practicable, the licensee or registrant may post a notice which describes the document and states where it may be examined.

(c) Department form RH-3 shall be posted by each licensee or registrant where individuals work in or frequent any portion of a controlled area.

(d) Documents, notices or forms shall be posted to allow individuals engaged in work under the license or registration to observe them on the way to or from any particular work location to which the document applies, shall be conspicuous, and shall be replaced if defaced or altered.

(e) Department documents posted pursuant to paragraph (a)(4) shall be posted within two working days after receipt of the documents from the department; the licensee's or registrant's response, if any, shall be posted within two working days after dispatch from the licensee or registrant. The documents shall remain posted for a minimum of five working days or until action correcting the violation has been completed, whichever is longer. (Authorized by K.S.A. 1984 Supp. 48-1607; implementing K.S.A. 1984 Supp. 48-1604, 48-1607, 48-1609; effective May 1, 1976; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985.)

28-35-333. Instructions to workers.

(a) Each licensee or registrant shall ensure that each individual who is likely to receive in a year an occupational dose in excess of 100 mrem (1 mSv) is instructed as follows:

(1) Is kept informed of the storage, transfer, or use of radioactive material or of radiation in the restricted area;

(2) is instructed in all of the following subjects:

(A) Health protection problems associated with exposure to radioactive material or radiation to the individual and potential offspring;

(B) precautions or procedures to minimize exposure; and

(C) the purposes and functions of protective devices employed;

(3) is instructed in, and instructed to observe, to the extent within the worker's control, the provisions of these regulations and any licenses concerning the protection of personnel from exposures to radiation or radioactive material;

(4) is informed of the individual's responsibility to report promptly to the licensee or registrant any condition that has caused or could cause any of the following:

(A) A violation of these regulations;

(B) a violation of a license or registration; or

(C) unnecessary exposure to radiation or radioactive material;

(5) is instructed in the appropriate response to warnings made in the event of any unusual occurrence or malfunction that could involve exposure to radiation or radioactive material; and

(6) is informed of the radiation exposure reports that workers may request as specified in K.A.R. 28-35-334.

(b) In determining which individuals are subject to the requirements of subsection (a) of this regulation, each licensee or registrant shall take into consideration each individual's assigned activities during normal and abnormal situations involving exposure to radiation or radioactive material, or both, that can reasonably be expected to occur during the life of a licensed or registered facility. The extent of the instruction specified in subsection (a) shall be commensurate with the potential radiological health protection problems present in the workplace. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1607; effective May 1, 1976; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985; amended Oct. 17, 1994; amended Dec. 30, 2005.)

28-35-334. Reports to individuals. Radiation exposure data for an individual and the results of any measurements, analyses, and calculations of radioactive material deposited or retained in the body of an individual shall be reported to the individual as specified in this regulation.

(a) The information reported shall include data and results obtained pursuant to the requirements

of these regulations or any order of the secretary or license condition, as shown in records maintained by the licensee or registrant pursuant to K.A.R. 28-35-227h. Each report shall meet the following requirements:

(1) Be in writing;

(2) include appropriate identifying data, including the name of the licensee or registrant, the name of the individual, and the individual's identification number, preferably social security number;

(3) include the individual's exposure information; and

(4) contain the following statement:

"This report is furnished to you under the provisions of Kansas Administrative Regulation 28-35-334. You should preserve this report for further reference."

(b) Each licensee or registrant shall make dose information available to individual workers shown in records maintained by the licensee or registrant pursuant to K.A.R. 28-35-227h. Each licensee or registrant shall provide an annual report to each individual worker monitored pursuant to K.A.R. 28-35-217a of the dose received in that monitoring year if either of the following situations occurs:

(1) The individual's dose exceeds 1 mSv (100 mrem) TEDE or 1 mSv (100 mrem) to any individual organ or tissue.

(2) The individual requests an annual dose report.

(c) Each licensee or registrant shall furnish a written report of a worker's exposure to sources of radiation or radioactive material at the request of the worker if the worker was formerly engaged in activities controlled by the licensee or registrant. The report shall be furnished within 30 days from the date of the request or within 30 days after the dose of the individual has been determined by the licensee or registrant, whichever is later. The report shall cover, within the period of time specified in the request, the dose record for each year the worker was required to be monitored pursuant to K.A.R. 28-35-217a. The report shall also include the period of time in which the worker's activities involved exposure to sources of radiation and shall include the dates and locations of work under the license or registration in which the worker participated during this period.

(d) When a licensee or registrant is required pursuant to K.A.R. 28-35-229a(a)(1) and (b)(1) to report to the department any exposure of an individual to sources of radiation, the licensee or

the registrant shall also provide to the individual a written report of the individual's exposure data included in the report. This report shall be transmitted to the individual at a time not later than the transmittal of the report to the department.

(e) At the request of a worker who is terminating employment with the licensee or registrant that involves exposure to radiation or radioactive material or at the request of a worker who, while employed by another person, is terminating an assignment to work involving radiation dose in the licensee's facility, each licensee or registrant shall provide to the worker, or the worker's designee, a written report regarding the radiation dose received by that worker from operations of the licensee or registrant during the current year. The report shall be provided at the worker's termination. The licensee or registrant may provide a written estimate of that dose if the finally determined personnel monitoring results are not available at that time. Estimated doses shall be clearly indicated as such. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1607 and 48-1609; effective May 1, 1976; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985; amended Oct. 17, 1994; amended March 18, 2011.)

28-35-335. Presence of representatives of licensees or registrants and workers during inspection. (a) Each licensee or registrant shall afford to the department, at all reasonable times, opportunity to inspect materials, machines, activities, facilities, premises, and records maintained by the licensee or registrant.

(b) During an inspection, department inspectors may consult privately with workers as specified in K.A.R. 28-35-336 and any amendment to that rule and regulation. The licensee or registrant may accompany department inspectors during other phases of an inspection.

(c) If, at the time of inspection, an individual has been authorized by the workers to represent them during department inspections, the licensee shall give the workers' representative an opportunity to accompany the inspectors during the inspection of physical working conditions.

(d) Each workers' representative shall be routinely engaged in work under control of the licensee or registrant and shall have received the instructions specified in K.A.R. 28-35-333 and any amendment of that rule and regulation.

(e) Different representatives of licensees or registrants and workers may accompany the in-

spectors during different phases of an inspection if there is no resulting interference with the conduct of the inspection. However, only one workers' representative at a time shall accompany the inspectors.

(f) With the approval of the licensee or registrant and the workers' representative, an individual who is not routinely engaged in work under control of the licensee or registrant shall be afforded the opportunity to accompany department inspectors during the inspection of physical working conditions.

(g) Department inspectors may refuse to permit accompaniment by an individual who deliberately interferes with a fair and orderly inspection. If an area to be inspected is a restricted area, the workers' representative for that area shall be an individual previously authorized by the licensee or registrant to enter that area. (Authorized by K.S.A. 1984 Supp. 48-1607; implementing K.S.A. 1984 Supp. 48-1604, 48-1607, 48-1609; effective May 1, 1976; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985.)

28-35-336. Consultation with workers during inspections. (a) Department inspectors may consult privately with workers concerning matters of occupational radiation protection and other matters related to the provisions of these regulations or any condition of a license, to the extent the inspectors deem necessary for the conduct of an effective and thorough inspection.

(b) During the course of an inspection, any worker may bring privately to the attention of the inspectors, either orally or in writing, any past or present condition which that worker has reason to believe may have contributed to or caused any violation of the act, these regulations, or any license condition, or any unnecessary exposure of an individual to radiation from licensed radioactive material or a registered radiation machine under the licensee's or registrant's control. Any such notice in writing shall state clearly the condition complained of and be signed by the worker.

(c) The provisions of 28-35-336 subsection (b) shall not be interpreted as authorizing disregard of instructions given pursuant to K.A.R. 28-35-333 and any amendments of that rule and regulation. (Authorized by K.S.A. 1984 Supp. 48-1607; implementing K.S.A. 1984 Supp. 48-1604, 48-1607, 48-1609; effective May 1, 1976; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985.)

28-35-337. Requests by workers for inspections. (a) Any worker or representative of workers who believes that a violation of the act, these regulations or a license conditions exists or has occurred in work under a license or registration with regard to radiological working conditions in which the worker is engaged may request an inspection by giving notice of the alleged violation to the department. Any such notice shall be in writing, shall set forth the specific grounds for the notice, and shall be signed by the worker or representative of the workers. A copy shall be provided to the licensee or registrant by the department no later than at the time of inspection except that, upon the request of the worker giving the notice, the worker's name and the name of individuals referred to shall not appear in the copy or on any record published, released, or made available by the department, except for good cause shown.

(b) If, upon receipt of the notice, the department determines that the complaint meets the requirements of subsection (a), and that there are reasonable grounds to believe that the alleged violation exists or has occurred, an inspection shall be made as soon as practicable, to determine if the alleged violation exists or has occurred. Inspections pursuant to this section need not be limited to matters referred to in the complaint.

(c) No licensee or registrant shall discharge or in any manner discriminate against any worker because the worker has filed any complaint, or instituted or caused to be instituted any proceeding under these regulations, or has testified or is about to testify in any proceeding, or because of the exercise by the worker on behalf of the worker or others of any option afforded by this part. (Authorized by K.S.A. 1984 Supp. 48-1607; implementing K.S.A. 1984 Supp. 48-1604, 48-1607, 48-1609; effective May 1, 1976; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985.)

28-35-338. Inspections not warranted; informal review. (a) If the department determines, with respect to a complaint filed under K.A.R. 28-35-337, and any amendments to that rule and regulation that an inspection is not warranted because there are no reasonable grounds to believe that a violation exists or has occurred, the department shall notify the complainant in writing of that determination. The complainant may obtain a review of the determination by submitting a written statement of position to the secretary, who will provide the licensee or registrant

with a copy of the statement by certified mail, excluding, at the request of the complainant, the name of the complainant. The licensee or registrant may submit an opposing written statement of position to the secretary, who will provide the complainant with a copy of that statement by certified mail. Upon the request of the complainant, the secretary or the secretary's designee may hold an informal conference in which the complainant and the licensee or registrant may orally present their views. An informal conference may also be held at the request of the licensee or registrant, but disclosure of the identity of the complainant shall be made only following receipt of written authorization from the complainant. After considering all written or oral views presented, the secretary shall affirm, modify, or reverse the determination of the department and furnish the complainant and the licensee or registrant a written notification of the decision and the reason for the decision.

(b) If the secretary determines that an inspection is not warranted because the requirements of K.A.R. 28-35-337(a) have not been met, the secretary shall notify the complainant in writing of the determination. That determination shall be without prejudice to the filing of a new complaint meeting the requirements of K.A.R. 28-35-337(a). (Authorized by K.S.A. 1984 Supp. 48-1607; implementing K.S.A. 1984 Supp. 48-1604, 48-1607, 48-1609; effective May 1, 1976; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985.)

PART 11. WIRELINE AND SUBSURFACE TRACER STUDIES

28-35-341. Persons to whom these regulations apply. The regulations in this part shall apply to each licensee or registrant who uses any source of radiation for wireline service operations, including mineral logging, radioactive markers, or subsurface tracer studies. The requirements of this part shall be in addition to, and not in substitution for, the requirements of Parts 1, 2, 3, 4, and 10 of these regulations. (Authorized by and implementing K.S.A. 1992 Supp. 48-1607; effective Sept. 20, 1993.)

28-35-342. Preoperational and use requirements. (a) Preoperational agreements. A licensee shall not perform any wireline service operation with a sealed source or source unless, before commencement of the operation, the licensee has a written agreement with the well operator,

well owner, drilling contractor, or land owner stating the following:

(1) If a sealed source is lodged downhole, a reasonable effort at recovery will be made.

(2) No person will attempt to recover a sealed source in a manner that, in the licensee's opinion, could result in a rupture of the sealed source.

(3) If a decision is made to abandon the sealed source downhole, the requirements of K.A.R. 28-35-362 (c) will be met.

(b) Limits on levels of radiation. All sources of radiation shall be used, stored, and transported so that the transportation and the dose limitation requirements of these regulations are met.

(c) Uranium sinker bars. Any licensee may use a uranium sinker bar in well-logging applications only if the sinker bar is legibly impressed with these words: "CAUTION RADIOACTIVE—DEPLETED URANIUM" and "NOTIFY CIVIL AUTHORITIES [or COMPANY NAME] IF FOUND."

(d) Energy compensation source. Any licensee may use either an energy compensation source (ECS) contained within a logging tool or other tool components, if the ECS contains quantities of licensed material not exceeding 3.7 Mbq (100 microcuries).

(1) For well-logging applications with a surface casing protecting freshwater aquifers, use of the ECS shall be subject only to the requirements of K.A.R. 28-35-346, K.A.R. 28-35-347, and K.A.R. 28-35-360.

(2) For well-logging applications without a surface casing protecting freshwater aquifers, use of the ECS shall be subject only to the requirements of K.A.R. 28-35-342, K.A.R. 28-35-346, K.A.R. 28-35-347, K.A.R. 28-35-360, and K.A.R. 28-35-362.

(e) Use of sealed source in a well without a surface casing. Any licensee may use a sealed source in a well without a surface casing for protecting freshwater aquifers if the licensee follows a procedure for reducing the probability that the source will become lodged in the well. This procedure shall be required to be approved by the U.S. nuclear regulatory commission or by an agreement state before the licensee uses the procedure.

(f) Use of a tritium neutron generator target source.

(1) Each licensee who uses a tritium neutron generator target source that contains a total quantity of tritium not exceeding 1,110 Mbq (30 curies) and is located in a well with a surface casing to protect freshwater aquifers shall be subject to

the requirements of this part, excluding K.A.R. 28-35-349 and K.A.R. 28-35-362.

(2) Each licensee who uses a tritium neutron generator target source that contains a total quantity of tritium exceeding 1,110 Mbq (30 curies) or is located in a well without a surface casing to protect freshwater aquifers shall be subject to the requirements of this part, excluding K.A.R. 28-35-349. (Authorized by and implementing K.S.A. 48-1607; effective Sept. 20, 1993; amended Dec. 30, 2005.)

28-35-343. Storage precautions. (a) Each source of radiation, except accelerators, shall be provided with a storage container and, if transported, a transport container. The same container may be used in both cases if the container meets the requirements for each use. The container shall be provided with a lock to prevent unauthorized removal of, or exposure to, the source of radiation.

(b) Each source of radiation shall be stored in a manner that minimizes danger from explosion or fire. (Authorized by and implementing K.S.A. 48-1607; effective Sept. 20, 1993; amended Dec. 30, 2005; amended May 4, 2018.)

28-35-344. Transport precautions. Each licensee shall lock and physically secure each transport package containing licensed material in the transporting vehicle to prevent accidental loss, tampering, or unauthorized removal of the licensed material from the vehicle. (Authorized by and implementing K.S.A. 48-1607; effective Sept. 20, 1993; amended May 4, 2018.)

28-35-345. Radiation survey instruments. (a) Each licensee or registrant shall maintain a sufficient supply of calibrated and operable radiation survey instruments capable of detecting beta and gamma radiation at each field station and temporary job site to make any physical radiation survey required by this part and part 4 of these regulations. Instrumentation shall be capable of measuring a range of 0.1 milliroentgens through at least 50 milliroentgens per hour.

(b) Each licensee shall have available additional calibrated and operable radiation-detection instruments sensitive enough to detect the low radiation and contamination levels that could be encountered if a sealed source ruptures. Any licensee may own the instruments or may have a procedure to obtain them from a second party when needed.

(c) Within the previous six months and after each servicing or repair, each radiation survey instrument used shall be calibrated as follows:

(1) At energies and radiation levels appropriate for use;

(2) with a demonstrated accuracy of within plus or minus 20 percent of the true radiation level on each scale; and

(3) (A) At two points located approximately one-third and two-thirds of full scale on each scale if it is a linear instrument;

(B) at midrange of each decade, and at two points of at least one decade if it is a logarithmic scale instrument; and

(C) at appropriate points if it is a digital instrument.

(d) A calibration record for each instrument shall be maintained for two years for inspection by the department. (Authorized by and implementing K.S.A 48-1607; effective Sept. 20, 1993; amended Dec. 30, 2005.)

28-35-346. Leak testing of sealed sources. (a) Requirements. Each licensee using any sealed source of radioactive material shall have the source tested for leakage as specified in subsection (c). A record of leak test results shall be kept in units of microcuries and maintained for inspection by the department. The licensee shall keep the records of the results for three years after the leak test is performed.

(b) Method of testing. Each test for leakage shall be performed only by a person specifically authorized to perform such a test by the department, the nuclear regulatory commission, an agreement state, or a licensing state. The test sample shall be taken from the surface of the source, the source holder, or the surface of the device in which the source is stored or mounted and on which one could expect contamination to accumulate. The test sample shall be analyzed for radioactive contamination. The analysis shall be capable of detecting the presence of 0.005 microcurie (185 Bq) of radioactive material on the test sample and shall be performed by a person specifically authorized to perform such a test by the department, the nuclear regulatory commission, an agreement state, or a licensing state.

(c) Interval of testing. Each sealed source of radioactive material, except an energy compensation source (ECS), shall be tested at intervals not to exceed six months. In the absence of a certificate from a transferor indicating that a test has

been made within the six months before the transfer, the sealed source shall not be put into use until tested. If, for any reason, it is suspected that a sealed source could be leaking, the sealed source shall be removed from service immediately and tested for leakage as soon as practical. Each ECS that is not exempt from testing in accordance with subsection (e) shall be tested at intervals not to exceed three years. In the absence of a certificate from a transferor that a test has been made within the three years before the transfer, the ECS shall not be used until tested.

(d) Leaking or contaminated sources. If the test reveals the presence of 0.005 microcurie (185 Bq) or more of leakage or contamination, the licensee shall immediately withdraw the source from use and shall cause it to be decontaminated, repaired, or disposed of in accordance with these regulations. Each licensee shall check the equipment associated with the leaking source for radioactive contamination and, if contaminated, shall have the equipment decontaminated or disposed of by a nuclear regulatory commission licensee or an agreement state licensee that is authorized to perform these functions. A report describing the equipment involved, the test result, and the corrective action taken shall be filed with the department within five days after receiving the test results.

(e) Exemptions. The following sources shall be exempt from the periodic leak test requirements of this regulation:

(1) Hydrogen-3 (tritium) sources;

(2) sources of radioactive material with a half-life of 30 days or less;

(3) sealed sources of radioactive material in gaseous form;

(4) sources of radioactive material emitting beta, beta-gamma, or gamma radiation, with an activity of not more than 100 microcuries (3.7 Mbq); and

(5) sources of alpha-emitting radioactive material with an activity of not more than 10 microcuries (0.370 MBq). (Authorized by and implementing K.S.A 48-1607; effective Sept. 20, 1993; amended Dec. 30, 2005; amended March 18, 2011.)

28-35-347. In-person inventory. Each licensee or registrant shall conduct an in-person inventory to account for all sources of radiation once every six months. A record of each inventory shall be maintained for two years from the date of the inventory for inspection by the department and shall include the quantities and kinds of sources of radiation, the location where sources of

radiation are assigned, the date of the inventory, and the name of the individual conducting the inventory. (Authorized by and implementing K.S.A. 48-1607; effective Sept. 20, 1993; amended May 4, 2018.)

28-35-348. Utilization records. Each licensee or registrant shall maintain current utilization records, which shall be kept available for inspection by the department for two years from the date of the recorded event, showing the following information for each source of radiation:

- (a) make, model number, and a serial number or a description of each source of radiation used;
- (b) the identity of the well-logging supervisor or field unit to whom assigned;
- (c) each location where used and each date of use; and
- (d) the radionuclide and activity used in a particular well, when dealing with tracer materials and radioactive markers. (Authorized by and implementing K.S.A. 1992 Supp. 48-1607; effective Sept. 20, 1993.)

28-35-349. Design, performance, and certification criteria for sealed sources used in downhole operations. (a) Each sealed source that is used in downhole operations and manufactured after May 1, 1991 shall be certified by the manufacturer or other testing organization to meet the following minimum criteria.

- (1) Each source shall be doubly encapsulated.
- (2) Each source shall contain radioactive material with a chemical and physical form that is insoluble and nondispersive as practical.
- (3) Each source's prototype shall have been tested and found to maintain its integrity after each of the following tests:

(A) Temperature. The test source shall be held at -40°C for 20 minutes and at 600°C for one hour. Then the test source be subjected to a thermal shock test with a temperature drop from 600°C to 20°C within 15 seconds.

(B) Impact test. A five-kg steel hammer with a diameter of 2.5 cm shall be dropped from a height of one meter onto the test source.

(C) Vibration test. The test source shall be subject to a vibration from 25 Hz to 500 Hz at five g (gravitational acceleration) amplitude for 30 minutes.

(D) Puncture test. A one-gram hammer with a pin having a diameter of 0.3 cm shall be dropped from a height of one meter onto the test source.

(E) Pressure test. The test source shall be subjected to an external pressure of 24,600 pounds per square inch absolute (1.695×10^7 pascal).

(b) No sealed source acquired after May 1, 1992 shall be put into use in the absence of a certificate from a transferor certifying that the sealed source meets the requirements of subsection (a), until the required determinations and testing have been performed.

(c) Each sealed source that is used in downhole operations after May 1, 1992 shall be certified by the manufacturer or other testing organization as meeting the sealed source performance requirements for oil well-logging contained in "sealed radioactive sources—classification," ANSI/HPS N43.6-1997, including the annexes, approved by the American national standards institute, inc. in November 1997, published by the health physics society, and hereby adopted by reference.

(d) Certification documents shall be maintained for inspection by the department for a period of two years after source disposal. If the source is abandoned downhole, the certification documents shall be maintained until the department authorizes disposition of these documents.

(e) The requirements in subsections (a), (b), (c), and (d) shall not apply to any sealed sources that contain licensed material in gaseous form.

(f) The requirements in subsections (a), (b), (c), and (d) shall not apply to any energy compensation sources (ECS). Each ECS shall be registered with the department, NRC, or an agreement state. (Authorized by and implementing K.S.A. 48-1607; effective Sept. 20, 1993; amended Dec. 30, 2005; amended July 27, 2007.)

28-35-350. Labeling. (a) Each source, source holder, and logging tool containing radioactive material shall bear a durable, legible, and clearly visible marking or label that has, at a minimum, the standard radiation caution symbol, without the conventional color requirement, and the following wording:

DANGER (or CAUTION)
RADIOACTIVE MATERIAL

This labeling shall be on the smallest component transported as a separate piece of equipment.

(b) Each storage container that is transported shall have securely attached to the container a durable, legible, and clearly visible label that has, at a minimum, the standard radiation caution symbol and the following wording:

DANGER (or CAUTION)
 RADIOACTIVE MATERIAL
 NOTIFY CIVIL AUTHORITIES
 (or NAME OF COMPANY)

(c) No licensee may transport licensed material unless the material is packaged, labeled, marked, and accompanied by appropriate shipping papers in accordance with these regulations. (Authorized by and implementing K.S.A. 48-1607; effective Sept. 20, 1993; amended Dec. 30, 2005.)

28-35-351. Repair, opening, or modification. (a) Each licensee shall visually check for defects all source holders, logging tools, sinker bars, injection tools, source handling tools, storage containers, transport containers, and uranium sinker bars before each use to ensure that the equipment is in good working condition and that the required labeling is present. If any defects are found, the equipment shall be removed from service until repaired, and a record shall be made listing the following:

- (1) The date of inspection;
- (2) the name of the inspector;
- (3) the type of equipment involved;
- (4) the defects found; and
- (5) the repairs made.

(b) Each licensee shall have a program for semiannual visual inspections and routine maintenance of all source holders, logging tools, injection tools, source handling tools, storage containers, transport containers, and uranium sinker bars to ensure that the required labeling is legible and that no physical damage is visible. If any defects are found, the equipment shall be removed from service until repaired, and a record shall be made listing the following:

- (1) The date of the inspection;
- (2) the type of equipment involved;
- (3) the inspection and maintenance operations performed;
- (4) any defects found; and
- (5) any actions taken to correct the defects.

(c) Removal of a sealed source holder or logging tool, and maintenance on sealed sources or holders in which sealed sources are contained shall not be performed by the licensee unless a written procedure to perform this operation that is approved by the U.S. nuclear regulatory commission, an agreement state, or a licensing state is used.

(d) If a sealed source is stuck in the source holder, the licensee shall not drill, cut, chisel, or perform any other operation on the source holder

unless the licensee is approved by the U.S. nuclear regulatory commission, an agreement state, or a licensing state to perform this operation.

(e) The repair, opening, or modification of any sealed source shall be performed only by a person authorized to do so by the department, the U.S. nuclear regulatory commission, an agreement state, or a licensing state.

(f) Each licensee shall maintain the records required by this regulation for three years. (Authorized by and implementing K.S.A. 48-1607; effective Sept. 20, 1993; amended Dec. 30, 2005.)

28-35-352. Training requirements. (a) A licensee or registrant shall not permit any individual to act as a logging supervisor as defined in this part until that individual meets the following requirements:

(1) Has received, in a course recognized by the department, the U.S. nuclear regulatory commission, an agreement state, or a licensing state, instruction in each subject outlined in K.A.R. 28-35-363 and has demonstrated an understanding of the course material and of this subsection by successfully completing a written or oral test;

(2) (A) has received copies of and received instruction in the regulations contained in this part and the applicable regulations in parts 1, 4, and 10 of these regulations, the conditions of the appropriate license or certificate of registration, and the licensee's or registrant's operating and emergency procedures; and

(B) has demonstrated an understanding of these materials; and

(3) has demonstrated competence to use sources of radiation, related handling tools, and radiation survey instruments that will be used on the job.

(b) No licensee may permit an individual to act as a logging assistant until that person meets the following:

(1) Has received instruction in the applicable regulations in parts 4, 10 and 11;

(2) has received copies of, and instruction in, the licensee's operating and emergency procedures;

(3) has demonstrated understanding of the materials listed in paragraphs (1) and (2) of this subsection by successfully completing a written or oral test; and

(4) has received instruction in the use of licensed materials, remote handling tools, and radiation survey instruments, as appropriate for the logging assistant's intended job responsibilities.

(c) Each licensee or registrant shall maintain training records for each employee for inspection by the department for three years following termination of employment. (Authorized by and implementing K.S.A. 48-1607; effective Sept. 20, 1993; amended Dec. 30, 2005.)

28-35-353. Operating and emergency procedures. Each licensee shall develop and follow written operating and emergency procedures that cover the following:

(a) The handling and use of licensed materials, including the use of sealed sources in wells without surface casing for protecting freshwater aquifers, if appropriate;

(b) the use of remote handling tools for handling sealed sources and radioactive tracer material, except low-activity calibration sources;

(c) the methods and occasions for conducting radiation surveys, including surveys for detecting contamination;

(d) the ways to minimize personnel exposure, including exposures from inhalation and ingestion of licensed tracer materials;

(e) the methods and occasions for locking and securing stored licensed materials;

(f) personnel monitoring and the use of personnel-monitoring equipment;

(g) the transportation of licensed materials to field stations or temporary job sites, packaging of licensed materials for transport in vehicles, placarding of vehicles when needed, and physically securing licensed materials in transport vehicles during transportation to prevent accidental loss, tampering, or unauthorized removal;

(h) the procedures for picking up, receiving, and opening packages containing licensed materials;

(i) the use of tracers;

(j) decontamination of the environment, equipment, and personnel;

(k) the maintenance of records generated by logging personnel at temporary job sites;

(l) the inspection and maintenance of sealed sources, source holders, logging tools, injection tools, source handling tools, storage containers, transport containers, and uranium sinker bars;

(m) the actions to be taken if a sealed source is lodged in a well;

(n) the means of notifying the proper persons if an accident occurs; and

(o) the actions to be taken if a sealed source is ruptured, including actions to prevent the spread of contamination and minimize the inhalation and

ingestion of licensed materials and actions to obtain appropriate radiation survey instruments as required by K.A.R. 28-35-345. (Authorized by and implementing K.S.A. 48-1607; effective Sept. 20, 1993; amended Dec. 30, 2005.)

28-35-354. Personnel monitoring. (a) The licensee or registrant shall not permit any individual to act as a logging supervisor or to assist in the handling of sources of radiation unless each individual wears a personnel-monitoring device as specified in K.A.R. 28-35-217a. Each PMD shall be assigned to and worn by only one individual. Film badges shall be replaced at least monthly, and other personnel-monitoring devices shall be replaced at least quarterly. After replacement, each film badge or PMD shall be promptly processed.

(b) Each licensee shall provide bioassay services to individuals using licensed materials in subsurface tracer studies if required by the license.

(c) Personnel monitoring and bioassay results records shall be maintained for inspection until the secretary authorizes the disposition of these records. (Authorized by and implementing K.S.A. 48-1607; effective Sept. 20, 1993; amended Dec. 30, 2005.)

28-35-355. Security. (a) During each logging or tracer application, except when radiation sources are below ground or in shipping or storage containers, the logging supervisor or other designated employee shall maintain direct surveillance of the operation to protect against unauthorized or unnecessary entry into a controlled area.

(b) A logging supervisor shall be physically present at a temporary job site whenever licensed materials either are being handled or are not stored and locked in a vehicle or storage place. The logging supervisor may leave the job site in order to obtain assistance if a source becomes lodged in a well. (Authorized by and implementing K.S.A. 48-1607; effective Sept. 20, 1993; amended Dec. 30, 2005.)

28-35-356. Handling tools. Each licensee shall provide and require the use of tools that will assure remote handling of sealed sources other than low activity calibration sources. (Authorized by and implementing K.S.A. 1992 Supp. 48-1607; effective Sept. 20, 1993.)

28-35-357. Subsurface tracer studies. (a) Protective gloves and other appropriate protective clothing and equipment shall be used by all per-

sonnel when handling radioactive tracer material. Precautions shall be taken to avoid ingestion or inhalation of radioactive material and to avoid contamination of field stations and temporary job sites.

(b) A licensee shall not intentionally cause the injection of radioactive material into freshwater aquifers. (Authorized by and implementing K.S.A. 48-1607; effective Sept. 20, 1993; amended Dec. 30, 2005.)

28-35-358. Particle accelerators. A licensee or registrant shall not permit above-ground testing of any particle accelerator, designed for use in well logging which results in the production of radiation, except in areas or facilities controlled or shielded so that the requirements of K.A.R. 28-35-212a and 28-35-214a of these regulations, as applicable, are met. (Authorized by and implementing K.S.A. 1992 Supp. 48-1607; effective Sept. 20, 1993.)

28-35-359. Radiation surveys. (a) Each licensee shall make a radiation survey or calculation and record for each area where radioactive materials are stored.

(b) Each licensee shall make a radiation survey or calculation and record for the radiation levels in occupied positions and on the exterior of each vehicle used to transport radioactive material. The survey or calculation shall include each source of radiation or combination of sources to be transported in the vehicle.

(c) After removal of the sealed source from the logging tool and before departing the job site, the logging tool detector shall be energized, or a survey meter used, to ensure that the logging tool is free of contamination.

(d) If the licensee has reason to believe that, as a result of any operation involving a sealed source, the encapsulation of the sealed source could be damaged by the operation, the licensee shall conduct radiation surveys, including a contamination survey, during and after the operation.

(e) The licensee shall make a radiation survey at the temporary job site before and after each subsurface tracer study to confirm the absence of contamination.

(f) Each licensee shall make a radiation survey and record at the job site or wellhead for each tracer operation, except those using hydrogen-3, carbon-14, and sulfur-35. The survey shall include measurements of radiation levels before and after the operation.

(g) Each record required by subsections (a) through (f) of this regulation shall include the dates, the identification of the individual or individuals making the survey, the identification of the survey instrument or instruments used, and an exact description of the location of the survey. The record of each licensee's survey shall be maintained for inspection by the department for three years after completion of the survey. (Authorized by and implementing K.S.A. 48-1607; effective Sept. 20, 1993; amended Dec. 30, 2005.)

28-35-359a. Radioactive contamination control. (a) If the licensee detects any evidence that a sealed source has ruptured or that licensed materials have caused any contamination, the licensee shall immediately initiate the emergency procedures required by this part.

(b) If contamination results from the use of licensed materials in well logging, the licensee shall decontaminate all work areas, equipment, and unrestricted areas.

(c) During all efforts to recover a sealed source lodged in a well, the licensee shall continuously monitor, with an appropriate radiation-detection instrument or a logging tool with a radiation detector, the circulating fluids from the well, if any, to check for contamination resulting from damage to the sealed source. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005.)

28-35-360. Documents and records required to be maintained at field stations. Each licensee or registrant shall maintain, for inspection by the department, the following documents and records for the specific devices and sources assigned to the field station:

(a) The appropriate license, certificate of registration, or equivalent document;

(b) operating and emergency procedures;

(c) applicable regulations;

(d) records of the latest survey instrument calibrations conducted according to K.A.R. 28-35-345;

(e) records of the latest leak test results conducted according to K.A.R. 28-35-348;

(f) quarterly physical inventories required by K.A.R. 28-35-359;

(g) utilization records required by K.A.R. 28-35-348;

(h) survey records required by K.A.R. 28-35-349;

(i) records of inspection and maintenance required by K.A.R. 28-35-351; and

(j) training records required by K.A.R. 28-35-352 (Authorized by and implementing K.S.A. 48-1607; effective Sept. 20, 1993; amended Dec. 30, 2005.)

28-35-361. Documents and records required at temporary jobsites. Each licensee or registrant conducting operations at a temporary jobsite shall have the following documents and records available at that site for inspection by the department:

- (a) operating and emergency procedures;
- (b) survey records required pursuant to K.A.R. 28-35-359 for the period of operation at the site;
- (c) evidence of current calibration for each radiation survey instrument in use at the site;
- (d) when operating in the state under a reciprocity agreement, a copy of the appropriate license, certificate of registration, or equivalent documentation; and
- (e) shipping papers for the transportation of radioactive material. (Authorized by and implementing K.S.A. 1992 Supp. 48-1607; effective Sept. 20, 1993.)

28-35-362. Notification of incidents, abandonment, and lost sources. (a) Each licensee shall notify the department of any incidents and any sources lost in other than downhole logging operations in accordance with K.A.R. 28-35-184b, 28-35-228a, 28-35-229a and 28-35-230a.

(b) Whenever a sealed source or device containing radioactive material is lodged downhole, the licensee shall monitor at the surface for the presence of radioactive contamination with a radiation survey instrument or logging tool during logging tool recovery operations.

(c) If the licensee knows or has reason to believe that a sealed source has been ruptured, the licensee shall notify the department immediately by telephone and subsequently, within 30 days, by confirmatory written report. This written report shall identify the well or other location, describe the magnitude and extent of the escape of radioactive material, assess the consequences of the rupture, and explain efforts planned or being taken to mitigate these consequences.

(d) If it becomes apparent that efforts to recover the radioactive source will not be successful, the licensee shall meet the following requirements:

(1) The licensee shall advise the well operator of the following requirements regarding the method of abandonment:

(A) The well operator shall immobilize and seal the radioactive source in place with a cement plug.

(B) The well operator shall set in place a whipstock or other deflection device.

(C) The well operator shall mount a permanent identification plaque at the surface of the well, containing the appropriate information required by this regulation.

(2) The licensee shall notify the department by telephone, giving the circumstances of the loss, and request approval of the proposed abandonment procedures.

(3) The licensee shall file a written report with the department within 30 days of the abandonment, providing the following information:

(A) The date of occurrence and a brief description of attempts to recover the source;

(B) a description of the radioactive source involved, including the radionuclide, quantity, and chemical and physical form;

(C) a description of the surface location and identification of the well;

(D) the results of efforts to immobilize and set the source in place;

(E) the depth of the radioactive source;

(F) the depth of the top of the cement plug;

(G) the depth of the well; and

(H) the information contained on the permanent identification plaque.

(e) Whenever a sealed source containing radioactive material is abandoned downhole, the licensee shall provide a permanent plaque on the well or well-bore. The plaque shall meet the following requirements:

(1) Be constructed of long-lasting material, which may include stainless steel or Monel metal; and

(2) contain the following information engraved on its face:

(A) The word "CAUTION";

(B) the radiation symbol, without the conventional color requirement;

(C) the date of abandonment;

(D) the name of the well operator or well owner;

(E) the well name and the well identification number or numbers or other designation;

(F) a description of the sealed source or sources, by radionuclide and quantity of activity;

(G) the source depth and the depth to the top of the plug; and

(H) an appropriate warning that, depending on the specific circumstances of that abandonment, shall include one of the following:

(i) "Do not drill below plug back depth";

(ii) “do not enlarge casing”; or
 (iii) “do not reenter the hole before contacting the Kansas department of health and environment radiation control program”; and

(3) be at least seven inches square. The word “CAUTION” shall be written in ½-inch letters and all other information shall be written in ¼-inch letters.

(f) If the licensee knows or has reason to believe that radioactive material has been lost in or to an underground potable water source, the licensee shall immediately notify the department by telephone and subsequently, within 30 days, by confirmatory letter. The notice shall designate the well location and shall describe the magnitude and extent of loss of radioactive material, assess the consequences of the loss, and explain efforts planned or being taken to mitigate these consequences. (Authorized by and implementing K.S.A. 48-1607; effective Sept. 20, 1993; amended Nov. 1, 1996; amended May 4, 2018.)

28-35-363. Appendix A; training courses for logging supervisors; subjects. (a) Each training course for logging supervisors shall cover the fundamentals of radiation safety, including:

- (1) characteristics of radiation;
- (2) units of radiation dose and quantity of radioactivity; and
- (3) significance of radiation dose, including:
 - (A) radiation protection standards; and
 - (B) biological effects of radiation dose;
- (4) levels of radiation from sources of radiation;
- (5) methods of minimizing radiation dose, including:
 - (A) working time;
 - (B) working distances; and
 - (C) shielding; and
- (6) radiation safety practices, including prevention of contamination and methods of decontamination.

(b) Each training course for logging supervisors shall cover radiation detection instrumentation to be used, including:

- (1) use of radiation survey instruments, including training as to their:
 - (A) operation;
 - (B) calibration; and
 - (C) limitations;
- (2) survey techniques; and
- (3) use of personnel monitoring equipment.

(c) Each training course for logging supervisors shall cover the equipment to be used, including:

- (1) handling equipment;
 - (2) sources of radiation;
 - (3) storage and control of equipment; and
 - (4) operation and control of equipment.
- (d) Each training course for logging supervisors shall include:

- (1) the requirements of pertinent federal and state regulations;
- (2) the licensee’s or registrant’s written operating and emergency procedures; and
- (3) the licensee’s or registrant’s record-keeping procedures. (Authorized by and implementing K.S.A. 1992 Supp. 48-1607; effective Sept. 20, 1993.)

PART 12. LICENSURE AND RADIATION SAFETY REQUIREMENTS FOR IRRADIATORS

28-35-375. General requirements. The provisions of 10 CFR part 36, as in effect on May 4, 2004, are hereby adopted by reference, with the changes specified in this regulation. (a) All reports required by this regulation shall be submitted to the department.

(b) The following sections shall be deleted:

- (1) 10 CFR 36.2, “definitions”;
- (2) 10 CFR 36.5, “interpretations”;
- (3) 10 CFR 36.8, “information collection requirements: OMB approval”;
- (4) 10 CFR 36.11, “application for a specific license”;
- (5) 10 CFR 36.91, “violations”; and
- (6) 10 CFR 36.93, “criminal penalties.”

(c) Wherever the following CFR references occur within 10 CFR part 36, these references shall be replaced with the specified references to regulations and parts in this article:

(1) “10 CFR part 19” shall be replaced with “part 10, ‘instructions and reports to worker: inspections.’”

(2) “10 CFR 20.1501(c)” shall be replaced with “K.A.R. 28-35-217a, ‘conditions requiring individual monitoring of external and internal occupational dose.’”

(3) “10 CFR 20.1902” shall be replaced with “K.A.R. 28-35-219a, ‘caution signs and labels.’”

(4) “10 CFR 30.33 of this chapter” shall be replaced with “K.A.R. 28-35-180a, ‘general requirements for the issuance of specific licenses.’”

(5) “10 CFR 30.35” shall be replaced with “K.A.R. 28-35-180b, ‘financial assurance for decommissioning.’”

(6) “10 CFR 30.41” shall be replaced with “K.A.R. 28-35-190a, ‘transfer of material.’”

(7) “10 CFR 30.50” shall be replaced with “K.A.R. 28-35-230a, ‘reports of over-exposures and excessive levels and concentrations.’”

(8) “10 CFR 30.51” shall be replaced with “K.A.R. 28-35-137, ‘records.’”

(9) “10 CFR 170.31” shall be replaced with “K.A.R. 28-35-147a, ‘schedule of fees.’”

(d) Wherever the following terms occur within 10 CFR part 36, these terms shall be replaced with “department”:

- (1) “Commission”;
- (2) “NRC operation center”;
- (3) “NRC regional office”; and
- (4) “NRC.”

(e) The following changes shall be made to the sections specified:

(1) In 10 CFR 36.51, paragraph (a)(2) shall be replaced with the following text: “the requirements of part 10 and part 12 of these regulations that are relevant to the irradiator.”

(2) In 10 CFR 36.57(d), the last sentence shall be replaced with the following sentence: “Radioactive concentrations shall not exceed those specified in ‘appendices to part 4: standards for protection against radiation,’ effective April 1994, table 2, column 2 or table 3 of appendix B, ‘annual limits on intake (ALIs) and derived air concentrations (DACs) or radionuclides for occupational exposure; effluent concentrations; concentrations for release to sewerage.’”

(3) In 10 CFR 36.59(c), the last sentence shall be replaced with the following sentence: “If a pool is contaminated, the licensee shall arrange to clean the pool until the contamination levels do not exceed the appropriate concentration in table 2, column 2 of ‘appendices to part 4: standards for protection against radiation,’ effective April 1994.” (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005.)

PART 13. CONTINGENCY PLANNING FOR RESPONSE TO RADIOACTIVE MATERIAL EMERGENCIES

28-35-400. Applicability; additional requirements. (a) Each person licensed to receive, possess, own, acquire, use, process, store, transfer, or dispose of radioactive material shall be subject to this part.

(b) In addition to conforming to the licensing requirements in part 3 of these regulations and the requirements for protection in part 4 of these regulations, each licensee with any of the quantities of radioactive material specified in K.A.R.

28-35-411 shall be required to evaluate and prepare to respond to an event involving the possible release of radioactive material. This requirement shall include, at a minimum, immediate activities including containment, rescue, notification, and securing the scene of an event. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1602; effective Dec. 30, 2005.)

28-35-401. Dose evaluation and contingency plan. Each person seeking a license to possess radioactive material in unsealed form, on a foil or plated source, or sealed in glass shall submit an application containing either of the following, if the radioactive material is in excess of any of the quantities specified in K.A.R. 28-35-411:

(a) An evaluation, as specified in K.A.R. 28-35-402, showing that the projected dose to a person off-site due to a release of radioactive material would not exceed 0.01 sievert (1 rem) total effective dose equivalent or 0.01 sievert (1 rem) to the thyroid; or

(b) a contingency plan, as prescribed in K.A.R. 28-35-403, for responding to any event in which radioactive material could be released from the site. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1602; effective Dec. 30, 2005.)

28-35-402. Evaluation of potential dose. (a) For purposes of this part, the following terms shall have the meanings specified in this subsection.

(1) “Release fraction” means the ratio of the quantity of radioactive material released to the quantity of radioactive material available for release.

(2) “Respirable size range” means the range of sizes of airborne particles that can be deposited anywhere in the respiratory tract.

(b) In evaluating the total effective dose equivalent to an individual as specified in K.A.R. 28-35-401, the applicant may take the following into account, as applicable:

(1) The radioactive material is physically separated so that only a portion could be involved in an alert, site area emergency, or general emergency.

(2) All or part of the radioactive material, because of the way the material is stored or packaged, is not subject to release during an alert, site area emergency, or general emergency.

(3) The release fraction in the respirable size range is predicted to be lower than the release fraction specified in K.A.R. 28-35-411, due to the chemical or physical form of the material.

(4) The solubility in body fluids of the radioactive material is predicted to reduce the dose received.

(5) The facility design or engineered safety features in the facility are predicted to cause the release fraction to be lower than the release fraction specified in K.A.R. 28-35-411.

(6) The operating restrictions or procedures are predicted to prevent any release fraction equal to or larger than that specified in K.A.R. 28-35-411. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1602; effective Dec. 30, 2005.)

28-35-403. Contents of contingency plan. Each applicant or licensee shall ensure that the contingency plan that is submitted as specified in K.A.R. 28-35-401 includes information about the following, in separate sections:

(a) The facility, including a brief description of the applicant's or licensee's facility and surroundings;

(b) the types of accidents that the contingency plan addresses, including an identification of each type of alert, site area emergency, or general emergency involving radioactive material for which actions by applicant's or licensee's staff or off-site response organizations will be needed to protect members of the public;

(c) classification of accidents, consisting of a method for classifying and declaring each alert, site area emergency, or general emergency as defined in this part;

(d) detection of accidents, including the identification of the means for detecting each type of alert, site area emergency, or general emergency in a timely manner;

(e) mitigation of consequences, including a brief description of the means and equipment that are available for mitigating the consequences of each type of alert, site area emergency, or general emergency including the following:

(1) Means and equipment provided to protect workers on-site;

(2) a description of the program for maintaining the equipment;

(3) radiological exposure controls for on-site and off-site response personnel; and

(4) the readiness to carry out special efforts within any designated emergency planning zone;

(f) assessment of radioactive releases, including a brief description of the methods and equipment available to assess any releases of radioactive material;

(g) personnel responsibilities, including the following information:

(1) The names and titles of the applicant's or licensee's personnel responsible for developing, maintaining, and updating the contingency plan;

(2) a brief description of the responsibilities of the applicant's or licensee's personnel who will respond if an alert, site area emergency, or general emergency is declared, including identification of personnel responsible for promptly notifying off-site response organizations, which shall include the department; and

(3) a list of off-site response organizations, a description of their responsibilities and anticipated actions, and a copy of their formal commitments, if any;

(h) notification, coordination, and use of off-site response organizations, including the following information:

(1) A brief description of the means for promptly notifying the off-site response organizations specified in paragraph (g)(3) of this regulation if an alert, site area emergency, or general emergency occurs;

(2) a brief description of the arrangements made for requesting, and coordinating, and using off-site organizations capable of augmenting the planned on-site response, including arrangements for backup communications and 24-hour response capability. The types of assistance that could be requested may include medical treatment of contaminated or injured on-site workers;

(3) a description or drawing of designated locations from which control and assessment of an alert, site area emergency, or general emergency would be exercised; and

(4) provisions of notification and coordination if key personnel, parts of the facility, or any equipment is unavailable;

(i) information to be communicated, including the following information:

(1) A brief description of the information to be provided to off-site response organizations, which shall include the department, if an alert, site area emergency, or general emergency occurs. The types of information to be provided shall include the following:

(A) The declared status of the facility;

(B) a description of the actual or potential releases of radioactive material;

(C) the names and telephone numbers of personnel designated as points of contact;

(D) the population that has been affected; and

(E) any recommendations for protective action;
 (2) a brief description of the types of information to be provided to the public by facility staff and through off-site response organizations; and

(3) if protective action by the public is part of the contingency plan, a description of how the public will be trained to perform the action;

(j) training, including the following information:

(1) A brief description of the performance objectives and plans for the initial and annual training that the applicant or licensee will provide to workers and responders about how to respond to an emergency, including any special instructions and orientation tours that the applicant or licensee will provide for fire, police, medical, and other emergency response personnel;

(2) provisions for familiarizing radiation workers and non-radiation workers, including off-site responders, with site-specific hazards and emergency procedures; and

(3) provisions for preparing site personnel for their responsibilities during an alert, site area emergency, or general emergency, including the use of drills, exercises and team training;

(k) drills and exercises, including specifications for the following:

(1) Conducting quarterly communications checks with off-site response organizations that include the verification and updating of all necessary telephone numbers and other electronic communication addresses;

(2) conducting at least one radiological and health physics, medical drill, or fire drill every two years and conducting, between the required biennial drills, at least one drill involving a combination of some of the principal functional areas of the applicant's or licensee's on-site emergency response capabilities;

(3) inviting off-site response organizations to participate in on-site exercises conducted pursuant to K.A.R. 28-35-407;

(4) using several alert, site area emergency, or general emergency scenarios, including those involving many of the potential responders identified in the contingency plan and those postulated as most probable for the specific site, up to and including the maximum credible accident; and

(5) ensuring that scenarios are not known in advance by the exercise participants whose roles are prescribed in the contingency plan; and

(1) the criteria for determining when a safe condition exists, including a brief description of the site-specific criteria for a safe condition and the

means of restoring the facility and surroundings to a safe condition after an alert, site area emergency, or general emergency. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1602; effective Dec. 30, 2005.)

28-35-404. Comment from off-site response organizations. (a) Each applicant or licensee shall provide the contingency plan for comment to off-site response organizations expected to respond in case of an alert, site area emergency, or general emergency including, at a minimum, local fire, ambulance, emergency management, and hospital emergency response officials. The applicant or licensee shall provide the contingency plan to these organizations at least 60 days before submitting the plan to the department. Each applicant or licensee shall submit any changes to the plan to off-site agencies for comment before resubmitting the plan to the department.

(b) Each applicant or licensee shall provide each comment received within the 60 days specified in subsection (a) to the department with the initial or amended contingency plan. The applicant or licensee shall also provide to the department any proposed response to the comment or comments. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1602; effective Dec. 30, 2005.)

28-35-405. Certification of compliance. Each applicant shall certify to the department that the applicant is in compliance with the emergency planning and community right-to-know act of 1986, title III, pub. L. 99-499, at the proposed place of use of the radioactive material. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1602; effective Dec. 30, 2005.)

28-35-406. Training. Each licensee required to submit a contingency plan in accordance with K.A.R. 28-35-401 shall provide training to facility staff and to personnel for each off-site response organization at least annually for each person who is responsible for responding to the types of accidents postulated in the contingency plan as most probable for the specific site. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1602; effective Dec. 30, 2005.)

28-35-407. Conduct of drills and exercises. Each licensee that is required to submit a contingency plan in accordance with K.A.R. 28-35-401 shall meet the following requirements:

(a) Conduct drills and exercises at least every two years to test the response to simulated emergencies;

(b) perform critiques of drills and exercises and ensure that these critiques evaluate the appropriateness of the contingency plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response;

(c) unless the secretary approves otherwise, ensure that the critique of each exercise is performed by individuals who are not responsible for conducting the exercise; and

(d) correct any deficiencies noted in the critique of each drill and exercise within a time period for corrective action that is conveyed, in writing, to the department and approved by the secretary. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1602; effective Dec. 30, 2005.)

28-35-408. Plan implementation. Each licensee required to submit a contingency plan in accordance with K.A.R. 28-35-401 shall meet the following requirements:

(a) Comply with the contingency plan submitted to the department;

(b) notify all off-site response organizations, including the department, not later than one hour after the licensee declares an alert, site area emergency, or general emergency; and

(c) promptly report any projected dose and protective action recommendation as required by the contingency plan. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1602; effective Dec. 30, 2005.)

28-35-409. Contingency plan revision. Each licensee that is required to submit a contingency plan pursuant to K.A.R. 28-35-401 shall comply with the following:

(a) Update the contingency plan at least annually and provide the updated contingency plan to the department and to affected off-site response organizations within 30 days after the update is completed; and

(b) obtain the secretary's written approval before implementing any changes to the plan, except for updating individual names, titles, assignments of responsibility, and telephone numbers. All updates of individual names, titles, assignments of responsibility, and telephone numbers shall be reported to the department and to affected off-site response organizations within 30 days of these

changes. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1602; effective Dec. 30, 2005.)

28-35-410. Documentation and record-keeping. Each licensee required to submit a contingency plan pursuant to K.A.R. 28-35-401 shall retain the following records in accordance with the recordkeeping requirements of part 3 of these regulations:

(a) The reports of contingency plan training, drills, and exercises as specified in K.A.R. 28-35-403; and

(b) the revisions and records of all notifications and reports as specified in K.A.R. 28-35-409 and part 3 of these regulations. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1602; effective Dec. 30, 2005.)

28-35-411. Table of quantities of radioactive material; need for contingency plan.

Quantities of Radioactive Materials Requiring Consideration of the Need for a Contingency Plan for Responding to a Release

Radioactive Material ¹	Release	Quantity	Quantity
	Fraction	(GBq)	(Ci)
Actinium-228	0.001	148,000	4,000
Americium-241	0.001	74	2
Americium-242	0.001	74	2
Americium-243	0.001	74	2
Antimony-124	0.01	148,000	4,000
Antimony-126	0.01	222,000	6,000
Barium-133	0.01	370,000	10,000
Barium-140	0.01	1,110,000	30,000
Bismuth-207	0.01	185,000	5,000
Bismuth-210	0.01	22,200	600
Cadmium-109	0.01	37,000	1,000
Cadmium-113	0.01	2,960	80
Calcium-45	0.01	740,000	20,000
Californium-252	0.001	333	9 (20 mg)
Carbon-14 (Non-CO)	0.01	1,850,000	50,000
Cerium-141	0.01	370,000	10,000
Cerium-144	0.01	11,100	300
Cesium-134	0.01	74,000	2,000
Cesium-137	0.01	111,000	3,000
Chlorine-36	0.5	3,700	100
Chromium-51	0.01	11,100,000	300,000
Cobalt-60	0.001	185,000	5,000
Copper-64	0.01	7,400,000	200,000
Curium-242	0.001	2,220	60
Curium-243	0.001	110	3
Curium-244	0.001	148	4
Curium-245	0.001	74	2
Europium-152	0.01	18,500	500
Europium-154	0.01	14,800	400
Europium-155	0.01	111,000	3,000

	Release	Quantity	Quantity		Release	Quantity	Quantity
Gadolinium-153	0.01	185,000	5,000	Mixed fission products	0.01	37,000	1,000
Gold-198	0.01	1,110,000	30,000	Contaminated equipment:			
Hafnium-172	0.01	14,800	400	beta-gamma emitters	0.001	370,000	10,000
Hafnium-181	0.01	259,000	7,000	Irradiated material, in			
Holmium-166m	0.01	3,700	100	any form other than			
Hydrogen-3	0.5	740,000	20,000	solid noncombustible	0.01	370,000	10,000
Indium-114m	0.01	37,000	1,000	Irradiated material that			
Iodine-124	0.5	370	10	is solid and noncom-			
Iodine-125	0.5	370	10	bustible	0.001	370,000	10,000
Iodine-131	0.5	370	10	Mixed radioactive waste:			
Indium-114m	0.01	37,000	1,000	beta-gamma emitters	0.01	37,000	1,000
Iridium-192	0.001	1,480,000	40,000	Packaged mixed waste ² :			
Iron-55	0.01	1,480,000	40,000	beta-gamma emitters	0.001	370,000	10,000
Iron-59	0.01	259,000	7,000	Any other alpha emitter	0.001	74	2
Krypton-85	1.0	222,000,000	6,000,000	Contaminated equipment:			
Lead-210	0.01	296	8	alpha emitters	0.0001	740	20
Manganese-56	0.01	2,220,000	60,000	Packaged waste ² :			
Mercury-203	0.01	370,000	10,000	alpha emitters	0.0001	740	20
Molybdenum-99	0.01	1,110,000	30,000				
Neptunium-237	0.001	74	2				
Nickel-63	0.01	740,000	20,000				
Niobium-94	0.01	11,100	300				
Phosphorus-32	0.5	3,700	100				
Phosphorus-33	0.5	37,000	1,000				
Polonium-210	0.01	370	10				
Potassium-42	0.01	333,000	9,000				
Promethium-145	0.01	148,000	4,000				
Promethium-147	0.01	148,000	4,000				
Radium-226	0.001	3,700	100				
Ruthenium-106	0.01	7,400	200				
Samarium-151	0.01	148,000	4,000				
Scandium-46	0.01	111,000	3,000				
Selenium-75	0.01	370,000	10,000				
Silver-110m	0.01	37,000	1,000				
Sodium-22	0.01	333,000	9,000				
Sodium-24	0.01	370,000	10,000				
Strontium-89	0.01	111,000	3,000				
Strontium-90	0.01	3,330	90				
Sulfur-35	0.5	3,330	900				
Technetium-99	0.01	370,000	10,000				
Technetium-99m	0.01	14,800,000	400,000				
Tellurium-127m	0.01	185,000	5,000				
Tellurium-129m	0.01	185,000	5,000				
Terbium-160	0.01	148,000	4,000				
Thulium-170	0.01	148,000	4,000				
Tin-113	0.01	370,000	10,000				
Tin-123	0.01	111,000	3,000				
Tin-126	0.01	37,000	1,000				
Titanium-44	0.01	3,700	100				
Vanadium-48	0.01	259,000	7,000				
Xenon-133	1.0	33,300,000	900,000				
Yttrium-91	0.01	74,000	2,000				
Zinc-65	0.01	185,000	5,000				
Zirconium-93	0.01	14,800	400				
Zirconium-95	0.01	185,000	5,000				
Any other beta-gamma emitter	0.01	370,000	10,000				

¹ For combinations of radioactive materials, the licensee shall be required to consider whether a contingency plan is needed if the sum of the ratios of the quantity of each radioactive material authorized to the quantity listed in this table for that material exceeds one.

² Waste packaged in type B containers shall not require a contingency plan.

(Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1602; effective Dec. 30, 2005; amended March 18, 2011.)

PART 14. THERAPEUTIC RADIATION MACHINES

28-35-450. General requirements. The provisions of “part X: therapeutic radiation machines” in volume I of the “suggested state regulations for control of radiation,” including appendix A, published by the conference of radiation control program directors, inc. and dated February 2005, are hereby adopted by reference, with the changes specified in this regulation. (a) Sec. X.2, “definitions,” shall be deleted.

(b) Sec. X.3(d)(vi) shall be deleted.

(c) Wherever the following phrases and references occur in part X, these phrases and references shall be replaced with the specified phrases and references to regulations and parts in this article:

(1) “Agency” shall be replaced with “department.”

(2) “[INSERT EFFECTIVE DATE OF THESE REGULATIONS]” shall be replaced with “the effective date of these regulations.”

(3) “G.14” shall be replaced with “part 6.”

(d) The following phrases in part X shall be replaced with the phrase “part 4”:

(1) In sec. X.3(i), “Parts D.1201, D.1205 and D.1502”;

- (2) in sec. X.4(a)(i)(1), "Part D.1201a.";
- (3) in sec. X.4(a)(i)(2), "Parts D.1301. and D.1301b.";
- (4) in sec. X.4(b), (b)(i), and (b)(iv), "Parts D.1301a. and D.1301b.";
- (5) in sec. X.4(b)(iv), "Part D.1301c.";
- (6) in sec. X.6(r)(vi), "Part D.1201";
- (7) in sec. X.9(a), "Parts D.1201 and D.1301"; and
- (8) in appendix A, sec. II(C), "Part D.1201."

(e) In sec. X.3(e), paragraph (i) shall be replaced with the following text: "Individuals operating a therapeutic radiation machine for healing arts purposes shall meet the requirements specified in the radiologic technologists practice act and shall have satisfactorily completed an education program in radiation therapy that meets the criteria specified in K.A.R. 100-73-3." (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005; amended July 27, 2007.)

PART 15. PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

28-35-500. General license: NRC-approved packages. (a) A general license shall be deemed to have been issued to any licensee to transport, or to deliver to a carrier for transport, any licensed or registered material in a package for which a license, certificate of compliance (CoC), or other approval has been issued by the NRC.

(b) Each general license specified in subsection (a) shall apply only to a licensee who has a quality assurance program approved by the NRC.

(c) Each general license specified in subsection (a) shall apply only to a licensee who meets the following requirements:

(1) Has a copy of the specific license, certificate of compliance, or other approval by the NRC for the package and has the drawings and any other documents referenced in the approval relating to the use and maintenance of the package and to the actions to be taken before shipment;

(2) complies with the terms and conditions of the license, certificate of compliance, or other approval, as applicable, and with the applicable requirements of this part; and

(3) has registered with the NRC before the licensee's first use of the package.

(d) Each general license specified in subsection (a) shall apply only if the package approval authorizes the use of the package under this general license.

(e) Each general licensee specified in subsection (a) shall meet the requirements of K.A.R. 28-35-501 when using any type B or fissile material package approved by the NRC before April 1, 1996. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005.)

28-35-501. Previously approved type B package. (a)(1) Any type B package previously approved by the NRC but not designated as "B(U)," "B(M)," "B(U)F," or "B(M)F" in the identification number of the NRC CoC and any type AF package approved by the NRC before September 6, 1983 may be used under the general license specified in K.A.R. 28-35-500(a), if the following additional provisions are met:

(A) The fabrication of the packaging was satisfactorily completed by August 31, 1986, as demonstrated by application of the model number on the package in accordance with 10 CFR 71.85(c).

(B) A serial number is assigned that is a unique identifier of each package that conforms to the approved design. The serial number shall be legibly and durably marked on the outside of each package.

(2) This subsection shall not apply to type B packages after October 1, 2008.

(b) Any type B(U) package, type B(M) package, or fissile material package may be used under the general license specified in K.A.R. 28-35-500(a), if the following provisions are met:

(1) The package has been previously approved by the NRC and does not have the designation "-85" in the identification number of the NRC CoC.

(2) The fabrication of the package was satisfactorily completed on or before April 1, 1999, as demonstrated by the application of the model number on the package in accordance with 10 CFR 71.85(c).

(3) The package used for a shipment to a location outside the United States is subject to multilateral approval as defined in the U.S. DOT regulations specified in 49 CFR 173.403.

(4) A serial number is assigned that is a unique identifier of the package conforming to the approved design. The serial number shall be legibly and durably marked on the outside of the package. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005.)

28-35-502. Air transport of plutonium. (a) Notwithstanding any applicable provisions of any general licenses and notwithstanding any ap-

plicable exemptions stated in this part or in the U.S. department of transportation regulations, each licensee shall ensure that plutonium in any form, whether for import, export, or domestic shipment, is not transported by air or delivered to a carrier for air transport unless at least one of the following conditions is met:

(1) The plutonium is contained in a medical device designed for human application for one individual.

(2) The plutonium is contained in a material in which the specific activity is less than or equal to the activity concentration values for plutonium specified in K.A.R. 28-35-221b and in which the radioactivity is essentially uniformly distributed.

(3) The plutonium is shipped in a single package containing no more than an A_2 quantity of plutonium in any isotope or form and is shipped as specified in K.A.R. 28-35-196a.

(4) The plutonium is shipped in a package specifically authorized for the shipment of plutonium by air in the certificate of compliance issued by the NRC for that package.

(b) Nothing in subsection (a) of this regulation shall be interpreted as removing or diminishing the requirements of 10 CFR 73.24.

(c) For any shipment of plutonium by air that is subject to paragraph (a)(4), each licensee shall, through special arrangement with the carrier, require the carrier's compliance with 49 CFR 175.704. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005.)

28-35-503. Package-opening instructions. Before delivering any package containing licensed or registered material to a carrier for transport, each licensee shall ensure that any special instructions that are needed to safely open the package have been sent to, or otherwise have been made available to, the consignee for the consignee's use in accordance with K.A.R. 28-35-221a. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005.)

28-35-504. Advance notification of shipment of certain types of licensed or registered material. (a)(1) As specified in subsections (b), (c), and (d), each licensee shall provide advance notification to the governor or the governor's designee of each state of each shipment of licensed or registered material through or across the boundary of that governor's state. The licensee shall provide this advance notification before transporting, or deliv-

ering to a carrier for transport, any licensed or registered material outside the confines of the licensee's facility or other place of use or storage.

(2) As specified in subsections (b), (c), and (d), each licensee shall provide advance notification to the Indian tribal official or tribal official of participating tribes referenced in subsection (c), or the official's designee, of the shipment of licensed material within or across the boundary of the tribe's reservation before the transport or delivery to a carrier for transport of licensed material outside the confines of the licensee's plant or other place of use or storage.

(b)(1) The advance notification specified in subsection (a) shall be required for each shipment of irradiated reactor fuel containing 100 grams or less in net weight of irradiated fuel, exclusive of cladding and any other structural or packaging material, that has a total external radiation dose rate in excess of 100 rems per hour at a distance of three feet from any accessible surface without intervening shielding.

(2) The advance notification specified in subsection (a) shall also be required for each shipment of licensed or registered material, other than irradiated fuel, meeting all of the following conditions:

(A) The licensed or registered material is required to be shipped in a type B package for transportation as specified in this part.

(B) The licensed or registered material is being transported to or across a state boundary en route to a disposal facility or to a collection point for transport to a disposal facility.

(C) The quantity of licensed or registered material in a single package exceeds the smaller of the following:

(i) 3,000 times the A_1 value of the radionuclides as specified in 10 C.F.R. part 71, appendix A, which is adopted by reference in K.A.R. 28-35-221b, for special form radioactive material or 3,000 times the A_2 value of the radionuclides as specified in 10 C.F.R. part 71, appendix A, which is adopted by reference in K.A.R. 28-35-221b for normal form radioactive material; and

(ii) 1,000 TBq (27,000 Ci).

(c) The notification specified in subsection (b) shall meet the following requirements:

(1) The notification shall be submitted, in writing, to the office of each appropriate governor or governor's designee and each appropriate Indian tribal official and to the director of the division of nuclear security in the office of nuclear security and incident response.

(2) Each notification delivered by mail shall be postmarked at least seven days before the beginning of the seven-day period during which departure of the shipment is estimated by the licensee to occur.

(3) Each notification delivered by any means other than mail shall reach the office of each governor or governor's designee and each appropriate Indian tribal official at least four days before the beginning of the seven-day period during which departure of the shipment is estimated by the licensee to occur.

(4) Each licensee shall retain a copy of the notification as a record for three years.

(d) Each advance notification of any shipment of irradiated reactor fuel or nuclear waste shall contain the following information:

(1) The name, address, and telephone number of the shipper, carrier, and receiver of the irradiated reactor fuel or nuclear waste shipment;

(2) a description of the irradiated reactor fuel or nuclear waste contained in the shipment, as specified in the regulations of the United States department of transportation (USDOT) in 49 C.F.R. 172.202 and 172.203(d);

(3) a shipment schedule, which shall include the following information:

(A) The point of origin of the shipment and a specification of the seven-day period during which departure of the shipment is estimated by the licensee to occur;

(B) a specification of the seven-day period during which arrival of the shipment at the state boundaries is estimated by the licensee to occur; and

(C) the destination of the shipment and a specification of the seven-day period during which arrival of the shipment at the destination is estimated by the licensee to occur; and

(4) the name of a contact person, including a telephone number, for current shipment information.

(e) If any licensee finds out that the shipment schedule previously furnished to any governor, governor's designee, or Indian tribal official in accordance with this regulation will not be met, that licensee shall perform the following:

(1) Telephone a responsible individual in the office of the governor or governor's designee or the Indian tribal official as soon as practical after the licensee has found out that the shipment schedule will not be met and inform that individual of the revised schedule; and

(2) maintain a record of the name of the responsible individual contacted and the date of this contact for three years.

(f) Each licensee who cancels an irradiated reactor fuel or nuclear waste shipment for which advance notification has been sent shall send a cancellation notice to the governor of each state or the governor's designee or to the Indian tribal official who was previously notified and to the director of the division of nuclear security in the office of nuclear security and incident response. The licensee shall state in the notice that the notice is a cancellation and shall identify the advance notification that is being canceled. The licensee shall retain a copy of the notice as a record for three years. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005; amended May 4, 2018.)

28-35-505. Quality assurance requirements. Each program for transport container inspection and maintenance that is limited to radiographic exposure devices, source changers, or any package transporting these devices or changers and that meets the requirements of K.A.R. 28-35-282a or equivalent NRC or agreement state requirements shall be deemed to meet the requirement specified in K.A.R. 28-35-500(b). (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005.)

PART 16. RADON

28-35-600. Definitions. In addition to the terms defined in K.S.A. 48-16a02 and amendments thereto, each of the following terms shall have the meaning assigned in this regulation: (a) "All reasonable times" means normal business hours and other times that radon services are being performed, or at a time convenient for the property owner.

(b) "Mitigation" means any action taken to reduce radon concentrations in the indoor atmosphere or to prevent the entry of radon into the indoor atmosphere. This term shall include application of materials, installation of systems, and any new repair or alteration of a building or design.

(c) "Mitigation system" means any set of devices, controls, or materials installed for reducing radon concentrations in a building.

(d) "Quality assurance and quality control plan" means a plan or design that ensures the authenticity, integrity, reproducibility, and accuracy of radon concentration measurements. Each quality

assurance and quality control plan shall include at a minimum procedures for the following:

- (1) Chain of custody;
 - (2) calibration of measurement devices in the field;
 - (3) checks for background;
 - (4) duplicates, blanks, and spikes; and
 - (5) representative sampling.
- (e) “Radon certification law” means K.S.A. 48-16a01 through 48-16a12, and amendments thereto.

(f) “Radon measurement technician” means an individual certified by the department who performs radon or radon progeny measurements for a radon measurement business or provides professional advice on radon or radon progeny measurements, health risks, radon-related exposure, radon entry routes, or other radon-related activities.

(g) “Radon mitigation technician” means an individual certified by the department who designs or installs radon mitigation systems or who performs and evaluates results of tests to determine appropriate radon mitigation systems. This individual may be employed or contracted by a radon mitigation business.

(h) “Radon progeny” means the short-lived radionuclides formed from the decay of radon-222 or radon-220.

(i) “Radon services” means any activity provided by a person that is subject to the radon certification law. This term shall include radon testing, the analysis of radon, radon testing or mitigation consultation, and radon mitigation.

(j) “Site” means a geographic location comprising leased or owned land, buildings, and other structures where radon services are performed. (Authorized by K.S.A. 2010 Supp. 48-16a03; implementing K.S.A. 2010 Supp. 48-16a03, 48-16a05, 48-16a06, and 48-16a08; effective Feb. 3, 2012.)

28-35-601. General provisions. Except as otherwise specifically provided by the radon certification law, K.A.R. 28-35-601 through 28-35-608 shall apply to any person that provides radon services.

(a) Any initial or renewal application to conduct radon services may be denied by the department for any of the following reasons:

- (1) Any false statement in the application;
- (2) revocation of a prior radon services certification in Kansas or another state; or
- (3) violation of any of the requirements of K.A.R. 28-35-601 through 28-35-608 or the radon certification law.

(b) Any certification to conduct radon services may be suspended or revoked or may have requirements or restrictions added by the secretary for any of the following reasons:

(1) Any condition revealed by an application, any statement of fact, or any report, record, or inspection that could result in the denial of any application; or

(2) violation of or failure to observe any of the terms and conditions of the certification, any requirement of the radon certification law and K.A.R. 28-35-601 through 28-35-608, or any order of the secretary.

(c) Initial certification and renewal certification shall be valid for 24 months.

(d) Requirements or restrictions that are necessary to ensure compliance with the radon certification law may be specified by the secretary at the time of initial certification or renewal certification or in connection with any radon services inspection.

(e) Failure to comply with all requirements for certification within 60 days of submittal of an application for initial or renewal certification shall void the application.

(f) An exemption to any requirement of K.A.R. 28-35-601 through 28-35-608 may be granted by the secretary if both of the following conditions are met:

(1) A person certified to conduct radon services submits a written request, including justification for the exemption and any supporting data or documentation, to the secretary for review and consideration for approval.

(2) The secretary determines that the exemption is protective of public health, safety, and the environment.

(g) Each person certified under the radon certification law and these regulations shall submit the reports required by K.S.A. 48-16a10, and amendments thereto, and any additional relevant information requested by the department in a format specified by the department.

(h) All records required to be kept by each person certified under the radon certification law and these regulations shall be retained for at least three years.

(i) Each radon measurement technician, radon mitigation technician, radon measurement business, radon mitigation business, and radon measurement laboratory shall allow the department access at all reasonable times to that person’s or that person’s employer’s facilities and files for inspection and examination of records of radon

services to determine compliance with the radon certification law and K.A.R. 28-35-601 through 28-35-608.

(j) Upon request by the department, each person certified under K.A.R. 28-35-601 through 28-35-608 or the radon certification law shall submit a list of scheduled measurement or mitigation activities to the department within two business days of receipt of the request. (Authorized by K.S.A. 2010 Supp. 48-16a03 and 48-16a04; implementing K.S.A. 2010 Supp 48-16a03 and 48-16a10; effective Feb. 3, 2012.)

28-35-602. Fees. (a) Application fees for 24-month certification:

- (1) Radon measurement technician:
 - (A) Initial certification \$100.00
 - (B) Renewal certification..... \$100.00
- (2) Radon mitigation technician:
 - (A) Initial certification \$100.00
 - (B) Renewal certification..... \$100.00
- (3) Radon measurement laboratory:
 - (A) Initial certification \$250.00
 - (B) Renewal certification..... \$250.00
 - (b) Fee for returned check..... \$50.00
- (c) Fee for late certification renewal,
for each month or part of a month \$25.00

Each fee specified in this regulation shall be nonrefundable. (Authorized by and implementing K.S.A. 2010 Supp. 48-16a03 and 48-16a04; effective Feb. 3, 2012.)

28-35-603. Requirements for radon measurement technician. (a) Each applicant for initial certification as a radon measurement technician shall meet the requirements of K.S.A. 48-16a05, and amendments thereto, and the following additional requirements:

- (1) Be at least 18 years of age;
 - (2) complete and show proof of completion to the department of a radon measurement training course with at least 16 hours of classroom instruction approved by the department pursuant to K.S.A. 48-16a05, and amendments thereto;
 - (3) pass a closed-book examination on radon measurement approved by the department pursuant to K.S.A. 48-16a05, and amendments thereto, with a score of at least 70 percent; and
 - (4) provide any additional relevant information requested by the department.
- (b) Each radon measurement technician shall meet the following requirements:

(1) Conduct radon measurement activities in accordance with the requirements of the following:

- (A) K.S.A. 48-16a05, and amendments thereto;
- (B) “protocols for radon and radon decay product measurements in homes,” EPA 402-R-92-003, including appendices, published by the environmental protection agency and dated June 1993, which is hereby adopted by reference;
- (C) “indoor radon and radon decay product measurement device protocols,” EPA 402-R-92-004, published by the environmental protection agency and dated July 1992, which is hereby adopted by reference; and
- (D) all applicable municipal, county, state, and federal laws and regulations;

(2) upon request from the department, provide documentation of proficiency including continuing education requirements specified in K.A.R. 28-35-605;

(3) notify the department of any name or address changes within 30 days; and

(4) maintain and adhere to a quality assurance and quality control plan. (Authorized by K.S.A. 2010 Supp. 48-16a03; implementing K.S.A. 2010 Supp. 48-16a03 and 48-16a05; effective Feb. 3, 2012.)

28-35-604. Requirements for radon mitigation technician. (a) Each applicant for initial certification as a radon mitigation technician shall meet the requirements of K.S.A. 48-16a06, and amendments thereto, and the following additional requirements:

- (1) Be at least 18 years of age;
- (2) complete and submit proof of completion to the department of a radon mitigation training course with at least 24 hours of classroom instruction that includes active participation in radon mitigation techniques approved by the department pursuant to K.S.A. 48-16a06, and amendments thereto;
- (3) pass a closed-book examination on radon mitigation approved by the department pursuant to K.S.A. 48-16a06, and amendments thereto, with a score of at least 70 percent; and
- (4) provide any additional relevant information requested by the department.

(b) Each radon mitigation technician shall meet the following requirements:

- (1) Conduct radon mitigation activities in accordance with the requirements of the following:
 - (A) K.S.A. 48-16a06, and amendments thereto;
 - (B) “protocols for radon and radon decay prod-

uct measurements in homes,” which is adopted by reference in K.A.R. 28-35-603;

(C) “indoor radon and radon decay product measurement device protocols,” which is adopted by reference in K.A.R. 28-35-603;

(D) “radon mitigation standards,” EPA 402-R-93-078, including the appendix, published by the environmental protection agency, dated October 1993, and revised April 1994, which is adopted by reference; and

(E) municipal, county, state, and federal laws and regulations;

(2) upon request from the department, provide documentation of proficiency including continuing education requirements specified in K.A.R. 28-35-605; and

(3) notify the department of any name or address changes within 30 days. (Authorized by K.S.A. 2010 Supp. 48-16a03; implementing K.S.A. 2010 Supp. 48-16a03 and 48-16a06; effective Feb. 3, 2012.)

28-35-605. Continuing education. (a) Before certification renewal, each radon measurement technician shall meet the following continuing education requirements:

(1) Complete and submit proof of completion to the department of at least 16 hours of department-approved continuing education; and

(2) maintain documentation, pursuant to K.A.R. 28-35-601(h), that the continuing education was successfully completed within the prior 24-month certification period.

(b) Before certification renewal, each radon mitigation technician shall meet the following continuing education requirements:

(1) Complete and submit proof of completion to the department of at least 24 hours of department-approved continuing education;

(2) maintain documentation, pursuant to K.A.R. 28-35-601(h), that the continuing education was successfully completed within the prior 24-month certification period.

(c) If a person is certified as both a radon measurement technician and a radon mitigation technician, continuing education credit shall be granted for both certifications if the person completes at least 24 hours of department-approved continuing education credits for radon services during the 24-month period that the certificates are valid.

(d) Continuing education credit shall be accepted only for the completion of each different con-

tinuing education training course during a current certification period. Training courses for continuing education credit that are repeated shall be accepted only for the initial successful completion of the course during a current certification period. (Authorized by K.S.A. 2010 Supp. 48-16a03; implementing K.S.A. 2010 Supp. 48-16a03, 48-16a05, and 48-16a06; effective Feb. 3, 2012.)

28-35-606. Radon measurement business. (a) Each radon measurement business shall maintain for inspection a list of the name and credentials of each radon measurement technician employed or retained as a consultant by the radon measurement business.

(b) A radon measurement technician shall be present on-site to directly supervise all measurement activities performed by each radon measurement business.

(c) A radon measurement technician shall perform all testing and consultation about radon or radon progeny measurements, health risks, radon-related exposure, radon entry routes, and other radon-related activities for each radon measurement business. (Authorized by K.S.A. 2010 Supp. 48-16a03; implementing K.S.A. 2010 Supp. 48-16a03 and 48-16a07; effective Feb. 3, 2012.)

28-35-607. Radon mitigation business. (a) Each radon mitigation business shall maintain for inspection a list of the name and credentials of each radon mitigation technician employed or retained as a consultant by the radon mitigation business.

(b) All radon mitigation activities and consultations about radon or radon progeny measurements, health risks, radon-related exposure, radon entry routes, or other radon-related activities for a radon mitigation business shall be directly supervised or performed on-site by a radon mitigation technician.

(c) Each person subject to K.A.R. 28-35-601 through 28-35-608, when performing radon mitigation, shall comply with the protocols in the document adopted by reference in K.A.R. 28-35-604(b)(1)(D) regarding the design and construction of mitigation systems. (Authorized by K.S.A. 2010 Supp. 48-16a03; implementing K.S.A. 2010 Supp. 48-16a03 and 48-16a08; effective Feb. 3, 2012.)

28-35-608. Renewal of certification. (a) Each certification renewal application for a radon measurement technician, radon mitigation tech-

nician, or radon measurement laboratory shall be submitted at least 60 days before expiration of the certificate.

(b) Each applicant for renewal of certification shall meet the following requirements:

(1) Submit a completed application to the department on a form provided by the department;

(2) provide any additional relevant information requested by the department documenting that all applicable continuing education requirements for certification renewal have been completed; and

(3) submit payment to the department for the applicable fee specified in K.A.R. 28-35-602.

(c) An applicant's failure to renew a certification within six months after certification has expired shall require that applicant's compliance with all requirements for initial certification.

(d) Each renewal application submitted after certification has expired shall require the payment of a late fee specified in K.A.R. 28-35-602. (Authorized by and implementing K.S.A. 2010 Supp. 48-16a03; effective Feb. 3, 2012.)

**PART 17. PHYSICAL PROTECTION
OF RADIOACTIVE MATERIAL
QUANTITIES OF CONCERN**

28-35-700. General requirements. The provisions of 10 C.F.R. part 37, 78 fed. reg. 17007-17020 (2013), as in effect on May 20, 2013, are hereby adopted by reference, with the changes specified in this regulation.

(a) The following sections or portions of sections in 10 C.F.R. part 37 shall be deleted:

- (1) 37.1;
- (2) 37.3;
- (3) 37.7;
- (4) 37.9;
- (5) 37.11(a) and (b);
- (6) 37.13;
- (7) 37.43(d)(9);
- (8) in 37.81(g), the third sentence;
- (9) 37.105;
- (10) 37.107; and
- (11) 37.109.

(b) In 10 C.F.R. 37.5, the following terms and the definition of each of these terms shall be deleted:

- (1) "Act";
- (2) "agreement state";
- (3) "becquerel";
- (4) "byproduct material";
- (5) "commission";
- (6) "curie";

- (7) "government agency";
- (8) "license";
- (9) "lost or missing licensed material";
- (10) "person";
- (11) "state"; and
- (12) "United States."

(c) Wherever the following words and phrases occur within the portions of 10 C.F.R. part 37 adopted in this regulation, these words and phrases shall be replaced with "department":

- (1) "Appropriate NRC regional office listed in §30.6(a)(2) of this chapter";
- (2) "Commission," except secs. 37.5, 37.27(a) and (c), 37.29(a) and 37.71;
- (3) "NRC," except secs. 37.25(b)(2), 37.27(c), 37.29(a), and 37.71;
- (4) "NRC regional office specified in §30.6 of this chapter";
- (5) "NRC's Operations Center"; and
- (6) "NRC's Operations Center (301-816-5100)."

(d) The following changes shall be made whenever the following text occurs within the portions of 10 C.F.R. part 37 adopted in this regulation:

- (1) "Part 73 of this chapter" shall be replaced with "10 C.F.R. Part 73."
- (2) "71.97(b) of this chapter" and "71.97 of this chapter" shall be replaced with "K.A.R. 28-35-504(b)."
- (3) "Governor's designee" shall be replaced with "division of emergency management of the office of the adjutant general." (Authorized by and implementing K.S.A. 48-1607; effective May 4, 2018.)

**Article 36.—FOOD SERVICE
ESTABLISHMENTS, FOOD VENDING
MACHINE COMPANIES AND LODGING
ESTABLISHMENTS**

MOBILE UNITS

28-36-1. (Authorized by K.S.A. 1978 Supp. 36-503; effective, E-77-45, Sept. 30, 1976; effective Feb. 15, 1977; amended, E-79-16, July 1, 1978; amended May 1, 1979; revoked Feb. 18, 2005.)

**FOOD VENDING MACHINES AND
FOOD VENDING MACHINE COMPANIES**

28-36-10 to 28-36-18. (Authorized by K.S.A. 1976 Supp. 36-507; effective, E-77-46, Sept. 30, 1976; effective Feb. 15, 1977; revoked Aug. 13, 1999.)

FOOD SERVICE ESTABLISHMENTS

28-36-20. (Authorized by K.S.A. 1978 Supp. 36-507; effective, E-79-29, Oct. 24, 1978; effective May 1, 1979; revoked Aug. 13, 1999.)

28-36-21. (Authorized by K.S.A. 36-507; implementing K.S.A. 36-508; effective, E-79-29, Oct. 24, 1978; effective May 1, 1979; amended Aug. 23, 1993; revoked Aug. 13, 1999.)

28-36-22 to 28-36-24. (Authorized by K.S.A. 1978 Supp. 36-507; effective, E-79-29, Oct. 24, 1978; effective May 1, 1979; revoked Aug. 13, 1999.)

28-36-25. (Authorized by K.S.A. 36-507; implementing K.S.A. 36-508, K.S.A. 1982 Supp. 36-503; effective, E-79-29, Oct. 24, 1978; effective May 1, 1979; amended, T-83-47, Dec. 8, 1982; modified, L. 1983 ch. 350, May 1, 1983; revoked Aug. 13, 1999.)

28-36-26 to 28-36-28. (Authorized by K.S.A. 1978 Supp. 36-507; effective, E-79-29, Oct. 24, 1978; effective May 1, 1979; revoked Aug. 13, 1999.)

28-36-29. (Authorized by K.S.A. 36-507; implementing K.S.A. 36-508, K.S.A. 1982 Supp. 36-515a; effective, E-79-29, Oct. 24, 1978; effective May 1, 1979; amended, T-83-47, Dec. 8, 1982; amended May 1, 1983; revoked Aug. 13, 1999.)

APPLICATION AND LICENSE FEES

28-36-30. (Authorized by and implementing K.S.A. 2002 Supp. 36-503; effective, E-79-16, July 1, 1978; effective May 1, 1979; amended, E-82-21, Nov. 16, 1981; amended May 1, 1982; amended Dec. 30, 1991; amended Sept. 27, 1993; amended Nov. 20, 1998; amended, T-28-7-2-01, July 2, 2001; amended Nov. 9, 2001; amended Oct. 24, 2003; revoked June 4, 2010.)

28-36-31. (Authorized by K.S.A. 1978 Supp. 36-502; effective, E-79-16, July 1, 1978; effective May 1, 1979; revoked June 4, 2010.)

28-36-32. (Authorized by K.S.A. 1978 Supp. 36-504; effective, E-79-16, July 1, 1978; effective May 1, 1979; revoked Feb. 18, 2005.)

LODGING ESTABLISHMENTS

28-36-33 through 28-36-45. (Authorized by K.S.A. 1978 Supp. 36-506; effective May

1, 1979; revoked, T-28-10-8-07, Oct. 8, 2007; revoked Feb. 1, 2008.)

28-36-46. (Authorized by and implementing K.S.A. 36-506; effective May 1, 1983; revoked, T-28-10-8-07, Oct. 8, 2007; revoked Feb. 1, 2008.)

28-36-47. (Authorized by and implementing K.S.A. 36-506; effective May 1, 1983; revoked, T-28-10-8-07, Oct. 8, 2007; revoked Feb. 1, 2008.)

28-36-48. (Authorized by and implementing K.S.A. 36-507; effective May 1, 1983; revoked, T-28-10-8-07, Oct. 8, 2007; revoked Feb. 1, 2008.)

28-36-49. (Authorized by and implementing K.S.A. 36-507; effective May 1, 1983; revoked, T-28-10-8-07, Oct. 8, 2007; revoked Feb. 1, 2008.)

28-36-60. (Authorized by and implementing 2001 SB 100, Secs. 2 and 3; effective, T-28-7-2-01, July 2, 2001; effective Nov. 9, 2001; revoked Feb. 18, 2005.)

28-36-70. (Authorized by K.S.A. 36-506; implementing K.S.A. 36-501 and 36-506; effective, T-28-10-8-07, Oct. 8, 2007; effective Feb. 5, 2008; revoked June 4, 2010.)

28-36-71. (Authorized by and implementing K.S.A. 36-502 and 36-506; effective, T-28-10-8-07, Oct. 8, 2007; effective Feb. 5, 2008; revoked June 4, 2010.)

28-36-72 through 28-36-89. (Authorized by and implementing K.S.A. 36-506; effective, T-28-10-8-07, Oct. 8, 2007; effective Feb. 5, 2008; revoked June 4, 2010.)

28-36-101 through 28-36-107. (Authorized by and implementing K.S.A. 36-507; effective Aug. 13, 1999; amended Nov. 30, 2007; revoked June 4, 2010.)

28-36-108. (Authorized by K.S.A. 36-507; implementing K.S.A. 2006 Supp. 36-503 and K.S.A. 36-507; effective Aug. 13, 1999; amended Nov. 30, 2007; revoked June 4, 2010.)

28-36-109. (Authorized by and implementing K.S.A. 36-507; effective Nov. 30, 2007; revoked June 4, 2010.)

28-36-120. (Authorized by and implementing 2001 SB 100, Secs. 2 and 3; effective, T-28-7-2-01, July 2, 2001; effective Nov. 9, 2001; revoked Feb. 18, 2005.)

Article 36a.—RESTAURANTS

28-36a-1. (Authorized by K.S.A. 36-304, 36-305; effective Jan. 1, 1966; revoked May 1, 1979.)

28-36a-2. (Authorized by K.S.A. 36-304, 36-305; effective Jan. 1, 1966; revoked Jan. 1, 1968.)

28-36a-3 to 28-36a-8. (Authorized by K.S.A. 36-304, 36-305; effective Jan. 1, 1966; revoked May 1, 1979.)

28-36a-9. (Authorized by K.S.A. 36-304, 36-305; effective Jan. 1, 1966; revoked Jan. 1, 1968.)

28-36a-10 to 28-36a-15. (Authorized by K.S.A. 36-304, 36-305; effective Jan. 1, 1966; revoked May 1, 1979.)

28-36a-16. (Authorized by K.S.A. 36-304, 36-305; effective Jan. 1, 1966; amended, E-68-13, May 13, 1968; amended Jan. 1, 1969; revoked May 1, 1979.)

28-36a-17. (Authorized by K.S.A. 36-304, 36-305; effective Jan. 1, 1966; revoked Jan. 1, 1968.)

28-36a-18 to 28-36a-24. (Authorized by K.S.A. 36-302, 36-304, 36-305, K.S.A. 1967 Supp. 36-301, 36-303; effective Jan. 1, 1968; revoked, E-79-29, Oct. 24, 1978; revoked May 1, 1979.)

**Article 37.—HOTELS, MOTELS,
ROOMING HOUSES AND
APARTMENT HOUSES**

28-37-1 to 28-37-5. (Authorized by K.S.A. 36-304, 36-305; effective Jan. 1, 1966; revoked May 1, 1979.)

28-37-6. (Authorized by K.S.A. 36-304, 36-305; effective Jan. 1, 1966; revoked Jan. 1, 1968.)

28-37-7 and 28-37-8. (Authorized by K.S.A. 36-304, 36-305; effective Jan. 1, 1966; revoked May 1, 1979.)

28-37-9. (Authorized by K.S.A. 36-304, 36-305; effective Jan. 1, 1966; revoked Jan. 1, 1968.)

28-37-10 to 28-37-14. (Authorized by K.S.A. 36-304, 36-305; effective Jan. 1, 1966; revoked May 10, 1996.)

**Article 38.—LICENSURE OF ADULT
CARE HOME ADMINISTRATORS**

28-38-1. (Authorized by K.S.A. 65-3503; effective Feb. 15, 1977; revoked May 1, 1981.)

28-38-2. (Authorized by K.S.A. 65-3503; effective Feb. 15, 1977; amended, E-81-4, Jan. 10, 1980; revoked May 1, 1981.)

28-38-3. (Authorized by K.S.A. 65-3503; effective Feb. 15, 1977; revoked May 1, 1981.)

28-38-4 to 28-38-7. (Authorized by K.S.A. 65-3503; effective Feb. 15, 1977; amended, E-81-4, Jan. 10, 1980; revoked May 1, 1981.)

28-38-8. (Authorized by K.S.A. 65-3503; effective Feb. 15, 1977; revoked May 1, 1981.)

28-38-9. (Authorized by K.S.A. 65-3503; effective Feb. 15, 1977; amended, E-81-4, Jan. 10, 1980; revoked, May 1, 1981.)

28-38-10 to 28-38-12. (Authorized by K.S.A. 65-3503; effective Feb. 15, 1977; revoked May 1, 1981.)

28-38-13. (Authorized by K.S.A. 60-2101; effective Feb. 15, 1977; revoked May 1, 1981.)

28-38-14 to 28-38-16. (Authorized by K.S.A. 65-3503; effective Feb. 15, 1977; revoked May 1, 1981.)

28-38-17. (Authorized by and implementing K.S.A. 65-3503; effective May 1, 1981; amended May 1, 1983; revoked Sept. 24, 1990.)

28-38-18. (Authorized by K.S.A. 2010 Supp. 65-3503; implementing K.S.A. 2010 Supp. 65-3503 and 65-3504; effective May 1, 1981; amended July 1, 1981; amended, E-82-12, June 17, 1981; amended May 1, 1982; amended Sept. 24, 1990; amended May 10, 1993; amended July 14, 2000; amended Jan. 17, 2003; amended Oct. 3, 2003; amended Dec. 5, 2008; amended Oct. 14, 2011; revoked Oct. 2, 2020.)

28-38-19. (Authorized by and implementing K.S.A. 2007 Supp. 65-3503 and K.S.A. 2007 Supp. 65-3504; effective May 1, 1981; amended, E-82-12, June 17, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1987; amended Sept. 24, 1990; amended May 10, 1993; amended July 14, 2000; amended Jan. 17, 2003; amended Oct. 3, 2003; amended Dec. 5, 2008; revoked Oct. 2, 2020.)

28-38-20. (Authorized by and implementing K.S.A. 2001 Supp. 65-3503 and K.S.A. 2001 Supp. 65-3504; effective May 1, 1981; amended, E-82-12, June 17, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended Sept. 24, 1990; amended May 10, 1993; amended July 14, 2000; amended Jan. 17, 2003; revoked Oct. 2, 2020.)

28-38-21. (Authorized by and implementing K.S.A. 65-3502; effective May 1, 1981; amended, E-82-12, June 17, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1987; amended Sept. 24, 1990; amended May 10, 1993; amended July 14, 2000; amended Jan. 17, 2003; amended Dec. 5, 2008; revoked Oct. 2, 2020.)

28-38-22. (Authorized by K.S.A. 2007 Supp. 65-3503; implementing K.S.A. 2007 Supp. 65-3503 and K.S.A. 65-3505; effective May 1, 1981; amended, E-82-12, June 17, 1981; amended May 1, 1982; amended May 1, 1984; amended Sept. 24, 1990; amended May 10, 1993; amended July 14, 2000; amended Jan. 17, 2003; amended Dec. 5, 2008; revoked Oct. 2, 2020.)

28-38-23. (Authorized by K.S.A. 65-3501, K.S.A. 2007 Supp. 65-3503, and K.S.A. 65-3505; implementing K.S.A. 65-3501 and 65-3505; effective May 1, 1981; amended, E-82-12, June 17, 1981; amended May 1, 1982; amended May 1, 1984; amended Sept. 24, 1990; amended May 10, 1993; amended July 14, 2000; amended Jan. 17, 2003; amended Dec. 5, 2008; revoked Oct. 2, 2020.)

28-38-24. (Authorized by K.S.A. 65-3503; implementing K.S.A. 65-3508; effective May 1, 1981; revoked Sept. 24, 1990.)

28-38-25. (Authorized by K.S.A. 65-3503; implementing K.S.A. 65-3508; effective May 1, 1981; revoked Sept. 24, 1990.)

28-38-26. (Authorized by and implementing K.S.A. 1999 Supp. 65-3503; effective May 1, 1981, amended May 1, 1984; amended Sept. 24, 1990; amended July 14, 2000; revoked Oct. 2, 2020.)

28-38-27. (Authorized by and implementing K.S.A. 65-3503; effective May 1, 1981; revoked May 1, 1984.)

28-38-28. (Authorized by and implementing K.S.A. 2001 Supp. 65-3503; effective May 1, 1981;

amended Sept. 24, 1990; amended July 14, 2000; amended Jan. 17, 2003; revoked Oct. 2, 2020.)

28-38-29. (Authorized by and implementing K.S.A. 2007 Supp. 65-3503; effective May 10, 1993; amended July 14, 2000; amended Jan. 17, 2003; amended Dec. 5, 2008; revoked Oct. 2, 2020.)

28-38-30. (Authorized by and implementing K.S.A. 2001 Supp. 65-3503 and 65-3505; effective July 14, 2000; amended Jan. 17, 2003; revoked Oct. 2, 2020.)

Article 39.—LICENSURE OF ADULT CARE HOMES

SKILLED NURSING HOMES

28-39-1 to 28-39-22. (Authorized by K.S.A. 39-932; effective Feb. 15, 1977; revoked May 1, 1982.)

INTERMEDIATE CARE HOMES

28-39-30 to 28-39-50. (Authorized by K.S.A. 39-932; effective Feb. 15, 1977; revoked May 1, 1982.)

PERSONAL CARE HOMES

28-39-60 to 28-39-75. (Authorized by K.S.A. 39-932; effective Feb. 15, 1977; revoked May 1, 1982.)

GENERAL

28-39-76. (Authorized by and implementing K.S.A. 39-932; effective May 1, 1982; amended May 1, 1984; revoked Nov. 1, 1993.)

28-39-77. (Authorized by K.S.A. 39-932; implementing K.S.A. 39-927, 39-932, and K.S.A. 1990 Supp. 39-930; effective May 1, 1982; amended, T-84-17, July 26, 1983; amended May 1, 1984; amended, T-87-51, Dec. 19, 1986; amended May 1, 1987; amended, T-88-57, Dec. 16, 1987; amended May 1, 1988; amended April 3, 1989; amended Dec. 30, 1991; revoked Nov. 1, 1993.)

28-39-77a. (Authorized by and implementing L. 1985, Ch. 151, Sec. 1; effective May 1, 1986; revoked Nov. 1, 1993.)

28-39-78. (Authorized by and implementing K.S.A. 39-932; effective May 1, 1982; revoked Nov. 1, 1993.)

28-39-79. (Authorized by K.S.A. 39-932, K.S.A. 1983 Supp. 39-936; implementing K.S.A. 1983 Supp. 39-936; effective, T-84-22, Aug. 30, 1983; effective May 1, 1984; revoked Feb. 28, 1994.)

28-39-80. (Authorized by K.S.A. 39-932, K.S.A. 1983 Supp. 39-936; implementing K.S.A. 1983 Supp. 39-936; effective, T-84-22, Aug. 30, 1983; effective May 1, 1984; revoked Feb. 28, 1994.)

28-39-81. (Authorized by K.S.A. 75-5625; implementing K.S.A. 65-1,120; effective May 1, 1984; amended Aug. 13, 1990; revoked Feb. 28, 1994.)

28-39-81a. (Authorized by K.S.A. 75-5625; implementing K.S.A. 1983 Supp. 65-1,121, 65-1124; effective May 1, 1984; revoked Feb. 28, 1994.)

28-39-81b. (Authorized by K.S.A. 75-5625; implementing K.S.A. 1983 Supp. 65-1,121; 65-1124; effective May 1, 1984; revoked Feb. 28, 1994.)

SKILLED NURSING FACILITIES AND INTERMEDIATE CARE FACILITIES

28-39-82. (Authorized by and implementing K.S.A. 39-932; effective May 1, 1982; revoked Nov. 1, 1993.)

28-39-83. (Authorized by and implementing K.S.A. 39-932; effective May 1, 1982; amended May 1, 1985; amended, T-88-57, Dec. 16, 1987; amended May 1, 1988; revoked Nov. 1, 1993.)

28-39-84. (Authorized by and implementing K.S.A. 39-932; effective May 1, 1982; revoked Nov. 1, 1993.)

28-39-85. (Authorized by and implementing K.S.A. 39-932; effective May 1, 1982; revoked Nov. 1, 1993.)

28-39-86. (Authorized by and implementing K.S.A. 39-932; effective May 1, 1982; revoked Nov. 1, 1993.)

28-39-87. (Authorized by and implementing K.S.A. 39-932; effective May 1, 1982; amended May 1, 1984; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended July 17, 1989; revoked Nov. 1, 1993.)

28-39-88. (Authorized by and implementing K.S.A. 39-932; effective May 1, 1982; revoked Nov. 1, 1993.)

28-39-89. (Authorized by and implementing K.S.A. 39-932; effective May 1, 1982; revoked Nov. 1, 1993.)

28-39-90. (Authorized by and implementing K.S.A. 39-932; effective May 1, 1982; revoked Nov. 1, 1993.)

28-39-91. (Authorized by and implementing K.S.A. 39-932; effective May 1, 1982; revoked Nov. 1, 1993.)

28-39-92. (Authorized by and implementing K.S.A. 39-932; effective May 1, 1982; revoked Nov. 1, 1993.)

28-39-93. (Authorized by and implementing K.S.A. 39-932; effective May 1, 1982; revoked Nov. 1, 1993.)

28-39-94. (Authorized by and implementing K.S.A. 39-932; effective, T-83-4, Jan. 7, 1982; effective May 1, 1982; amended May 1, 1984; revoked Nov. 1, 1993.)

28-39-95. (Authorized by and implementing K.S.A. 39-932; effective May 1, 1982; revoked Nov. 1, 1993.)

28-39-96. (Authorized by and implementing K.S.A. 39-932; effective May 1, 1982; revoked Nov. 1, 1993.)

28-39-97. (Authorized by and implementing K.S.A. 39-932; effective May 1, 1982; revoked Nov. 1, 1993.)

28-39-98. (Authorized by and implementing K.S.A. 39-932; effective May 1, 1982; revoked Nov. 1, 1993.)

28-39-99. (Authorized by and implementing K.S.A. 39-932; effective May 1, 1982; revoked Nov. 1, 1993.)

28-39-100. (Authorized by and implementing K.S.A. 39-932; effective May 1, 1982; revoked Nov. 1, 1993.)

28-39-101. (Authorized by and implementing K.S.A. 39-932; effective May 1, 1982; revoked Nov. 1, 1993.)

28-39-102. (Authorized by and implementing K.S.A. 39-932; effective May 1, 1982; revoked Nov. 1, 1993.)

28-39-103. (Authorized by and implementing K.S.A. 39-932; effective May 1, 1982; revoked Nov. 1, 1993.)

28-39-103a. (Authorized by K.S.A. 29-932; implementing K.S.A. 1983 Supp. 39-927, 39-930 and K.S.A. 39-932; effective May 1, 1984; revoked Nov. 1, 1993.)

28-39-104. (Authorized by and implementing K.S.A. 39-932; effective, T-83-4, Jan. 7, 1982; effective May 1, 1982; amended, T-83-15, July 1, 1982; amended May 1, 1983; revoked Nov. 1, 1993.)

28-39-105. (Authorized by and implementing K.S.A. 39-932; effective, T-83-4, Jan. 7, 1982; effective May 1, 1982; amended, T-83-15, July 1, 1982; amended May 1, 1983; revoked Nov. 1, 1993.)

28-39-106. (Authorized by and implementing K.S.A. 39-932; effective, T-83-4, Jan. 7, 1982; effective May 1, 1982; amended, T-83-15, July 1, 1982; amended May 1, 1983; revoked Nov. 1, 1993.)

28-39-107. (Authorized by and implementing K.S.A. 39-932; effective May 1, 1982; revoked Nov. 1, 1993.)

28-39-108. (Authorized by and implementing K.S.A. 39-932; effective May 1, 1982; revoked Nov. 1, 1993.)

28-39-109. (Authorized by and implementing K.S.A. 39-932; effective May 1, 1982; revoked Nov. 1, 1993.)

28-39-110. (Authorized by and implementing K.S.A. 39-932; effective May 1, 1982; revoked Nov. 1, 1993.)

28-39-111. (Authorized by and implementing K.S.A. 39-932; effective May 1, 1982; amended, T-87-51, Dec. 19, 1986; amended May 1, 1987; revoked Nov. 1, 1993.)

28-39-112. (Authorized by and implementing K.S.A. 39-932; effective May 1, 1982; revoked Nov. 1, 1993.)

28-39-113. (Authorized by and implementing K.S.A. 39-932; effective May 1, 1982; revoked Nov. 1, 1993.)

PERSONAL CARE FACILITIES

28-39-114 to 28-39-129. (Authorized by and implementing K.S.A. 39-932; effective May 1,

1982; revoked, T-88-57, Dec. 16, 1987; revoked May 1, 1988.)

28-39-130. (Authorized by and implementing K.S.A. 39-932; effective, May 1, 1982; amended T-83-15, July 1, 1982; amended May 1, 1983; revoked, T-88-57, Dec. 16, 1987; revoked May 1, 1988.)

28-39-131. (Authorized by and implementing K.S.A. 39-932, effective May 1, 1982; revoked, T-88-57, Dec. 16, 1987; revoked May 1, 1988.)

ONE-BED AND TWO-BED HOMES

28-39-132. (Authorized by K.S.A. 39-932; implementing K.S.A. 39-932, K.S.A. 1982 Supp. 39-927, 39-930; effective, T-83-4, Jan. 7, 1982; effective May 1, 1982; amended, T-83-28, Sept. 22, 1982; amended May 1, 1983; revoked May 1, 1984.)

28-39-133. (Authorized by and implementing K.S.A. 39-932; effective May 1, 1982; revoked Oct. 8, 1999.)

28-39-134 to 28-39-137. (Authorized by and implementing K.S.A. 39-932; effective, T-83-4, Jan. 7, 1982; effective May 1, 1982; amended, T-83-28, Sept. 22, 1982; amended May 1, 1983; revoked Oct. 8, 1999.)

BOARDING CARE HOMES

28-39-138. (Authorized by K.S.A. 39-932; implementing K.S.A. 1982 Supp. 39-927, 39-930; effective, T-83-28, Sept. 22, 1982; effective May 1, 1983; revoked May 1, 1984.)

28-39-139 to 28-39-143. Authorized by and implementing K.S.A. 39-932; effective, T-83-28, Sept. 22, 1982; effective May 1, 1983; revoked, T-88-57, Dec. 16, 1987; revoked May 1, 1988.)

28-39-144. Definitions. The following definitions shall apply to all adult care homes except nursing facilities for mental health and intermediate care facilities for the mentally retarded.

(a) "Activities director" means an individual who meets one of the following requirements:

- (1) Has a degree in therapeutic recreation;
- (2) has two years of experience in a social or recreational program within the last five years, one of which was full-time in a patient activities program in a health care setting;
- (3) is registered in Kansas as an occupational therapist or occupational therapy assistant;

(4) has a bachelor's degree in a therapeutic activity field in art therapy, horticultural therapy, music therapy, special education, or a related therapeutic activity field; or

(5) has completed a course approved by the department in resident activities coordination and receives consultation from a therapeutic recreation specialist, an occupational therapist, an occupational therapy assistant, or an individual with a bachelor's degree in art therapy, music therapy, or horticultural therapy.

(b) "Administrator" means any individual who is charged with the general administration of a nursing facility, nursing facility for mental health, assisted living facility, or residential health care facility, whether or not the individual has an ownership interest in the adult care home. Each administrator of an adult care home shall be licensed in accordance with K.S.A. 65-3501 et seq., and amendments thereto.

(c) "Adult day care" means an adult care home that meets the definition in K.S.A. 39-923, and amendments thereto.

(d) "Adult care home" means any of the following facilities licensed by the secretary of health and environment:

- (1) A nursing facility;
- (2) a nursing facility for mental health;
- (3) an intermediate care facility for the mentally retarded;
- (4) an assisted living facility;
- (5) a residential health care facility;
- (6) a home-plus facility;
- (7) an adult day care facility; or
- (8) a boarding care home.

(e) "Advanced registered nurse practitioner" means an individual who is certified by the Kansas board of nursing as an advanced registered nurse practitioner.

(f) "Alteration" means any addition, modification, or modernization in the structure or usage of a facility.

(g) "Ambulatory resident" means any resident who is physically and mentally capable of performing the following:

- (1) Getting in and out of bed; and
- (2) walking in a normal path to safety in a reasonable period of time without the assistance of another person.

(h) "Applicant" means any individual, firm, partnership, corporation, company, association, or joint stock association requesting a license to operate an adult care home.

(i) "Assisted living facility" means an adult care home that meets the definition found in K.S.A. 39-923, and amendments thereto.

(j) "Audiologist" means an individual who is licensed by the Kansas department of health and environment as an audiologist.

(k) "Basement" means the part of a building that is below grade.

(l) "Boarding care home" means an adult care home that meets the definition found in K.S.A. 39-923, and amendments thereto.

(m) "Change of ownership" means any transaction that results in a change of control over the capital assets of an adult care home.

(n) "Clinical record" means a record that includes all the information and entries reflecting each resident's course of stay in an adult care home.

(o) "Controlled substance" means any drug, substance, or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111, and 65-4113, and amendments thereto.

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

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

(r) "Dietetic services supervisor" means an individual who meets one of the following requirements:

- (1) Is licensed in the state of Kansas as a dietitian;
- (2) has an associate's degree in dietetic technology from a program approved by the American dietetic association;

(3) is a dietary manager who is certified by the board of the dietary managers' association; or

(4) has training and experience in dietetic services supervision and management that are determined by the secretary of health and environment to be equivalent in content paragraph (2) or (3) of this subsection.

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

(t) "Direct care staff" means individuals employed by an adult care home who assist residents in activities of daily living. These activities may include the following:

- (1) Grooming;
- (2) eating;
- (3) toileting;
- (4) transferring; and

- (5) ambulation.
- (t) "Director of nursing" means an individual who meets the following criteria:
- (1) Is licensed in Kansas as a registered nurse;
 - (2) is employed full-time in a nursing facility; and
 - (3) has the responsibility, administrative authority, and accountability for the supervision of nursing care provided to residents in a nursing facility.
- (u) "Drug administration" means an act in which a single dose of a prescribed drug or biological is given by injection, inhalation, ingestion, or any other means to a resident by an authorized person in accordance with all laws and regulations governing the administration of drugs and biologicals. Drug administration shall entail the following:
- (1) Removing an individual dose from a labeled container, including a unit-dose container;
 - (2) verifying the drug and dose with the physician's orders;
 - (3) administering the dose to the proper resident; and
 - (4) documenting the dose in the resident's clinical record.
- (w) "Drug dispensing" means the delivery of one or more doses of a drug by a licensed pharmacist or physician. The drug shall be dispensed in a container and labeled in compliance with state and federal laws and regulations.
- (x) "Full-time" means 35 or more hours per week.
- (y) "Health information management practitioner" means an individual who has met the "standards for initial certification" as a registered record administrator or an accredited record technician adopted by the American medical record association, as in effect on October 1, 1990, and hereby adopted by reference.
- (z) "Home-plus" means an adult care home that meets the definition of K.S.A. 39-923, and amendments thereto.
- (aa) "Interdisciplinary team" means the following:
- (1) A registered nurse with responsibility for the care of the residents; and
 - (2) other appropriate staff, as identified by resident comprehensive assessments, who are responsible for the development of care plans for residents.
- (bb) "Legal representative" means an individual person who has been appointed by a court of law as a guardian or has been selected by a resident in a durable power of attorney for health care decisions.
- (cc) "Licensed mental health technician" means an individual licensed by the Kansas board of nursing as a licensed mental health technician.
- (dd) "Licensed nurse" means an individual licensed by the Kansas board of nursing as a registered professional nurse or licensed practical nurse.
- (ee) "Licensed practical nurse" means an individual who is licensed by the Kansas board of nursing as a licensed practical nurse.
- (ff) "Licensed social worker" means an individual who is licensed by the Kansas board of behavioral sciences as a social worker.
- (gg) "Licensee" means an individual, firm, partnership, association, company, corporation, or joint stock association authorized by a license obtained from the secretary of health and environment to operate an adult care home.
- (hh) "Medication" means any drug defined by K.S.A. 65-1626, and amendments thereto.
- (ii) "Medication aide" means an individual who has completed a training program in medication administration as prescribed in K.A.R. 28-39-169 through K.A.R. 28-39-171.
- (jj) "Non-ambulatory resident" means any resident who is not physically or mentally capable of getting in and out of bed and walking a normal path to safety without the assistance of another person.
- (kk) "Nurse aide" means an individual who has a nurse aide certificate issued by the Kansas department of health and environment according to K.A.R. 28-39-165.
- (ll) "Nurse aide trainee" means an individual who is in the process of completing a nurse aide training program as prescribed in K.A.R. 28-39-165 or K.A.R. 28-39-167 and has not been issued a nurse aide certificate by the Kansas department of health and environment.
- (mm) "Nursing facility" means an adult care home that meets the definition found in K.S.A. 39-923(a)(2), and amendments thereto.
- (nn) "Nursing facility for mental health" means an adult care home that meets the definition of K.S.A. 39-923 (a)(3), and amendments thereto.
- (oo) "Nursing personnel" means all of the following:
- (1) Registered professional nurses;
 - (2) licensed practical nurses;
 - (3) licensed mental health technicians in nursing facilities for mental health;
 - (4) medication aides;
 - (5) nurse aides; and
 - (6) nurse aide trainees.

(pp) “Nursing unit” means a distinct area of a nursing facility serving not more than 60 residents and including the service areas and rooms described in K.A.R. 28-39-162.

(qq) “Occupational therapist” means an individual who is registered with the Kansas board of healing arts as an occupational therapist.

(rr) “Occupational therapy assistant” means an individual who is registered with the Kansas board of healing arts as an occupational therapy assistant.

(ss) “Physical restraint” means any method or any physical device, material, or equipment attached or adjacent to the resident’s body and meeting the following criteria:

(1) Cannot be easily removed by the resident; and

(2) restricts freedom of movement or normal access to the resident’s body.

(tt) “Physical therapist” means an individual who is registered with the Kansas board of healing arts as a physical therapist.

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

(vv) “Physician” means an individual who meets the requirements of the Kansas board of healing arts to practice medicine or osteopathy.

(ww) “Psychopharmacologic drug” means any drug prescribed with the intent of controlling mood, mental status, or behavior.

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

(yy) “Respite care” means the provision of services to a resident on an intermittent basis for periods of fewer than 30 days at any one time.

(zz) “Sanitization” means effective bactericidal treatment by a process that reduces the bacterial count, including pathogens, to a safe level on utensils and equipment.

(aaa) “Self-administration of drugs” means the determination by the resident of when to take a drug and the application or ingestion of the drug by the resident without assistance from nursing staff.

(bbb) “Significant change in condition” means a decline or improvement in a resident’s mental, psychosocial, or physical functioning that would result in the need for amendment of the resident’s comprehensive plan of care or negotiated service agreement.

(ccc) “Social services designee” means an individual who meets one of the following qualifications:

(1) Is licensed by the board of behavioral science as a social worker;

(2) has a bachelor’s degree in a human service field, including sociology, special education, rehabilitation counseling, or psychology, and receives supervision from a licensed social worker; or

(3) has completed a course in social services coordination approved by the department and receives supervision from a licensed social worker on a regular basis.

(ddd) “Speech language pathologist” means an individual who is licensed by the Kansas department of health and environment as a speech-language pathologist. (Authorized by and implementing K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21, 1997; amended Oct. 8, 1999; amended Nov. 26, 2001.)

28-39-145. (Authorized by K.S.A. 39-932; implementing K.S.A. 39-927, K.S.A. 39-930 and K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21, 1997; revoked Oct. 8, 1999.)

28-39-145a. (Authorized by K.S.A. 39-930, 39-932, and 39-933; implementing K.S.A. 39-927, 39-930, 39-932, and 39-933; effective Oct. 8, 1999; revoked May 22, 2009.)

28-39-146. (Authorized by and implementing K.S.A. 39-954; effective Nov. 1, 1993; amended Feb. 21, 1997; revoked May 22, 2009.)

28-39-147 and 28-39-148. (Authorized by and implementing K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21, 1997; revoked May 22, 2009.)

28-39-149. Protection of resident funds and possessions in nursing facilities. The nursing facility shall have written policies and procedures which ensure the security of residents’ possessions and residents’ funds accepted by the facility for safekeeping. (a) The facility shall afford each resident the right to manage the resident’s own financial affairs and the facility shall not require any resident to deposit the resident’s personal funds with the facility.

(b) Upon written authorization of a resident, the resident’s legal representative or power of attorney or an individual who has been appointed conservator for the resident, the facility shall hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility.

(c) The facility shall establish and maintain a

system that assures a full, complete, and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.

(1) The facility shall designate in writing the person responsible for the accounting system.

(2) A record shall be made each time there is a disbursement or addition to the resident's personal fund.

(3) The facility shall provide a written report which includes accounting for all transactions and which states the current fund balance to the resident or the resident's legal representative at least quarterly.

(4) The facility shall deposit any resident's funds in excess of \$50 in one or more interest bearing accounts which are separate from any of the facility's operating accounts, and which credit all interest when earned on the resident's account to the personal account of the resident.

(5) All resident funds deposited by the facility shall be deposited in a Kansas financial institution.

(6) Within 30 days after the death of a resident with personal funds deposited with the facility, the facility shall convey the resident's funds and a final accounting of those funds to the individual or probate jurisdiction administering the resident's estate.

(7) The facility shall purchase a surety bond to assure the security of all residents' personal funds deposited with the facility.

(d) The facility shall have written policies and procedures which ensure the security of each resident's personal possessions.

(1) A written inventory of the resident's personal possessions, signed by the resident or the resident's legal representative shall be completed at the time of admission and updated at least annually.

(2) If a resident requests that the facility hold personal possessions within the facility for safe-keeping, the facility shall:

(A) Maintain a written record; and

(B) give a receipt to the resident or the resident's legal representative. (Authorized by and implementing K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21, 1997.)

28-39-150. Resident behavior and nursing facility practices. (a) Restraints. The resident shall be free from any physical restraints imposed or psychopharmacologic drugs admin-

istered for the purposes of discipline or convenience, and not required to treat the resident's medical symptoms.

(1) When physical restraints are used there shall be:

(A) a written physician's order which includes the type of restraint to be applied, the duration of the application and the justification for the use of the restraint;

(B) evidence that at least every two hours the resident is released from the restraint, exercised, and provided the opportunity to be toileted;

(C) regular monitoring of each resident in restraints at intervals of at least 30 minutes;

(D) documentation in the resident's clinical record which indicates that less restrictive methods to ensure the health and safety of the resident were not effective or appropriate; and

(E) evaluation of the continued necessity for the physical restraint at least every three months and more frequently when there is a significant change in the resident's condition.

(2) Equipment used for physical restraints shall be designed to assure the safety and dignity of the resident.

(3) Staff who work with residents in physical restraints shall be trained in the appropriate application of the restraint and the care of a resident who is required to be physically restrained.

(4) In the event of an emergency, a physical restraint may be applied following an assessment by a licensed nurse which indicates that the physical restraint is necessary to prevent the resident from harming him or herself or other residents and staff members. The nursing facility shall obtain physician approval within 12 hours after the application of any physical restraint.

(b) The facility staff and consultant pharmacist shall monitor residents who receive psychopharmacologic drugs for desired responses and adverse effects.

(c) Abuse. Each resident shall have a right to be free from the following:

(1) verbal, sexual, physical, and mental abuse;

(2) corporal punishment; and

(3) involuntary seclusion.

(d) Staff treatment of residents. Each facility shall develop and implement written policies and procedures that prohibit abuse, neglect, and exploitation of residents. The facility shall:

(1) Not use verbal, mental, sexual, or physical abuse, including corporal punishment, or involuntary seclusion;

(2) not employ any individual who has been identified on the state nurse aide registry as having abused, neglected, or exploited residents in an adult care home in the past;

(3) ensure that all allegations of abuse, neglect, or exploitation are investigated and reported immediately to the administrator of the facility and to the Kansas department of health and environment;

(4) have evidence that all alleged violations are thoroughly investigated, and shall take measures to prevent further potential abuse, neglect and exploitation while the investigation is in progress;

(5) report the results of all facility investigations to the administrator or the designated representative;

(6) maintain a written record of all investigations of reported abuse, neglect, and exploitation; and

(7) take appropriate corrective action if the alleged violation is verified. (Authorized by and implementing K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21, 1997.)

28-39-151. Resident assessment. Each nursing facility shall conduct at the time of admission, and periodically thereafter, a comprehensive assessment of a resident's needs on an instrument approved by the secretary of health and environment. (a) The comprehensive assessment shall include at least the following information:

(1) Current medical condition and prior medical history;

(2) measurement of the resident's current clinical status;

(3) physical and mental functional status;

(4) sensory and physical impairments;

(5) nutritional status and impairments;

(6) special treatments and procedures;

(7) mental and psychosocial status;

(8) discharge potential;

(9) dental condition;

(10) activities potential;

(11) rehabilitation potential;

(12) cognitive status; and

(13) drug therapy.

(b) A comprehensive assessment shall be completed:

(1) not later than 14 days after admission;

(2) not later than 14 days after a significant change in the resident's physical, mental, or psychosocial condition; and

(3) at least once every 12 months.

(c) The nursing facility staff shall examine each resident at least once every three months, and as appropriate, revise the resident's assessment to assure the continued accuracy of the assessment.

(d) Changes in a resident's condition which are self-limiting and which will not affect the functional capacity of the resident over the long term do not in themselves require a reassessment of the resident.

(e) The nursing facility shall use the results of the comprehensive assessment to develop, review, and revise the resident's comprehensive plan of care under subsection (h).

(f) The nursing facility shall conduct or coordinate each assessment with the participation of appropriate health professionals.

(g) A registered professional nurse shall conduct or coordinate each comprehensive assessment and shall sign and certify that the assessment has been completed.

(h) Comprehensive care plans.

(1) The facility shall develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's physical, mental, and psychosocial needs that are identified in the comprehensive assessment.

(2) The comprehensive care plan shall be:

(A) Developed within seven days after completion of the comprehensive assessment; and

(B) prepared by an interdisciplinary team including the attending physician, a registered nurse with responsibility for the care of the resident, and other appropriate staff in other disciplines as determined by the resident's needs, and with the participation of the resident, the resident's legal representative, and the resident's family to the extent practicable.

(i) The services provided or arranged by the facility shall:

(1) Meet professional standards of quality; and

(2) be provided by qualified persons in accordance with each resident's written plan of care.

(j) Discharge summary. When the facility anticipates discharge of a resident, a discharge summary shall be developed which includes the following:

(1) A recapitulation of the resident's stay;

(2) a final summary of the resident's status which includes the items found in the comprehensive assessment, K.A.R. 28-39-151 (a). This summary shall be available for release at the time of discharge to authorized persons and agencies, with the consent of the resident or the resident's legal representative; and

(3) a post-discharge plan to assist the resident in the adjustment to a new environment. The resident, and when appropriate, the resident's family, shall participate in the development of the plan. (Authorized by and implementing K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21, 1997.)

28-39-152. Quality of care. Each resident shall receive and the nursing facility shall provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being in accordance with the comprehensive assessment and the plan of care.

(a) Activities of daily living. Based on the comprehensive assessment of the resident, the facility shall ensure all of the following:

(1) Each resident's abilities in activities of daily living improve or are maintained except as an unavoidable result of the resident's clinical condition. This shall include the resident's ability to perform the following:

- (A) Bathe;
- (B) dress and groom;
- (C) transfer and ambulate;
- (D) toilet;
- (E) eat; and
- (F) use speech, language, or other functional communication systems.

(2) Each resident is given the appropriate treatment and services to maintain or improve the level of functioning as described above in paragraph (1).

(3) Any resident who is unable to perform activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene. The facility shall ensure all of the following:

(A) Residents are bathed to ensure skin integrity, cleanliness, and control of body odor.

(B) Oral care is provided so that the oral cavity and dentures are clean and odor is controlled.

(C) Residents are dressed and groomed in a manner that preserves personal dignity.

(D) Residents who are unable to eat without assistance are offered fluids and food in a manner that maintains adequate hydration and nutrition.

(E) The resident's abilities to obtain fluid and nutrition in a normal manner are preserved or enhanced.

(b) Urinary incontinence. The facility shall ensure all of the following:

(1) Residents who are incontinent at the time of admission or who become incontinent after

admission are assessed, and based on that assessment a plan is developed and implemented to assist the resident to become continent, unless the resident's clinical condition demonstrates that incontinence is unavoidable.

(2) Residents who are incontinent receive appropriate treatment and services to prevent urinary tract infections.

(3) Residents who are admitted to the facility without an indwelling catheter are not catheterized, unless the resident's clinical condition demonstrates that catheterization is necessary.

(4) Residents with indwelling catheters receive appropriate treatment and services to prevent urinary tract infections and to restore normal bladder function, if possible.

(c) Pressure ulcers. Based on the comprehensive assessment, the facility shall ensure all of the following:

(1) Any resident who enters the facility without pressure ulcers does not develop pressure ulcers, unless the resident's clinical condition demonstrates that they were unavoidable. The facility shall report in writing the development of any pressure ulcer to the medical director.

(2) Any resident with pressure ulcers receives the necessary treatment and services to promote healing, prevent infection, and prevent new ulcers from developing.

(3) A skin integrity program is developed for each resident identified to be at risk for pressure ulcers. The program shall include the following:

(A) Frequent changes of position at least one time every two hours;

(B) protection of the skin from items that could promote loss of skin integrity;

(C) the use of protective devices over vulnerable areas, including heels, elbows, and other body prominences; and

(D) methods to assist the resident to remain in good body alignment.

(d) Stasis ulcers. Based on the comprehensive assessment of the resident, the facility shall ensure both of the following:

(1) Any resident who is identified on the comprehensive assessment as being at risk for development of stasis ulcers does not develop stasis ulcers, unless the resident's clinical condition demonstrates that the stasis ulcers were unavoidable.

(2) Any resident with stasis ulcers receives the necessary treatment and services to promote healing, prevent infection, and prevent new ulcers from developing.

(e) Range of motion. Based on the comprehensive assessment of a resident, the facility shall ensure all of the following:

(1) Any resident who enters the facility without a limitation in range of motion does not experience a reduction in range, unless the resident's clinical condition demonstrates that a reduction in range of motion is unavoidable.

(2) Any resident with a decrease in range of motion receives appropriate treatment and services to increase range of motion, if practicable, and to prevent further decrease in range of motion.

(3) Any resident who is identified as at risk for experiencing a decrease in range of motion is provided appropriate treatment and services to prevent the decrease.

(f) Mobility. Based on the comprehensive assessment of the resident, the facility shall ensure all of the following:

(1) A resident's level of mobility does not decrease after admission, unless the resident's clinical condition demonstrates that a reduction in mobility is unavoidable.

(2) Any resident with a limitation in mobility receives the appropriate treatment and services to maintain or increase the resident's mobility.

(3) Any resident who is identified by the comprehensive assessment to be at risk for a reduction of function in the area of mobility is provided the treatment and services to prevent or limit that decrease in function.

(g) Psychosocial functioning. Based on the comprehensive assessment of the resident, the facility shall ensure both of the following:

(1) A resident's level of psychosocial functioning does not decrease after admission, unless the resident's clinical condition demonstrates that a reduction in psychosocial functioning is unavoidable.

(2) Any resident who displays psychosocial adjustment difficulty receives appropriate treatment and services to achieve as high a level of psychosocial functioning as possible within the constraints of the resident's clinical condition.

(h) Gastric tubes. Based on the comprehensive assessment of a resident, the facility shall ensure that each resident meets either of the following criteria:

(1) Has been able to eat enough to maintain adequate nutrition and hydration independently or with assistance is not fed by a gastric tube, unless the resident's clinical condition demonstrates that use of a gastric tube was unavoidable; or

(2) is fed by a gastric tube and receives the following appropriate treatment and services:

(A) To prevent the following:

(i) Aspiration pneumonia;

(ii) diarrhea;

(iii) vomiting;

(iv) dehydration;

(v) metabolic abnormalities;

(vi) nasal and pharyngeal ulcers; and

(vii) ulceration at a gastrostomy tube site; and

(B) to restore, if possible, normal feeding function.

(i) Accidents. The facility shall ensure both of the following:

(1) The resident's environment remains free of accident hazards.

(2) Each resident receives adequate supervision and assistive devices to prevent accidents.

(j) Nutrition. Based on the resident's comprehensive assessment, the facility shall ensure all of the following for each resident:

(1) Maintenance of acceptable parameters of nutritional status, including usual body weight and protein levels, unless the resident's clinical condition demonstrates that this is not possible;

(2) a therapeutic diet as ordered by the attending physician when there is a nutritional problem or there is a potential for a nutritional problem; and

(3) for residents at risk for malnutrition, the provision of monitoring and appropriate treatment and services to prevent malnutrition.

(k) Hydration. The facility shall provide each resident with sufficient fluid intake to maintain proper hydration and health.

(1) Fresh water, with or without ice according to the preference of the resident, shall be accessible to each resident at all times except when not appropriate due to resident's clinical condition.

(2) Any resident at risk for dehydration shall be monitored, and appropriate treatment and services shall be provided to prevent dehydration.

(1) The facility shall ensure that each resident receives proper treatment and care for special services, which shall include the following:

(1) Parenteral injections. Parenteral injections shall be performed by licensed nurses and physicians;

(2) Intravenous fluids and medications. Intravenous fluids and medications shall be administered and monitored by a registered nurse or by a licensed practical nurse who has documented successful completion of training in intravenous therapy;

- (3) colostomy, ureterostomy, or ileostomy care;
- (4) tracheostomy care;
- (5) tracheal suctioning;
- (6) respiratory care;
- (7) podiatric care;
- (8) prosthetic care;
- (9) skin care related to pressure ulcers;
- (10) diabetic testing; and
- (11) other special treatments and services ordered by the resident's physician.

(m) Drug therapy. The facility shall ensure that all drugs are administered to residents in accordance with a physician's order and acceptable medical practice. The facility shall further ensure all of the following:

(1) All drugs are administered by physicians, licensed nursing personnel, or other personnel who have completed a state-approved training program in drug administration.

(2) A resident may self-administer drugs if the interdisciplinary team has determined that the resident can perform this function safely and accurately and the resident's physician has given written permission.

(3) Drugs are prepared and administered by the same person.

(4) The resident is identified before administration of a drug, and the dose of the drug administered to the resident is recorded on the resident's individual drug record by the person who administers the drug.

(n) Oxygen therapy. The facility shall ensure that oxygen therapy is administered to a resident in accordance with a physician's order. The facility shall further ensure all of the following:

(1) Precautions are taken to provide safe administration of oxygen.

(2) Each staff person administering oxygen therapy is trained and competent in the performance of the required procedures.

(3) Equipment used in the administration of oxygen, including oxygen concentrators, is maintained and disinfected in accordance with the manufacturer's recommendations.

(4) A sign that reads "oxygen—no smoking" is posted and visible at the corridor entrance to a room in which oxygen is stored or in use.

(5) All smoking materials, matches, lighters, or any item capable of causing a spark has been removed from a room in which oxygen is in use or stored.

(6) Oxygen containers are anchored to prevent them from tipping or falling over. (Authorized by and implementing K.S.A. 39-932; effective Nov.

1, 1993; amended Feb. 21, 1997; amended Oct. 8, 1999.)

28-39-153. Quality of life. Each nursing facility shall care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life.

(a) Dignity. Each facility shall promote respect of each resident and shall fully recognize each resident's individuality.

(b) Self-determination and participation. The nursing facility shall afford each resident the right to:

(1) Choose activities, schedules, and health care consistent with resident's interests, assessments and care plans;

(2) interact with members of the community both inside and outside the facility; and

(3) make choices about aspects of the resident's life that are significant to the resident.

(c) Participation in resident and family groups.

(1) The facility shall afford each resident the right to organize and participate in resident groups in the facility.

(2) The nursing facility shall afford each resident's family the right to meet in the facility with the families of other residents in the facility.

(3) Staff or visitors may attend meetings at the group's invitation.

(4) The facility shall designate a staff person responsible for providing assistance and responding to written requests that result from group meetings.

(5) When a resident or family group exists, the facility shall consider the views, grievances, and recommendations of residents and their families concerning proposed policy and operational decisions affecting resident care and life in the facility. The nursing facility shall maintain a record of the written requests and the facility responses or actions.

(d) Participation in other activities. The nursing facility shall afford each resident the right to:

(1) Participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility; and

(2) reside and receive services in the facility with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other residents would be endangered.

(e) Activities.

(1) The facility shall provide an ongoing program of activities designed to meet, in accordance

with the comprehensive assessment, the interests of and promote the physical, mental, and psychosocial well-being of each resident.

(2) A qualified activities director shall direct the activities program.

(3) The nursing facility shall employ activities personnel at a minimum weekly average of .09 hours per resident per day.

(f) Social services.

(1) The facility shall provide medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

(2) Any facility with more than 120 beds shall employ a full-time social service designee who:

(A) is a licensed social worker; or

(B) (i) meets the qualifications in K.A.R. 28-39-144 (bbb); and

(ii) receives supervision from a licensed social worker.

(3) Any facility with 120 beds or fewer shall employ a social services designee. If the social service designee is not a licensed social worker or meets the requirements in K.A.R. 28-39-144 (bbb)(2), a licensed social worker shall supervise the social service designee.

(4) The nursing facility shall employ social service personnel at a minimum weekly average of .09 hours per resident per day. (Authorized by and implementing K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21, 1997.)

28-39-154. Nursing services. Each nursing facility shall have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident as determined by resident assessments and individual plans of care. (a) Sufficient staff. The facility shall employ sufficient numbers of each of the following types of personnel to provide nursing care to all residents in accordance with each resident's comprehensive assessment and care plan.

(1) The nursing facility shall employ full-time a director of nursing who is a registered nurse. The director of nursing shall have administrative authority over and responsibility for the functions and activities of the nursing staff.

(2) A registered nurse shall be on duty at least eight consecutive hours per day, seven days per week. The facility may include the director of nursing to meet this requirement.

(3) A licensed nurse shall be on duty 24 hours per day, seven days per week.

(A) On the day shift there shall be the same number of licensed nurses on duty as there are nursing units.

(B) If a licensed practical nurse is the only licensed nurse on duty, a registered nurse shall be immediately available by telephone.

(4) At least two nursing personnel shall be on duty at all times in the facility. Personnel shall be immediately accessible to each resident to assure prompt response to the resident call system and necessary action in the event of injury, illness, fire, or other emergency.

(5) The nursing facility shall not assign nursing personnel routine housekeeping, laundry, or dietary duties.

(6) Direct care staff shall wear identification badges to identify name and position.

(7) The nursing facility shall ensure that direct care staff are available to provide resident care in accordance with the following minimum requirements.

(A) Per facility, there shall be a weekly average of 2.0 hours of direct care staff time per resident and a daily average of not fewer than 1.85 hours during any 24 hour period. The director of nursing shall not be included in this computation in facilities with more than 60 beds.

(B) The ratio of nursing personnel to residents per nursing unit shall not be fewer than one nursing staff member for each 30 residents or for each fraction of that number of residents.

(C) The licensing agency may require an increase in the number of nursing personnel above minimum levels under certain circumstances. The circumstances may include the following:

(i) location of resident rooms;

(ii) locations of nurses' stations;

(iii) the acuity level of residents; or

(iv) that the health and safety needs of residents are not being met.

(b) The nursing facility shall maintain staffing schedules on file in the facility for 12 months and shall include hours actually worked and the classification of nursing personnel who worked in each nursing unit on each shift. (Authorized by and implementing K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21, 1997.)

28-39-155. Physician services. Each resident in a nursing facility shall be admitted and shall remain under the care of a physician.

(a) The facility shall ensure that both of the following conditions are met:

(1) The medical care of each resident is supervised by a physician.

(2) Another physician supervises the medical care of residents when the resident's attending physician is not available.

(b) The physician shall perform the following duties:

(1) At the time of the resident's admission to the facility, provide orders for the immediate care of the resident, current medical findings, and diagnosis. The physician shall provide a medical history within seven days after admission of the resident;

(2) review the resident's total program of care, including medications and treatments at each visit;

(3) write, sign, and date progress notes at each visit; and

(4) sign all written orders at the time of the visit and all telephone orders within seven days of the date the order was given.

(c) A physician shall see the resident for all of the following:

(1) If it is necessary due to a change in the resident's condition determined by the physician or licensed nursing staff;

(2) if the resident or legal representative requests a physician visit; and

(3) at least annually.

(d) The physician may delegate resident visits to an advanced registered nurse practitioner or a physician assistant.

(e) At admission, the resident or the resident's legal representative shall designate the hospital to which the resident is to be transferred in a medical emergency. If the resident's attending physician does not have admitting privileges at the designated hospital, the facility shall assist the resident or the resident's legal representative in making arrangements with another physician who has admitting privileges to assume the care of the resident during hospitalization. This information shall be available on the resident's clinical record.

(f) Death of resident. The nursing facility shall obtain an order from a physician before allowing the removal of the body of a deceased resident. (Authorized by and implementing K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21, 1997; amended Nov. 26, 2001.)

28-39-156. Pharmacy services. The nursing facility shall provide pharmaceutical services including policies and procedures that assure the

accurate acquisition, receipt, and administration of all drugs and biologicals to meet the needs of each resident. (a) Supervision by a licensed pharmacist.

(1) A pharmacist shall develop, coordinate, and supervise all pharmacy services.

(2) The pharmacist shall perform a monthly review of the methods, procedures, storage, administration, disposal, and record-keeping of drugs and biologicals.

(3) The pharmacist shall prepare a written report which includes recommendations for the administrator after each monthly review.

(b) Ordering and labeling.

(1) All drugs and biologicals shall be ordered pursuant to a written order issued by a licensed physician.

(2) The dispensing pharmacist shall label each prescription container in accordance with K.A.R. 68-7-14.

(3) Over-the-counter drugs. The facility shall ensure that any over-the-counter drug delivered to the facility is in the original, unbroken manufacturer's package. The pharmacist or licensed nurse shall place the full name of the resident on the package. If over-the-counter drugs are removed from the original manufacturer's package other than for administration, the pharmacist shall label the drug as required for prescription drugs.

(4) Physicians, advanced registered nurse practitioners, and physician assistants shall give verbal orders for drugs only to a licensed nurse, pharmacist or another physician. The licensed nurse, physician, or pharmacist shall immediately record the verbal order in the resident's clinical record. The physician shall counter-sign all verbal orders within seven working days after receipt of the verbal order.

(c) Automatic stop orders. Drugs not specifically limited as to time or number of doses when ordered shall be controlled by automatic stop orders in accordance with written policies of the facility. A licensed nurse shall notify the physician of an automatic stop order before the administration of the last dose so that the physician may decide if additional drug is to be ordered.

(d) Storage.

(1) The licensed pharmacist shall ensure that all drugs and biologicals are stored according to state and federal laws.

(2) The nursing facility shall store all drugs and biologicals in a locked medication room or a locked medication cart located at the nurses' sta-

tion. Only the administrator and persons authorized to administer medications shall have keys to the medication room or the medication cart.

(3) The nursing facility shall store drugs and biologicals under sanitary conditions.

(4) The temperature of the medication room shall not exceed 85°F. The nursing facility shall store drugs and biologicals at the temperatures recommended by the manufacturer.

(e) The nursing facility shall develop and implement policies and procedures to assure that residents who self-administer drugs do so safely and accurately.

(f) Accountability and disposition. The nursing facility shall control and dispose of drugs and biologicals in a manner that ensures the safety of the resident.

(1) The nursing facility shall maintain records of receipt and disposition of all controlled substances in order that there can be an accurate reconciliation.

(2) The licensed pharmacist shall determine whether the records of drug and biological administration are in order and that an accurate account of all controlled substances was maintained and reconciled.

(3) The licensed pharmacist shall identify any deteriorated, outdated, or discontinued drugs and biologicals and any drugs or biologicals that are unused remaining from a discharged or deceased resident during the monthly pharmacy services review. The licensed pharmacist shall destroy, if appropriate, any deteriorated, outdated, unused, or discontinued drugs and biologicals at the nursing facility and in the presence of one witness who is a licensed nurse employed by the facility. A record shall be on file in the facility which contains the date, drug name, quantity of drugs and biologicals destroyed, and signatures of the pharmacist and licensed nurse.

(4) The nursing facility shall return to the dispensing pharmacy any drugs and biologicals which have been recalled and shall maintain documentation of this action in the facility.

(5) Staff members who have authority to administer drugs may provide drugs to residents or a responsible party during short-term absences from the facility.

(A) A staff member who has the authority to administer drugs may transfer drugs to a suitable container.

(B) The staff member preparing the drugs shall provide written instructions for the admin-

istration of the drugs to the resident or responsible party.

(6) The staff member preparing the drugs shall document the drugs provided and the instructions given in the resident's clinical record.

(7) The nursing facility may send drugs with a resident at the time of discharge, if so ordered by the physician.

(g) Drug regimen review.

(1) The licensed pharmacist shall review the drug regimen of each resident at least monthly.

(2) The licensed pharmacist shall document in the resident's clinical record that the drug regimen review has been performed.

(3) The licensed pharmacist shall report any irregularities to the attending physician, the director of nursing, and the medical director. The pharmacist or a licensed nurse shall act upon any responses by the physician to the report.

(4) The pharmacist shall document the drug regimen review in the resident's clinical record or on a drug regimen report form. A copy of the drug regimen review shall be available to the department.

(5) Any deviation between drugs ordered and drugs given shall be reported to the quality assessment and assurance committee.

(h) Emergency drug kits. A nursing facility may have an emergency drug kit available for use when needed.

(1) The medical director, director of nursing, and licensed pharmacist shall determine the contents of the emergency drug kit. The contents of the kit shall be periodically reviewed and drugs added and deleted as appropriate. Written documentation of these determinations shall be available in the facility.

(2) Policies and procedures shall be available for the use of the emergency drug kit.

(3) The facility shall have a system in place which ensures that drugs used from the emergency drug kit are replaced in a timely manner.

(4) The emergency drug kit shall be in compliance with K.A.R. 68-7-10 (d). (Authorized by and implementing K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21, 1997.)

28-39-157. Specialized rehabilitation services. Each nursing facility shall provide or obtain rehabilitative services for residents, including physical therapy, speech-language pathology, audiology, and occupational therapy. (a) Provision of services. If specialized rehabilitative services

are required in the resident's comprehensive plan of care, the facility shall:

- (1) Provide the required services; or
- (2) obtain the required services from an outside resource in accordance with K.A.R. 28-39-163 (h), from a provider of specialized rehabilitation services.
- (b) Qualified personnel shall provide specialized rehabilitation services under the written order of a physician.
- (c) The facility shall develop policies and procedures for the provision of specialized rehabilitation services. (Authorized by and implementing K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21, 1997.)

28-39-158. Dietary services. The nursing facility shall provide each resident with nourishing, palatable, attractive, non-contaminated foods that meet the daily nutritional and special dietary needs of each resident. A facility that has a contract with an outside food management company shall be found to be in compliance with this regulation if the company meets the requirements of these regulations. (a) Staffing.

(1) Overall supervisory responsibility for the dietetic services shall be the assigned responsibility of a full-time employee who is a licensed dietitian or a dietetic services supervisor who receives regularly scheduled onsite supervision from a licensed dietitian. The nursing facility shall provide sufficient support staff to assure adequate time for planning and supervision.

(2) The nursing facility shall implement written policies and procedures for all functions of the dietetic services department. The policies and procedures shall be available for use in the department.

(b) Menus and nutritional adequacy.

(1) Menus shall meet the nutritional needs of the residents in accordance with:

- (A) each resident's comprehensive assessment;
- (B) the attending physician's orders; and
- (C) the recommended dietary allowances of the food and nutrition board of the national research council, national academy of sciences as published in *Recommended Dietary Allowances*, 10th ed., 1989.

(2) Menus for all diets and therapeutic modifications shall be written at least two weeks in advance of service and shall be approved by a licensed dietitian.

(3) Menus shall ensure that not less than 20 percent of the total calorie intake is served at one meal.

(4) When a substitution is necessary, the substitute shall be of similar nutritive value, recorded, and available for review.

(5) Menus shall be followed.

(6) The nursing facility shall keep on file and available for review records of the foods purchased and meals and snacks actually served for 3 months.

(c) Food. Each facility shall comply with the following provisions.

(1) Dietary service staff shall prepare the food by methods that conserve nutritive value, flavor, appetizing aroma, and appearance.

(2) Food shall be attractive, flavorful, well-seasoned, and served at the proper temperature.

(A) Before serving, the facility shall hold hot foods at 140°F or above.

(B) Hot foods, when served to the resident, shall not be below 115°F.

(C) The facility shall hold and serve cold foods that are potentially hazardous at not more than 45°F.

(3) The facility shall prepare the food using standardized recipes adjusted to the number of residents served.

(4) The facility shall prepare the food in a form designed to meet individual resident needs.

(5) When a resident refuses a food served, the facility shall serve the resident food of similar nutritive value as a substitute.

(d) Therapeutic diets.

(1) The attending physician shall prescribe any therapeutic diets.

(2) A current diet manual approved by the licensed dietitian shall be available to attending physicians, nurses, and dietetic services personnel. The facility shall use the manual as a guide for writing menus for therapeutic diets.

(e) Frequency of meals.

(1) Each resident shall receive and the facility shall:

(A) Provide at least three meals daily, at regular times;

(B) offer nourishment at bedtime to all residents unless clinically contra-indicated; and

(C) provide between-meal nourishments when clinically indicated or requested when not clinically contra-indicated.

(2) There shall be no more than 14 hours' time between a substantial evening meal and breakfast the following day, except when a nourishing snack is provided at bedtime, in which instance 16 hours may elapse. A nourishing snack shall contain items from at least 2 food groups.

(f) Assistive devices. Each facility shall provide, based on the comprehensive assessment, special eating equipment and utensils for residents who need them.

(g) Sanitary conditions. Each facility shall comply with the following provisions.

(1) The facility shall procure all foods from sources approved or considered satisfactory by federal, state and local authorities.

(2) The facility shall store, prepare, display, distribute, and serve foods to residents, visitors and staff under sanitary conditions.

(A) The facility shall keep potentially hazardous foods at a temperature of 45°F or 7°C or lower, or at a temperature of 140°F or 60°C or higher.

(B) The facility shall provide each mechanically refrigerated storage area with a numerically scaled thermometer, accurate to +plus or -minus 3°F or 1.5°C, which is located to measure the warmest part of the storage area and is easily readable.

(C) The facility shall keep frozen food frozen and shall store the food at a temperature of not more than 0°F.

(D) The facility shall store each prepared food, dry or staple food, single service ware, sanitized equipment, or utensil at least six inches or 15 centimeters above the floor on clean surfaces and shall protect the food from contamination.

(E) The facility shall store and label containers of poisonous compounds or cleaning supplies and keep the containers in areas separate from those used for food storage, preparation and serving.

(F) The facility shall cover, label, and date each food item not stored in the original product container or package.

(G) The facility shall tightly cover and date each opened food item stored in the original product container or package.

(H) The facility shall not store prepared foods, dry or staple foods, single service ware, sanitized equipment or utensils and containers of food under exposed or unprotected sewer lines or water lines, except for automatic fire protection sprinkler heads. The facility shall not store food and service equipment or utensils in toilet rooms.

(I) The facility shall store food not subject to further washing or cooking before serving in a way that protects the food against cross-contamination.

(J) The facility shall not store packaged food subject to entry of water in contact with water or undrained ice.

(3) The facility shall prepare and serve food:

(A) with the least possible manual contact;

(B) with suitable utensils; and

(C) on surfaces that have been cleaned, rinsed and sanitized before use to prevent cross-contamination.

(4) The facility shall not prepare or serve food from containers with serious defects.

(5) The facility shall thoroughly wash each raw fruit and raw vegetable with water before being cooked or served.

(6) With the following exceptions, the facility shall cook potentially hazardous foods which require cooking to at least 145°F.

(A) The facility shall cook poultry, poultry stuffings, stuffed meats and stuffing containing meat to a minimum temperature of 165°F in all parts of the food with no interruption of the cooking process.

(B) The facility shall cook pork and any food containing pork to a minimum temperature of 150°F in all parts of the food.

(C) The facility shall cook ground beef and any food containing ground beef to at least 155°F in all parts of the food.

(7) When foods in which dry milk has been added are not cooked, the foods shall be consumed within 24 hours.

(8) The facility shall use only pasteurized fresh milk as a milk beverage and shall transfer to a glass directly from a milk dispenser or original container. When clinically indicated, non-fat dry milk may be added to fresh milk served to a resident.

(9) The facility shall use only clean whole eggs, with shells intact and without cracks or checks, or pasteurized liquid, frozen, or dry eggs or egg products, or commercially prepared and packaged hard cooked, peeled eggs. All eggs shall be cooked.

(10) The facility shall reheat rapidly potentially hazardous foods that have been cooked and then refrigerated to a minimum of 165°F throughout before being served or before being placed in a hot food storage unit.

(11) The facility shall use metal stem-type numerically scaled thermometers, accurate to +plus or -minus 3°F to assure the attainment and maintenance of proper internal cooking, holding, or refrigeration temperatures of potentially hazardous foods.

(12) The facility shall thaw potentially hazardous foods:

(A) Under refrigeration;

(B) under cold running water;

(C) in a microwave when the food will be immediately cooked; or

(D) as part of the cooking process.

(h) Service. The facility shall:

(1) provide dining room service for all capable residents;

(2) provide ice for beverages which shall be handled in a manner which prevents contamination;

(3) cover food distributed for room service and to dining rooms not adjacent to the dietetic services department; and

(4) protect food on display from contamination by the use of packaging or by the use of easily cleanable counter, serving line or salad bar protective devices or other effective means.

(i) Dietary employees shall:

(1) Thoroughly wash their hands and exposed portions of their arms with soap and water before starting work, during work as often as necessary to keep them clean, and after smoking, eating, drinking, or using the toilet. Employees shall keep their fingernails clean and trimmed;

(2) wear clean outer clothing;

(3) use effective hair restraints to prevent contamination of food and food-contact surfaces;

(4) taste food in a sanitary manner;

(5) use equipment and utensils constructed from and repaired with safe materials;

(6) clean and sanitize equipment and utensils after each use;

(7) use clean, dry cloths or paper used for no purpose but for wiping food spills on tableware such as plates or bowls; and

(8) use cloths or sponges for wiping food spills on food and non-food contact surfaces which are clean, rinsed frequently in a sanitizing solution and stored in the sanitizing solution which is maintained at an effective concentration.

(j) The facility shall ensure that only persons authorized by the facility are in the dietary services area or areas.

(k) The facility shall ensure that the food preparation area is not used as a dining area.

(l) Cleaning procedures. The facility shall:

(1) Establish and follow cleaning procedures to ensure that all equipment and work areas, including walls, floors, and ceilings are clean;

(2) perform cleaning and sanitizing of tableware and equipment by immersion, spray-type, or low-temperature dishwashing machines used according to the manufacturer's directions. Rinse temperature in hot water machines shall be a minimum of 160°F at the dish level;

(3) air dry all tableware, kitchenware, and equipment;

(4) store glasses and cups in an inverted position;

(5) cover or invert other stored utensils;

(6) provide for storage of knives, forks, and spoons so that the handle is first presented;

(7) provide mops and mop pails for exclusive use in the dietary department;

(8) provide a lavatory with hot and cold running water, soap, and single-service towels or a mechanical hand drying device in dietetic services;

(9) dispose of waste in a sanitary manner via a food disposal or in clean containers with tight-fitting covers; and

(10) cover waste containers except when in continuous use. (Authorized by and implementing K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21, 1997.)

28-39-159. Dental Services. Each nursing facility shall assist residents in obtaining routine and 24-hour emergency dental care. The facility shall: (a) Maintain a list of available dentists for residents who do not have a dentist;

(b) assist residents, if requested or necessary, in arranging for appropriate dental services; and

(c) assist residents in arranging transportation to and from the dentist's office. (Authorized by and implementing K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21, 1997.)

28-39-160. Other resident services. (a) Special care section. A nursing facility may develop a special care section within the nursing facility to serve the needs of a specific group of residents.

(1) The facility shall designate a specific portion of the facility for the special care section.

(2) The facility shall develop admission and discharge criteria that identify the diagnosis, behavior, or specific clinical needs of the residents to be served. The medical diagnosis, physician's progress notes, or both shall justify admission to the section.

(3) A written physician's order shall be required for placement.

(4) Direct care staff shall be present in the section at all times.

(5) Before admission to a special care section, the facility shall inform the resident or resident's legal representative in writing of the services and programs available in the special care section that are different from those services and programs provided in the other sections of the facility.

(6) The facility shall provide a training program for each staff member before the member's assignment to the section. Evidence of completion of the training shall be on file in the employee's personnel records.

(7) The facility shall provide in-service training specific to the needs of the residents in the special care section to staff at regular intervals.

(8) The facility shall develop and make available to the clinical care staff policies and procedures for operation of the special care section.

(9) The facility shall provide a substation for use by the direct care staff in the special care section. The design of the substation shall be in accordance with the needs of the special care section and shall allow for visibility of the corridors from that location.

(10) Staff in the section shall be able to observe and hear resident and emergency call signals from the corridor and nurse substation.

(11) The facility shall provide living, dining, activity, and recreational areas in the special care section at the rate of 27 square feet per resident, except when residents are able to access living, dining, activity, and recreational areas in another section of the facility.

(12) The comprehensive resident assessment shall indicate that the resident would benefit from the program offered by the special care section.

(13) The resident comprehensive care plan shall include interventions that effectively assist the resident in correcting or compensating for the identified problems or need.

(14) Control of exits shall be the least restrictive possible for the residents in the section.

(b) Adult day care. A nursing facility may provide adult day care services to any individual whose physical, mental, and psychosocial needs can be met by intermittent nursing, psychosocial, and rehabilitative or restorative services.

(1) The nursing facility shall develop written policies and procedures for provision of adult day care services.

(2) The nursing facility shall develop criteria for admission to and discharge from the adult day care service.

(3) The nursing facility shall maintain a clinical record of services provided to clients in the adult day care program.

(4) The provision of adult day care services shall not adversely affect the care and services offered to residents of the facility.

(c) Respite care. A nursing facility may provide

respite care to individuals on a short-term basis of not more than 30 consecutive days.

(1) The facility shall develop policies and procedures for the provision of respite care.

(2) All requirements for admission of a resident to a nursing facility shall be met for an individual admitted for respite care.

(3) The facility may obtain an order from the resident's physician indicating that the resident may return to the facility at a later date for respite care.

(A) The facility may identify the resident's clinical record as inactive until the resident returns.

(B) Each time the resident returns to the facility for subsequent respite services, the resident's physician shall review the physician plan of care and shall indicate any significant change that has occurred in the resident's medical condition since the previous stay.

(C) The facility shall review and revise the comprehensive assessment and care plan, if needed.

(D) The facility shall conduct a comprehensive assessment after any significant change in the resident's physical, mental, or psychosocial functioning and not less often than once a year.

(E) Any facility with a ban on admissions shall not admit or readmit residents for respite care. (Authorized by and implementing K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21, 1997; amended Oct. 8, 1999.)

28-39-161. Infection control. Each nursing facility shall establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment for residents and to prevent the development and transmission of disease and infection.

(a) Each facility shall establish an infection control program under which the facility meets the following requirements:

(1) Prevents, controls, and investigates infections in the facility;

(2) develops and implements policies and procedures that require all employees to adhere to universal precautions to prevent the spread of blood-borne infectious diseases based on "universal precautions for prevention of transmission of human immunodeficiency virus, hepatitis B virus, and other bloodborne pathogens in health-care settings," as published in the morbidity and mortality weekly report, June 24, 1988, vol. 37 no. 24 and CDC guidelines for "handwashing and hospital environmental control," as published in November 1985, are hereby adopted by reference;

(3) develops and implements policies and procedures related to isolation of residents with suspected or diagnosed communicable diseases based on the centers for disease control “guideline for isolation precautions in hospitals,” as published in January 1996, which is hereby adopted by reference;

(4) develops policies and procedures related to employee health based on the centers for disease control “guideline for infection control in hospital personnel,” as published in August 1983, which is hereby adopted by reference;

(5) assures that at least one private room that is well ventilated and contains a separate toilet facility is designated for isolation of a resident with an infectious disease requiring a private room. The facility shall develop a policy for transfer of any resident occupying the designated private room to allow placement of a resident with an infectious disease requiring isolation in the private room designated as an isolation room;

(6) includes in the orientation of new employees and periodic employees in-service information on exposure control and infection control in a health care setting; and

(7) maintains a record of incidents and corrective actions related to infection that is reviewed and acted upon by the quality assessment and assurance committee.

(b) Preventing the spread of infection.

(1) When a physician or licensed nurse determines that a resident requires isolation to prevent the spread of infection, the facility shall isolate the resident according to the policies and procedures developed.

(2) The facility shall prohibit employees with a communicable disease or infected skin lesions from coming in direct contact with residents, any resident’s food, or resident care equipment until the condition is resolved.

(3) Tuberculosis skin testing shall be administered to each new resident and employee as soon as residency or employment begins, unless the resident or employee has documentation of a previous significant reaction. Each facility shall follow the centers for disease control recommendations for “prevention and control of tuberculosis in facilities providing long-term care to the elderly,” as published in morbidity and mortality weekly report, July 13, 1990.

(4) Staff shall wash their hands after each direct resident contact for which handwashing is indicated by the centers for disease control guide-

line for “handwashing and hospital environmental control,” as published in November 1985, which is hereby adopted by reference.

(c) Linens and resident clothing.

(1) The facility shall handle soiled linen and soiled resident clothing as little as possible and with minimum agitation to prevent gross microbial contamination of air and of persons handling the items.

(2) The facility shall place all soiled linen and resident clothing in bags or in carts immediately at the location where they were used. The facility shall not sort and pre-rinse linen and resident clothing in resident-care areas.

(3) The facility shall deposit and transport linen and resident clothing soiled with blood or body fluids in bags that prevent leakage.

(4) The facility shall wash linen with detergent in water of at least 160°F. The facility shall follow the manufacturers’ operating directions for washing equipment.

(5) The facility may choose to wash linens and soiled resident clothing in water at less than 160°F if the following conditions are met:

(A) Temperature sensors and gauges capable of monitoring water temperatures to ensure that the wash water does not fall below 72°F are installed on each washing machine.

(B) The chemicals used for low temperature washing emulsify in 70°F water.

(C) The supplier of the chemical specifies low-temperature wash formulas in writing for the machines used in the facility.

(D) Charts providing specific information concerning the formulas to be used for each machine are posted in an area accessible to staff.

(E) The facility ensures that laundry staff receive in-service training by the chemical supplier on a routine basis, regarding chemical usage and monitoring of wash operations.

(F) Maintenance staff monitors chemical usage and wash water temperatures at least daily to ensure conformance with the chemical supplier’s instructions.

(6) The facility shall use methods for transport and storing of clean linen that will ensure the cleanliness of the linens. (Authorized by and implementing K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21, 1997; amended Oct. 8, 1999.)

28-39-162. (Authorized by and implementing K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21, 1997; revoked Jan. 7, 2011.)

28-39-162a. (Authorized by and implementing K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21, 1997; amended Oct. 8, 1999; revoked Jan. 7, 2011.)

28-39-162b. (Authorized by and implementing K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21, 1997; revoked Jan. 7, 2011.)

28-39-162c. (Authorized by and implementing K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21, 1997; amended Oct. 8, 1999; revoked Jan. 7, 2011.)

28-39-163. Administration. Each nursing facility shall be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident. (a) Governing body.

(1) Each facility shall have a governing body or shall designate a group of people to function as a governing body. The governing body shall be legally responsible for establishing and implementing policies regarding the management and operation of the facility.

(2) The governing body shall appoint an administrator who meets the following criteria:

(A) Is licensed by the state; and

(B) has full authority and responsibility for the operation of the facility and compliance with licensing requirements.

(3) The licensee shall adopt a written position description for the administrator that includes responsibility for the following:

(A) Planning, organizing, and directing the operation of the facility;

(B) implementing operational policies and procedures for the facility; and

(C) authorizing, in writing, a responsible employee 18 years old or older to act on the administrator's behalf in the administrator's absence.

(4) Each facility may request approval from the department for an administrator to supervise more than one nursing facility. Each request shall be submitted, in writing, by the governing bodies of the facilities on a form approved by the department. Each facility shall meet all of the following conditions:

(A) The facilities are in a proximate location that would facilitate on-site supervision daily, if needed.

(B) The combined resident capacity does not exceed 120 residents.

(C) The administrator appointed to operate the facilities has had at least two years of experience

as an administrator of a nursing facility and has demonstrated the ability to assure the health and safety of residents.

(D) When a change in administrator occurs, the facilities submit the credentials of the proposed new administrator for approval by the department.

(b) Policies and procedures.

(1) Each licensee shall adopt and enforce written policies and procedures to ensure all of the following:

(A) Each resident attains or maintains the highest practicable physical, mental, and psychosocial well-being.

(B) Each resident is protected from abuse, neglect, and exploitation.

(C) The rights of residents are proactively assured.

(2) The facility shall revise all policies and procedures as necessary and shall review all policies and procedures at least annually.

(3) Policies and procedures shall be available to staff at all times. Policies and procedures shall be available, on request, to any person during normal business hours. The facility shall post a notice of availability in a readily accessible place for residents.

(c) Power of attorney and guardianship. Anyone employed by or having a financial interest in the facility, unless the person is related by marriage or blood within the second degree to the resident, shall not accept a power of attorney, a durable power of attorney for health care decisions, guardianship, or conservatorship.

(d) Reports. Each administrator shall submit to the licensing agency, not later than 10 days following the period covered, a semiannual report of residents and employees. The administrator shall submit the report on forms provided by the licensing agency. The administrator shall submit any other reports as required by the licensing agency.

(e) Telephone. The facility shall maintain at least one non-coin-operated telephone accessible to residents and employees on each nursing unit for use in emergencies. The facility shall post adjacent to this telephone the names and telephone numbers of persons or places commonly required in emergencies.

(f) Smoking. If smoking is permitted, there shall be designated smoking areas.

(1) The designated areas shall not infringe on the rights of nonsmokers to reside in a smoke-free environment.

(2) The facility shall provide areas designated as smoking areas both inside and outside the building.

(g) Staff development and personnel policies. The facility shall provide regular performance review and in-service education of all employees to ensure that the services and procedures assist residents to attain and maintain their highest practicable level of physical, mental, and psychosocial functioning.

(1) The facility shall regularly conduct and document an orientation program for all new employees.

(2) Orientation of direct care staff shall include review of the facility's policies and procedures and evaluation of the competency of the direct care staff to perform assigned procedures safely and competently.

(3) The facility shall provide regular, planned in-service education for all staff.

(A) The in-service program shall provide all employees with training in fire prevention and safety, disaster procedures, accident prevention, resident rights, psychosocial needs of residents, and infection control.

(B) The facility shall provide direct care staff with in-service education in techniques that assist residents to function at their highest practicable physical, mental, and psychosocial level.

(C) Direct care staff shall participate in at least 12 hours of in-service education each year. All other staff shall participate in at least eight hours of in-service education each year.

(D) The facility shall maintain documentation of in-service education offerings. Documentation shall include a content outline, resume of the presenter, and record of staff in attendance.

(E) The facility shall record attendance at in-service education in the employee record of each staff member.

(h) Professional staff qualifications.

(1) The facility shall employ on a full-time, part-time, or consultant basis any professionals necessary to carry out the requirements of these regulations.

(2) The facility shall document evidence of licensure, certification, or registration of full-time, part-time, and consultant professional staff in employee records.

(3) The facility shall perform a health screening, including tuberculosis testing, on each employee before employment or not later than seven days after employment.

(i) Use of outside resources. Arrangements or agreements pertaining to services furnished by

outside resources shall specify in writing that the facility assumes responsibility for the following:

(1) Obtaining services that meet professional standards and principles that apply to professionals providing services; and

(2) assuring the timeliness of the services.

(j) Medical director.

(1) The facility shall designate a physician to serve as medical director.

(2) The medical director shall be responsible for the following:

(A) Implementation of resident care policies reflecting accepted standards of practice;

(B) coordination of medical care in the facility; and

(C) provision of consultation to the facility staff on issues related to the medical care of residents.

(k) Laboratory services. The facility shall provide or obtain clinical laboratory services to meet the needs of its residents. The facility shall be responsible for the quality and timeliness of the services.

(1) If the facility provides its own clinical laboratory services, it shall meet all of the following requirements:

(A) The services shall meet applicable statutory and regulatory requirements for a clinical laboratory.

(B) The facility staff shall follow manufacturer's instructions for performance of the test.

(C) The facility shall maintain a record of all controls performed and all results of tests performed on residents.

(D) The facility shall ensure that staff who perform laboratory tests do so in a competent and accurate manner.

(2) If the facility does not provide the laboratory services needed by its residents, the facility shall have written arrangements for obtaining these services from a laboratory as required in 42 CFR 483.75(j), as published on October 1, 1993, and hereby adopted by reference.

(3) All laboratory services shall be provided only on the order of a physician.

(4) The facility shall ensure that the physician ordering the laboratory service is notified promptly of the findings.

(5) The facility shall ensure that the signed and dated clinical reports of the laboratory findings are documented in each resident's clinical record.

(6) The facility shall assist the resident, if necessary, in arranging transportation to and from the source of laboratory services.

(1) Radiology and other diagnostic services. The facility shall provide or obtain radiology and other diagnostic services to meet the needs of its residents.

(1) If the facility provides its own radiology and diagnostic services, the services shall meet applicable statutory and regulatory requirements for radiology and other diagnostic services.

(2) If the facility does not provide the radiology and diagnostic services needed by its residents, the facility shall have written arrangements for obtaining these services from a licensed provider or supplier.

(3) All radiology and diagnostic services shall be provided only on the order of a physician.

(4) The facility shall ensure that the physician ordering the radiology or diagnostic services is notified promptly of the findings.

(5) The facility shall document signed and dated clinical reports of the radiological or diagnostic findings in the resident's clinical record.

(6) The facility shall assist the resident, if necessary, in arranging transportation to and from the source of radiology or diagnostic services.

(m) Clinical records.

(1) The facility shall maintain clinical records on each resident in accordance with accepted professional standards and practices. The records shall meet the following criteria:

- (A) Be complete;
- (B) be accurately documented; and
- (C) be systematically organized.

(2) Clinical records shall be retained according to the following schedule:

(A) At least five years following the discharge or death of a resident; or

(B) for a minor, five years after the resident reaches 18 years of age.

(3) Resident records shall be the property of the facility.

(4) The facility shall keep confidential all information in the resident's records, regardless of the form or storage method of the records, except when release is required by any of the following:

- (A) Transfer to another health care institution;
- (B) law;
- (C) third party payment contract;
- (D) the resident or legal representative; or
- (E) in the case of a deceased resident, the executor of the resident's estate, or the resident's spouse, adult child, parent, or adult brother or sister.

(5) The facility shall safeguard clinical record information against loss, destruction, fire, theft, and unauthorized use.

(6) The clinical record shall contain the following:

- (A) Sufficient information to identify the resident;
- (B) a record of the resident's assessments;
- (C) admission information;
- (D) the plan of care and services provided;
- (E) a discharge summary or report from the attending physician and a transfer form after a resident is hospitalized or transferred from another health care institution;

(F) physician's orders;

(G) medical history;

(H) reports of treatments and services provided by facility staff and consultants;

(I) records of drugs, biologicals, and treatments administered; and

(J) documentation of all incidents, symptoms, and other indications of illness or injury, including the date, the time of occurrence, the action taken, and the results of action.

(7) The physician shall sign all documentation entered or directed to be entered in the clinical record by the physician.

(8) Documentation by direct care staff shall meet the following criteria:

(A) List drugs, biologicals, and treatments administered to each resident;

(B) be an accurate and functional representation of the actual experience of the resident in the facility;

(C) be written in chronological order and signed and dated by the staff person making the entry;

(D) include the resident's response to changes in condition with follow-up documentation describing the resident's response to the interventions provided;

(E) not include erasures or use of white-out. Each error shall be lined through and the word "error" added. The staff person making the correction shall sign and date the error. An entry shall not be recopied; and

(F) in the case of computerized resident records, include a system to ensure that when an error in documentation occurs, the original entry is maintained and the person making the correction enters the date and that person's electronic signature in the record.

(9) Clinical record staff.

(A) The facility shall assign overall supervisory responsibility for maintaining the residents' clinical records to a specific staff person.

(B) The facility shall maintain clinical records in a manner consistent with current standards of practice.

(C) If the clinical record supervisor is not a qualified medical record practitioner, the facility shall provide consultation through a written agreement with a qualified medical record practitioner.

(n) Disaster and emergency preparedness.

(1) The facility shall have a detailed written emergency management plan to meet potential emergencies and disasters, including, fire, flood, severe weather, tornado, explosion, natural gas leak, lack of electrical or water service, and missing residents.

(2) The plan shall be coordinated with area governmental agencies.

(3) The plan shall include written agreements with agencies that will provide needed services, including providing a fresh water supply, evacuation site, and transportation of residents to an evacuation site.

(4) The facility shall ensure disaster and emergency preparedness by the following means:

(A) Orienting new employees at the time of employment to the facility's emergency management plan;

(B) periodically reviewing the plan with employees; and

(C) annually carrying out a tornado or disaster drill with staff and residents.

(5) The emergency management plan shall be available to staff, residents, and visitors.

(o) Transfer agreement. The facility shall have in effect a written transfer agreement with one or more hospitals that reasonably assures both of the following:

(1) Residents will be transferred from the facility to the hospital, and timely admitted to the hospital, when transfer is medically appropriate, as determined by the attending physician.

(2) Medical and other information needed for care and treatment of residents will be exchanged between the institutions.

(p) Quality assessment and assurance.

(1) The facility shall maintain a quality assessment and assurance committee consisting of these individuals:

(A) The director of nursing services;

(B) a physician designated by the facility; and

(C) at least three other members of the facility's staff.

(2) The quality assessment and assurance committee shall perform the following:

(A) Meet at least quarterly to identify issues with respect to what quality assessment and assurance activities are necessary; and

(B) develop and implement appropriate plans of action to correct identified quality deficiencies and prevent potential quality deficiencies. (Authorized by and implementing K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21, 1997; amended Oct. 8, 1999.)

28-39-164. Definitions. (a) "Adult care home" means any facility that meets the definition specified in K.A.R. 28-39-144.

(b) "Clinical instruction" means training in which the trainee demonstrates knowledge and skills while performing tasks on an individual under the direct supervision of the course instructor. Clinical instruction may be performed in any of the following settings:

(1) An adult care home;

(2) a long-term care unit of a hospital; or

(3) a simulated laboratory.

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

(d) "Direct care" means assistance provided in activities of daily living. These activities shall include grooming, eating, toileting, transferring, and ambulation.

(e) "Direct supervision" means that the supervisor is on the facility premises and is readily accessible for one-on-one consultation, instruction, and assistance, as needed.

(f) "Eligible for employment," when describing a certified nurse aide, means that the certified nurse aide meets the following criteria:

(1) Has been employed to perform nursing or nursing-related services for at least eight hours in the preceding 24 months;

(2) has no record of abuse, neglect, and exploitation; and

(3) is not prohibited from employment based upon criminal convictions pursuant to K.S.A. 39-970, and amendments thereto.

(g) "Instructor" means an individual who has been approved by the secretary to teach nurse aide, home health aide, or medication aide training courses.

(h) "Licensed nursing experience" means experience as a registered nurse or licensed practical nurse.

(i) "Nurse aide trainee I" means an individual in the process of completing part I of a 90-hour nurse aide course as specified in K.A.R. 28-39-165.

(j) "Nurse aide trainee II" means an individual who has successfully completed part I of a 90-hour nurse aide course specified in K.A.R. 28-39-165 or

whose training has been endorsed as specified in K.A.R. 28-39-167.

(k) "Secretary" means secretary of the Kansas department of health and environment.

(l) "Simulated laboratory" means an enclosed area that is in a school, institution, adult care home, or other facility and that is similar to an adult care home residential room. In a simulated laboratory, trainees practice and demonstrate basic nurse aide skills while an instructor observes and evaluates the trainees. (Authorized by K.S.A. 2008 Supp. 39-925(d)(2); implementing K.S.A. 2008 Supp. 39-936; effective Feb. 28, 1994; amended Dec. 29, 2003; amended June 12, 2009.)

28-39-165. Nurse aide training program.

(a) Requirements. Unlicensed employees who provide direct individual care to residents shall be required to perform the following:

(1) Successfully complete at least a 90-hour nurse aide course that has been approved by the secretary; and

(2) pass a state test as specified in K.A.R. 28-39-168.

(b) Certification. Each person shall be issued a nurse aide certificate by the secretary and shall be listed on a public registry upon completion of the requirements specified in subsection (a).

(c) Employment as a trainee.

(1) Each nurse aide trainee I in an approved 90-hour course shall be required to successfully complete part I of the course to demonstrate initial competency before being employed or used as a nurse aide trainee II. A nurse aide trainee II may provide direct care to residents only under the direct supervision of a registered nurse or licensed practical nurse.

(2) Each nurse aide trainee II in an approved 90-hour course shall be issued a nurse aide certificate by the secretary, upon completion of the requirements specified in subsection (a), within four months from the beginning date of the initial course in order to continue employment providing direct care. Nurse aide trainee II status for employment shall be for one four-month period only.

(d) 90-hour nurse aide course.

(1) Each nurse aide course shall be prepared and administered in accordance with the guidelines established by the department in the "Kansas certified nurse aide curriculum guidelines (90 hours)," including the appendices, dated May 2008, and the "Kansas 90-hour certified nurse aide sponsor and instructor manual," pages 1

through 20 and the appendices, dated May 2008, which are hereby adopted by reference.

(2) Each nurse aide course shall consist of a combination of didactic and clinical instruction. At least 50 percent of part I and part II of the course curriculum shall be provided as clinical instruction.

(3) Each nurse aide course shall be sponsored by one of the following:

(A) An adult care home;

(B) a long-term care unit of a hospital; or

(C) a postsecondary school under the jurisdiction of the state board of regents.

(4) Clinical instruction shall be conducted in one or a combination of the following locations:

(A) An adult care home;

(B) a long-term care unit of a hospital; or

(C) a simulated laboratory.

(5) An adult care home shall not sponsor or provide clinical instruction for a 90-hour nurse aide course if that adult care home has been subject to any of the sanctions under the medicare certification regulations listed in 42 C.F.R. 483.151(b)(2), as in effect on October 1, 2007.

(e) Correspondence courses. No correspondence course shall be approved as a nurse aide course.

(f) Other offerings. Distance-learning offerings and computer-based educational offerings shall meet the standards specified in subsection (d). (Authorized by K.S.A. 2008 Supp. 39-925(d)(2); implementing K.S.A. 2008 Supp. 39-936; effective Feb. 28, 1994; amended Dec. 29, 2003; amended June 12, 2009.)

28-39-166. Nurse aide course instructor.

(a) Approval and qualifications.

(1) Each person who intends to be a course instructor shall submit a completed instructor approval application form to the department at least three weeks before offering an initial course and shall receive approval as an instructor before the first day of an initial course.

(2) Each course instructor shall be a registered nurse with a minimum of two years of licensed nursing experience, with at least 1,750 hours of experience in either or a combination of an adult care home or long-term care unit of a hospital. Each course instructor shall have completed a course in teaching adults, shall have completed a professional continuing education offering on supervision or adult education, or shall have experience in teaching adults or supervising nurse aides.

(b) Course instructor and course sponsor responsibilities.

(1) Each course instructor and course sponsor shall be responsible for ensuring that the following requirements are met:

(A) A completed course approval application form shall be submitted to the department at least three weeks before offering a course. Approval shall be obtained from the secretary at the beginning of each course whether the course is being offered initially or after a previous approval. Each change in course location, schedule, or instructor shall require approval by the secretary.

(B) All course objectives shall be accomplished.

(C) Only persons in health professions having the appropriate skills and knowledge shall be selected to conduct any part of the training. Each person shall have at least one year of experience in the subject area in which that person is providing training.

(D) Each person providing a part of the training shall do so only under the direct supervision of the course instructor.

(E) The provision of direct care to residents by a nurse aide trainee II during clinical instruction shall be limited to clinical experiences that are for the purpose of learning nursing skills under the direct supervision of the course instructor.

(F) When providing clinical instruction, the course instructor shall perform no other duties but the direct supervision of the nurse aide trainees.

(G) Each nurse aide trainee in the 90-hour nurse aide course shall demonstrate competency in all skills identified on the part I task checklist before the checklist is signed and dated by the course instructor as evidence of successful completion of part I of the course.

(H) The course shall be prepared and administered in accordance with the guidelines in the "Kansas certified nurse aide curriculum guidelines (90 hours)" and the "Kansas 90-hour certified nurse aide sponsor and instructor manual," as adopted in K.A.R. 28-39-165.

(2) Any course instructor or course sponsor who does not meet the requirements of this regulation may be subject to withdrawal of approval to serve as a course instructor or a course sponsor. (Authorized by K.S.A. 2008 Supp. 39-925(d)(2); implementing K.S.A. 2008 Supp. 39-936; effective Feb. 28, 1994; amended Dec. 29, 2003; amended June 12, 2009.)

28-39-167. Out-of-state and allied health training endorsement for nurse aide. (a) Each person whom the secretary has determined to have successfully completed training or passed a test, or both, that is equivalent to the training or test required by this state may be employed without taking this state's test.

(b) Each person whom the secretary has determined not to be exempt from examination pursuant to subsection (a) but who meets any one of the following requirements shall be deemed to have met the requirements specified in K.A.R. 28-39-165 if that person passes a state test as specified in K.A.R. 28-39-168:

(1) Each person who has received nurse aide training in another state, is listed on another state's registry as a nurse aide, and is eligible for employment as a nurse aide shall be deemed eligible to take the state test as specified in K.A.R. 28-39-168. Each person whose training in another state is endorsed and who has passed the state test shall be issued a nurse aide certificate.

(2) Each person who meets any of the following criteria shall be deemed eligible to take the state test as specified in K.A.R. 28-39-168:

(A) Has completed training deemed equivalent to the requirements specified in K.A.R. 28-39-165;

(B) is currently licensed in Kansas or another state to practice as a registered nurse, licensed practical nurse, or licensed mental health technician, with a license that has not been suspended or revoked; or

(C) has a license to practice as a registered nurse, licensed practical nurse, or licensed mental health technician that has expired within the 24-month period before applying for equivalency, but has not been suspended or revoked.

(3) Each person who has received training from an accredited nursing or mental health technician training program within the 24-month period before applying for equivalency and whose training included a basic skills component comprised of personal hygiene, nutrition and feeding, safe transfer and ambulation techniques, normal range of motion and positioning, and a supervised clinical experience in geriatrics shall be deemed eligible to take the state test as specified in K.A.R. 28-39-168.

(c) Each person qualified under subsection (a) shall receive written notification from the department of exemption from the requirement to take this state's test and the fact that the person is eligible for employment.

(d) Each person qualified under subsection (b) shall receive written approval from the department or its designated agent to take the state test. Upon receiving written approval from the department or its designated agent to take the state test, that person may be employed by an adult care home as a nurse aide trainee II to provide direct care under the direct supervision of a registered nurse or licensed practical nurse. Each person employed as a nurse aide trainee II shall be issued a nurse aide certificate by the secretary, upon completion of the requirements specified in K.A.R. 28-39-165, within one four-month period starting from the date of approval, in order to continue employment providing direct care. (Authorized by K.S.A. 2008 Supp. 39-925(d)(2); implementing K.S.A. 2008 Supp. 39-936; effective Feb. 28, 1994; amended Dec. 29, 2003; amended June 12, 2009.)

28-39-168. State nurse aide test. (a) Composition of state nurse aide test. The state test shall be comprised of 100 multiple-choice questions. A score of 75 percent or higher shall constitute a passing score.

(b) State nurse aide test eligibility.

(1) Only persons who have successfully completed an approved 90-hour nurse aide course or completed education or training that has been endorsed or deemed equivalent as specified in K.A.R. 28-39-167 shall be allowed to take the state test.

(2) Each person shall have a maximum of three attempts within 12 months from the beginning date of the course to pass the state test after completing an approved 90-hour course as specified in K.A.R. 28-39-165.

(3) If the person does not pass the state test within 12 months after the starting date of taking an approved 90-hour course, the person shall retake the entire course.

(4) If a person whose education or training has been endorsed or deemed equivalent as specified in K.A.R. 28-39-167 and the person does not pass the state test on the first attempt, the person shall successfully complete an approved 90-hour nurse aide course as specified in K.A.R. 28-39-165 to retake the state test. Each person whose training was endorsed or deemed equivalent, who failed the state test, and who has successfully completed an approved nurse aide course shall be eligible to take the test three times within a year after the beginning date of the course.

(c) Application fee.

(1) Each nurse aide trainee shall pay a nonrefundable application fee of \$20.00 before taking the state test. A nonrefundable application fee shall be required each time the test is scheduled to be taken. Each person who is scheduled to take the state test, but fails to take the state test, shall submit another fee before being scheduled for another opportunity to take the test.

(2) Each course instructor shall collect the application fee for each nurse aide candidate eligible to take the state test and shall submit the fees, class roster, application forms, and accommodation request forms to the department or its designated agent.

(d) Each person who is eligible to take the state test and who has submitted the application fee and application form shall be issued written approval, which shall be proof of eligibility to sit for the test.

(e) Test accommodation.

(1) Any reasonable test accommodation or auxiliary aid to address a disability may be requested by any person who is eligible to take the state test. Each request for reasonable accommodation or auxiliary aid shall be submitted each time a candidate is scheduled to take the test.

(2) Each person requesting a test accommodation shall submit an accommodation request form along with an application form to the instructor. The instructor shall forward these forms to the department or its designated agent at least three weeks before the desired test date. Each instructor shall verify the need for the accommodation by signing the accommodation request form.

(3) Each person whose second language is English shall be allowed to use a bilingual dictionary while taking the state test. Limited English proficiency shall not constitute a disability with regard to accommodations. An extended testing period of up to two additional hours may be offered to persons with limited English proficiency.

(f) This regulation shall not apply to any person who meets the requirement of K.A.R. 28-39-167(a). (Authorized by K.S.A. 2008 Supp. 39-925(d)(2) and 39-936; implementing K.S.A. 2008 Supp. 39-936; effective Feb. 28, 1994; amended Dec. 29, 2003; amended June 12, 2009.)

28-39-169. (Authorized by K.S.A. 75-5625; implementing K.S.A. 65-1,120; effective Feb. 28, 1994; revoked Dec. 29, 2003.)

28-39-169a. Medication aide. (a) Each medication aide candidate shall be either a nurse aide who has been issued a certificate by the secretary or a qualified mental retardation professional as defined in 42 C.F.R. 483.430(a), revised October 1, 2010 and hereby adopted by reference, and shall meet the following requirements:

(1) Has completed a course in medication administration approved by the secretary; and

(2) has passed a state test as approved by the secretary.

(b) Each person who has met one of the following requirements shall be eligible to enroll in a medication aide course:

(1) Is a nurse aide who has a Kansas nurse aide certificate and who has been screened and tested for reading comprehension at an eighth-grade level; or

(2) is a qualified mental retardation professional employed by an intermediate care facility for the mentally retarded.

(c) A qualified mental retardation professional who is not a nurse aide, who has completed a course in medication administration as approved by the secretary, and who has passed the state test shall be allowed to administer medications only to residents in an intermediate care facility for the mentally retarded.

(d) (1) Each medication aide course shall meet the following requirements:

(A) Consist of a minimum of 75 total hours, which shall include a minimum of 25 hours of clinical instruction;

(B) be prepared and administered in accordance with the guidelines prescribed by the secretary and follow the content outlined in the "Kansas certified medication aide curriculum" and appendices, dated February 2011, and the "Kansas certified medication aide sponsor and instructor manual," pages 2 through 21, dated February 2011, which are hereby adopted by reference; and

(C) be sponsored by one of the following:

(i) A postsecondary school under the jurisdiction of the state board of regents;

(ii) a state-operated institution for the mentally retarded; or

(iii) a professional health care association approved by the secretary.

(2) No correspondence course shall be approved as a medication aide course.

(3) Distance-learning and computer-based educational offerings shall be required to meet the requirements specified in this subsection.

(e) Each medication aide course instructor shall meet the following requirements:

(1) Each person who intends to be a course instructor shall submit an instructor approval application form to the secretary at least three weeks before offering an initial course and shall be required to receive approval as an instructor before the first day of an initial course.

(2) Each instructor shall be a registered nurse with a current Kansas license and two years of clinical experience as a registered nurse. Any Kansas-licensed pharmacist actively working in the pharmacy field may conduct part of the training under the supervision of an approved instructor.

(f) Each course sponsor and course instructor shall be responsible for ensuring that the following requirements are met:

(1) Only persons who meet the qualifications specified in subsection (b) shall be eligible to take the course.

(2) Each trainee shall be screened and tested for comprehension of the written English language at an eighth-grade reading level before enrolling in the course.

(3) The course shall be prepared and administered in accordance with the guidelines and follow the content in the "Kansas certified medication aide curriculum" and the "Kansas certified medication aide sponsor and instructor manual," as adopted in subsection (d).

(4) The clinical instruction and skills performance involving the administering of medications shall be under the direct supervision of the course instructor.

(5) During the clinical instruction and skills performance, the course instructor shall perform no other duties than the provision of direct supervision to the trainees.

(g) Any course instructor or course sponsor who does not fulfill the requirements of this regulation may be subject to withdrawal of approval to serve as a course instructor or a course sponsor.

(h) Any person whose education or training has been deemed equivalent to the medication aide course by an approved sponsor as specified in paragraph (d)(1)(C) may apply to take the state test to become certified as a medication aide. Before requesting a determination of equivalency for a person's education or training, that person shall be a Kansas-certified nurse aide and shall meet one of the following conditions:

(1) The person is currently credentialed to administer medications in another state. The sec-

retary or the designated agent shall evaluate that state's credentialed training for equivalency in content and skills level to the requirements for certification as a medication aide in Kansas.

(2) The person is currently enrolled in an accredited practical nursing or professional nursing program and has completed a course of study in pharmacology with a grade of C or better.

(3) The person is currently licensed in Kansas or another state, or has been licensed within 24 months from the date of application, as a licensed mental health technician, and there are no pending or current disciplinary actions against the individual's license.

(4) The person has been licensed in Kansas or another state, within 24 months from the date of application, as a licensed practical nurse whose license is inactive or a registered nurse whose license is inactive, and there are no pending or current disciplinary actions against the individual's license. (Authorized by K.S.A. 75-5625; implementing K.S.A. 65-1,120 and K.S.A. 2010 Supp. 65-1124; effective Dec. 29, 2003; amended Oct. 14, 2011.)

28-39-169b. State medication aide test.

(a) The state test shall be administered by the secretary or the designated agent and in accordance with guidelines prescribed by the secretary as outlined in the "certified medication aide test manual" on pages 24 through 31 of the "Kansas certified medication aide sponsor and instructor manual," dated February 2011. These pages are hereby adopted by reference.

(1) Each person who has completed the medication aide course as specified in K.A.R. 28-39-169a shall have a maximum of two attempts to pass the state test within 12 months after the first day of the course. If the person does not pass the test within this 12-month period, the course shall be retaken. Each time the person successfully completes the course, the person shall have two attempts to pass the state test within 12 months after the first day of the course. The number of times a person may retake the course shall be unlimited.

(2) Each person who is a Kansas-certified nurse aide and whose training has been deemed equivalent to the Kansas medication aide course shall have a maximum of one attempt to pass the test within 12 months after the date the equivalency is approved. If the person does not pass the test within this 12-month period, the person shall be required to take the medication aide course.

(3) There shall be three different forms of the state test. The different forms of the test shall be used on an alternating basis. Each of the three forms shall be comprised of 85 multiple-choice questions. The passing score for each of the three forms of the test shall be 65 or higher.

(4) Only persons who have met the requirements specified in K.A.R. 28-39-169a(a)(1) and (h) shall be eligible to take the state test.

(5) Each person whose second language is English shall be allowed to use a bilingual dictionary while taking the state test. Limited English proficiency shall not constitute a disability with regard to accommodation. An extended testing period of up to two additional hours may be offered to persons with limited English proficiency.

(b) Each person shall be issued a medication aide certificate by the secretary and shall be listed on a public nurse aide registry upon successful completion of the requirements specified in K.A.R. 28-39-169a(a) and (h).

(c) The course instructor shall submit to the secretary a course roster of names, an application form, and a nonrefundable application fee of \$20.00 for each medication aide who has completed the course and passed the state test.

(d) A replacement medication aide certificate for a medication aide whose certification is current shall be issued by the secretary upon the receipt and processing of a certificate replacement form and a nonrefundable fee of \$20.00. (Authorized by K.S.A. 75-5625; implementing K.S.A. 65-1,120 and K.S.A. 2010 Supp. 65-1124; effective Dec. 29, 2003; amended Oct. 14, 2011.)

28-39-169c. Medication aide continuing education.

(a) Each person who has a certificate of completion for a medication aide training course as specified in K.A.R. 28-39-169a and who wishes to maintain the certificate shall complete, every two years, a program of 10 hours of continuing education approved by the secretary.

(b) The continuing education requirement shall include one or more of the following topics:

- (1) Classes of drugs and new drugs;
 - (2) new uses of drugs;
 - (3) methods of administering medications;
 - (4) alternative treatments, including herbal drugs and their potential interaction with traditional drugs;
 - (5) safety in the administration of medications;
- or
- (6) documentation.

(c) Each program of continuing education shall be sponsored by one of the following:

(1) A postsecondary school under the jurisdiction of the state board of regents;

(2) an adult care home;

(3) a long-term care unit of a hospital;

(4) a state-operated institution for the mentally retarded; or

(5) a professional health care association approved by the secretary.

(d) Each course instructor shall be a registered nurse with a current Kansas license and two years of clinical experience as a registered nurse or a licensed practical nurse. Any Kansas-licensed pharmacist actively working in the pharmacy field may be selected to conduct part of the training under the supervision of the instructor.

(e) Each person who intends to be a course instructor shall submit an instructor approval application form to the secretary at least three weeks before offering an initial course and shall be required to receive approval as an instructor before the first day of an initial course.

(f) Each sponsor and course instructor of continuing education shall be responsible for ensuring that the following requirements are met:

(1) The course shall be prepared and administered as prescribed by regulation and the "Kansas certified medication aide sponsor and instructor manual," as adopted in K.A.R. 28-39-169a.

(2) A course approval application form shall be submitted to the secretary at least three weeks before offering a course, and course approval shall be required to be received before beginning the course.

(3) A course roster of names, a renewal application form, and a nonrefundable renewal application fee of \$20.00 for each medication aide who has completed the course shall be submitted to the secretary.

(4) If clinical instruction in administering medications is included in the program, each student administering medications shall be under the direct supervision of the registered nurse instructor.

(g) Any sponsor or instructor who does not fulfill the requirements specified in subsections (d), (e), and (f) may be subject to withdrawal of approval to serve as a course instructor or a course sponsor.

(h) College credits or vocational training may be approved by the secretary as substantially equivalent to medication aide continuing education. The instructor or nursing program coordinator shall submit a department-approved form

attesting that the course content is substantially equivalent to the topics listed in paragraphs (b) (1) through (6).

(i) Each certified medication aide shall be responsible for notifying the secretary of any change in the aide's address or name.

(j) No correspondence course shall be approved for a medication aide continuing education course.

(k) Distance-learning educational offerings and computer-based educational offerings shall meet the requirements specified in subsections (b), (c), (d), (e), (f), and (g).

(l) Each medication aide certificate shall be renewed upon the department's receipt from the course instructor of the following:

(1) Verification of the applicant's completion of 10 hours of approved continuing education;

(2) a renewal application form; and

(3) a nonrefundable renewal application fee of \$20.00.

(m) Each medication aide certificate or renewed certificate shall be valid for two years from the date of issue.

(n) Each applicant for renewal of certification shall have completed the required number of hours of documented and approved continuing education during each certification period immediately preceding renewal of the certificate. Approved continuing education hours completed in excess of the requirement shall not be carried over to a subsequent renewal period.

(o) Each medication aide certificate that has been expired for three or fewer years shall be reinstated upon the department's receipt of the following:

(1) Verification of the applicant's completion of 10 hours of approved continuing education. This continuing education shall have been completed within the three-year period following expiration of the certification;

(2) a renewal application form; and

(3) a nonrefundable renewal application fee of \$20.00.

(p) Each lapsed certificate renewed within the three-year period specified in subsection (o) shall be valid for two years from the date of issuance.

(q) Each person whose medication aide certification has been expired for more than three years shall be required to retake the 75-hour medication aide course. (Authorized by K.S.A. 65-1,121 and 75-5625; implementing K.S.A. 65-1,121 and K.S.A. 2010 Supp. 65-1124; effective Dec. 29, 2003; amended Oct. 14, 2011.)

28-39-170. (Authorized by K.S.A. 75-5625; implementing K.S.A. 65-1124; effective Feb. 28, 1994; revoked Dec. 29, 2003.)

28-39-171. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5115; effective Feb. 28, 1994; revoked Dec. 29, 2003.)

28-39-172. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5115; effective Feb. 28, 1994; revoked Dec. 29, 2003.)

28-39-173. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5115; effective Feb. 28, 1994; revoked Dec. 29, 2003.)

28-39-174. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5115; effective Feb. 28, 1994; revoked Dec. 29, 2003.)

INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

28-39-200. (Authorized by K.S.A. 39-932; effective May 1, 1979; revoked April 3, 1989.)

28-39-201. (Authorized by K.S.A. 39-932; effective May 1, 1979; amended, T-84-17, July 26, 1983; revoked May 1, 1984.)

28-39-202 through 28-39-218. (Authorized by K.S.A. 39-932; effective May 1, 1979; revoked April 3, 1989.)

28-39-219 to 28-39-223. (Authorized by K.S.A. 39-932; effective May 1, 1979, revoked May 1, 1984.)

28-39-224. (Authorized by K.S.A. 39-932; effective May 1, 1979; amended, E-81-29, Sept. 10, 1980; amended May 1, 1981; revoked May 1, 1982.)

28-39-225. Physical environment and complete construction; 16 beds or fewer.

(a) General provisions. The following provisions describe the physical environment and complete construction requirements for residential buildings in which not more than 16 residents are housed in one building. The facility shall provide for a safe, sanitary environment and for the safety and comfort of the residents. Residential buildings which house six or fewer residents are governed solely by the code of federal regulations, 42 CFR 483.470, as published in the Federal Register, Vol. 53, No. 107, Friday, June 3, 1988 and adopted by reference in K.A.R. 28-39-226.

(b) Each residential building shall consist of at least the following units, areas, and rooms which shall all be within a single building and under one roof.

(1) A bedroom unit which shall consist of not more than 16 beds. Each bed shall be located in a room designed for not more than four beds. At least one single-bed room shall be provided. Each resident bedroom shall meet the following requirements:

(A) Minimum room areas, excluding toilet rooms, closets, lockers, wardrobes, other built-in fixed items, alcoves, or vestibules, shall be 80 square feet in single-bed rooms and 60 square feet per bed in multi-bed rooms;

(B) Each toilet room shall contain at least a water closet and a lavatory but not more than two water closets. The lavatory may be omitted if the toilet adjoins bedrooms containing a lavatory. There shall be not less than one water closet for each five residents;

(C) Each resident room shall be provided with a fixed closet or freestanding wardrobe with doors. A shelf and hanging rod shall be provided;

(D) Each resident room shall be equipped with furnishings required to meet the developmental needs of the residents; and

(E) Each resident room shall be located not more than 75 feet from a toilet room and not more than 150 feet from any one of the other resident use areas contained within the residential building, except other bedrooms. Distance shall be measured from one foot outside the resident room door along the shortest line in the general corridor, within one foot of corners, to one foot of the door to each service area.

(2) Service areas required below shall be located in all residential buildings. Each service area shall have a door opening from the general corridor system for direct access without passing through any intervening use area. Exceptions shall include adjoining use areas which have closely related functions. Lounges, living rooms, dens, and large open or central living areas may be considered as corridors. Each facility shall contain:

(A) An administrative area with space for charting, records, and a telephone;

(B) A room with a water closet and lavatory for staff and visitors that is accessible without passing through a resident bedroom;

(C) A locked medication storage area with space for separate storage of each resident's medication. A separate locked compartment shall be

provided within the area for controlled drugs and narcotic storage;

(D) Space for storage of clean linen. This space shall be separate from the soiled linen area;

(E) Space for holding soiled laundry with provisions to prevent odors, contamination of clean linen, and spread of disease. In residential buildings where laundry processing is done, commercial or household-type washing and drying machines shall be provided to process soiled laundry in the workroom area. The workroom shall contain a flushing rim clinic sink, a work counter, and a storage cabinet for supplies. In resident buildings for eight or fewer residents, the flushing rim clinic sink shall not be required. Clean supplies and materials shall not be stored in this area;

(F) Space for storage of equipment for the facility's use. This space may be part of the janitor's closet;

(G) Bathing units at the rate of one bathtub or shower per five residents. There shall be separate bathing units for each sex. Each bathing unit shall be located in a room or area with access to a water closet and handwashing lavatory without entering the general corridor. Bathing units shall be located within enclosures which provide privacy;

(H) A janitor's closet with a utility sink, hot and cold water, a shelf, and mop hanging provision. In residential buildings for eight or fewer residents, the janitor's closet shall not be required if other provisions are made for sanitary storage of house-keeping equipment;

(I) Living, dining, and recreational areas at the rate of 27 square feet per bed. At least 14 square feet of this space shall be utilized for dining space;

(J) A separate quiet area unless all single-bed rooms are provided. Residents shall have access to this area for reading, meditation, and private consultation with family, guests, or other residents;

(K) Public areas which include:

(i) An entrance at grade level which is designed to accommodate the handicapped in wheelchairs;

(ii) at least one public toilet accessible to and usable by the physically handicapped; and

(iii) a public telephone accessible for use from a wheelchair;

(L) Dietary areas, including kitchen and pantry areas, in the size required to implement appropriate food service. The dietary area shall include:

(i) Storage for a four-day supply of food, including cold storage;

(ii) food preparation facilities which shall in-

clude equipment for thawing, portioning, cooking, and baking;

(iii) a two-compartment sink for vegetable preparation; and

(iv) a commercial or domestic type dishwasher with a sanitizing cycle for warewashing;

(M) Provision for disposal of waste by incineration, mechanical destruction, compaction, removal or by a combination of these techniques. Stored waste shall be in water-tight, closed containers;

(N) An equipment room or rooms or a separate building or buildings for boilers and mechanical and electrical equipment, and storage of building maintenance supplies; and

(O) If tools, supplies, or equipment used for yard or exterior maintenance are stored at the facility, a room which opens to the outside or which is located in a detached building for storage of such equipment.

(c) Details and finishes.

(1) Details.

(A) Rooms containing bathtubs, sitz baths, showers, and toilets subject to occupancy by residents shall be equipped with doors and hardware which will permit access from outside the room.

(B) Windows and outer doors left in an open position shall be provided with insect screens. Windows shall be designed to prevent accidental falls when open or shall be provided with security screens.

(C) Doors, sidelights, borrowed lights, and windows in which the glazing is within 18 inches (46 centimeters) of the floor shall be glazed with safety glass, wire glass, or plastic glazing material that will resist breaking and will not create dangerous cutting edges if broken. If glazing in any area does not meet the above requirement, protective barriers or railing shall be provided. Safety glass or plastic glazing materials as described above shall be used for shower doors and bath enclosures.

(D) Grab bars shall be provided for all residents' toilets, showers, tubs, and sitz baths. The bars shall have 1½ inch (3.8 centimeters) clearance to walls and shall have sufficient strength and anchorage to sustain a concentrated load of 150 pounds (113.4 kilograms).

(E) Shower bases and tubs shall have a nonslip surface.

(2) Finishes.

(A) Wall bases in kitchens, soiled workrooms, and other areas which are frequently subject to wet cleaning methods shall be tightly sealed and constructed without voids that can harbor insects.

(B) Wall finishes shall be washable and in the immediate area of plumbing fixtures shall be smooth and moisture resistant. Finish, trim, wall, and floor constructions in dietary and food preparation areas shall be free from spaces that can harbor rodents and insects.

(C) Floor and wall penetrations by pipes, ducts, and conduits shall be tightly sealed to minimize entry of rodents and insects. Joints of structural elements shall be similarly sealed.

(D) Ceilings in the dietary and food preparation areas shall be cleanable by vacuum cleaning, wet cleaning or other dustless methods. These areas shall not have exposed or unprotected sewer lines.

(d) Mechanical requirements.

(1) Heating, air conditioning, and ventilating systems.

(A) The system shall be designed to maintain a year-round indoor temperature range in resident care areas of 70°F. (21°C.) to 85°F. (29°C.) with a relative humidity range of 30 to 60 percent. The winter outside design temperature of the facility shall be -10°F. (-23°C.) dry bulb and the summer outside design temperature of the facility shall be 100°F. (38°C.) dry bulb.

(B) Each central ventilation or air conditioning system shall be equipped with filters having a minimum efficiency of 25 percent.

(2) Plumbing and piping systems.

(A) Backflow prevention devices (vacuum breakers) shall be installed on each bedpan flushing attachment and on each fixture to which hoses or tubing can be attached.

(B) Water distribution systems shall be arranged to provide hot water at hot water outlets at all times. The temperature of hot water shall range between 98°F. (36°C.) and 115°F. (46°C.) at shower, bathing, and handwashing facilities throughout the system except when a higher temperature, not to exceed 130°F. (54°C.), is provided as part of a written training program that provides for direct supervision.

(e) Electrical requirements.

(1) All spaces occupied by persons or machinery and equipment within the buildings, approaches to buildings, and parking lots shall have adequate lighting.

(2) Minimum lighting intensity levels shall be as required in Table 1.

(3) Portable lamps shall not be accepted as light sources, except as specifically permitted in Table 1.

(4) Corridors and stairways shall remain lighted at all times.

TABLE 1. ARTIFICIAL LIGHT REQUIREMENTS

Place	Light Measured in Foot Candles	Where Measured
Kitchen and other food preparation and serving areas	30	Counter level
Dining room	25	Table level
Living room and/or recreation room		
General	15	Three feet above floor
Reading and other specialized areas (<i>may be portable lamp</i>)	50	Chair or table level
Nurse's station and office		
General	20	Three feet above floor
Desk and charts	50	Desk level
Clean workroom	30	Counter level
Central bath and showers	30	Three feet above floor
Resident's room		
General	10	Three feet above floor
Bed (<i>may be portable lamp</i>)	30	Mattress top level
Laundry	30	Three feet above floor
Storage room		
General	5	Three feet above floor
Disinfectant or cleaning agent storage area	15	Three feet above floor
Corridors	10	Floor level
Stairways	20	Step level
Exits	5	Floor level
Heating plant space	5	Floor level

(5) All lights shall be equipped with shades, globes, grids, or glass panels that prevent direct glare to the residents' eyes.

(f) Site location requirements. Each facility shall be:

(1) Served by all-weather roads or streets;

(2) free from noxious or hazardous smoke or fumes;

(3) a minimum of 3,000 feet (914 meters) from feedlots, shipping or holding pens, or other concentrated livestock operations.

(4) free of flooding for a 20-year period; and

(5) sufficient in area and configuration to accommodate the facility, drives, parking, sidewalks, and a recreation area.

(g) Site development requirements.

(1) Final grading of the site shall provide topography for positive surface drainage away from the building and positive protection and control of surface drainage and freshets from adjacent areas.

(2) All drives and parking areas shall be surfaced with concrete, asphalt, or equivalent, smooth all-weather finish. Unsealed gravel surfaces shall not be used.

(3) Except for lawn or shrubbery which may be used in landscape screening, an unencumbered outdoor open area of at least 50 square feet per resident shall be provided for recreational use and shall be so designated on the plot plan. The licensing agency may approve equivalent facilities provided by terraces, roof gardens, or similar provisions for homes located in high density urban areas. (Authorized by K.S.A. 39-932; implementing K.S.A. 39-932; effective May 1, 1982; amended May 1, 1984; amended April 3, 1989.)

28-39-226. General licensure. The code of federal regulations 42 CFR 483.400 to CFR 483.480 inclusive, as published in the Federal Register, Vol. 53, No. 107, Friday, June 3, 1988, is adopted by reference. (Authorized by and implementing K.S.A. 39-932; effective April 3, 1989.)

28-39-227. General licensure. The code of federal regulations, 42 CFR 483.1 to 42 CFR 483.75 inclusive, as published in the federal register, Vol. 56, No. 187, Thursday, September 26, 1991, and as amended in Vol. 57, No. 185, Wednesday, September 23, 1992 is adopted by reference. (Authorized by and implementing K.S.A. 39-932; effective May 16, 1994.)

28-39-228. Definitions. (a) "Activities director" means a person who meets the following requirements:

(1) Has completed the requirements for certification as a music therapist or has completed the requirements for graduation as a horticultural therapist; and

(2) has one year of experience in a patient activities program in a health care setting.

(b) "Administrator" means a person who is charged with the general administration of the nursing facility for mental health whether or not the individual has an ownership interest in the facility. Each administrator of a nursing facility for mental health shall be licensed in accordance with K.S.A. 65-3501 et seq., and amendments thereto.

(c) "Admission assessment" means that evaluation at facility admission which is used to guide the initial plan of care for the resident until the mental health plan of care is put in place.

(d) "Admitting physician" means the licensed physician who provides the order specifying the rationale for admission of a person to a nursing facility for mental health.

(e) "Behavior management program" means a therapeutic treatment regime identified by an

interdisciplinary team to change or maintain a specific behavior in the behavior repertoire of a resident in a nursing facility for mental health.

(f) "Case manager" means a person in a program authorized by the Kansas department of social and rehabilitation services assigned to monitor and participate in the treatment program of a resident living in a nursing facility for mental health.

(g) "Community mental health center" means an agency licensed by the state of Kansas pursuant to K.S.A. 19-4001 et seq., and in compliance with K.S.A. 65-211 et seq. and amendments thereto.

(h) "Comprehensive assessment" means:

(1) The minimum data set plus; and

(2) all related evaluations to identify a person's current functioning level and those factors which are barriers to maintaining the current level, or achieving a higher level of functioning.

(i) "Crisis intervention" means the allowable techniques to be utilized by facility staff in situations when:

(1) A resident's inappropriate behavior escalates beyond the definitions in the individualized behavior management program; and

(2) the resident, other residents, or staff are placed in a harmful situation.

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

(k) "Direct care staff" means those persons who assist or supervise residents in meeting the objectives in the mental health plan of care.

(l) "Discharge plan" means that section of each resident's mental health plan of care that identifies what placement opportunities are available to the resident and what necessary resources, skills and behaviors are required to facilitate the placement.

(m) "Guardian" means a person who has been appointed by a court of law to provide the functions and services for a ward as defined in K.S.A. 59-3018 and amendments thereto.

(n) "Informed consent" means receiving permission from the resident, or legal representative after the person has been presented with:

(1) The specific issue;

(2) the recommended treatment or procedure;

(3) the resident's specific mental or physical status with regard to the problem issue;

(4) any attendant risks regarding treating or not treating the problem issue;

(5) acceptable alternatives of treatment to the problem issue;

(6) the right to refuse treatment; and
 (7) any consequences of refusal.

(o) "Initial plan of care" means that plan which is put into place for each individual resident following the admission assessment and which is to be used until the mental health plan of care is put in place.

(p) "Interdisciplinary team" means the group of persons, including the resident or the resident's legal representative or both, who formulate, deliver and monitor the individual program plan for each resident.

(q) "Legal representative" means the person who has been appointed by a court of law as a guardian, or has been selected by a resident as a durable power of attorney for health care decisions.

(r) "Licensed mental health technician" means a person licensed by the Kansas board of nursing as a licensed mental health technician.

(s) "Licensed nurse" means a registered nurse or a licensed practical nurse.

(t) "Licensed practical nurse" means a person who is licensed by the Kansas board of nursing as a licensed practical nurse.

(u) "Living unit" means the specific section, wing, or pod where the resident is assigned to engage in the majority of activities of daily living.

(v) "Mental health plan of care" means those documents that describe for each resident:

(1) The basis for medical or mental health treatment or training;

(2) specific objectives identified for treatment or training;

(3) the staff members who formulated the plan; and

(4) the staff members who are responsible for carrying out the plan.

(w) "Mental health professional" means a physician, psychologist, social worker, or a psychiatric nurse.

(x) "Motivational system" means those procedures and intervention techniques that are applied to a resident group of residents to enhance and maintain positive behavioral change.

(y) "Nursing facility for mental health" means a facility licensed pursuant to K.S.A. 39-923 et seq. as a nursing facility and identified by the Kansas department of social and rehabilitation services as serving mentally ill persons.

(z) "Physician" means a person who is licensed by the Kansas board of healing arts as a medical doctor or a doctor of osteopathy.

(aa) "Psychiatric nurse" means a person who is licensed by the Kansas state board of nursing as a registered nurse and who has at least one year of experience as a registered nurse in the delivery of services to persons with mental illness.

(bb) "Psychiatric services" means those interventions and assessments held out to be exclusively in the practice of a physician who has completed additional training as a psychiatrist.

(cc) "Psychotropic medication" means those drugs that are used with the intent of controlling mood, mental status and behavior.

(dd) "Psychologist" means a person who is licensed or registered as a psychologist with the Kansas board of behavioral sciences.

(ee) "Registered nurse" means a person who is licensed by the Kansas board of nursing as a registered nurse.

(ff) "Resident" means a person who has been admitted to a nursing facility for mental health and who is in need of services provided by the facility.

(gg) "Restraint" means the control and limitation of a resident's movement by:

(1) Physical restraint, which is a technique involving the use of one or more staff person's arms, legs, hands or other body areas to restrict or control the movements of a resident;

(2) mechanical restraint, which is a device applied to a person's limbs, head or body, which restricts a person's movement and access to their body; or

(3) chemical restraint, which is the administration of an appropriate physician prescribed medication for the specific purpose of immediately calming a resident when there has been an assessment that the resident or others in the resident's environment are in danger.

(hh) "Seclusion" means the isolation of a resident in a locked room which cannot be opened by the resident.

(ii) "Social worker" means a person who is a social worker licensed by the Kansas board of behavioral sciences.

(jj) "Tardive dyskinesia" means an extrapyramidal syndrome characterized by rhythmic, repetitive stereotypic movements that can occur following prolonged treatment with neuroleptic medication. (Authorized by and implementing K.S.A. 39-932; effective May 16, 1994.)

28-39-229. Resident rights. (a) No resident shall be presumed to be incompetent, to for-

feit any legal rights, responsibility or obligation, or to suffer any legal disability as a citizen, unless otherwise prescribed by law, as a consequence of receiving care or treatment in a nursing facility for mental health.

(1) Each resident shall have the right to be evaluated, treated and habilitated in the least restrictive environment possible.

(2) Each resident shall have the right to contact a representative at the local community mental health center about their care and treatment.

(3) Each resident shall be given free access to the surrounding local community.

(4) Each resident shall have the right to have daily opportunities for physical exercise and outdoor recreation.

(5) Each resident shall have the right to have access to current newspapers, magazines and radio and television programming.

(6) Each resident shall have, at a minimum, the right at all times to communicate by unopened mail with his or her immediate family, case manager, legal representative, and representatives from the Kansas department on aging, Kansas department of social and rehabilitation services and the Kansas department of health and environment.

(b) Resident work. Services performed by the resident shall be identified within the mental health plan of care.

(1) A resident engaged in work of benefit to the facility shall be paid wages according to U.S. department of labor requirements.

(2) Residents performing work for the facility shall not be used to replace paid employees to fulfill staffing requirements.

(3) Residents shall not be denied the opportunity to volunteer for work.

(4) Residents working outside the facility shall be protected by the facility from exploitation.

(c) Choice. Activities shall allow maximum flexibility for residents to exercise choice regarding what they will do and when they will do it. Residents' individual preferences regarding such things as menus, clothing, religious activities, friendships, activity programs, entertainment, sleeping, eating and times to retire at night and arise in the morning shall be elicited and considered by the facility.

(d) Communications. Each resident may communicate, associate, and meet privately with persons of the resident's choice, unless to do so would infringe upon the rights of other residents.

(e) Mail. Arrangements shall be made to provide aid to residents who require assistance in reading or sending mail.

(f) Visitors. Space shall be provided for residents to receive visitors in comfort and privacy.

(g) Activities. Residents who wish to meet with, or participate in, activities of social, religious or community groups in or outside the facility, shall be informed, encouraged, and assisted to do so.

(h) Residents shall be permitted to leave the facility and its surroundings at reasonable times unless there are justifiable reasons established in writing by the attending physician, mental health professional, or facility administrator for denying permission. (Authorized by and implementing K.S.A. 39-932; effective May 16, 1994.)

28-39-230. Admission, transfer and discharge. (a) The commitment of a resident to a nursing facility for mental health shall not be permitted.

(b) Persons identified by the admitting physician as being a danger to themselves or others shall not be admitted to nursing facilities for mental health.

(c) Each resident shall have established at admission an initial plan of care based on the physician's admitting diagnosis.

(d) Each resident's mental health plan of care shall include a discharge plan.

(e) Each resident shall have the right to request a review of progress for discharge at any scheduled regular review. (Authorized by and implementing K.S.A. 39-932; effective May 16, 1994.)

28-39-231. Resident behavior and facility practices. (a) Psychotropic medication shall only be prescribed and used for a resident's treatment program following:

(1) Receipt of informed consent from the resident, or the resident's legal representative;

(2) documentation in the resident's record of the rationale for the use of the medication; and

(3) implementation of an objective monitoring system to determine the impact of the medication on the resident's behavior.

(b) Seclusion shall not be utilized in nursing facilities for mental health.

(c) Restraints shall not be applied to a resident unless it is determined to be required to prevent substantial body injury to the resident or others, and a physician's order and informed consent for the use of the restraint has been obtained.

(1) The extent of the use of restraints shall be the least restrictive necessary to prevent injury.

(2) Standing or "prn" orders for restraint shall be prohibited.

(d) The record of each resident for whom restraint is used shall contain complete information about restraint use that includes:

(1) The informed consent of the resident or the resident's legal representative for the use of the restraint;

(2) the clinical assessment done before the resident was restrained;

(3) the circumstances that led to the use of the restraint;

(4) an explanation of less restrictive measures used before restraint was applied;

(5) the physician's orders for the restraint;

(6) recordings of consistent observation of the resident at least every 15 minutes, or more frequently if needed, to monitor general well-being including vital signs, respirations, circulation, positioning and alertness as medically indicated;

(7) a description of the resident's activity at the time of observation that includes verbal exchanges and behavior;

(8) a description of safety procedures taken at restraint implementation;

(9) a recording of release from the mechanical restraint and exercise and massage every two hours;

(10) recordings of intake of food and fluid; and

(11) recording of use of the toilet.

(e) A resident shall not be allowed to participate in the restraint of another resident.

(f) There shall be written policies that address the basic assumption and philosophy that govern the use of restraint and who may authorize the use of restraint.

(g) During any period of restraint, the facility shall provide for the emotional and physical needs of the resident.

(h) The resident shall be informed of the reason for the restraint and the conditions for release. The resident's legal representative shall be notified within 24 hours of initiation of the use of restraints.

(i) Only persons who have documented training in restraint theory and techniques shall be authorized to assist with the restraint of a resident.

(j) Behavior management programs shall emphasize positive modification practices utilizing current reinforcement theory standard of practice.

(k) Motivation systems shall be based on the principles of positive reinforcement.

(l) Facility motivational systems shall not implement group punishment for the inappropriate behavior of a resident or more than one resident. (Authorized by and implementing K.S.A. 39-932; effective May 16, 1994.)

28-39-232. Quality of life; activity programs. (a) Each nursing facility for mental health shall have an organized activity program which is managed by an activity director and is directed toward community integration.

(b) The activity program plan for the facility shall be based on the needs identified in the comprehensive assessment of each resident and on interests expressed by individual residents.

(c) Activities shall be offered at least daily.

(d) Activities offered shall be varied and shall be planned for individuals, small groups or large groups with opportunities for involvement in the local community.

(e) Monthly calendars of activities offered shall be prepared in advance and shall be kept for three months. (Authorized by and implementing K.S.A. 39-932; effective May 16, 1994.)

28-39-233. Resident assessment. (a) An assessment upon admission for each resident shall be completed and shall include, but not be limited to a statement of presenting problems.

(b) Prior to the development of the mental health plan of care, a comprehensive assessment shall be completed within 14 days after admission for each resident and shall include but not be limited to:

(1) The minimum data set plus prepared by a registered nurse;

(2) psychosocial assessment prepared by a mental health professional to determine strengths and weaknesses in:

(A) Living arrangements;

(B) financial resources;

(C) vocational and educational skills;

(D) leisure pursuits;

(E) social support structures; and

(F) previous compliance with treatment programs; and

(3) a social history which includes:

(A) Family background;

(B) educational history, and

(C) employment history. (Authorized by and implementing K.S.A. 39-932; effective May 16, 1994.)

28-39-234. Quality of care. (a) Each facility shall develop and provide a system of mental health treatment and medical care for all residents including all aspects of care from admission through discharge. The system shall include the following provisions.

(1) Each facility shall conduct for each resident an admission assessment based upon information from available sources and document the findings in the resident's record.

(2) Each facility shall write an initial treatment plan for each resident based on the admission assessments which will be used to guide the treatment provided for the resident with necessary documented revisions until the implementation of the mental health plan of care.

(3) Each facility shall conduct and document in each resident's record comprehensive assessments that will be used to formulate the mental health plan of care.

(4) Each facility shall write and implement the mental health plan of care with necessary revisions through the course of each resident's stay.

(5) Each facility shall identify and document in each resident's record a discharge plan that integrates the wishes of the resident or legal representative.

(b) A mental health plan of care for each resident shall be developed by an interdisciplinary team including the resident or the resident's legal representative, or both, within 21 days after admission. The resident, or the resident's legal representative has the ultimate authority to accept or reject the plan. The mental health plan of care shall be approved and have its progress monitored by a mental health professional.

(1) The mental health plan of care shall be based on the comprehensive assessments and directed toward objective resident outcome.

(2) Each facility shall assist each resident in obtaining access to academic services, community living skills training, legal services, self-care training, support services, transportation, treatment and vocational education as needed. These services may be provided by the facility or obtained from other providers.

(3) Services to each resident shall be provided in the least restrictive environment and shall incorporate the use of community experiences when relevant.

(4) If needed services are not available and accessible, the facility shall document the actions taken to locate and obtain those services. The doc-

umentation shall identify needs which will not be met because of the lack of available services and why they cannot be met.

(5) The mental health plan of care shall be written, dated, signed by the interdisciplinary team members, including the resident, and maintained in the resident's record.

(6) The mental health plan of care shall include:

(A) Medical directives;

(B) behavioral directives;

(C) specific services to be provided;

(D) persons or agency responsible for providing services;

(E) beginning dates for services;

(F) anticipated duration of services; and

(G) a discharge plan.

(7) The mental health plan of care shall identify the procedure to be used to determine whether the objectives were achieved. This procedure shall incorporate a process for ongoing review and revision.

(8) The interdisciplinary team shall review the mental health plan of care for each resident at least quarterly and at the time a resident's condition changes. The interdisciplinary team review shall include a written report in the resident's record which addresses:

(A) The resident's progress toward objectives;

(B) the need for continued services;

(C) recommendations concerning alternative services or living arrangements; and

(D) those persons involved in the review and the date of the review.

(9) Each facility shall develop procedures for recording implementation and progress of the activities of the mental health plan of care and the resident's response. These procedures shall include the following provisions.

(A) A written progress note shall be placed in the resident's record following the delivery of each single service required by the mental health plan of care.

(B) A weekly summary shall be written by the staff and placed in the resident's record for services provided more than once a week.

(C) All progress and summary notes shall be signed and dated by the person who provides the service.

(D) Additional entries shall be provided in the resident's record when significant incidents occur.

(E) Notes shall be written in specific terms based on behavioral observations and activity responses of the resident. Entries that involve sub-

jective interpretations of a resident's behavior or progress shall be clearly identified and shall be supplemented with descriptions of behavior upon which the interpretation was based.

(c) There shall be written policies and procedures concerning crisis intervention. These policies and procedures shall be:

(1) Directed to maximizing the growth and development of the resident by listing a hierarchy of available alternative methods that emphasize positive approaches;

(2) available in each program area and living unit;

(3) available to residents and their families; and

(4) developed with the participation, as appropriate, of residents served. (Authorized by and implementing K.S.A. 39-932; effective May 16, 1994.)

28-39-235. Nursing services. (a) Each nursing facility for mental health shall employ or have on contract a psychiatric nurse who shall perform a monthly written evaluation of each resident's response to the mental health plan of care.

(b) A registered nurse shall perform for each resident receiving psychotropic medication an annual evaluation for tardive dyskinesia based on an industry-wide accepted test.

(c) Each nursing facility for mental health shall have a licensed nurse on duty at all times.

(d) Each facility shall have a registered nurse on duty at least eight hours a day, seven days a week.

(e) Each facility with 41 or more beds shall have an additional licensed nurse on duty during the working shift of the director of nursing.

(f) Each facility shall provide sufficient direct care staff to manage and supervise residents in accordance with each resident's mental health plan of care.

(g) Each facility shall provide sufficient support staff so that direct care staff are not required to perform cleaning, dietary and maintenance tasks to the extent that those duties interfere with the exercise of their primary direct care duties. (Authorized by and implementing K.S.A. 39-932; effective May 16, 1994.)

28-39-236. Dietary services. (a) Residents shall be encouraged to participate in meal planning, food purchasing, food preparation, table setting, serving, dishwashing and cleanup.

(b) The facility shall be responsible for assisting residents in learning what constitutes good nutritional practices.

(c) Menus shall be developed with input on food preferences from residents.

(d) Menus shall include a variety of foods prepared in various ways.

(e) Menu shall be written for a minimum of a three week cycle in which meals are not repeated. (Authorized by and implementing K.S.A. 39-932; effective May 16, 1994.)

28-39-237. Physician services. For each resident having a psychiatric diagnosis, a written agreement for the provision of psychiatric services or consultation shall be entered into if primary services are provided by a physician other than a psychiatrist. (Authorized by and implementing K.S.A. 39-932; effective May 16, 1994.)

28-39-238. Infection control. (a) Each facility shall provide a sanitary environment and shall follow proper techniques of asepsis, sterilization, and isolation.

(b) Each facility shall have written policies and procedures for aseptic and isolation techniques. Those policies and procedures shall be followed by all employees. If the facility does not have the capability of caring for a resident with an infectious disease, the written policies shall include provisions for handling the case until arrangements can be made to transfer the resident to an appropriate facility.

(c) Each facility shall have, and follows, written procedures to insure safe disposal of infectious waste and materials.

(d) Each facility shall have, and follow, written procedures to monitor the health status of all employees.

(e) Each ice storage container shall be kept clean, and ice and ice scoops shall be handled in a sanitary manner to prevent contamination. (Authorized by and implementing K.S.A. 39-932; effective May 16, 1994.)

28-39-239. Administration. (a) Each licensed nursing facility for mental health shall have an administrator, duly approved by the Kansas department of health and environment who acts in a professional capacity in accordance with regulations governing the operation of a nursing facility for mental health.

(b) Each nursing facility for mental health shall adopt and enforce written policies relative to:

(1) The health care, safety, psychosocial, and self-esteem needs of the residents;

(2) the protection of personal and property rights of residents; and

(3) emergency medical procedures.

(c) Each nursing facility for mental health shall maintain an affiliation agreement with the community mental health center within its service area. Such affiliation agreement shall, at a minimum, address the following:

(1) Provisions for any services to be provided to the nursing facility for mental health or its residents by the community mental health center; and

(2) mechanisms which insure coordination and planning with the community mental health center for any resident being discharged from the nursing facility for mental health to the community, or to any other institution or hospital. (Authorized by and implementing K.S.A. 39-932; effective May 16, 1994.)

28-39-240. (Authorized by and implementing K.S.A. 39-932; effective Feb. 21, 1997; amended Oct. 8, 1999; revoked May 29, 2009.)

28-39-241 through 28-39-244. (Authorized by and implementing K.S.A. 39-932; effective Feb. 21, 1997; revoked May 29, 2009.)

28-39-245. (Authorized by and implementing K.S.A. 39-932; effective Feb. 21, 1997; amended Oct. 8, 1999; revoked May 29, 2009.)

28-39-246. (Authorized by and implementing K.S.A. 39-932; effective Feb. 21, 1997; revoked May 29, 2009.)

28-39-247. (Authorized by and implementing K.S.A. 39-932; effective Feb. 21, 1997; amended Oct. 8, 1999; revoked May 29, 2009.)

28-39-248 through 28-39-253. (Authorized by and implementing K.S.A. 39-932; effective Feb. 21, 1997; revoked May 29, 2009.)

28-39-254. Construction; general requirements. (a) The assisted living facility or residential health care facility shall be designed, constructed, equipped and maintained to protect the health and safety of residents, personnel and the public.

(b) All new construction, renovation, remodeling and changes in building use in existing buildings shall comply with building and fire codes, ordinances and regulations enforced by city, coun-

ty, and state jurisdictions, including the state fire marshal.

(c) New construction, modifications and equipment shall conform to the following codes and standards:

(1) Title III of the Americans with disabilities act, 42 U.S.C. 12181, effective as of January 26, 1992; and

(2) "Food Service Sanitation Manual," health, education, and welfare (HEW) publication no. FDA 78-2081, as in effect on July 1, 1981.

(d) Site location requirements. The facility shall be:

(1) Served by all-weather roads and streets;

(2) free from noxious or hazardous smoke or fumes;

(3) at least 4,000 feet from concentrated livestock operations, including feedlots and shipping and holding pens;

(4) free of flooding for a 100-year period; and

(5) sufficient in area and configuration to accommodate the building or buildings, drives, parking, sidewalks, and an outdoor recreation area.

(e) Site development requirements.

(1) Final grading of the site shall provide for positive surface drainage away from the building and positive protection and control of surface drainage and freshets from adjacent areas.

(2) Except for lawn or shrubbery which may be used in landscape screening, an unencumbered outdoor open area shall be provided for recreation and shall be designated for that purpose on the plot plan. The licensing agency may approve outdoor areas provided by terraces, roof gardens, or similar provisions for facilities located in high density urban areas.

(f) General building exterior.

(1) Each exterior pathway or access to the facility's common use areas and entrance or exit ways shall be:

(A) made of hard smooth material;

(B) barrier free; and

(C) maintained in good repair.

(2) There shall be a means of monitoring each exterior entry and exit for security purposes.

(3) Outdoor recreation areas shall be provided and available to residents.

(g) General building interior.

(1) Each assisted living facility shall consist of apartments which contain at least the following:

(A) A sleeping area with a window which opens for ventilation and that conforms with minimum dimensions described in the uniform building

code, section 1204 as in effect on January 26, 1992 for egress to the outside;

(B) a living area;

(C) a storage area with a door or doors, a shelf and a hanging rod accessible to the resident;

(D) a kitchen area equipped with a sink, a refrigerator, a stove or a microwave and space for storage of utensils and supplies. Provision shall be available to disconnect the stove if necessary for resident safety;

(E) a toilet room which contains a toilet, lavatory, and a bath tub or shower accessible to a resident with disabilities;

(F) an entrance door which has only one locking device which releases with operation of the inside door handle. This lock shall be masterkeyed from the corridor side; and

(G) at least 200 square feet of living space not including the toilet room, closets, lockers, wardrobes, other built-in fixed items, alcoves and vestibules.

(2) Any assisted living facility licensed before January 1, 1995, as an intermediate personal care facility shall not be required to have kitchens and private baths in apartments.

(3) Each residential health care facility shall provide individual living units which include at least the following:

(A) A sleeping area with a window which opens for ventilation and that conforms with minimum dimensions described in the uniform building code, section 1204 as in effect on January 26, 1992 for egress to the outside;

(B) a toilet room which contains a toilet, lavatory and a bathing unit accessible to a resident with disabilities;

(C) a storage area with a door, a shelf and a hanging rod accessible to the resident;

(D) an entrance door which has only one locking device which releases with operation of the inside door handle. This lock shall be master-keyed from the corridor side; and

(E) at least 100 square feet of living space not including the toilet room, closets, lockers, wardrobes, other built-in fixed items, alcoves, and vestibules.

(4) If a resident in a residential health care facility shares an individual living unit with another resident, there shall be at least 80 square feet of living space per resident.

(5) Any facility licensed as intermediate personal care home before January 1, 1995 shall not be required to have a bathing unit in each toilet room.

(6) Any nursing facility licensed on or before July 1, 1995 which wishes to license a section of the facility as a residential health care facility shall have private bathing facilities in at least 20 percent of the individual living units.

(7) The individual living units in any wing or floor of the nursing facility licensed as residential health care shall be contiguous.

(8) Any nursing facility which has changed licensure level in a wing or floor of the facility as found in paragraph (g)(6) of this regulation may change that wing or floor back to a nursing facility as long as all environmental elements required at the time of the initial change are met.

(h) Common use areas.

(1) Each entrance shall be at ground level and shall be accessible to individuals with disabilities.

(2) Except for adjoining use areas which have closely related functions, each common use area shall have access from a general corridor without passing through any intervening use area. Large open areas or central living areas, including living rooms, dining rooms and dens, may be considered to be corridors.

(i) Bathing room.

(1) There may be a bathing room with a mechanical tub and sufficient floor space to allow accessibility for a resident using a wheelchair.

(2) The room shall contain provisions for an individual heat control or a supplemental heat source and shall have an exhaust to the outside.

(3) A toilet and lavatory shall be accessible without entering the general corridor.

(j) Public restroom.

(1) There shall be a public restroom accessible to individuals with disabilities on each floor of the facility. This restroom shall be available to staff and visitors.

(2) The restroom shall contain a toilet, lavatory, waste container and a non-reusable method of hand drying.

(k) Dining room. The facility shall have a dining room or dining rooms with the capacity to seat all residents.

(l) Social and recreation areas. The facility shall have common areas for social and recreational use by residents.

(m) Public telephone. There shall be a local access public telephone accessible to individuals with disabilities in a private area that allows a resident or another individual to conduct a private conversation.

(n) Smoking. If smoking is allowed:

(1) A public use area or areas shall be provided for residents, visitors and employees in which smoke is exhausted to the outside; and

(2) the facility shall ensure that residents who desire to live in a smoke-free environment may do so.

(o) The facility shall ensure that residents who desire to receive mail without staff intervention may do so.

(p) Any assisted living facility or residential health care facility which is physically attached to a nursing facility may share common use areas with the nursing facility. However, the facility shall provide for at least one common living or recreational area designated primarily for use by residents of the assisted living or residential health care facility. (Authorized by and implementing K.S.A. 39-932; effective Feb. 21, 1997.)

28-39-255. Support service areas. (a) The assisted living or residential health care facility shall provide the following:

(1) Space with a desk and telephone which can be used by direct care staff to chart and maintain resident records; and

(2) a locked medication storage area with a sink and a refrigerator in the same area for medications. The facility shall provide a separate locked compartment within the area for controlled drugs. A drug cart with a double locking system shall be acceptable. The facility shall provide storage for necessary medical supplies.

(b) Housekeeping and sanitation.

(1) The facility shall provide a locked janitor closet for storing supplies and equipment, with a floor or service sink.

(2) The facility shall provide space for storage of clean linen if linen service is included in the negotiated service agreements.

(c) Laundry facility.

(1) The facility shall store soiled laundry in a manner which prevents odors and spread of disease.

(2) If laundry is processed in the facility, the facility shall provide washing and drying machines. The facility shall arrange the work area to provide a "one-way flow" of laundry from a soiled area to a clean area.

(3) The facility shall provide a work counter and a locked cabinet for storage of chemicals and supplies.

(4) The facility shall provide a handwashing lavatory with a non-reusable method of hand-drying within or accessible to the laundry facility.

(d) Dietary areas. A dietary area or areas shall provide for sanitary meal preparation or service for residents.

(1) The facility shall provide disposal of waste by incineration, mechanical destruction, removal or a combination of these. The facility shall use containers with tightly fitting lids to store waste.

(2) Ceilings in the dietary areas shall be cleanable by dustless methods, such as vacuum cleaning or wet cleaning. These areas shall not have exposed or unprotected sewer lines.

(e) Assisted living or residential health care facilities which are physically attached to a nursing facility may share support areas with the nursing facility. (Authorized by and implementing K.S.A. 39-932; effective Feb. 21, 1997.)

28-39-256. Details and finishes. (a) Details for assisted living or residential health care facilities shall include the following:

(1) Rooms containing bathtubs, showers or toilets available for use by residents shall be equipped with doors and hardware capable of being opened from the outside and shall permit access from outside the room in an emergency.

(2) Windows and outer doors which may be left in an open position shall be provided with insect screens. Windows shall be designed to prevent accidental falls when open or shall be equipped with security screens.

(3) Doors, sidelights, borrowed lights, and windows in which the glazing is within 18 inches or 46 centimeters of the floor shall be glazed with safety glass, wire glass, or plastic glazing material that will resist breaking and will not create dangerous cutting edges if broken. Similar materials shall be used in wall openings of recreation rooms and exercise rooms unless required otherwise for fire safety.

(4) Safety glass or plastic glazing as described in paragraph (a) (3) shall be used for shower doors and bath enclosures.

(5) Grab bars, or sufficient blocking installed in the walls to support a grab bar, shall be provided at all toilets, showers, and tubs accessible to residents.

(b) Finishes.

(1) Wall bases in kitchens, janitor's closets, laundries and resident bathrooms shall be made tightly sealed, and constructed without voids that can harbor insects.

(2) Wall finishes shall be washable and, in the immediate area of plumbing fixtures, shall be smooth and moisture-resistant. Finish trim, and wall and floor construction in dietary and food

preparation areas shall be free from spaces that can harbor rodents and insects.

(3) Ceilings in the dietary, food preparation, and food storage areas shall be cleanable by dustless methods, such as vacuum cleaning or wet cleaning. Finished ceilings may be omitted in mechanical and equipment spaces, shops, general storage areas, and similar spaces unless required for fire protection purposes.

(4) Floor, wall and ceiling penetrations by pipes, ducts, and conduits shall be tightly sealed to minimize entry of rodents and insects. Joints of structural elements shall be similarly sealed.

(5) Shower bases and tubs shall provide non-slip surfaces.

(c) Mechanical requirements.

(1) Heating, air conditioning, and ventilating systems.

(A) The systems shall be designed to maintain a year-round indoor temperature range of 70°F or 21°C to 85°F or 26°C.

(B) Each apartment or individual living unit shall allow the resident to control the temperature.

(2) Plumbing and piping systems.

(A) Backflow prevention devices or vacuum breakers shall be installed on fixtures to which hoses or tubing can be attached.

(B) Water distribution systems shall be arranged to provide hot water at outlets at all times. The temperature of hot water shall range between 98°F and 120°F at bathing facilities, sinks, and lavatories in resident use areas.

(3) Electrical requirements.

(A) All spaces occupied by persons or machinery and equipment within the buildings, approaches to buildings, and parking lots shall have adequate lighting.

(B) Minimum lighting intensity levels shall be as required in Table 1.

Table 1
Artificial Light Requirements

Place	Light measured in foot candles	Where Measured
Kitchen and other food preparation and serving areas	50	Counter level
Dining room	25	Table level
Living room or other common areas	15	Three feet above floor
Areas for reading or specialized areas (may be provided by a portable lamp)	50	Chair or table area

Place	Light measured in foot candles	Where Measured
Corridors	10	Floor level
Stairways	20	Step level
Exits	5	Floor level
Resident Apartment or Individual living unit – General	20	Three feet above floor
Toilet room	50	Three feet above floor
Kitchen	50	Counter

(C) Each corridor and stairway shall remain lighted at all times.

(D) Each light in resident use areas shall be equipped with shades, globes, grids, or glass panels.

(4) Telephone service. Each unit or apartment shall have at least one telephone jack for each resident who desires phone service. (Authorized by and implementing K.S.A. 39-932; effective Feb. 21, 1997.)

28-39-275 through 28-39-288. (Authorized by and implementing K.S.A. 39-932; effective Oct. 8, 1999; revoked May 29, 2009.)

28-39-289. Construction; general requirements. (a) Each adult day care facility shall be designed, constructed, equipped, and maintained to protect the health and safety of residents, personnel, and the public.

(b) All new construction, renovation, and remodeling or changes in building use in existing buildings shall comply with building and fire codes, ordinances, and regulations enforced by city, county, and state jurisdictions, including the state fire marshal.

(c) New construction, modifications, and equipment shall conform to the following codes and standards:

(1) Title III of the Americans with disabilities act, 42 U.S.C. 12181, as implemented by 28 C.F.R. part 36, as published on July 26, 1991 and hereby adopted by reference; and

(2) “food service sanitation manual,” health, education, and welfare (HEW) 1976 publication no. FDA 78-2081, which is hereby adopted by reference.

(d) Site location requirements. Each facility shall meet the following requirements:

(1) Be served by all-weather roads and streets;

(2) be free from noxious or hazardous smoke or fumes;

(3) be located a minimum of 4,000 feet from concentrated livestock operations, including feedlots and shipping and holding pens;

(4) be free of flooding for a 100-year period; and

(5) be sufficient in area and configuration to accommodate the building or buildings, drives, parking, sidewalks, and outdoor recreation area or areas.

(e) Building exterior.

(1) Each exterior pathway or access to the facility's common use areas and entrance and exit ways shall meet the following requirements:

(A) Be made of hard, smooth material;

(B) be free of barriers; and

(C) be maintained in good repair.

(2) There shall be a means of monitoring each exterior entry and exit used by residents for security purposes.

(3) Each facility shall provide outdoor recreation areas for residents.

(f) Common use areas.

(1) Each facility shall have sufficient common-use space to accommodate the full range of program activities and services.

(A) Space shall be provided for activities at a rate of 60 square feet per resident capacity of the facility. Reception areas, storage areas, offices, rest rooms, passageways, treatment rooms, service areas, or specialized space used only for therapies shall not be included when calculating activity space square footage.

(B) A private area equipped with a bed shall be available for residents who become ill, may require a rest period, or need a quiet area for treatment of behavioral symptoms.

(C) Each facility shall have social, recreational, and dining areas that provide for the activity needs of residents. The dining area shall have seating capacity for all residents in attendance at any one time.

(D) Rooms or areas used for resident services and activities shall have furniture appropriate to the needs of the residents attending the adult day care program.

(2) Each facility located in a building housing other services shall have a separate, identifiable space for adult day care activity areas provided during hours of operation. Space, including the kitchen and therapy rooms, may be shared.

(3) Rest room or rooms.

(A) Each rest room shall be accessible to residents with disabilities and shall contain a toilet or toilets, lavatory, waste container, and a nonreusable method of hand drying.

(B) The number of toilets and lavatories accessible to residents shall include the following:

(i) One to five residents: one toilet and lavatory;

(ii) six to 10 residents: two toilets and two lavatories; and

(iii) 11 or more residents: one toilet and lavatory for each 10 residents over 10.

(4) Bathing room.

(A) There may be a bathing room with a tub, shower, or mechanical tub.

(B) A toilet and lavatory shall be accessible without entering the general corridor.

(5) Public telephone. There shall be a public telephone locally accessible to individuals with disabilities in a private area that allows a resident or another individual to conduct a private conversation. (Authorized by and implementing K.S.A. 39-932; effective Oct. 8, 1999.)

28-39-290. Support services areas. (a) Each adult day care facility shall provide the following:

(1) A work space with a desk and telephone that can be used by staff to chart and maintain resident records; and

(2) a locked medication storage area and a refrigerator for the storage of medications in the same area. If controlled drugs are stored at the facility, a separate double-locked compartment shall be provided. A drug cart with a double-locking system shall be acceptable. Each facility shall provide storage for necessary medical supplies.

(b) Each facility shall provide a locked closet or cabinet for the storage of cleaning chemicals and supplies used for facility housekeeping and sanitation.

(c) Laundry facility.

(1) If the facility processes laundry, the facility shall provide washing and drying machines. Each facility shall arrange the work area to provide a one-way flow of laundry from a soiled area to a clean area.

(2) Each facility shall store soiled laundry in a manner that prevents odors and the spread of disease.

(3) Each facility shall provide a lavatory with a nonreusable method of hand drying within or accessible to the laundry area.

(d) Dietary areas. A dietary area shall provide for sanitary meal preparation or service to residents.

(1) Each facility shall wash, rinse, and sanitize all tableware, kitchenware, and food preparation equipment in any of the following:

- (A) A dishwashing machine;
 - (B) a three-compartment sink;
 - (C) three separate containers; or
 - (D) any combination of the above.
- (2) Each facility shall provide the disposal of waste by incineration, mechanical destruction, removal, or a combination of these. Air-tight, closed containers shall be used to store waste.
- (3) Ceilings in the dietary area shall be cleanable by dustless methods, including vacuum cleaning or wet cleaning.
- (4) Dietary areas shall not have exposed or unprotected sewer lines. (Authorized by and implementing K.S.A. 39-932; effective Oct. 8, 1999.)

28-39-291. Details and finishes. (a) Details for each adult day care facility shall include the following:

(1) Rooms containing bathtubs, showers, or toilets available for use by residents shall be equipped with doors and hardware capable of being opened from the outside and shall permit access from outside the room in an emergency.

(2) Windows and outer doors, when left in an open position, shall be provided with insect screens. Windows shall be designed to prevent accidental falls when open or shall be equipped with security screens.

(3) Grab bars shall be provided at all toilets, showers, and tubs accessible to residents.

(b) Finishes.

(1) Wall finishes shall be washable and, in the immediate area of plumbing fixtures, shall be smooth and moisture resistant. Finish trim, and wall and floor constructions in dietary and food preparation areas shall be free from spaces that can harbor rodents and insects.

(2) Floor, wall, and ceiling penetrations by pipes, ducts, and conduits shall be tightly sealed to minimize the entry of rodents and insects. Joints of structural elements shall be similarly sealed.

(3) Shower bases and tubs shall be provided with nonslip surfaces.

(c) Mechanical requirements.

(1) Heating, air conditioning, and ventilating systems.

(A) The system shall be designed to maintain a year-round indoor temperature range of 70°F to 85°F.

(2) Plumbing and piping systems.

(A) Backflow prevention devices or vacuum breakers shall be installed on fixtures to which hoses or tubing can be attached.

(B) Water distribution systems shall be arranged to provide hot water at hot water outlets at all times. The temperature of hot water shall range between 98°F and 120°F at showers, tubs, and lavatories accessible to residents.

(3) Electrical requirements.

(A) All spaces occupied by persons or machinery and equipment within buildings, approaches to buildings, and parking lots shall have adequate lighting.

(B) Each corridor and stairway shall remain lighted during the hours of operation.

(C) Each light in resident use areas shall be equipped with shades, globes, grids, or glass panels. (Authorized by and implementing K.S.A. 39-932; effective Oct. 8, 1999.)

28-39-300 to 28-39-312. (Authorized by and implementing K.S.A. 39-932; effective, T-88-57, Dec. 16, 1987; amended May 1, 1988; revoked Oct. 8, 1999.)

28-39-400. Administration. The boarding care home shall be operated in a manner to ensure the delivery of all required administrative services. (Authorized by and implementing K.S.A. 39-932; effective, T-88-57, Dec. 16, 1987; amended May 1, 1988.)

28-39-401. Administration; management standard. (a) The licensee shall have full authority and responsibility for the operation of the facility and for compliance with licensing requirements.

(b) The licensee shall operate the facility to assure the safety, psychosocial, and self-esteem needs of the residents; and to protect personal and property rights of residents.

(c) Admission.

(1) The facility shall admit and retain only persons in need of supervision. The facility shall accommodate a maximum of 10 residents.

(2) Before admission, the prospective resident or the legal guardian of the resident shall be informed, in writing, of the rates and charges and the resident's obligations regarding payment, including the refund policy of the facility.

(3) At the time of admission, the licensee shall execute a written agreement with the resident or the legal guardian of the resident which describes in detail the goods and services which the resident shall receive and which sets forth the obligations which the resident has toward the facility.

(4) The facility shall not admit persons with an infection or disease in communicable stage;

women who are pregnant or within three months following pregnancy; or persons in need of active treatment for alcoholism, mental condition, or drug addiction.

(d) Power of attorney and guardianship. A power of attorney from or legal guardianship for a resident shall not be accepted by anyone employed by or having a financial interest in the facility unless the person is related by marriage or blood within the second degree to the resident.

(e) Reports. The facility shall submit to the licensing agency, not later than 10 days following the period covered, a quarterly report of residents and employees. The report shall be submitted on forms provided by the licensing agency. The facility shall submit any other reports as required by the licensing agency. (Authorized by and implementing K.S.A. 39-932; effective, T-88-57, Dec. 16, 1987; amended May 1, 1988.)

28-39-402. Health services. The boarding care home shall provide qualified personnel to meet the needs of the residents, including those services prescribed in K.A.R. 28-39-403 to K.A.R. 28-39-405. (Authorized by and implementing K.S.A. 39-932; effective, T-88-57, Dec. 16, 1987; amended May 1, 1988.)

28-39-403. Health services; medical and dental services standard. (a) Residents shall provide for their own medical services through personal physicians and for dental services by their personal dentists.

(b) Residents may self-administer medications or facility personnel may supervise residents who self-administer medication by:

- (1) Reminding residents to take medication,
- (2) opening bottle caps for residents,
- (3) reading the medication label to residents,
- (4) observing residents while they take medications,
- (5) checking the self-administered dosage against the label of the container,
- (6) reassuring residents that they have obtained and are taking the dosage as prescribed,
- (7) assisting a resident with the taking of medications when the resident requires assistance,
- (8) keeping daily records of when residents receive supervision, and
- (9) immediately reporting noticeable changes in the condition of a resident to the resident's physician and nearest relative or legal guardian.

(c) Restraints shall not be used. (Authorized by

and implementing K.S.A. 39-932; effective, T-88-57, Dec. 16, 1987; amended May 1, 1988.)

28-39-404. Health services; records standard. (a) Resident records shall be maintained with pertinent information regarding care of the resident.

(b) Resident records shall include name, date of admission, birth date, nearest relative or legal guardian, personal physician, and whom to notify in case of illness or accident. (Authorized by and implementing K.S.A. 39-932; effective, T-88-57, Dec. 16, 1987; amended May 1, 1988.)

28-39-405. Health services; dietetic services standard. The facility shall provide meal services that include:

(a) Menus planned and followed to meet the nutritional needs of residents; and

(b) Foods prepared by methods that conserve the nutritive value, flavor, and appearance and attractively served at the proper temperature. (Authorized by and implementing K.S.A. 39-932; effective, T-88-57, Dec. 16, 1987; amended May 1, 1988.)

28-39-406. Environmental sanitation and safety. The boarding care home shall provide staff and services to ensure a clean, safe, and comfortable environment for residents and shall meet the environmental sanitation and safety requirements prescribed in K.A.R. 28-39-407 to K.A.R. 28-39-409, inclusive. (Authorized by and implementing K.S.A. 39-932; effective, T-88-57, Dec. 16, 1987; amended May 1, 1988.)

28-39-407. Environmental sanitation and safety; housekeeping standard. (a) Housekeeping services shall be provided to maintain a safe, sanitary, and comfortable environment for residents and to help prevent the development or transmission of infections.

(b) The facility shall be kept free of insects, rodents, and vermin.

(c) The grounds shall be free from accumulation of rubbish and other health and safety hazards.

(d) The interior and exterior of the building shall be maintained in a clean, safe, and orderly manner. (Authorized by and implementing K.S.A. 39-932; effective, T-88-57, Dec. 16, 1987; amended May 1, 1988.)

28-39-408. Environmental sanitation and safety; maintenance standard. (a) All buildings shall be maintained in good repair and free from hazards.

(b) All electrical and mechanical equipment shall be maintained in good repair and in safe operating condition.

(c) Resident care equipment shall be maintained in a safe and sanitary condition. (Authorized by and implementing K.S.A. 39-932; effective, T-88-57, Dec. 16, 1987; amended May 1, 1988.)

28-39-409. Environmental sanitation and safety; disaster preparedness standard.

(a) The facility shall have a written plan with procedures to be followed if a disaster, such as fire, tornado, explosion, or flood, occurs inside or outside the facility. The facility shall ensure that the staff are prepared for a disaster.

(b) The disaster plan shall be available and posted for residents and staff.

(c) The plan shall include evacuation routes and procedures to be followed in case of fire, tornado, explosion, flood, or other disaster. The plan shall include procedures for the transfer of residents, casualties, medical records, medications, and notification of next of kin and other persons. (Authorized by and implementing K.S.A. 39-932; effective, T-88-57, Dec. 16, 1987; amended May 1, 1988.)

28-39-410. (Authorized by and implementing K.S.A. 39-932; effective, T-88-57, Dec. 16, 1987; amended May 1, 1988; revoked March 23, 2001.)

28-39-411. Physical environment and complete construction.

(a) General provisions. The following provisions describe the physical environment and complete construction requirements for boarding care homes. The facility shall provide for a safe, sanitary environment and for the safety and comfort of the residents.

(b) Each boarding care home shall consist of at least the following units, areas, and rooms which shall all be within a single building and under one roof;

(1) All beds shall be located in rooms designed for not more than five beds. Each resident bedroom shall meet the following requirements:

(A) Minimum room areas, excluding toilet rooms, closets, lockers, wardrobes, other built-in fixed items, alcoves, or vestibules, shall be 60 square feet per bed. Visual privacy shall be provided for each bed in a multibed room;

(B) Each toilet room shall contain at least a toilet and a lavatory but not more than two toilets. The lavatory may be omitted if the toilet adjoins

bedrooms containing a lavatory. There shall be not less than one toilet for each five residents; and

(C) Each resident room shall be provided with space for resident clothing and personal items.

(2) Services areas or elements required below shall be located in all boarding care homes. Each facility shall contain:

(A) Space for storage of clean linen;

(B) Space for holding of soiled laundry;

(C) Space for storage of equipment for the facility's use.

(D) Bathing units at the rate of one bathtub or shower per five residents. Bathing units shall be located in rooms or areas with access to a toilet and lavatory without entering the general corridor. Bathing units shall be located within enclosures which provide for privacy;

(E) Living and dining areas;

(F) Food preparation areas in the size required to implement meal service. The area shall include provision for disposal of waste by incineration, mechanical destruction, compaction, removal, or by a combination of these techniques. Stored waste shall be in water-tight, closed containers; and

(G) If tools, supplies, or equipment used for yard or exterior maintenance are stored at the facility, a room which opens to the outside or which is located in a detached building for storage of such equipment.

(c) Details and finishes.

(1) Windows and outer doors left in an open position shall be provided with insect screens.

(2) Shower bases and tubs shall have a nonslip surface.

(3) Wall finishes shall be washable and in the immediate area of plumbing fixtures shall be smooth and moisture resistant. Finish, trim, wall, and floor constructions in food preparation areas shall be free from spaces that can harbor rodents and insects.

(4) Ceilings in the food preparation areas shall be cleanable by dustless methods, such as vacuum cleaning or wet cleaning. These areas shall not have exposed or unprotected sewer lines.

(d) Mechanical, plumbing, and electrical requirements.

(1) Heating, air conditioning, and ventilation systems. The system shall maintain a year-round indoor temperature range between 70°F. to 85°F.

(2) The temperature of hot water shall range between 98°F. and 115°F. at shower, bathing, and handwashing facilities throughout the system.

(3) All spaces occupied by persons or machinery and equipment within the buildings, approaches to buildings, and parking lots shall have adequate lighting. (Authorized by and implementing K.S.A. 39-932; effective, T-88-57, Dec. 16, 1987; amended May 1, 1988.)

28-39-425 through 28-39-436. (Authorized by and implementing K.S.A. 39-932; effective Oct. 8, 1999; revoked May 29, 2009.)

28-39-437. Construction; general requirements. (a) Each home-plus facility shall be designed, constructed, equipped, and maintained to protect the health and safety of residents, personnel, and the public.

(b) All new construction, renovation, remodeling, and changes in building use in existing buildings shall comply with building and fire codes, ordinances, and regulations enforced by city, county, and state jurisdictions, including the state fire marshal.

(c) Site location requirements. Each facility shall meet the following requirements:

(1) Be served by all-weather roads and streets;

(2) be free from noxious or hazardous smoke or fumes;

(3) be located at least 4,000 feet from concentrated livestock operations, including feedlots and shipping and holding pens;

(4) be free of flooding for a 100-year period; and

(5) be sufficient in area and configuration to accommodate the building or buildings, drives, parking, sidewalks, and outdoor recreation area.

(d) General building exterior.

(1) Each exterior pathway or access to the facility's common use areas and entrance or exit ways shall meet the following requirements:

(A) Be made of hard, smooth material;

(B) be barrier free; and

(C) be maintained in good repair.

(2) Outdoor recreation areas shall be provided and available to residents.

(3) The exterior of the building and the grounds shall be maintained in good repair and in a clean, safe, and orderly manner.

(4) Each facility house address number shall be posted on the exterior of the facility using at least three-inch-high numbers. Address numbers shall be posted on any mailbox located away from the facility.

(e) General building interior.

(1) Resident bedrooms.

(A) Each resident shall be provided a separate bed with the following:

(i) A clean, comfortable mattress; and

(ii) bedding appropriate to the weather.

(B) Each facility shall provide visual privacy for each resident in a multi-bed room.

(C) A space of at least three feet shall be provided between beds in a multi-bed room.

(D) Each resident shall be provided with space for the storage of personal items.

(E) There shall be at least one window to the outside.

(F) Resident bedrooms shall not be located in a basement.

(G) Bedrooms for residents who require physical assistance in transferring from a bed to a wheelchair shall be located on the first floor of the facility.

(2) Toilet facilities.

(A) There shall be at least one toilet room with a lavatory, and a shower or tub, for each five individuals living in the facility.

(B) The facility shall provide grab bars or equivalent assistive devices at each toilet, tub, or shower if required for resident safety.

(C) Showers and tubs shall have nonslip surfaces or be provided with nonslip mats for resident safety.

(3) Living, dining, and activity areas. Each facility shall provide living, dining, and activity areas that meet the following requirements:

(A) Are well lighted;

(B) are adequately furnished;

(C) have sufficient space to accommodate all resident activities; and

(D) are located in an area or areas accessible to all residents.

(4) Laundry area.

(A) If the facility processes laundry, the facility shall provide a work area with a one-way flow of laundry from a soiled area to a clean area.

(B) The laundry area shall not be located in the same room where preparation and service of food occur.

(C) Each facility shall store laundry in a manner that prevents odors and the spread of disease.

(f) Sanitation and maintenance. Each facility shall provide a safe, functional, sanitary, and comfortable environment for residents, staff, and the public.

(g) Public telephone. There shall be a public telephone locally accessible to individuals with disabilities in a private area that allows a resident

or another individual to conduct a private conversation.

(h) The heating, air conditioning, and ventilation systems shall maintain a year-round indoor temperature range of 70°; F to 85°F in the resident use areas.

(i) Plumbing and piping systems.

(1) Backflow prevention devices or vacuum breakers shall be installed on fixtures to which hoses or tubing can be attached.

(2) Water distribution systems shall be arranged to provide hot water at hot water outlets at all times. The temperature of hot water shall range between 98°F and 120°F at showers, tubs, and lavatories accessible to residents.

(j) Each facility shall ensure that residents who desire to receive mail without staff intervention may do so. (Authorized by and implementing K.S.A. 39-932; effective Oct. 8, 1999.)

Article 40.—EMERGENCY MEDICAL SERVICES

CERTIFICATION OF AMBULANCE ATTENDANTS

28-40-1 to 28-40-6. (Authorized by K.S.A. 65-4320; effective, E-77-34, July 8, 1976; effective Feb. 15, 1977; revoked, E-81-33, Oct. 22, 1980; revoked May 1, 1981.)

AMBULANCE LICENSURE

28-40-51 to 28-40-58. (Authorized by K.S.A. 65-4320; effective, E-77-34, July 8, 1976; effective Feb. 15, 1977; revoked, E-81-33, Oct. 22, 1980; revoked May 1, 1981.)

28-40-61 and 28-40-62. (Authorized by K.S.A. 1979 Supp. 65-4320; implementing K.S.A. 1979 Supp. 65-4320, 65-4322; effective May 1, 1981; revoked May 1, 1985.)

28-40-63 to 28-40-65. (Authorized by K.S.A. 1979 Supp. 65-4320; implementing K.S.A. 1979 Supp. 65-4320; effective May 1, 1981; revoked May 1, 1985.)

28-40-66. (Authorized by K.S.A. 1979 Supp. 65-4320; implementing K.S.A. 1979 Supp. 65-4326; effective May 1, 1981; revoked May 1, 1985.)

28-40-67 and 28-40-68. (Authorized by K.S.A. 1979 Supp. 65-4320; implementing K.S.A. 1979 Supp. 65-4320; effective May 1, 1981; revoked May 1, 1985.)

28-40-69. (Authorized by and implementing K.S.A. 1982 Supp. 65-4318, as amended by L. 1983, ch. 286, § 6; effective May 1, 1984; revoked May 1, 1985.)

Article 41.—OIL FIELD WASTE DISPOSAL

28-41-1 to 28-41-3. (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective July 1, 1966; amended May 1, 1984; revoked May 10, 1996.)

28-41-9. (Authorized by and implementing K.S.A. 65-171d; effective Dec. 31, 1947; amended July 1, 1949; amended Sept. 1, 1950; amended July 1, 1955; amended July 1, 1958; amended July 1, 1966; amended Feb. 15, 1977; amended May 1, 1982; amended, T-84-42, Jan. 1, 1984; amended May 1, 1984; revoked May 10, 1996.)

Article 42.—CERTIFICATES OF NEED FOR HEALTH FACILITIES

28-42-1. (Authorized by K.S.A. 65-4704 and 65-4821; implementing K.S.A. 1983 Supp. 65-4805, 65-4806, 65-4808, 65-4815; effective May 1, 1979; amended, E-81-7, March 12, 1980; amended May 1, 1980; amended, E-81-34, Nov. 12, 1980; amended May 1, 1981; amended, T-84-21, Aug. 30, 1983; amended May 1, 1984; revoked May 10, 1996.)

28-42-3. (Authorized by K.S.A. 65-4806, 65-4821; effective May 1, 1979; amended, E-81-34, Nov. 12, 1980; amended May 1, 1981; revoked May 10, 1996.)

28-42-4. (Authorized by K.S.A. 1978 Supp. 65-4806; effective May 1, 1979; revoked May 10, 1996.)

28-42-5. (Authorized by K.S.A. 65-4704, 65-4821, K.S.A. 1983 Supp. 65-4806; implementing K.S.A. 65-4806; effective May 1, 1979; amended, E-81-7, March 12, 1980; amended May 1, 1980; amended, E-81-34, Nov. 12, 1980; amended May 1, 1981; amended, T-84-21, Aug. 30, 1983; amended May 1, 1984; revoked May 10, 1996.)

28-42-6. (Authorized by K.S.A. 1979 Supp. 65-4704, 65-4804, 65-4808; effective May 1, 1979; amended, E-81-7, March 12, 1980; amended May 1, 1980; revoked May 10, 1996.)

28-42-7. (Authorized by K.S.A. 1979 Supp. 65-4704, 65-4807, 65-4808; effective May 1, 1979;

amended, E-81-7, March 12, 1980; amended May 1, 1980; revoked May 10, 1996.)

28-42-9. (Authorized by K.S.A. 1979 Supp. 65-4704, 65-4808; effective, E-81-7, March 12, 1980; effective May 1, 1980; revoked May 10, 1996.)

28-42-10. (Authorized by K.S.A. 1983 Supp. 65-4805, and K.S.A. 65-4821; implementing K.S.A. 1983 Supp. 65-4805; effective, E-81-34, Nov. 12, 1980; modified, L. 1981, ch. 411; effective May 1, 1981; amended, T-84-21, Aug. 30, 1983; amended May 1, 1984; revoked May 10, 1996.)

28-42-11. (Authorized by K.S.A. 1978 Supp. 65-4815; effective May 1, 1979; revoked May 10, 1996.)

28-42-12. (Authorized by K.S.A. 65-4704, 65-4804, 65-4815, 65-4821; effective May 1, 1979; amended, E-81-7, March 12, 1980; amended May 1, 1980; amended, E-81-34, Nov. 12, 1980; amended May 1, 1981; revoked May 10, 1996.)

28-42-13. (Authorized by K.S.A. 1979 Supp. 65-4704, 65-4808, 65-4815; effective May 1, 1979; amended, E-81-7, March 12, 1980; amended May 1, 1980; revoked May 10, 1996.)

28-42-14. (Authorized by K.S.A. 1978 Supp. 65-4802; effective May 1, 1979; revoked May 10, 1996.)

28-42-15. (Authorized by K.S.A. 65-4704, 65-4820, 65-4821; effective, E-81-34, Nov. 12, 1980; effective May 1, 1981; revoked May 10, 1996.)

28-42-16. (Authorized by K.S.A. 1979 Supp. 65-4704, 65-4808, 65-4815; effective, E-81-7, March 12, 1980; effective May 1, 1980; revoked May 10, 1996.)

Article 43.—CONSTRUCTION, OPERATION, MONITORING AND ABANDONMENT OF SALT SOLUTION MINING WELLS

28-43-1. (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981; revoked Aug. 6, 2010.)

28-43-2. (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981; revoked Aug. 6, 2010.)

28-43-3. (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981; revoked Aug. 6, 2010.)

28-43-4. (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981; revoked Aug. 6, 2010.)

28-43-5. (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981; revoked Aug. 6, 2010.)

28-43-6. (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981; revoked Aug. 6, 2010.)

28-43-7. (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981; revoked Aug. 6, 2010.)

28-43-8. (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981; amended May 1, 1984; revoked Aug. 6, 2010.)

28-43-9. (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981; revoked Aug. 6, 2010.)

28-43-10. (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981; revoked Aug. 6, 2010.)

28-43-11. (Authorized by and implementing K.S.A. 1984 Supp. 65-171d; effective, T-85-7, Feb. 15, 1984; effective May 1, 1984; amended May 1, 1985; revoked Aug. 6, 2010.)

Article 44.—PETROLEUM PRODUCTS STORAGE TANKS

28-44-1 to 28-44-10. (Authorized by and implementing K.S.A. 65-171d; effective May 1, 1981; revoked Nov. 26, 1990.)

28-44-11. (Authorized by and implementing K.S.A. 1984 Supp. 65-171d; effective, T-85-7, Feb. 15, 1984; effective May 1, 1984; amended May 1, 1985; revoked Nov. 26, 1990.)

28-44-12. General provisions. (a) The following changes shall be made to any provision in 40 C.F.R. part 280 that is adopted by reference in these regulations:

(1) "The United States" shall be replaced with "the state of Kansas."

(2) “Environmental protection agency,” “implementing agency,” and “EPA” shall be replaced with “department” except as follows:

(A) “Environmental protection agency” shall not be replaced with “department” when used in 40 C.F.R. 280.103(b)(1) in the second sentence of the trust agreement.

(B) “Implementing agency” shall not be replaced with “department” when used in the following sections:

(i) 280.12 as stated in the definition of “implementing agency”; and

(ii) 280.92 as stated in the definition of “director of the implementing agency.”

(C) “EPA” shall not be replaced with “department” when used in the following sections:

(i) 280.92 as stated in the definition of “director of implementing agency”;

(ii) 280.92 as stated in the definition of “legal defense cost”;

(iii) 280.95(b)(1)(i) through (iii);

(iv) 280.95(d) as stated in the “Letter from Chief Financial Officer”;

(v) 280.103(b)(1); and

(vi) appendix III.

(3) “Administrator,” “regional administrator,” and “director” shall be replaced with “secretary” except as follows:

(A) In 40 C.F.R. 280.92 in the definition of “director of the implementing agency,” “regional administrator” shall not be replaced with “secretary.”

(B) In 40 C.F.R. 280.92 in the definition of “director of the implementing agency,” the first occurrence of the word “director” shall not be replaced.

(4) “Federal register” shall be replaced with “Kansas register.”

(5) “Must” shall be replaced with “shall.”

(6) “Will” shall be replaced with “shall.”

(7) “October 13, 2015” shall be replaced with “the effective date of these regulations.”

(8) “October 13, 2018” shall be replaced with “October 13, 2021,” except in 40 C.F.R. 280.36(a) as adopted in K.A.R. 28-44-19.

(b) Each owner or operator, or both, shall be assessed penalty fees by the department for non-compliance. The penalty fees shall be in addition to the required registration and permit fees specified in these regulations.

(c) Any UST license may be suspended or revoked if the requirements specified in K.A.R. 28-44-21 and K.A.R. 28-44-22 are not met. If any license is suspended or revoked, the licens-

ee shall meet the requirements established by the secretary as provided in the order issuing the suspension or revocation to be considered for reinstatement or renewal.

(d) The fees required by these regulations shall be submitted in the form of a check, money order, or electronic payment made payable to the Kansas department of health and environment. (Authorized by and implementing K.S.A. 65-34,105; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-13. Program scope. The provisions of 40 C.F.R. 280.10 and 280.11, dated July 1, 2015, as amended by 80 fed. reg. 41624-41625 (2015) and effective on October 13, 2015, are hereby adopted by reference. (Authorized by and implementing K.S.A. 65-34,105; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-14. Definitions. (a) Each of the terms defined in this regulation, as used in these regulations, shall have the meaning specified in this regulation.

(b)(1) The terms and definitions in the following federal regulations are hereby adopted by reference:

(A) 40 C.F.R. 280.12 and 280.92, dated July 1, 2015, as amended by 80 fed. reg. 41625-41627 and 41640-41641 (2015) and effective on October 13, 2015; and

(B) 40 C.F.R. 280.250, published at 80 fed. reg. 41667 (2015) and effective on October 13, 2015.

(2) If the same term is defined differently both in K.S.A. 65-34,100 et seq. and amendments thereto or these regulations and in any federal regulation adopted by reference in these regulations, the definition prescribed in the Kansas statutes or these regulations shall control.

(c)(1) “Drop ticket” shall mean a bill of lading, invoice, or similar document that reflects fuel delivery by a petroleum transport company to a specific facility and includes the deliverer’s name, the delivery date, and the quantity delivered.

(2) “EPA” shall mean United States environmental protection agency.

(3) “Installation” shall mean the work involved in placing a UST system or any part of a UST system in the ground, including excavation, tank placement, line placement, backfilling, and preparing a UST to be placed into service.

(4) “License” shall mean a document issued by the department to a qualified individual or contractor authorizing the person to engage in the

business of installing, removing, modifying, upgrading, repairing, or testing underground storage tanks. A license specifies the types of services that the individual or contractor is qualified to perform.

(5) “Out-of-service,” when used to describe a UST or UST system, shall mean that the UST or UST system is removed from use as a permitted UST or UST system storing a regulated substance.

(6) “Overfill” shall mean to supply a UST with more fuel than the UST can contain.

(7) “Site assessment” shall mean a determination of the presence or absence of petroleum contamination in areas where a release from a UST or UST system could have occurred or is suspected. This term shall include UST and UST system inspection in addition to the collection and analysis of samples from the areas surrounding and beneath the UST and UST system.

(8) “Storage tank operation” shall mean the use, storage, filling, or dispensing of petroleum contained in a UST or UST system.

(9) “These regulations” shall mean article 44 of the department’s regulations.

(10) “UST remover” shall mean a type of underground storage tank contractor. (Authorized by and implementing K.S.A. 65-34,105; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-15. Application for installation or modification of an underground storage tank.

(a) Each owner shall obtain an installation or modification permit from the department before installing or modifying a UST or UST system. The application requirements and procedures for installation or modification of a UST or UST system shall be those specified in the department’s “Kansas storage tank program document,” dated July 22, 2019, which is hereby adopted by reference.

(b) Each owner shall submit a nonrefundable installation application fee of \$100.00 for each tank. The installation application fee for a new UST shall include the registration fee and the first year’s operating permit fee as required by K.A.R. 28-44-17. (Authorized by K.S.A. 65-34,105; implementing K.S.A. 65-34,105 and 65-34,106; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-16. Underground storage tank systems: design, construction, installation, modification, and notification.

(a) C.F.R. adoptions. The provisions of 40 C.F.R. 280.20, 280.21, and

280.22 and appendix III to part 280, dated July 1, 2015, as amended by 80 fed. reg. 41627-41630 and 41677 (2015) and effective on October 13, 2015, are hereby adopted by reference, with the following changes to the sections specified:

(1) In 280.20(a)(2)(iv), “in writing” shall be added after “or according to guidelines established by the implementing agency.”

(2) In 280.20(a)(5), (b)(4), and (c)(2)(i), “in writing” shall be added after “determined by the implementing agency.”

(3) In 280.20(b)(2)(iv), “in writing” shall be added after “or guidelines established by the implementing agency.”

(4) In 280.20(c)(3), “may not” shall be replaced with “shall not.”

(5)(A) 280.20(e)(1) shall be replaced with the following:

“(e)(1) Each owner or operator of a new UST system shall ensure that an installer licensed by the department certifies that the UST system has been properly installed.”

(B) 280.20(e)(2) shall be replaced with the following:

“(e)(2) Each owner or operator shall provide the completed manufacturer’s installation checklist and installation certification to the department with the UST registration notification form as required by K.A.R. 28-44-17.”

(C) 280.20(e)(3) through (6) shall be deleted.

(6) In 280.22(a), the last sentence shall be replaced with the following sentences: “Owners shall use the form provided by the department in accordance with paragraph (c) of this section. The form is available from the department upon request.”

(7) 280.22(b) shall be replaced with the following:

“(b) Within 30 days of acquisition, any person who assumes ownership of a regulated underground storage tank system, except as described in paragraph (a) of this section, shall submit notice of the ownership change to the department using forms provided by the department upon request.”

(8) 280.22(c) shall be replaced with the following:

“(c) Owners shall use forms provided by the department upon request in lieu of forms set forth in appendix I and appendix II of this part. The information prescribed in appendix I and appendix II shall be collected on forms provided by the department.”

(b) UST system requirements. The UST system requirements shall be those specified in the de-

partment's "Kansas storage tank program document," as adopted in K.A.R. 28-44-15.

(c) Verification. Each owner or operator shall submit verification of each installation or modification not later than 30 days after completion of the installation or modification. The verification shall be submitted to the department on forms provided by the department. (Authorized by and implementing K.S.A. 65-34,105; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-17. Underground storage tank registration and operating permit. (a) Registration of each UST shall include notice of UST existence. Each owner or operator shall submit notice to the department and include the registration documentation specified in the department's "Kansas storage tank program document," as adopted in K.A.R. 28-44-15.

(b) Each owner of a UST shall remit a nonrefundable registration fee of \$20.00 for each tank, which shall be submitted to the department with the registration notification form provided by the department.

(c) Each owner shall be assessed a penalty fee of \$50.00 for each tank if the owner fails to submit the completed registration notification form within seven days of either of the following:

(1) Bringing a UST or UST system into use; or
(2) assuming ownership of a regulated UST or UST system.

(d) Each owner or operator shall submit an annual operating permit fee of \$25.00 for each tank before April 30 of each year. The operating permit requirements shall be those specified in the department's "Kansas storage tank program document," as adopted in K.A.R. 28-44-15.

(e) Each owner who fails to secure all necessary annual operating permits for each facility before April 30 of each year shall be assessed a penalty fee of \$50.00 for each tank. Each owner shall be assessed an additional penalty fee of \$100.00 for each tank if the owner fails to secure all necessary operating permits before August 1 of each year.

(f) An annual operating permit shall not be issued by the department until all permit fees and applicable penalty fees have been paid.

(g) No owner or operator shall operate a regulated UST system unless a valid operating permit issued by the department is displayed at the facility and is visible to the public. (Authorized by and implementing K.S.A. 65-34,105 and 65-34,106; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-18. Registration of nonregulated underground storage tanks. (a) Any owner or operator of a nonregulated tank may register that tank with the department for the purpose of qualifying the owner or operator to participate in the petroleum storage tank release trust funds. Each registration shall be submitted to the department with the following information on a form provided by the department:

(1) Owner's name, address, and telephone number;

(2) facility address or location;

(3) tank operating status;

(4) tank age;

(5) tank capacity;

(6) UST system construction details; and

(7) type of each regulated substance stored.

(b) Voluntary registration of each nonregulated UST shall not bring the owner or operator under the mandatory provisions of the Kansas storage tank act, K.S.A. 65-34,101 et seq. and amendments thereto. (Authorized by and implementing K.S.A. 65-34,105; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-19. General operating requirements. (a) The provisions of 40 C.F.R. 280.30, 280.31, 280.32, 280.33, and 280.34, dated July 1, 2015, as amended by 80 fed. reg. 41630-41632 (2015) and effective on October 13, 2015, are hereby adopted by reference, with the following changes to the sections specified:

(1) In 280.31(b)(1), "or according to another reasonable time frame established by the implementing agency" shall be deleted.

(2) In 280.31(c), the cathodic protection inspection date of "every 60 days" shall be replaced with an inspection date of "every 30 days."

(3) In 280.32(b)(2), "in writing" shall be added after "Use another option determined by the implementing agency."

(4) In 280.33(b), "may" shall be replaced with "shall."

(5) In 280.33(c), the second sentence shall be replaced with the following: "Non-corrodible pipes and fittings shall be replaced or repaired in accordance with the manufacturer's specifications."

(6) In 280.33(d), "in writing" shall be added after "or according to requirements established by the implementing agency."

(7) In 280.33(d)(3), "in writing" shall be added after "determined by the implementing agency."

(8)(A) In 280.34, “Section 9005 of Subtitle I of the Solid Waste Disposal Act, as amended” shall be replaced with “K.S.A. 65-34,108, as amended.”

(B) In 280.34(b), the following changes shall be made:

(i) The word “and” shall be deleted from the end of paragraph (b)(8).

(ii) The period at the end of paragraph (b)(9) shall be replaced with “; and”.

(iii) The following paragraph shall be added after paragraph (b)(9):

“(10) The drop tickets for the preceding 12 months.”

(b) The provisions of 40 C.F.R. 280.35 and 280.36, published at 80 fed. reg. 41632-41633 (2015) and effective on October 13, 2015, are hereby adopted by reference, with the following changes to the sections specified:

(1) In 280.35(a)(1)(ii)(C), “in writing” shall be added after “requirements determined by the implementing agency.”

(2) In 280.36(a)(3), “in writing” shall be added after “developed by the implementing agency.”

(c) The general operating requirements shall be those specified in the department’s “Kansas storage tank program document,” as adopted in K.A.R. 28-44-15. (Authorized by and implementing K.S.A. 65-34,105; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-20. Underground storage tank contractor licensing. (a) Each person installing, removing, or testing a UST or UST system shall be licensed in Kansas.

(b) Each person applying for a new UST contractor license shall submit the following to the department:

(1) A completed application on a form provided by the department; and

(2) a nonrefundable licensing fee of \$200.00 for a license effective for two years from the initial licensing date.

(c) Upon completion of the initial two years of licensure, each applicant for renewal of a UST contractor license shall submit the following to the department:

(1) A completed application on a form provided by the department; and

(2) a nonrefundable annual renewal fee of \$100.00. (Authorized by and implementing K.S.A. 65-34,105; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-21. Underground storage tank installer and remover licensing. (a) Any individual may apply for one or a combination of licenses. The requirements for an installer license and a remover license shall be those specified in the department’s “Kansas storage tank program document,” as adopted in K.A.R. 28-44-15.

(b)(1) For each initial license, each applicant shall submit a nonrefundable license fee of \$100.00. Each initial license shall be effective for two years from the initial licensing date.

(2) For license renewal, each individual shall submit a nonrefundable annual renewal fee of \$50.00 for the 12-month period beginning on the effective date of each renewal license. (Authorized by and implementing K.S.A. 65-34,105; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-22. Underground storage tank tester licensing. (a) No individual shall test a UST system unless that individual is licensed as required by this regulation. The requirements for a tester license shall be those specified in the department’s “Kansas storage tank program document,” as adopted in K.A.R. 28-44-15.

(b) Each individual who applies for any kind of tester license shall submit the following to the department:

(1) For each initial license, a nonrefundable licensing fee of \$100.00 for each license effective for two years from the initial licensing date; and

(2) for each license renewal, a nonrefundable annual renewal fee of \$50.00. The fee shall cover a 12-month period beginning on the effective date of the renewal of each license.

(c) Any license application may be denied or any license issued may be suspended or revoked for any UST or UST system tester license pursuant to these regulations if the applicant or licensee meets any of the following conditions:

(1) Has fraudulently or deceptively obtained or attempted to obtain a license;

(2) has failed at any time to meet the qualifications for a license or comply with any provision or requirement of these regulations; or

(3) has failed to submit to the department a copy of each UST or UST system test performed on a regulated tank in the state of Kansas. (Authorized by and implementing K.S.A. 65-34,105; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-23. Release detection. The provisions of 40 C.F.R. 280.40, 280.41, 280.42, 280.43,

280.44, and 280.45, dated July 1, 2015, as amended by 80 fed. reg. 41633-41636 (2015) and effective on October 13, 2015, are hereby adopted by reference, with the following changes:

(a) In 40 C.F.R. 280.40(a)(3), “in writing” shall be added after “or requirements determined by the implementing agency.”

(b) In 40 C.F.R. 280.41, paragraph (a)(1)(i) shall be deleted.

(c) The following paragraph shall be added after 40 C.F.R. 280.43(a)(6):

“(7) Each standby generator tank of any size and each waste oil UST with a capacity of 2,000 gallons or less shall be exempt from the inventory control requirements of this section.”

(d) In 40 C.F.R. 280.43(b)(5), “may not” shall be replaced with “shall not.”

(e) The following paragraph shall be added after 40 C.F.R. 280.43(e)(7):

“(8) The provisions of 40 C.F.R. 280.43(e) shall apply only to field-constructed tanks and airport hydrant fuel distribution systems. Each owner or operator previously approved for vapor monitoring for other USTs governed by these regulations shall use an approved release detection method beginning not later than October 13, 2021.”

(f) In 40 C.F.R. 280.43, paragraph (f) shall be deleted.

(g) In 40 C.F.R. 280.43, paragraph (i)(2) shall be replaced with the following:

“(i)(2) If another method is proposed, the owner and operator shall demonstrate that the method can detect a release as effectively as any of the methods allowed in paragraphs (c) through (h) of this section. The owner and operator shall provide information to be reviewed by the department concerning the size of release that the method can detect and the frequency and reliability with which it can be detected. The owner and operator shall comply with any approval conditions to ensure the protection of human health and the environment.”

(h) Each occurrence of the following phrases shall be deleted:

(1) “, or for another reasonable period of time determined by the implementing agency”; and

(2) “, or for another reasonable time period determined by the implementing agency.” (Authorized by and implementing K.S.A. 65-34,105; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-24. Release reporting, investigation, and confirmation. The provisions of 40 C.F.R. 280.50, 280.51, 280.52, and 280.53, dated

July 1, 2015, as amended by 80 fed. reg. 41636-41637 (2015) and effective on October 13, 2015, are hereby adopted by reference with the following changes:

(a) Each occurrence of the following phrases shall be deleted:

(1) “, or another reasonable period specified by the implementing agency”;

(2) “, or another reasonable time period specified by the implementing agency”;

(3) “, or another reasonable time period established by the implementing agency”; and

(4) “, or another reasonable amount specified by the implementing agency.”

(b) In 40 C.F.R. 280.51, “in writing” shall be added after “When required by the implementing agency.”

(c) In 40 C.F.R. 280.52, “in writing” shall be added after “or another procedure approved by the implementing agency.” (Authorized by and implementing K.S.A. 65-34,105; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-25. Release response and corrective action for UST systems. The provisions of 40 C.F.R. 280.60, 280.61, 280.62, 280.63, 280.64, 280.65, 280.66, and 280.67, dated July 1, 2015, as amended by 80 fed. reg. 41637-41639 (2015) and effective on October 13, 2015, are hereby adopted by reference with the following changes:

(a) The phrase “in writing” shall be added after each occurrence of the phrase “unless directed to do otherwise by the implementing agency.”

(b) Each occurrence of the following phrases shall be deleted:

(1) “or within another reasonable period of time determined by the implementing agency”;

(2) “, or within another reasonable period of time determined by the implementing agency.”; and

(3) “or another reasonable period of time determined by the implementing agency.”

(c) In 40 C.F.R. 280.63(b), “in writing” shall be added after “or in a format and according to the schedule required by the implementing agency.”

(d) In 40 C.F.R. 280.64, “in writing” shall be added after “to the maximum extent practicable as determined by the implementing agency.”

(e)(1) In 40 C.F.R. 280.65(a)(4), “in writing” shall be added after “The implementing agency requests an investigation.”

(2) In 40 C.F.R. 280.65(b), “in writing” shall be added after “or in accordance with a schedule established by the implementing agency.”

(f)(1) In 40 C.F.R. 280.66(a), “in writing” shall be added after “according to a schedule and format established by the implementing agency” and after “as determined by the implementing agency.”

(2) In 40 C.F.R. 280.66, paragraph (b) shall be replaced with the following paragraph:

“(b) Owners and operators shall not begin implementation of the corrective action plan until the department has determined that implementation of the plan would adequately protect human health, safety, and the environment. The following factors shall be considered in making this determination:”.

(3) In 40 C.F.R. 280.66(c), “in writing” shall be added after “or as directed by the implementing agency” and after “in accordance with a schedule and in a format established by the implementing agency.”

(4) In 40 C.F.R. 280.66(d)(2), “in writing” shall be added after “conditions imposed by the implementing agency.”

(g)(1) In 40 C.F.R. 280.67(a), the first sentence shall be replaced with the following sentence: “For each confirmed release that requires a corrective action plan, public notice provided by the department shall be designed to reach those members directly affected by the release and the planned corrective action.”

(2) In 40 C.F.R. 280.67, paragraph (b) shall be replaced with the following paragraph:

“(b) Site release information and decisions concerning the corrective action plan shall be made available to the public for inspection upon request to the department.”

(3) In 40 C.F.R. 280.67, paragraph (d) shall be replaced with the following paragraph:

“(d) If an approved corrective action plan implemented by the party or parties performing corrective action does not achieve the established cleanup levels in the plan and termination of that plan is under consideration by the department, the public shall receive notice in compliance with paragraph (a) of this section.” (Authorized by and implementing K.S.A. 65-34,105; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-26. Out-of-service UST systems and closure. (a) The provisions of 40 C.F.R. 280.70, 280.71, 280.72, 280.73, and 280.74, dated July 1, 2015, as amended by 80 fed. reg. 41639-41640 (2015) and effective on October 13, 2015, are hereby adopted by reference, with the following changes:

(1) The phrase “in writing” shall be added after each occurrence of “in a manner approved by the implementing agency” and “when directed by the implementing agency.”

(2) In 40 C.F.R. 280.70(c), “in writing” shall be added after “unless the implementing agency provides.”

(3)(A) In 40 C.F.R. 280.71(a), “or within another reasonable time period determined by the implementing agency” shall be deleted.

(B) In 40 C.F.R. 280.71(b), “in writing” shall be added after “or closed in place in a manner approved by the implementing agency.”

(C) The following sentence shall be added at the end of 40 C.F.R. 280.71(b): “Within 15 days of permanent closure, each owner or operator shall ensure that each contractor submits the completed permanent tank abandonment form to the department.”

(4) In 40 C.F.R. 280.72(a), the third sentence shall be deleted.

(5) In 40 C.F.R. 280.73, “based on the totality of the circumstances” shall be added after “in the judgment of the implementing agency.”

(b) The results of each site assessment shall be prepared and signed by an individual qualified to perform a site assessment in accordance with standard industry practices and the applicable requirements of the state board of technical professions. (Authorized by and implementing K.S.A. 65-34,105; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-27. Financial responsibility. The provisions of 40 C.F.R. 280.90, 280.91, 280.93 through 280.99, and 280.102 through 280.115, dated July 1, 2015, as amended by 80 fed. reg. 41640, 41641-41648, and 41649-41662 (2015) and effective on October 13, 2015, are hereby adopted by reference, with the following changes to the sections specified:

(a) In 280.94(b), “Attorney(s) General of the state(s) in which the tanks are located” shall be replaced with “State Attorney General or attorneys within the department reviewing guarantees or surety bonds as Special Assistant Attorney(s) General.”

(b)(1) In 280.95, the first sentence in paragraph (f) shall be replaced with the following sentence: “When directed by the secretary in writing, the owner or operator, and/or guarantor shall submit reports of financial condition.”

(2) In 280.95(g), “written” shall be added before “notification by the Director of the implementing agency.”

(c)(1) In 280.96(b), “in writing” shall be added after “If the Director of the implementing agency notifies the guarantor.”

(2) In 280.96(d), “written” shall be added before “instructions from the Director of the implementing agency.”

(d)(1) In 280.97(b)(1), “in writing” shall be added after each occurrence of “Whenever requested by [a Director of an implementing agency].”

(2) In 280.97, paragraph (c) shall be replaced with the following paragraph:

“(c) Each insurance endorsement or certificate language shall be worded with the language specified in paragraph (b) of this subsection or shall be amended to evidence the coverage of corrective action by the underground petroleum storage tank release trust fund by submitting a statement of eligibility in accordance with K.S.A. 65-34,115, and amendments thereto. Amendments shall reflect the standards specified in K.S.A. 65-34,114, and amendments thereto.”

(e)(1) In 280.98(b), in the fourth paragraph of the “Performance Bond,” “written” shall be added after “the Director of the state implementing agency’s.”

(2) In 280.98(b), in the third and fourth paragraphs under subsection (e) of the “Performance Bond,” “written” shall be added before “notification” and “instructions.”

(3) In 280.98(d), “written” shall be added before “instructions.”

(f)(1) In 280.99(b) in the “Irrevocable Standby Letter of Credit,” “may not” shall be replaced with “shall not.”

(2) In 280.99(c), “written” shall be added before “instructions.”

(g) In 280.102, paragraph (f) shall be replaced with the following paragraph:

“(f) Within 60 days after receiving a request from the owner or operator for release of funds as specified in paragraph (d) or (e) of this section, the trustee shall release funds to the owner or operator as instructed by the secretary in writing.”

(h)(1) In 280.103(b)(1) in the paragraph immediately following the title “Section 3. Establishment of Fund,” “written” shall be added before “instruction.”

(2) In 280.103(b)(1), “Section 4. Payment for [‘Corrective Action’ and/or ‘Third-Party Liability Claims’],” the first indented sentence shall be replaced with the following sentence: “The Trustee shall make payments from the fund as directed by [the Director of the implementing agency].”

(3) In 280.103(b)(1) in the second sentence following the title “Section 4. Payment for [‘Corrective Action’ and/or ‘Third-Party Liability Claims’],” “may not” shall be replaced with “shall not.”

(4) In 280.103, paragraph (c) shall be replaced with the following paragraph:

“(c) When instructed by the secretary in writing, the trustee shall refund the balance of the standby trust fund to the provider of financial assurance if the secretary determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.”

(i)(1) In 280.104(a) in the third sentence, “may not” shall be replaced with “shall not.”

(2) In 280.104(f), the first sentence shall be replaced with the following sentence: “When directed by the secretary in writing, the local government owner or operator, or local government guarantor shall submit reports of financial condition.”

(3) In 280.104(h), “written” shall be added after “within 30 days of.”

(j)(1) In 280.105(e), the first sentence shall be replaced with the following sentence: “When directed by the secretary in writing, the local government owner or operator shall submit reports of financial condition.”

(2) In 280.105(f), “written” shall be added after “within 30 days of.”

(k)(1) In 280.106(c)(1) and (c)(2), “in writing” shall be added after “as directed by the Director of the implementing agency.”

(2) In 280.106(d), each occurrence of “upon instructions” shall be replaced with “upon written instructions.”

(l)(1) In 280.107 in the first paragraph, the text “may not” shall be replaced with “shall not.”

(2) In 280.107(b) in the last sentence, “may not” shall be replaced with “shall not.”

(m)(1) In 280.109(a)(1), “may not” shall be replaced with “shall not.”

(2) In 280.109(a)(2), each occurrence of “may not” shall be replaced with “shall not.”

(n) In 280.110, paragraph (c) shall be replaced with the following paragraph:

“(c) When directed by the secretary, the owner or operator shall submit evidence of financial assurance as described in 40 C.F.R. 280.111(b) or other compliance information relevant to this subpart.”

(o)(1) In 280.112, paragraph (a) shall be replaced with the following paragraph:

“(a) Except as specified in paragraph (d) of this section, the guarantor, surety, or institution issuing a letter of credit shall place the amount of funds stipulated by the secretary in writing, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:”.

(2) In 280.112(b), the first sentence shall be replaced with the following: “A standby trust may be drawn on by the secretary when:”.

(3) In 280.112(c), the second sentence shall be replaced with the following sentence: “Third party liability claims shall be paid in the order in which the secretary receives certifications under paragraph (b)(2)(i) of this section and valid court orders under paragraph (b)(2)(ii) of this section.”

(4) In 280.112(d), “in writing” shall be added after “as directed by the Director.”

(p) In 280.113, “is no longer required” shall be replaced with “shall no longer be required.”

(q) In 280.115(a) in the first sentence, “written” shall be added before “instruction.” (Authorized by and implementing K.S.A. 65-34,105; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-28. (Authorized by and implementing K.S.A. 65-34,105; effective Nov. 22, 1993; revoked July 6, 2020.)

28-44-29. Aboveground storage tank operating permit. (a) Before an operating permit for an aboveground storage tank may be obtained or renewed, each owner shall comply with the following requirements:

(1) Each aboveground storage tank shall be registered with the department pursuant to K.S.A. 65-34,104, and amendments thereto. The registration application shall be submitted on forms provided by the department and shall include the following information:

(A) Owner’s name, address, and telephone number;

(B) facility address or location;

(C) tank status;

(D) tank age;

(E) tank capacity;

(F) storage tank construction details; and

(G) type of regulated substance stored.

(2) Each owner or operator shall pay to the department a nonrefundable annual registration fee of \$10.00 for each aboveground storage tank before December 31 of each year.

(3) A penalty fee of \$50.00 shall be charged for each tank if the owner or operator does not submit the required fees before December 31 of each year.

(b) A regulated substance shall not be placed in an aboveground storage tank unless a valid operating permit is displayed at the facility and is visible to the public. (Authorized by and implementing K.S.A. 65-34,105 and 65-34,106; effective Nov. 22, 1993; amended July 6, 2020.)

28-44-30. Operator training and requirements. (a) The provisions of 40 C.F.R. 280.240, 280.241, 280.242, 280.243, 280.244, and 280.245, published at 80 fed. reg. 41666-41667 (2015) and effective on October 13, 2015, are hereby adopted by reference with the following changes to the sections specified:

(1) In 280.242, the following changes shall be made:

(A) In the second sentence, “or comparable examination” shall be deleted.

(B) In paragraph (a), the following text shall be deleted: “either” and “or pass a comparable examination in accordance with paragraph (e) of this section.”

(C) After paragraph (a)(2), the following text shall be added:

“Each class A operator of a facility or group of facilities shall reside or be stationed within four hours of each managed facility to respond to emergencies as needed.”

(D) In paragraph (b), the following text shall be deleted: “either” and “or pass a comparable examination, in accordance with paragraph (e) of this section.”

(E) In paragraph (c), the first sentence shall be replaced with the following sentence: “Each designated Class C operator shall be trained by a Class A or Class B operator in accordance with paragraphs (c)(1) and (2) of this section and complete a training program in accordance with paragraphs (c)(1) and (2) of this section.”

(F) Paragraph (e) shall be deleted.

(2) In the first sentence of 280.244, “in writing” shall be added after “determined by the implementing agency.”

(b) Each class A operator, each class B operator, and each class C operator shall complete the training and testing required in the department’s “Kansas storage tank program document,” as adopted in K.A.R. 28-44-15. (Authorized by and implementing K.S.A. 65-34,105; effective July 6, 2020.)

28-44-31. UST systems with field-constructed tanks and airport hydrant fuel distribution systems. The provisions of 40 C.F.R. 280.251 and 280.252, published at 80 fed. reg. 41667-41669 (2015) and effective on October 13, 2015, are hereby adopted by reference, with the following changes to the sections specified:

(a) In 280.251, paragraph (b) shall be replaced with the following paragraphs:

“(b)(1) Each owner of an existing, out-of-service UST system with field-constructed tanks (FCTs) and airport hydrant fuel distribution systems (AHFDSs) shall submit to the department a one-time registration of UST system existence on a form provided by the department. This form shall be submitted to the department not later than 60 days after the effective date of these regulations, or upon discovery.

“(2) Each owner or operator of an active, in use UST system with FCTs and AHFDSs shall comply with the registration notification and operating permit requirements specified in K.A.R. 28-44-17. Each owner or operator of these UST systems shall demonstrate financial responsibility as required by K.A.R. 28-44-27 at the time of submission of the registration notification form.”

(b)(1) In 280.252(b)(1)(ii)(B), “in writing” shall be added after “another method determined by the implementing agency.”

(2) In 280.252(d)(1) and (d)(2), “in writing” shall be added after “approved by the implementing agency.”

(3) In 280.252(d)(1)(vi), the last sentence shall be replaced with the following sentence: “The owner and operator shall submit data showing the size of release that the method can detect, and the frequency and reliability of detection for the department’s consideration.”

(4) In 280.252(d)(2)(i)(B), the table titled “Phase In For Piping Segments \geq 100,000 Gallons In Volume” shall be replaced with the list titled “Phase-in testing for piping segments greater than or equal to 100,000 gallons in volume” on page 8 of the department’s “Kansas storage tank program document,” as adopted in K.A.R. 28-44-15.

(5) In 280.252(d)(2)(iv), the last sentence shall be replaced with the following sentence: “The owner and operator shall provide information to be reviewed by the department concerning the size of release that the method can detect and the frequency and reliability with which it can be detected.”

(6) In 280.252(e), the following changes shall be made:

(A) The phrase “in writing” shall be added after “When directed by the implementing agency.”

(B) The phrase “based on the totality of the circumstances” shall be added after “in the judgment of the implementing agency.” (Authorized by and implementing K.S.A. 65-34,105; effective July 6, 2020.)

Article 45.—UNDERGROUND HYDROCARBON STORAGE WELLS AND ASSOCIATED BRINE PONDS

28-45-1. (Authorized by and implementing K.S.A. 65-171d; effective May 1, 1981; revoked May 1, 1984.)

28-45-2. (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1981; amended May 1, 1984; revoked, T-28-4-1-03, April 1, 2003; revoked Aug. 8, 2003.)

28-45-2a. Definitions. (a) “Active well” means an unplugged well that is in service or in monitoring status.

(b) “Applicant” means the operator and the owner requesting a permit as specified in this article of regulations. If the operator and the owner are not the same person, the owner and the operator shall jointly submit an application for a permit.

(c) “Brine” means saline water with a sodium chloride concentration equal to or greater than 90 percent.

(d) “Brine pond” means the excavated or diked structure used for the surface containment of brine used in the creation, maintenance, and operation of an underground hydrocarbon storage well.

(e) “Cavern” and “storage cavern” mean the storage space created in a salt formation by solution mining.

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

(g) “Director” means the director of the division of environment of the Kansas department of health and environment.

(h) “Draft permit” means a document that is pending approval by the secretary to be issued as a final permit.

(i) “Existing storage well” means a well authorized or permitted by the secretary before April 1, 2003.

(j) “Existing brine pond” means a brine pond authorized or permitted by the secretary before April 1, 2003.

(k) “Fracture gradient” means the pressure gradient, measured in pounds per square inch per foot, that will cause the geological formations to physically fracture.

(l) “Freshwater” means water containing not more than 1,000 milligrams per liter of total dissolved solids.

(m) “Hydrocarbon storage well,” “underground hydrocarbon storage well,” and “storage well” mean a well used for the injection or withdrawal of hydrocarbon or liquified petroleum gas into or out of an underground hydrocarbon storage cavern.

(n) “Licensed geologist” means a geologist licensed to practice geology in Kansas by the Kansas board of technical professions.

(o) “Licensed professional engineer” means a professional engineer licensed to practice engineering in Kansas by the Kansas board of technical professions.

(p) “Licensed professional land surveyor” means a professional land surveyor licensed to practice land surveying in Kansas by the Kansas board of technical professions.

(q) “Liner” means the casing normally installed within the production casing.

(r) “Liquified petroleum gas” and “LPG” mean by-products or derivatives of oil and gas, including propane, butane, isobutane, and ethane, maintained in a liquid state under pressure.

(s) “Maximum allowable operating pressure” means the maximum pressure authorized by the department and measured at the product side of the wellhead.

(t) “Maximum allowable synthetic membrane liner leakage rate” means a monitored or a calculated leakage rate of 10 percent of the collection and leak return system capacity.

(u) “Maximum operating pressure” means the maximum pressure monitored during a 24-hour period and measured at the product side of the wellhead.

(v) “Monitoring status” means temporary status for a well that has been placed out of service by removing the product and filling the cavern with brine.

(w) “Municipal population center” means an incorporated city.

(x) “Natural gas” means the gaseous form of hydrocarbon consisting primarily of methane.

(y) “Operator” means the person recognized by the secretary as being responsible for the physical operation of an underground hydrocarbon storage facility or a brine pond.

(z) “Owner” means the person owning all or part of any underground hydrocarbon storage facility or brine pond.

(aa) “Permit” means an authorization, license, or equivalent control document issued to the owner and the operator by the secretary.

(bb) “Permit holder,” “holder of a permit,” and “permittee” mean the owner and the operator issued a permit, as defined in this regulation, by the secretary.

(cc) “Person” means any individual, company, corporation, institution, association, partnership, municipality, township, and local, state, or federal agency.

(dd) “Porosity storage” and “underground porosity storage” mean the storage of hydrocarbon gas in underground porous and permeable strata that have been converted to hydrocarbon gas storage.

(ee) “Pressure gradient” means the ratio of pressure per unit depth expressed as pounds per square inch per foot of depth.

(ff) “Product” means any hydrocarbon, including products and by-products from crude oil, derivatives of oil and gas, and liquefied petroleum gas.

(gg) “Saturated brine” means saline water with a sodium chloride concentration that is equal to or greater than 90 percent.

(hh) “Secretary” means the secretary of the department of health and environment.

(ii) “Solutioning” means the process of injecting fluid into a well to dissolve salt or any other readily soluble rock or mineral.

(jj) “Supervisory control and data acquisition” means an automated surveillance system in which the monitoring and control of storage activities are accomplished at a central or remote location.

(kk) “Underground hydrocarbon storage cavern” means the storage of any hydrocarbon, including liquid petroleum gas and excluding natural gas, in caverns formed by solutioning in bedded salt.

(ll) “Underground hydrocarbon storage facility” and “facility” mean the acreage associated with the storage field with facility boundaries approved by the secretary. This term shall include the brine ponds, wells, wellbore tubular goods, the wellhead, and any related equipment, including any appurtenances associated with the well field.

(mm) “Unsaturated brine” means saline water with a sodium chloride concentration less than 90 percent.

(nn) "Usable water formation" means an aquifer or any portion of the aquifer that meets any of the following criteria:

- (1) Supplies any public water system;
- (2) contains a supply of groundwater that is sufficient to supply a public water system and that currently supplies drinking water for human consumption; or
- (3) contains fewer than 10,000 mg/L total dissolved solids and is not an exempted aquifer.

(oo) "Variance" means the secretary's written approval authorizing an alternative action to the requirements of these regulations or the standards adopted by these regulations and incorporated into the temporary or final permit. (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d and K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45-3. (Authorized by and implementing K.S.A. 65-171d; effective, May 1, 1981; revoked, T-28-4-1-03, April 1, 2003; revoked Aug. 8, 2003.)

28-45-3a. Permit required. (a) No person shall create, operate, or maintain an underground storage well for liquified petroleum gas or hydrocarbon in bedded salt without obtaining a permit from the secretary. The requirements for permit issuance shall be as follows:

(1) Each operator and owner of an existing underground hydrocarbon storage facility shall initially obtain a temporary facility permit as specified in K.A.R. 28-45-5a.

(2) Each operator and owner of an existing underground storage well shall obtain a final permit as specified in K.A.R. 28-45-6a.

(3) The existing permit or authorization for the underground hydrocarbon storage facility shall remain in effect until a temporary facility permit is issued.

(4) The storage of liquified hydrocarbons in caverns constructed in any rock formations other than bedded salt shall be prohibited.

(b) A variance may be granted by the secretary if both of the following conditions are met:

(1) The variance is protective of public health, safety, and the environment.

(2) The applicant or permittee agrees to perform any additional testing, monitoring, or well improvements, or any combination, if required by the secretary.

(c) Each applicant or permittee seeking a variance shall submit a written request, including

justification for the variance and any supporting data, to the secretary for review and consideration for approval. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45-4. (Authorized by and implementing K.S.A. 65-171d; effective May 1, 1981; revoked, T-28-4-1-03, April 1, 2003; revoked Aug. 8, 2003.)

28-45-4a. Well conversions and reentry.

(a) The conversion of an existing well to underground hydrocarbon storage shall be prohibited if the well was not originally designed for hydrocarbon storage, unless the secretary determines that the conversion is protective of public health, safety, and the environment.

(b) The conversion of an underground hydrocarbon storage well for other purposes shall be prohibited, unless the secretary determines that the conversion is protective of public health, safety, and the environment.

(c) The reentry of a plugged liquified petroleum gas or hydrocarbon storage well for the purpose of reactivating activities associated with the underground storage of natural gas, liquified petroleum gas, or liquid hydrocarbons shall be prohibited.

(d) A permittee may convert an unplugged underground hydrocarbon storage well to monitoring status if the following requirements are met:

(1) Each permittee shall verify the integrity of the storage well and cavern by conducting a mechanical integrity test before converting the well to monitoring status.

(2) Each permittee shall run a gamma-density log to verify the roof thickness prior to converting the well to monitoring status.

(3) Each permittee shall meet the requirements specified in the department's document titled "procedure for converting a hydrocarbon storage well to monitoring status, procedure #:UICLPG-4," dated June 2003, which is hereby adopted by reference.

(4) Each permittee of an underground storage cavern that is in monitoring status shall conduct a casing inspection evaluation before placing the cavern into service if a casing evaluation has not been conducted in the last five years. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45-5. (Authorized by and implementing K.S.A. 65-171d; effective May 1, 1981; revoked, T-28-4-1-03, April 1, 2003; revoked Aug. 8, 2003.)

28-45-5a. Temporary facility permit. (a)

Each operator and owner of an existing underground hydrocarbon storage facility shall be required to have a temporary facility permit issued by the secretary.

(b) The temporary facility permit shall supersede any authorization or permit previously issued by the secretary.

(c) Each temporary facility permit application shall include the following information:

(1) The name and location of the facility;

(2) a site map of the facility showing the following:

(A) The facility boundaries and the location and well number of each well, including storage, observation, disposal, and any abandoned wells; and

(B) the location of buildings, roads, railways, right-of-ways, utilities, and any other appurtenances;

(3) the following information for each cavern:

(A) The depth of the top of the salt formation;

(B) the depth of the top of the underground storage cavern;

(C) the total depth of the underground storage cavern;

(D) a schematic of the well construction;

(E) the storage capacity;

(F) the type of product stored;

(G) the operating pressures; and

(H) a list of dates on which the required tests, logs, or monitoring reports for each underground hydrocarbon storage well were completed; and

(4) a list of requests for variances from the requirements of this article of regulations.

(d) Each applicant shall submit a compliance schedule with the temporary facility permit application, subject to the approval of the secretary, for conducting sonar surveys, integrity tests, and casing evaluations and for the installation of equipment. The compliance schedule shall be incorporated into the permit and may be modified as specified in K.A.R. 28-45-8a. The following requirements shall apply:

(1) The modification or installation of equipment associated with the wellhead, storage well, storage well system, or storage cavern shall be completed within five years after April 1, 2003 for existing underground hydrocarbon storage wells.

(2) A sonar survey shall be conducted for each underground hydrocarbon storage cavern. The following requirements shall apply:

(A) A sonar survey shall be conducted within five years after April 1, 2003 for any underground

hydrocarbon storage cavern that does not have a sonar survey or that had a sonar survey conducted before January 1, 1998.

(B) A sonar survey shall be conducted within 10 years after April 1, 2003 for any underground hydrocarbon storage cavern that had a sonar survey conducted on or after January 1, 1998.

(3) A mechanical integrity test and a casing inspection evaluation for each underground hydrocarbon storage well shall initially be conducted within seven years after April 1, 2003.

(e) Each temporary permittee for an underground hydrocarbon storage facility either shall be required to have a final permit for each underground hydrocarbon storage well within five years after April 1, 2003 or shall cease well operations and shall comply with abandonment and plugging requirements as specified in K.A.R. 28-45-20. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45-6. (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1981; amended May 1, 1984; revoked, T-28-4-1-03, April 1, 2003; revoked Aug. 8, 2003.)

28-45-6a. Final permit. (a) Each applicant shall submit a completed application for a final permit for each existing underground hydrocarbon storage well to the secretary, on a form furnished by the department, within three years after April 1, 2003.

(b) Each applicant who wishes to construct an underground hydrocarbon storage well shall submit a completed application to the secretary, on a form furnished by the department, at least 180 days before the proposed commencement date for the construction of the new underground hydrocarbon storage well. Well construction shall not begin until the secretary has issued the final permit.

(c) Upon review of each application, one of the following shall be issued by the secretary:

(1) A final permit, if the application is approved; or

(2) a notice that the final permit has been denied if the applicant has not complied with the requirements of this article of regulations. The notice shall include justification for the permit denial.

(d) Each temporary permit shall terminate on the effective date of the final permit.

(e) Each application for a final permit shall include a report prepared by a licensed geologist and shall include the following:

(1) An evaluation of the geology and hydrogeology, including cross-sections, isopach and structure maps of the salt formation, and water-level or potentiometric maps;

(2) a regional stratigraphic evaluation;

(3) local and regional structural analyses, including maps, cross-sections, and available geophysical data;

(4) a flood assessment identifying floodplain and flood-prone areas, including the following:

(A) Flood response procedures; and

(B) design criteria for the well and facility equipment; and

(5) an assessment of the potential for ground subsidence.

(f) Each applicant shall submit the following information with the application:

(1) A plan view map showing locations of all water, solution-mining, monitoring, disposal, injection, oil, and gas wells within a one-mile perimeter of the facility's boundary; and

(2) a plan view map of man-made surface structures and activities within a one-mile perimeter of the facility's boundary.

(g) Each permittee of an underground storage well shall submit a compliance audit every 10 years, on a form furnished by the department, for review and consideration for approval for the continued operation of the underground hydrocarbon storage well.

(h) Each permittee shall submit a sample log of well cuttings from any new well drilled at the facility, including new underground hydrocarbon storage wells, monitoring wells, and stratigraphic test holes.

(1) Cuttings shall be collected at 10-foot intervals from surface to total well depth or at an interval approved by the department.

(2) Well cuttings shall be collected, described and logged as specified in the department's document titled "procedure for sample logging, procedure #: UICLPG-9," dated July 2002, which is hereby adopted by reference.

(3) The collection of cuttings shall be supervised by a licensed geologist or a licensed geologist's designee.

(4) The description and logging of the sample cuttings shall be performed by a licensed geologist.

(5) Each permittee shall submit a sample log and a dry sample set to the department within 45 days after the completion of the well.

(i) Each permittee shall provide a minimum of one core from each facility. The following provisions shall apply:

(1) Each permittee shall submit a plan describing the coring interval, coring procedures, and core testing to the secretary for review and consideration for approval, at least 60 days before the coring event.

(2) Each permittee shall make the core available for inspection upon request by the secretary.

(3) Any permittee may submit existing core data if the secretary determines that the core is representative of the geology of the area.

(j) Each permittee shall submit a water analysis for any water-bearing formation encountered in drilling a new monitoring well. The water shall be analyzed for the following parameters:

(1) Chloride;

(2) total dissolved solids; and

(3) any parameter that the secretary determines could pose a potential threat to public health, safety, and the environment.

(k) Each permittee shall ensure that the stored hydrocarbons, formation water, lithology, and substances used in the solutioning of the storage caverns are compatible.

(l) Each permittee shall submit open-hole logs for any new underground hydrocarbon storage well. The logging interval shall be from the surface to 100 feet below the top of the salt section. At a minimum, the following logs shall be run:

(1) A gamma ray log;

(2) a neutron log if the source is registered in Kansas, or a sonic log;

(3) a density log; and

(4) a caliper log.

(m) Any permittee may use an alternative log if the secretary determines that the alternative log is substantially equivalent to one of the logs specified in subsection (l). The permittee shall submit the following information:

(1) A description of the log and the theory of operation for that log;

(2) a description of the field conditions under which the log can be used;

(3) the procedure for interpreting the log; and

(4) an interpretation of the log upon completion of the logging event.

(n) Each permittee of a new underground hydrocarbon storage cavern shall maintain a minimum salt roof thickness of 100 feet above the washed storage cavern.

(o) Each permittee of an existing underground

hydrocarbon storage cavern with a salt roof thickness greater than 50 feet but less than 100 feet shall meet the following provisions:

(1) Each permittee shall use only saturated brine to displace product.

(2) The permittee shall submit a schedule for monitoring brine salinity.

(3) The salt roof thickness shall be monitored with gamma ray and density logs, or any other log specified in subsection (m), every three years.

(4) Additional information, including a geomechanical study from core analysis, may be requested by the secretary to verify the integrity of the salt roof.

(p) Underground hydrocarbon storage caverns with a salt roof thickness of 50 feet or less shall be prohibited.

(q) Underground communication between underground hydrocarbon storage caverns in the upper 50 feet of the salt formation shall be prohibited.

(r) Underground communication between underground hydrocarbon storage caverns below the upper 50 feet of the salt formation shall be prohibited, unless the secretary determines that the communication is protective of public health, safety, and the environment. The permittee shall submit the following:

(1) A sonar survey for each cavern that is in communication with another cavern; and

(2) a plan describing the monitoring and testing that the permittee will conduct to ensure that the integrity of the underground hydrocarbon storage wells and caverns will be maintained.

(s) The horizontal distance separating new underground hydrocarbon storage caverns shall be at least 100 feet between cavern boundaries.

(t) Any existing underground hydrocarbon storage cavern with horizontal separation less than 100 feet may operate if the following requirements are met:

(1) Each permittee shall submit a justification for each existing underground hydrocarbon storage cavern with horizontal separation less than 100 feet. The following requirements shall apply:

(A) The justification shall include spacing-to-diameter ratios, cavern pressure differentials, and analyses of cavern shape, size, and depth.

(B) The horizontal spacing shall be reevaluated every five years.

(2) Horizontal spacing of less than 50 feet between caverns shall be prohibited.

(u) The maximum horizontal diameter of each cavern shall not exceed 300 feet.

(v) Each permittee shall ensure the integrity of the underground hydrocarbon storage wellhead, casing, and storage cavern before commissioning any new storage cavern into service. Storage operations may commence when the following requirements are met:

(1) Each permittee shall submit a notice of completion of construction on a form furnished by the department.

(2) Each new storage well shall be inspected by the secretary before storage operations commence. If the well fails the inspection, the permittee shall not commence storage operations. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45-7. (Authorized by and implementing K.S.A. 65-171d; effective May 1, 1981; revoked, T-28-4-1-03, April 1, 2003; revoked Aug. 8, 2003.)

28-45-7a. Public notice. (a) Public notice shall be given by the secretary for any of the following permit actions:

(1) Any final permit application for an underground hydrocarbon storage well;

(2) any modifications that require a draft permit as specified in K.A.R. 28-45-8a;

(3) any modifications for an existing facility as specified in K.A.R. 28-45-8a;

(4) the denial of a permit; or

(5) a scheduled hearing.

(b) Public notice and, if applicable, a copy of the draft permit shall be mailed or electronically mailed by the department to the permit applicant.

(c) The public notice shall be mailed by the department to the following:

(1) Any person who submits a written request for placement on the mailing list;

(2) the official county newspaper of each county in which the lands affected by the application are located, for publication in at least two issues; and

(3) the Kansas register.

(d) The public notice shall include the following information:

(1) The name and address of the department processing the permit action for which the notice is being given;

(2) the name and address of the person or company seeking the permit;

(3) a brief description of the business conducted at the facility or the activity described in the permit application;

(4) the name, address, and telephone number of the departmental contact whom interested persons may contact for further information, including copies of the application, draft permit, or any other appropriate information;

(5) a brief description of the comment procedures for public notice; and

(6) a statement of the procedure to request a hearing and other procedures that allow public participation in the final permit decision.

(e) Any interested person may submit written comments to the secretary on any permit action during the 30-day public comment period. The following requirements shall apply:

(1) All comments shall be submitted by the close of the public comment period.

(2) All supporting materials submitted shall be included in full and shall not be incorporated by reference, unless the supporting materials are any of the following:

(A) Part of the administrative record in the same proceeding;

(B) state or federal statutes and regulations;

(C) state or environmental protection agency documents of general applicability; or

(D) other generally available reference materials.

(3) Commentators shall make supporting materials not already included in the administrative record available to the secretary.

(f) The response to all significant comments concerning any permit actions and the reasons for changing any provisions in the draft permit shall be issued when the final permit decision is issued.

(g) The response to comments shall be made available to the public upon request. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45-8. (Authorized by and implementing K.S.A. 65-171d; effective May 1, 1981; revoked, T-28-4-1-03, April 1, 2003; revoked Aug. 8, 2003.)

28-45-8a. Modification and transfer of a temporary or a final permit. (a) The automatic transfer of a temporary or final permit shall be prohibited. The requirements for each permit transfer shall be as follows:

(1) Each person requesting a permit transfer shall submit a completed application to the secretary at least 60 days before the effective date of the proposed transfer.

(2) Each owner and each operator shall comply with the conditions of the existing permit until the secretary reissues the permit.

(b) Any temporary or final permit for an underground hydrocarbon storage well may be modified by the secretary under any of the following conditions:

(1) The secretary receives information that was not available when the permit was issued.

(2) The secretary receives a request for the modification of a permit.

(3) The secretary conducts a review of the permit file and determines that a modification is necessary.

(c) Only the permit actions subject to modification shall be reopened.

(d) Minor modifications that shall not require public notification include the following, except as otherwise specified:

(1) Correction of typographical errors;

(2) requirements for more frequent monitoring or reporting by the permittee;

(3) a date change in a schedule of compliance;

(4) a change in ownership or operational control of the facility, unless the secretary determines that public notification is necessary to protect the public interest;

(5) a change in construction requirements, if the secretary determines that the change is protective of public health, safety, and the environment; and

(6) any amendments to a facility plugging plan.

(e) A draft permit and notification to the public shall be required if any of the following conditions is met:

(1) A permittee proposes substantial alterations or additions to the facility or proposes an activity that justifies a change in the permit requirements, including cumulative effects on public health, safety, or the environment.

(2) Information has become available that would have initially justified different permit requirements.

(3) Standards of regulations on which the permit was based have changed due to the promulgation of new or amended standards or due to a judicial decision after the permit was issued.

(f) Any permittee may request a permit modification within 180 days after any of the following:

(1) The adoption of new regulations or standards;

(2) any deadline to achieve compliance with regulations or standards before the expiration date of the permit; or

(3) any judicial remand and stay of a promulgated regulation if the permit requirement was based on the remanded regulation. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45-9. (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1981; amended May 1, 1984; revoked, T-28-4-1-03, April 1, 2003; revoked Aug. 8, 2003.)

28-45-9a. Signatories for permit applications and reports. (a) Each permittee of an existing storage well and each applicant for a permit for a proposed storage well shall designate signatories to sign the permit applications and all reports required by the secretary.

(b) Positions that may be approved by the secretary to be signatories shall be the following:

- (1) Plant or operations manager;
- (2) cavern specialist;
- (3) superintendent; and

(4) a position with responsibility at least equivalent to that required by the positions listed in this subsection.

(c) Any signatory may submit written notification to the secretary specifying a position having responsibility for the overall operation of the regulated facility or activity to act as a designated signatory.

(d) Each signatory and each signatory's designee shall submit a signature statement, on a form furnished by the department, to the secretary with the temporary and the final permit applications. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45-10. (Authorized by and implementing K.S.A. 65-171d; effective May 1, 1981; revoked, T-28-4-1-03, April 1, 2003; revoked Aug. 8, 2003.)

28-45-10a. Siting requirements for new underground hydrocarbon storage wells and facilities. (a) Each applicant shall assess the geographical, topographical, and physical data for any proposed underground hydrocarbon storage well location to determine whether siting requirements have been met. The following siting requirements shall be met:

(1) Each new underground storage facility shall be located at least three miles from the established boundaries of municipal population centers.

(2) Each proposed new facility or boundary ex-

pansion for an existing facility shall be located as follows:

(A) Not less than five miles from an active or abandoned conventional shaft mining operation; and

(B) not less than two miles from the facility's boundary of any solution mining operation.

(3) Each applicant shall assess the extent and nature of current or past conventional subsurface mining activities within five miles of the underground hydrocarbon storage facility's boundary to determine any potential impact to public health, safety, or the environment resulting from the proposed activities at the facility.

(4) Each applicant shall identify and assess all wells, including abandoned wells, from available sources of information, within a one-mile perimeter of the facility's boundary to determine if the following conditions exist:

(A) The wells have been constructed in a manner to protect public health, property, and the environment.

(B) The abandoned wells, including water, oil, gas, monitoring, and underground storage wells, have been properly plugged.

(b) Each applicant shall conduct a regional geological and evaluation to determine if the integrity of the proposed storage cavern will be adversely affected by either of the following:

(1) Salt thinning due to any stratigraphic change; or

(2) a dissolution zone in the bedded salt.

(c) Each applicant shall determine if the facility's location is in a floodplain or flood-prone area.

(d) No new underground hydrocarbon storage facility's boundary or the expansion of an existing facility's boundary shall be located less than one mile from any existing underground porosity storage facility.

(e) Each applicant shall identify potential risks to the storage operation from activities conducted at adjacent facilities.

(f) Each applicant shall identify all utilities having a right-of-way, including pipeline, railway, roadway, and electrical lines, and shall assess the potential impact of the utilities on the location or operation of the facility. If a facility is exposed and subject to hazards, including vehicular traffic, railroads, electrical power lines, and aircraft or shipping traffic, the facility shall be protected from accidental damage, by distance or barricades.

(g) No outer boundary of an underground hydrocarbon storage cavern shall be less than 100 feet from any of the following:

(1) The property boundary of any owners who have not consented to subsurface storage under their property;

(2) any existing surface structure not owned by the facility's owner; or

(3) any public transportation artery. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45-11. (Authorized by and implementing K.S.A. 1984 Supp. 65-171d; effective, T-85-7, Feb. 15, 1984; effective May 1, 1984; amended May 1, 1985; revoked, T-28-4-1-03, April 1, 2003; revoked Aug. 8, 2003.)

28-45-11a. Financial assurance for underground hydrocarbon storage facility closure. (a) Each permittee of an underground hydrocarbon storage facility shall establish financial assurance for the following:

(1) Closure of the facility; and

(2) the plugging of any hydrocarbon storage well.

(b)(1) Each permittee of an existing underground hydrocarbon storage well shall submit proof of financial assurance to the secretary before April 1, 2004 and, thereafter, annually on or before January 31 of each year. Each applicant for a permit for a new underground hydrocarbon storage well shall submit proof of financial assurance with the final permit application and, thereafter, annually on or before January 31 of each year.

(2) Each permittee and each applicant shall meet the following requirements:

(A) Submit a detailed written estimate, in current dollars, of the cost to close all underground storage wells and storage caverns at the facility following the closure procedures specified in K.A.R. 28-45-20. The estimate shall be reviewed and approved by a licensed professional engineer or licensed geologist;

(B) prepare an estimate of the closure cost for all storage wells and storage caverns at the facility based on the cost charged by a third party to plug the underground storage wells; and

(C) increase the closure cost estimate and the amount of financial assurance provided if any change in the facility operation or closure plan increases the maximum cost of closure at any time.

(c) Each permittee shall provide continuous financial assurance coverage for closure until the secretary approves the facility closure.

(d) Each permittee shall comply with the provisions of the department's document titled "procedure for demonstrating financial assurance for an underground hydrocarbon storage well, procedure #: UICLPG-6," dated March 2003, which is hereby adopted by reference. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45-12. Operations and maintenance plan. (a) Each permittee of an underground hydrocarbon storage facility shall submit a plan for the long-term operation and maintenance of the facility with the final permit application.

(b) Each operation and maintenance plan shall include the following information:

(1) A description of the methods to be used to prevent the overpressuring of wells and storage caverns;

(2) a plan view map of the location of any disposal wells and corrosion control wells; and

(3) the location, depth, and well construction for all shallow and deep groundwater monitoring and observation wells.

(c) Each permittee shall maintain at the facility and make available for inspection by the secretary the following information:

(1) A location map of all wells within the facility's boundaries and a listing of the global positioning system coordinates for each well;

(2) a schematic of the brine and product lines for each cavern; and

(3) a schematic of the gathering line system that connects all wells within the underground hydrocarbon storage facility to a central distribution point.

(d) Each permittee shall submit a plan for solutioning or washing any cavern to the secretary for review and consideration for approval. The plan shall include the following:

(1) A list of acceptable blanket pad materials;

(2) methods for monitoring the solutioning or washing process; and

(3) a monitoring schedule.

(e) Only saturated brine shall be used to displace any product.

(f) The maximum allowable operating pressure and test pressure shall not exceed 0.8 pounds per square inch per foot of depth measured at the higher elevation of either the casing seat or the highest interior elevation of the storage cavern roof. The following requirements shall apply:

(1) A maximum allowable operating pressure exceeding 0.75 pounds per square inch per foot of depth shall be prohibited unless the following conditions are met:

(A) Each permittee submits a justification to the department for exceeding a maximum allowable operating pressure of 0.75 pounds per square inch per foot of depth.

(B) The well is equipped with a continuous pressure-monitoring system, and a pressure history can be maintained.

(2) The underground hydrocarbon storage cavern shall not be subjected to pressures in excess of the maximum allowable operating pressure, including pressure pulsations and abnormal operating conditions.

(g) Each permittee shall maintain a minimum operating pressure that is protective of cavern integrity at each underground hydrocarbon storage well.

(h) Each permittee shall meet the notification requirements in the facility's emergency response plan, give oral notification to the department within two hours, and submit written notification within one week to the department if any of the following events occurs:

(1) The overpressuring or the overfilling of an underground hydrocarbon storage cavern;

(2) the loss of integrity for an underground hydrocarbon storage well or cavern;

(3) the release of brine, product, or any other chemical parameter that poses a threat to public health, safety, or the environment;

(4) any uncontrolled or unanticipated loss of product or brine that is detectable by any monitoring or testing;

(5) any other condition that could endanger public health, safety, or the environment;

(6) the establishment of communication between underground hydrocarbon storage caverns;

(7) the triggering of any alarms verifying that the permit safety requirements have been exceeded; or

(8) any equipment malfunction or failure that could result in potential harm to public health, safety, or the environment.

(i) Each permittee shall notify the secretary of any change in the type of product stored in any underground hydrocarbon storage cavern and shall certify that the compatibility of product types and the effect of pressure changes will not adversely affect the wellhead, casing, tubing, and cavern. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45-13. Emergency response plan and safety and security measures. (a) Each permittee of an existing underground hydrocarbon storage facility and each applicant who wishes to operate a facility shall prepare an emergency response plan. The following requirements shall apply:

(1) Each permittee of an existing underground storage facility shall maintain the emergency response plan at the facility before April 1, 2004 and shall make the plan available for inspection by the secretary.

(2) Each applicant for a final permit for a new underground hydrocarbon storage facility shall make the emergency response plan available for inspection by the secretary when the final permit application is submitted to the department.

(b) Each permittee shall update the plan annually and also shall update the plan whenever new information regarding the requirements for the emergency response plan becomes available.

(c) Each plan shall include a description of the facility's response to the following events:

(1) Spills and releases;

(2) fires and explosions;

(3) cavern subsidence and collapse; and

(4) any other activity that endangers public health and safety, or that constitutes a threat to the environment.

(d) Each plan shall include the following information:

(1) A description of the warning systems in operation at the facility;

(2) a description of the facility's emergency response communication system that includes the following:

(A) A plat showing the location of all occupied buildings within a two-mile perimeter of the facility's boundaries; and

(B) a list of addresses and telephone numbers for all persons to contact within a two-mile perimeter of the facility's boundaries if a release or emergency condition occurs;

(3) the procedures for coordination of emergency response with local emergency planning committees, including emergency notification and evacuation of citizens and employees;

(4) a description of employee training for emergency response;

(5) a plat of the facility, showing the following locations:

(A) All hydrocarbon storage wells;

(B) all underground injection control wells;

(C) all monitoring wells;

(D) all brine and product lines;
 (E) railroad and transportation routes;
 (F) brine ponds; and
 (G) any other appurtenances at the facility; and
 (6) a plan map of man-made surface structures and any construction activities within a one-mile perimeter of the facility's boundaries.

(e) A copy of the plan shall be available at the facility, the company headquarters, and any coordinating agencies or committees involved in the emergency response plan.

(f) Each permittee shall establish an educational program for community safety and awareness of the emergency response plan.

(g) Each permittee of an underground hydrocarbon storage facility shall provide security measures to protect the public and to prevent unauthorized access. These security measures shall include the following:

(1) Methods for securing the facility from unauthorized entry and for providing a convenient opportunity for escape to a place of safety;

(2) clearly visible, permanent signs at all points of entry and along the facility's boundary, identifying the well or storage facility name, owner, and contact telephone number;

(3) security lighting;

(4) alarm systems;

(5) appropriate warning signs in areas that could contain accumulations of hazardous or noxious vapors or where physical hazards exist; and

(6) a direct communication link with the local control room or any remote control center for service and maintenance crews.

(h) Warning systems and alarms shall consist of the following:

(1) Combustible gas detectors, heat sensors, pressure sensors, and emergency shutdown instrumentation integrated with warning systems audible and visible in the local control room and at any remote control center;

(2) circuitry designed so that the failure of a detector or heat sensor, excluding meltdown and fused devices, will activate the warning; and

(3) a manually operated alarm, audible to facility personnel.

(i) Each wellhead and storage cavern shall be protected with safety devices to prevent pressures in excess of the maximum allowable operating pressure from being exerted on the underground hydrocarbon storage well or cavern and to prevent the backflow of any stored hydrocarbon if a flow-line ruptures.

(j) Each wellhead shall be equipped with manual isolation valves. Each port on a wellhead shall be equipped with either a valve or a blind flange. The valve or blind flange shall be rated at the same pressure as that for the wellhead.

(k) Each permittee shall install a supervisory control and data acquisition system approved by the secretary to monitor storage operations for individual storage wells. Each of the following instruments shall be connected to an alarm:

(1) Flow indicators for hydrocarbon;

(2) combustible gas detection indicators; and

(3) pressure indicators on both the product and brine lines of the wellhead.

(l) Each permittee shall install emergency shutdown valves on all hydrocarbon, brine, and water lines. Criteria for emergency shutdown valves shall include the following:

(1) (A) Be rated at least equivalent to 125% of the maximum pressure that could be exerted at the surface; or

(B) meet a pressure-rating standard equivalent to that specified to that in paragraph (1)(1)(A) and determined by the secretary to be protective of public health, safety, and the environment;

(2) fail to the closed position;

(3) be capable of remote and local operation; and

(4) be activated by the following:

(A) Overpressuring;

(B) underpressuring; and

(C) gas and heat detection.

(m) Each permittee shall conduct annual inspections of all wellhead instrumentation.

(n) Each permittee shall function-test each critical control system and emergency shutdown valve semiannually.

(o) Each permittee shall perform trip-testing of each loop, including the instrumentation, valves, shutdown equipment, and all wiring connections, to ensure the integrity of the circuit.

(p) Each permittee shall ensure that the equipment automatically closes all inlets and outlets to the storage cavern and safely shuts down or diverts any operation associated with the storage cavern, in case of overfilling or an emergency.

(q) Each permittee shall ensure that the automatic valve closure times meet the valve design limits for closure times.

(r) Each permittee shall cease operations or shall comply with the instructions from the secretary if the secretary determines that an imminent threat to public health, safety, or the environment exists due to any unsafe operating condition. The

permittee may resume operations if the secretary determines that the facility's operations no longer pose a risk to public health, safety, or the environment. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45-14. Design and construction of underground hydrocarbon storage wells.

(a) Each permittee shall ensure that each underground hydrocarbon storage well is constructed with surface casing. The following requirements shall apply:

(1) The surface casing shall be set through all fresh and usable water formations and into competent bedrock.

(2) The surface casing shall be cemented by circulating cement through the bottom of the casing to the surface.

(3) The annular space between the casing and the formation shall be filled with cement.

(b) Each permittee of any existing underground hydrocarbon storage well without a surface casing shall perform the following:

(1) Verify the integrity of the existing casing with a casing inspection tool specified in K.A.R. 28-45-16; and

(2) (A) Provide double protection by installing either of the following:

(i) An intermediate casing and a production casing; or

(ii) a production casing with a tubing and packer assembly; or

(B) plug the well if double protection cannot be provided.

(c) Each permittee of a new underground hydrocarbon storage well shall install double casing protection with an intermediate casing and a production casing set into the upper part of the salt formation. The following provisions shall apply:

(1) The intermediate casing shall extend a minimum of 105 feet into the salt formation. The production casing shall extend at least to the depth of the intermediate casing.

(2) The annular space between the intermediate and production casings and between the intermediate casing and formation shall be filled with cement by circulating cement through the bottom of the casing to the surface.

(3) A tubing and mechanical packer assembly may be installed with the production casing as an alternative to the use of cemented intermediate and production casings.

(d) Each permittee of an existing underground hydrocarbon storage well that does not have double casing protection shall enhance casing monitoring by providing a casing inspection evaluation as specified in K.A.R. 28-45-16.

(e) The casing and tubing shall meet the performance standards for collapse resistance, internal yield pressure, and pipe body yield strength for the well's setting depths using criteria specified in the American petroleum institute's bulletin 5C2, twenty-first edition, dated October 1999, which is hereby adopted by reference.

(f) The brine tubing in each underground hydrocarbon storage well shall have a weep hole located a minimum of one foot above the bottom of the brine tubing. The following requirements shall apply:

(1) The brine tubing in a new underground hydrocarbon storage well shall have a weep hole before storage operations begin.

(2) The weep hole shall be added to the brine tubing in an existing underground hydrocarbon storage well when the brine tubing is pulled for any well work.

(g) Only new steel casing shall be installed in a new underground hydrocarbon storage well. Used parts, materials, and equipment that have been tested and certified for continued service may be used for repairs.

(h) Liners shall extend from the surface to a depth near the bottom of the production casing that allows room for workover operations.

(i) The following cementing requirements shall be met:

(1) The cement shall be compatible with the rock formation water and the drilling fluids. Salt-saturated cement shall be used when cementing through the salt section.

(2) The cement across the confining zone and to the surface shall have a compressive strength of not less than 1,000 pounds per square inch.

(3) Remedial cementing shall be completed if there is evidence of either of the following:

(A) Communication between the confining zone and other horizons; or

(B) annular voids that would allow either fluid contact with the casing or channeling across the confining zone or above the confining zone.

(4) The following requirements for cement evaluation shall apply:

(A) Samples shall be obtained at the start and end of the cementing operation for evaluation of cement properties. All cement samples collect-

ed shall be representative of the cement being utilized.

(B) All samples shall be tested for compressive strength.

(C) A cement bond log shall be run on the surface casing, intermediate casing, and cemented production casing after the neat cement has cured for a minimum of 72 hours.

(j) Casing patches shall be prohibited, unless the secretary determines that the use of casing patches is protective of public health, safety, and the environment. The following requirements shall apply:

(1) Each permittee shall submit a plan for the installation of the casing patch to the secretary.

(2) Each permittee shall meet the requirements specified in the department's document titled "procedure for internal casing repair, procedure #: UICLPG-12," dated February 2003, which is hereby adopted by reference.

(k) Each permittee shall pressure-test each production casing for leaks when the well construction is completed.

(l) Each permittee shall submit a casing inspection base log for the entire cased interval for the innermost casing string or for the cemented liner that extends the entire length of the casing after the well construction is completed.

(m) Each permittee shall contain, in a tank, all workover wastes, drilling fluids, drilling mud, and drill cuttings from any drilling operation or workover. Drilling fluids, drilling mud, and drill cuttings shall be disposed of in a manner determined by the secretary to be protective of public health, safety, and the environment.

(n) A licensed professional engineer or a licensed geologist, or the licensed professional engineer's or licensed geologist's designee, shall supervise the installation of each underground hydrocarbon storage well.

(o) Each permittee shall install and maintain a corrosion control system. The following requirements shall apply:

(1) The corrosion control system shall be capable of protecting the well casings.

(2) The corrosion control system shall be assessed according to the protocol and time schedule recommended by the corrosion control system manufacturer, and the results shall be reported to the secretary. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45-15. Monitoring. (a) Each permittee shall install pressure sensors to continuously monitor wellhead pressures for both the product and brine sides of the wellhead for each underground hydrocarbon storage well. The following requirements shall apply:

(1) The pressure sensor shall be capable of recording the maximum and minimum operating pressures during a 24-hour period.

(2) The pressure sensor shall be capable of recording operating pressures at an interval approved by the secretary.

(3) Each permittee shall provide pressure data, including historic continuous monitoring, to the secretary upon request.

(4) Each underground hydrocarbon storage well shall have pressure gauges on both the product and brine sides at the wellhead, until continuous monitoring pressure sensors are installed.

(b) Each permittee of an underground hydrocarbon well equipped with a production casing with a tubing and packer assembly shall monitor the annular space. Each permittee shall submit the following to the secretary for review and consideration for approval:

(1) A diagram of the well construction; and

(2) a plan for monitoring the annulus that includes the following:

(A) A diagram of the instrumentation for monitoring the annular pressure and fluid levels;

(B) a description of how the annular pressure and fluid levels will be recorded; and

(C) a description of, and justification for, the testing methods to demonstrate the mechanical integrity of the system.

(c) Each permittee shall submit a plan for any monitoring activity, including logging and sonar surveys, to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment, at least 60 days before the commencement of these monitoring activities.

(d) Each permittee shall submit a summary and the results of the monitoring activity to the secretary within 30 days after completion of the monitoring activity.

(e) Each permittee shall monitor the thickness of the salt roof for each cavern with a gamma ray log and a density log, or with another log as specified in K.A.R. 28-45-6a (m), as follows:

(1) Every five years;

(2) every three years, if the cavern meets criteria specified in K.A.R. 28-45-6a;

(3) at any time that the secretary determines that cavern integrity is suspect; and

(4) before plugging the well.

(f) Each permittee shall monitor the cavern storage capacity and the cavern geometry with a sonar survey. The sonar survey shall be conducted as follows:

(1) Before placing the underground hydrocarbon storage cavern in service;

(2) every 10 years;

(3) for determining the stability of the cavern and the overburden if the salt roof thickness and cavern geometry indicate that the stability of the cavern or overburden is at risk;

(4) after any growth of the cavern that results in a solution volume increase of 20 percent or more of cavern capacity; and

(5) before plugging the well if a sonar survey has not been run in the past five years.

(g) Any permittee may use an alternative method for the sonar survey if the secretary determines that the alternative method is substantially equivalent to the method specified in subsection (f). The permittee shall submit the following information for the secretary's consideration:

(1) A description of the proposed method and the theory for its operation;

(2) a description of the storage well and cavern conditions under which the log can be used;

(3) the procedure for interpreting the survey results; and

(4) an assessment of the capacity and stability of the cavern upon completion of the survey.

(h) Each permittee shall submit a ground subsidence monitoring plan to the secretary. The following requirements shall apply:

(1) Each permittee shall submit the plan at either of the following times:

(A) When the final permit application is submitted; or

(B) when the permittee conducts an elevation survey that is due before submittal of the final permit application.

(2) The ground subsidence monitoring plan shall include the following information:

(A) A description of the method for conducting an elevation survey; and

(B) the criteria for establishing monuments, benchmarks, and wellhead survey points.

(3) The criteria for subsidence monitoring shall be as follows:

(A) Level measurements to the accuracy of 0.01 foot shall be made.

(B) Surface elevation changes in excess of 0.10 foot shall be reported within 24 hours to the secretary.

(C) No established benchmark shall be changed, unless the permittee submits a justification that the change is protective of public health, safety, and the environment.

(D) If a benchmark is changed, the elevation change from the previous benchmark shall be noted in the elevation survey report.

(E) Each permittee shall submit the elevation before and after any wellhead work that results in a change in the survey point at the wellhead.

(4) The elevation survey shall be conducted by a licensed professional land surveyor.

(5) Biennial survey results, including certified and stamped field notes, shall be submitted to the department within 30 days after completion of the survey.

(i) Each permittee shall submit an inventory balance plan for measuring the volume of hydrocarbons injected into or withdrawn from each underground hydrocarbon storage well, including methods for measuring and verifying volume, with the permit application to the secretary for review and consideration for approval. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45-16. Testing and inspections.

(a) Each permittee shall submit a plan to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment, before conducting any underground hydrocarbon storage well or cavern testing. Testing shall not commence without prior approval from the secretary.

(b) Each permittee shall submit a summary of the testing to the secretary within 45 days after completing the test. The summary shall include the following:

(1) A chronology of the test;

(2) copies of all logs;

(3) storage well completion information;

(4) pressure readings;

(5) volume measurements; and

(6) an explanation of the test results.

(c) Each permittee shall test each unplugged underground hydrocarbon storage well and cavern for mechanical integrity. The following requirements shall apply:

(1) Integrity tests shall be conducted on the storage well and cavern as follows:

(A) Before the cavern is initially placed in service;
 (B) every five years, if the well is unplugged;

(C) before the underground hydrocarbon storage cavern is placed back in service after being in monitoring status, unless the mechanical integrity test has been performed in the last five years; and

(D) before the well is plugged, unless the mechanical integrity test has been performed in the last five years.

(2) Integrity tests shall be conducted on the underground hydrocarbon storage well after each workover that involves physical changes to any cemented casing string.

(3) Each underground hydrocarbon storage well shall be tested for mechanical integrity using a nitrogen-brine interface method.

(4) Each underground hydrocarbon storage cavern shall be tested for integrity by using a hydrostatic brine test.

(5) Each permittee shall submit a test procedure plan, on a form furnished by the department, to the secretary for review and consideration for approval, at least 30 days before test commencement. The plan shall include the following information:

(A) The justification for test parameters;

(B) the test sensitivities; and

(C) the pass and fail criteria for the test.

(6) Each permittee shall notify the secretary at least five days before conducting any integrity test.

(7) The integrity test shall be conducted at the maximum allowable operating pressure.

(8) All test procedures shall use certified gauges and pressure transducers that have been calibrated annually.

(d) Any permittee may use an alternative integrity test if the secretary determines that the alternative integrity test is substantially equivalent to the integrity tests specified in subsection (c). The permittee shall submit the following information for the secretary's consideration:

(1) A description of the test method and the theory of operation, including the test sensitivities, a justification for the test parameters, and the pass and fail criteria for the test;

(2) a description of the well and cavern conditions under which the test can be conducted;

(3) the procedure for interpreting the test results; and

(4) an interpretation of the test upon completion of the test.

(e) No underground hydrocarbon storage well and cavern shall be used for storage if the mechanical integrity is not verified.

(f) Each permittee shall submit a casing evaluation for each underground hydrocarbon storage well. Acceptable casing evaluation methods shall include magnetic flux and ultrasonic imaging.

(g) Any permittee may use an alternative casing evaluation method if the secretary determines that the alternative casing evaluation method is substantially equivalent to the casing evaluation methods specified in subsection (f). The permittee shall meet the following requirements:

(1) Each permittee shall submit a description of the logging method, including the theory of operation and the well conditions suitable for log use.

(2) Each permittee shall submit the specifications for the logging tool, including tool dimensions, maximum temperature and pressure rating, recommended logging speed, approximate image resolution, and hole size range.

(3) Each permittee shall describe the capabilities of the log for determining the following:

(A) The presence of any metal loss due to either of the following:

(i) Internal or external corrosion; or

(ii) internal wear;

(B) the degree of penetration of the corrosion or the casing defect; and

(C) the circumferential extent of the corrosion or the casing defect.

(4) Each permittee shall submit a log and an interpretation of the log to the secretary.

(h) Each permittee shall submit a casing evaluation according to the following time schedule:

(1) Every 10 years, for either of the following conditions:

(A) The underground hydrocarbon storage well has double casing protection; or

(B) an existing well has a liner and a production casing;

(2) after any workover involving the cemented casing; and

(3) every five years, if the underground hydrocarbon well does not have double casing protection or if a determination is made by the secretary that the integrity of the long string casing could be adversely affected by any naturally occurring condition or man-made activity.

(i) A variance for submitting a casing evaluation may be considered by the director if the well has a tubing and packer assembly in place.

(j) Each permittee shall submit a cement bond log with the casing evaluation if a cement bond log has not been previously submitted.

(k) A licensed professional engineer or licensed geologist, or licensed professional engineer's or licensed geologist's designee, shall supervise all test procedures and associated field activity.

(l) Each permittee shall have a licensed professional engineer or licensed geologist review all test results.

(m) Each permittee shall visually inspect the wellhead monthly for any leakage.

(n) Each permittee shall conduct an inspection of facility records, using a form furnished by the department, every two years to ensure that the required records are being properly maintained. The permittee shall maintain these records at the facility and shall make the records available to the secretary upon request. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45-17. Groundwater monitoring. (a) Each permittee of an underground hydrocarbon storage facility shall submit a groundwater monitoring plan with the final permit application to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment.

(b) Each permittee shall ensure that the groundwater monitoring wells meet the following requirements:

(1) Each permittee shall set the screen in each shallow monitoring well at a depth that is inclusive of the seasonal fluctuation of the water table.

(2) Each permittee shall ensure that all deep groundwater monitoring wells extend a minimum of 25 feet into the bedrock, or to a depth based on the geology and hydrogeology at the facility and approved by the secretary to ensure the protection of public health, safety, and the environment.

(c) All well locations and the spacing between all well locations shall be based on the geology and the hydrogeology at the facility and shall be required to be approved by the secretary to ensure the protection of public health, safety, and the environment.

(d) Each permittee of a facility shall submit a quality assurance plan, including techniques for sampling and analysis, with the final permit application to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment.

(e) Each permittee shall collect groundwater samples and analyze the samples for chlorides and any other parameter determined by the secretary

to pose a threat to public health, safety, and the environment. The reporting format shall be determined by the secretary.

(f) Each permittee shall submit the results for chloride analyses from groundwater samples to the department on a quarterly basis.

(g) Each permittee shall monitor monthly for the presence of combustible gas in the headspace in monitoring wells and shall submit the results to the department quarterly.

(h) Each permittee shall submit a static groundwater level measurement for each monitoring well with the quarterly chloride analyses results specified in subsection (f).

(i) Any permittee of a facility where chloride concentrations in the groundwater exceed 250 milligrams per liter may be required by the secretary to submit a work plan, for review and consideration for approval, that describes the methods to delineate potential source areas and to control migration of the chloride contamination.

(j) Each permittee of a well in which combustible gas is detected shall submit a work plan to the secretary for review and consideration for approval. Each permittee shall describe the proposed methods to eliminate any source areas and return the combustible gas levels to levels that do not pose a potential threat to public health, safety, or the environment. The plan shall be approved if the secretary determines that the plan is protective of public health, safety, and the environment. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45-18. Record requirements and retention. (a) Each permittee shall complete and submit an annual report, on a form furnished by the department, on or before April 1 of each year. The annual report shall include the following:

(1) A description of any incident of uncontrolled or unanticipated product loss;

(2) the well number and date of any logs or sonar surveys conducted;

(3) the estimated storage capacity for all unplugged caverns;

(4) a list of any caverns being washed;

(5) a list of the volume of product injected and withdrawn for each well;

(6) a list, by well number, of the type of product stored; and

(7) a list, by well number, of the maximum and minimum product storage pressures encountered during the report year.

(b) Each permittee shall maintain facility records at the facility or at a location approved by the secretary for the following time periods:

(1) A period of 10 years, for the following records:

(A) The maximum and minimum operating pressures for each well; and

(B) the annual inspections required by the secretary;

(2) the life of the well, for the following records:

(A) The casing records for each well;

(B) the cementing records for each well;

(C) the workover records;

(D) monitoring information, including calibration and maintenance records; and

(E) continuous monitoring data; and

(3) the life of the facility, for the following records:

(A) All logging events;

(B) all mechanical integrity tests and other testing;

(C) all groundwater monitoring data; and

(D) all correspondence relating to the permit, including electronic mail.

(c) Surface elevation surveys shall be maintained and retained for the life of facility plus 20 years after the facility's closure.

(d) All required facility records, reports, and documents shall be transferred to the new permittee with the transfer of the permit. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45-19. Well workovers. (a) Each permittee shall submit a workover plan to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment. The following provisions shall apply:

(1) Each permittee shall submit the workover plan at least 10 days before performing any downhole or wellhead work that involves dismantling or removal of the wellhead.

(2) A permittee shall not be required to submit a workover plan for routine maintenance or replacement of gauges, sensors, or valves.

(3) Verbal authorization to initiate downhole or wellhead work may be issued by the secretary if the permittee has fulfilled the requirements of this subsection.

(b) Each permittee shall ensure that a blowout preventer with a pressure rating greater than the pressures anticipated to be encountered is used during each workover.

(c) Each permittee shall ensure that all logging procedures are conducted through a lubricator unit with a pressure rating greater than the pressures anticipated to be encountered.

(d) Each permittee shall provide to the person logging the well or performing a well workover all relevant information concerning the status and condition of the well and storage cavern before initiating any work. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45-20. Plugging requirements. (a) Each permittee shall submit a plugging plan, including monitoring and testing requirements, to the secretary for review and consideration for approval at least 60 days before the plugging event.

(b) Each permittee shall follow the plugging procedure specified in the department's document titled "procedure for the plugging and abandonment of a hydrocarbon storage well, procedure #:UICLPG-3," dated March 2003, which is hereby adopted by reference.

(c) Each permittee shall restore and preserve the integrity of the site as follows:

(1) Dispose of all liquid waste in an environmentally safe manner;

(2) clear the area of debris;

(3) drain and fill all excavations;

(4) remove all unused concrete bases, machinery, and materials; and

(5) level and restore the site. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45-21. Underground hydrocarbon storage fees. (a) Effective on and after January 1, 2004, each permittee shall submit an annual permit fee of \$18,890 per facility and \$305 per unplugged storage well on or before April 1 of each year.

(b) Each permittee shall submit a permit fee of \$305 for any unplugged storage well inadvertently omitted from the collection of permit fees for the year 2003.

(c) Each applicant for a permit for a proposed new underground hydrocarbon storage well shall submit a fee of \$700 with the permit application.

(d) Fees shall be made payable to the "Kansas department of health and environment—subsurface hydrocarbon storage fund."

(e) The fees collected under the provisions of this regulation shall not be refunded.

(f) If ownership of an underground hydrocarbon storage well or underground hydrocarbon storage facility changes during the term of a valid permit, no additional fee shall be required unless a change occurs that results in a new storage well or an expanded facility operation. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45-22. Permit required for a brine pond. (a) Since the underground storage of hydrocarbons and the access to and transfer of hydrocarbons is dependent on the safe and secure operation and maintenance of associated brine ponds, no person shall construct, operate, or maintain any brine pond associated with an underground hydrocarbon storage facility without obtaining a brine pond permit from the secretary.

(b) Each permittee of a brine pond in existence before April 1, 2003 shall meet the requirements for liner construction if either of the following conditions exists:

(1) A potential threat to public health, safety, or the environment exists.

(2) An existing brine pond is dewatered due to the repair, replacement, or expansion of the brine pond.

(c) A variance may be granted by the secretary if both of the following conditions are met:

(1) The variance is protective of public health, safety, and the environment.

(2) The applicant or permittee agrees to perform any additional monitoring or brine pond improvements, or both, if required by the secretary.

(d) Each applicant or permittee seeking a variance shall submit a written request, including a justification for the variance and any supporting data, to the secretary for review and consideration for approval. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45-23. Brine pond application and permit. (a) Each permittee of an existing brine pond and each applicant for a permit for a new brine pond shall submit an application for a permit to the secretary. Upon review of the application, either of the following shall be issued by the secretary:

(1) A final permit if the application is approved; or

(2) a notice that the permit has been denied if the applicant has not complied with the requirements of this article of regulations. The notice shall include justification for the permit denial.

(b) Each permit for a brine pond shall be authorized for a term not to exceed 10 years.

(c) Each permittee of an existing brine pond shall submit an application, on a form furnished by the department, to the secretary within six months after April 1, 2003.

(d) Each permittee shall submit a completed application to renew a permit not less than 90 days before the expiration date of the permit in effect.

(e) Each applicant for a permit for a new brine pond shall submit a completed application to the secretary not less than 90 days before the construction of the new brine pond commences. Brine pond construction shall not begin until the secretary has issued the permit.

(f) Each permit application for a new brine pond shall include a hydrogeological investigation conducted under the direction of a licensed geologist or a licensed professional engineer.

(g) Each hydrogeological investigation for a new brine pond shall include the following information:

(1) A site characterization for brine pond construction shall meet the following requirements:

(A) The bottom of the brine pond shall be determined by the lowest surface elevation of compacted or excavated soils used in creating the pond structure.

(B) All required excavations or boreholes shall be drilled to a depth of at least 10 feet below the bottom of the brine pond.

(C) A separation distance of at least 10 feet shall be maintained between the brine pond bottom and the water table.

(D) The surface area shall be measured at the interior top dike elevation.

(2) The location and elevation of each borehole or excavation, based on surface area, shall be determined by the following criteria:

(A) A minimum of two boreholes or excavations for each five acres of proposed brine pond surface area; or

(B) a minimum of two boreholes or excavations if the brine pond surface area is less than five acres.

(3) The following information shall be submitted for each borehole or excavation:

(A) A log of soil types encountered in each borehole or excavation; and

(B) a groundwater level measurement at each borehole or excavation.

(h) Each permittee shall notify the department at least five days before conducting any field activities for the hydrogeological investigation. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45-24. Public notice for a brine pond.

(a) Public notice shall be given by the secretary for the following permit actions:

(1) A permit application for any new brine pond associated with an underground hydrocarbon storage well;

(2) modifications that require a draft permit;

(3) modifications to an existing brine pond;

(4) a denied permit; and

(5) a scheduled hearing.

(b) The public notice and, if applicable, a copy of the draft permit shall be mailed or electronically mailed by the department to the permit applicant.

(c) The public notice shall be mailed by the department to the following:

(1) Any person who submits a written request for placement on the mailing list;

(2) the official county newspaper of each county in which the lands affected by the application are located, for publication in at least two issues; and

(3) the Kansas register.

(d) The public notice shall include the following information:

(1) The name and address of the department processing the permit action for which the notice is being given;

(2) the name and address of the person seeking the permit;

(3) a brief description of the activity described in the permit application;

(4) the name, address, and telephone number of the person that interested persons may contact for further information, including copies of the application, draft permit, or other appropriate information;

(5) a brief description of the comment procedures for public notice; and

(6) a statement of the procedure to request a hearing and other procedures that allow public participation in the final permit decision.

(e) Any interested person may submit written comments to the secretary on any permit action during the 30-day public comment period. The following requirements shall apply:

(1) Comments shall be submitted by the close of the public comment period.

(2) All supporting materials submitted shall be included in full and shall not be incorporated by reference, unless the supporting materials are any of the following:

(A) Part of the administrative record in the same proceeding;

(B) state or federal statutes and regulations;

(C) state or environmental protection agency documents of general applicability; or

(D) other generally available reference materials.

(3) Commentators shall make available to the secretary all supporting materials not already included in the administrative record.

(f) The response to all significant comments concerning any permit actions and the reasons for changing any provisions in the draft permit shall be issued at the time that the final permit decision is issued.

(g) The response to comments shall be made available to the public upon request. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45-25. Renewal, modification, and transfer of a brine pond permit.

(a) The issuance or modification of a brine pond permit or the variance of the specific requirements of a brine pond permit may be authorized by the secretary for a term of less than 10 years.

(b) The automatic transfer of a brine pond permit shall be prohibited. The terms of a permit transfer shall include the following:

(1) Each person requesting a permit transfer shall submit a completed application to the secretary at least 60 days before the proposed effective date of the transfer.

(2) Each permittee shall comply with the conditions of the existing permit until the secretary reissues the permit.

(c) Any permit for a brine pond may be modified by the secretary for any of the following reasons:

(1) The secretary receives information not available when the permit was issued.

(2) The secretary receives a request for a modification.

(3) The secretary conducts a review of the permit file and determines that a modification is necessary.

(d) Only the permit actions subject to modification shall be reopened.

(e) Minor modifications that shall not require public notification shall include the following:

- (1) Correction of typographical errors;
- (2) requirements for more frequent monitoring or reporting by the permittee;
- (3) date change in a schedule of compliance;
- (4) change in ownership or operational control of the facility, unless the secretary determines that public notification is necessary to protect the public interest;

(5) change in construction requirements, if approved by the secretary; and

(6) amendments to a brine pond closure plan.

(f) A draft permit and notification to the public shall be required if any of the following conditions is met:

(1) A permittee proposes substantial alterations to the brine ponds or proposes any activity that justifies a change in permit requirements, including cumulative effects on public health, safety, or the environment.

(2) Information has become available that would have initially justified different permit conditions.

(3) The standards or regulations on which the permit was based have changed because of the promulgation of new or amended standards or because of a judicial decision.

(g) Any permittee may request a permit modification within 180 days after any of the following:

(1) The adoption of any new regulations or standards;

(2) any deadline to achieve compliance with regulations or standards before the expiration date of the permit; or

(3) any judicial remand and stay of a promulgated regulation, if the permit condition was based on the remanded regulation. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-23-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45-26. Signatories for brine pond permit applications and reports. (a) Each permittee of an existing brine pond and each applicant for a permit for a new brine pond shall designate signatories to sign the permit applications and reports required by the secretary.

(b) Positions that may be approved by the secretary as signatories shall include either of the following:

- (1) Operations manager;
- (2) brine pond specialist; or
- (3) a position with responsibility at least equivalent

to that required by the positions listed in this subsection.

(c) Any signatory may submit written notification to the secretary specifying a position having responsibility for the overall operation of the regulated facility or activity to act as a designated signatory.

(d) Each signatory and each signatory's designee shall submit a signature statement, on a form furnished by the department, to the secretary with the brine pond permit application. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45-27. Financial assurance for brine pond closure. (a) Each permittee of a brine pond shall establish financial assurance for the decommissioning and abandonment of any brine pond permitted by the secretary under this article of regulations.

(b) (1) Each permittee of an existing brine pond shall submit proof of financial assurance before April 1, 2004 and, thereafter, annually on or before January 31 of each year. Each applicant for a permit for a new brine pond shall submit proof of financial assurance to the secretary with the permit application and, thereafter, annually on or before January 31 of each year.

(2) Each permittee and each applicant shall meet the following requirements:

(A) Submit a detailed written estimate, in current dollars, of the cost to close any brine pond at the facility. The estimate shall be reviewed and approved by a licensed professional engineer or licensed geologist;

(B) develop an estimate of the closure cost for each brine pond at the facility as follows:

(i) The estimate shall be based on the cost charged by a third party to properly decommission the brine pond; and

(ii) the brine pond shall be assumed to be at maximum storage capacity; and

(C) increase the closure cost estimate and the amount of financial assurance provided if any change in the brine pond closure plan or in the operation increases the maximum cost of brine pond closure at any time.

(c) Each permittee shall provide continuous financial assurance coverage for closure until the secretary approves the brine pond closure.

(d) Each permittee shall comply with the provisions of the department's document titled "pro-

cedure for demonstrating financial assurance for a brine pond associated with a storage facility, procedure #: UICLPG-11,” dated March 2003, which is hereby adopted by reference. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45-28. Design, construction, and maintenance of brine ponds. (a) Each applicant shall submit a design and construction plan for each new brine pond associated with an underground hydrocarbon storage facility to the secretary. The design and construction plan shall be approved if the secretary determines the plan is protective of public health, safety, and the environment. Each brine pond shall be designed by a licensed professional engineer.

(b) Each applicant shall ensure that the impermeable synthetic membrane liner system for each brine pond is comprised of primary and secondary impermeable synthetic membrane liners with an intermediate leak detection system. The following requirements shall apply:

(1) The primary and secondary liners shall be at least 30 mils in thickness.

(2) The engineer designing the brine pond shall obtain a certification from the liner manufacturer providing the following information:

(A) Confirmation that the specified liner is compatible for use with the brine;

(B) confirmation that the specified liner is ultraviolet-resistant; and

(C) data for the manufacturer’s estimated leakage, permeability, or transmissivity rate for specific liners, including the rate of movement of fluids through the synthetic membrane liner due to the properties and thickness of the liner material, expressed in units of volume per area per time;

(D) any normally expected manufacturing defects in the liner material; and

(E) any normally expected defects associated with the seaming and installation process.

(c) Each permittee of an existing brine pond and each applicant for a permit for a new brine pond shall submit a contingency plan to the secretary that outlines the procedures for brine containment issues associated with brine pond maintenance and dewatering due to liner failure, repair, replacement, or expansion of the brine pond. The contingency plan shall be approved if the secretary determines that the plan is protective of public health, safety, and the environment.

(d) Each permittee of an existing brine pond and each applicant for a permit for a new brine pond shall submit a flood response plan if the brine pond is located in a floodplain or a flood-prone area.

(e) Each permittee shall immediately cease operations or shall comply with instructions from the secretary if the secretary determines that an imminent threat to public health, safety, or the environment exists due to any unsafe operating condition. The permittee may resume operations if the secretary determines that the brine pond operations no longer pose a risk to public health, safety, or the environment.

(f) Each permittee shall ensure that the primary and secondary liners for each brine pond are separated to provide a conduit for the movement of any fluid between the liners to the leak detection monitoring location for detection and removal.

(g) Each permittee shall ensure that all materials between the primary and secondary liners are capable of transmitting a minimum of 1/64 inch per acre per day of flow with a head of no more than two feet placed on the secondary liner. Acceptable materials shall include the following:

(1) Clean sand;

(2) pea gravel;

(3) geotextile fabric;

(4) geonet-type material; and

(5) any alternatives recommended by the liner manufacturer, if the secretary determines that the alternatives are substantially equivalent to materials listed in this subsection.

(h) Each permittee shall ensure that the leak detection system design for each brine pond limits the maximum travel time required for fluid penetrating the liner to reach the leak detection monitoring location to 24 hours or less.

(i) Each permittee shall ensure that each brine pond bottom has a slope adequate for the proper operation of the leak detection system with not less than 0.5 percent for the slope for the collection pipes and 1.0 percent for all other slopes.

(j) Each permittee shall ensure that the dewatering system design for each brine pond is capable of the following:

(1) Monitoring the volume of fluid removed from the intermediate space between the primary and secondary liners; and

(2) pumping the volume of fluid generated equal to 10 times the maximum allowable liner leakage rate.

(k) Each permittee shall ensure that the compaction of all brine pond embankments and of the upper six inches of the interior lagoon bottom below the secondary liner meets all of the following criteria:

(1) The maximum standard proctor density shall be a minimum of 95 percent at optimum moisture to optimum moisture plus three percent.

(2) The maximum thickness of the compacted material shall not exceed six inches.

(3) The moisture content range of the compacted soils shall be optimum moisture to optimum moisture plus three percent.

(4) The maximum size of dirt clods in the compacted soil shall be less than one inch in diameter.

(1) Each permittee shall ensure that the following requirements for the installation of the liners at each brine pond are met:

(1) The primary and secondary liners shall be anchored at the top of the brine pond dike in accordance with the liner manufacturer's instructions.

(2) Installation shall be performed in accordance with the liner manufacturer's instructions.

(3) Installation shall be performed by a contractor experienced in the installation of impermeable synthetic membrane liners.

(4) On-site supervision of the liner installation shall be provided by an individual that has experience in liner installation practices.

(m) Each permittee shall ensure that the volume of fluid monitored from the intermediate leak detection system at the brine pond is based on a rate of 10 percent of leak return system capacity and does not exceed 1,000 gallons per day per acre of pond area.

(n) Each permittee shall submit, to the secretary, a seam testing method to verify the adequacy of the seaming process for the liners at each brine pond. The following requirements shall apply:

(1) The testing method shall include the following:

(A) The methods for destructive and nondestructive seam testing;

(B) the protocol describing the number of tests per lineal foot of field seam;

(C) the size of the destructive test specimen required; and

(D) other pertinent quality control provisions recommended by the liner manufacturer.

(2) All field seams shall be subjected to nondestructive testing.

(o) Each permittee shall install a gas vapor control system to ignite or capture hydrocarbon vapors at each brine pond within five years after

April 1, 2003. The gas vapor control system shall consist of one of the following:

(1) A hydrocarbon liquid knockout vessel and degassifier; or

(2) an alternative method if the secretary determines that the alternative method is substantially equivalent to the hydrocarbon liquid knockout vessel and degassifier. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45-29. Groundwater monitoring for brine ponds.

(a) Each permittee of an existing brine pond and each applicant for a permit for a new brine pond shall submit a groundwater monitoring plan with the brine pond permit application to the secretary for review and consideration for approval. The monitoring plan shall be approved if the secretary determines that the plan is protective of public health, safety, and the environment.

(b) Each permittee of an existing brine pond and each applicant for a permit for a new brine pond shall meet the following requirements:

(1) Install monitoring wells around the perimeter of the brine pond. The well spacing shall be based on the geology and hydrogeology at the facility and shall be approved by the secretary if the secretary determines that the well spacing is protective of public health, safety, and the environment; and

(2) set the screen in all shallow groundwater monitoring wells at a depth that is inclusive of the seasonal fluctuation of the water table.

(c) Each permittee of an existing brine pond and each applicant for a permit for a new brine pond shall submit, with the groundwater monitoring plan, a quality assurance plan to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment.

(d) Each permittee shall collect groundwater samples and analyze the samples for chloride and any other parameter determined by the secretary as posing a potential threat to public health, safety, and the environment. The reporting format shall be determined by the secretary.

(e) Each permittee shall submit the results for the chloride analyses from groundwater samples to the department on a quarterly basis.

(f) Each permittee shall monitor monthly for the presence of combustible gas in the headspace in monitoring wells and submit the results to the department on a quarterly basis.

(g) Each permittee shall submit a static groundwater level measurement for each monitoring well with the quarterly chloride analyses specified in subsection (e).

(h) Any permittee of a brine pond where chloride concentrations in the groundwater exceed 250 milligrams per liter may be required by the secretary to submit a work plan, for review and consideration for approval, that describes proposed methods to delineate the extent of the contamination and to control migration of the chloride contamination. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45-30. Brine pond closure requirements.

(a) Each brine pond permittee shall submit a closure plan, including monitoring and testing requirements, to the secretary for review and consideration for approval at least 60 days before the closure of a brine pond. The closure plan shall be approved if the secretary determines that the closure plan is protective of public health, safety, and the environment.

(b) The permittee shall not commence closure activities without the secretary's approval.

(c) Each permittee shall include the following information in the brine pond closure plan:

(1) The procedure for deactivating the various brine lines employed at the facility;

(2) the procedures for the remediation, removal, or disposal of brine, accumulated sludge in the brine pond, contaminated soils, and contaminated groundwater;

(3) a description regarding the proposed maintenance, deactivation, conversion, or demolition of the brine pond structure; and

(4) procedures addressing the plugging of any water wells or groundwater monitoring wells associated with the brine pond. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

Article 45a.—UNDERGROUND NATURAL GAS STORAGE WELLS IN BEDDED SALT

28-45a-1. Definitions. (a) "Applicant" means the operator and the owner requesting a permit as specified in this article of regulations. If the operator and the owner are not the same person, the owner and the operator shall jointly submit an application for a permit.

(b) "Base gas" and "cushion gas" mean the vol-

ume of gas required as permanent storage inventory to maintain adequate storage cavern pressure for meeting minimum gas deliverability demands throughout the withdrawal season or for structural integrity of the storage cavern.

(c) "Brine" means saline water with a sodium chloride concentration equal to or greater than 90 percent.

(d) "Brine pond" means the excavated or diked structure used for the surface containment of brine used in the creation, maintenance, or operation of an underground storage well.

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

(f) "Director" means the director of the division of environment of the department of health and environment.

(g) "Draft permit" means a document that is pending approval by the secretary to be issued as a permit.

(h) "In existence" and "existing," when used to describe an underground natural gas storage well, mean a natural gas storage well that has been authorized or permitted by the Kansas department of health and environment before April 1, 2003.

(i) "Kansas board of technical professions" means the state board responsible for licensing persons to practice engineering, geology, or land surveying in Kansas.

(j) "Licensed geologist" means a geologist licensed to practice geology in Kansas by the Kansas board of technical professions.

(k) "Licensed professional engineer" means a professional engineer licensed to practice engineering in Kansas by the Kansas board of technical professions.

(l) "Licensed professional land surveyor" means a professional land surveyor licensed to practice land surveying in Kansas by the Kansas board of technical professions.

(m) "Liner" means the casing normally installed within the production casing.

(n) "Liquified petroleum gas" and "LPG" mean by-products or derivatives of oil and gas, including propane, butane, isobutane, and ethane, maintained in a liquid state under pressure.

(o) "Maximum allowable operating pressure" means the maximum pressure authorized by the department and measured at the wellhead.

(p) "Maximum operating pressure" means the maximum pressure recorded during a 24-hour period and measured at the product side of the wellhead.

(q) "Municipal population center" means an incorporated city.

(r) "Natural gas" means the gaseous form of hydrocarbon consisting primarily of methane.

(s) "Operator" means the person recognized by the secretary as being responsible for the physical operation of an underground natural gas storage facility.

(t) "Owner" means the person owning all or part of any underground natural gas storage facility.

(u) "Permit" means an authorization, license, or equivalent control document issued by the secretary to the operator and owner.

(v) "Permittee," "permit holder," and "holder of a permit" mean the owner and the operator issued a permit, as defined in this regulation, by the secretary.

(w) "Person" means any individual, company, corporation, institution, partnership, municipality, township, or federal agency.

(x) "Product" means natural gas.

(y) "Secretary" means the secretary of the department of health and environment.

(z) "Solutioning" means the process of injecting fluid into a well to dissolve salt or any other readily soluble rock or mineral.

(aa) "Supervisory control and data acquisition" means an automated surveillance system in which monitoring and control of storage activities are accomplished at a central or remote location.

(bb) "Underground natural gas storage cavern" means a cavern formed by solutioning in bedded salt in which natural gas is stored.

(cc) "Underground natural gas storage facility" means the acreage associated with the storage field with facility boundaries approved by the secretary. This term shall include the wells, wellbore tubular goods, wellhead, and any related equipment, including any appurtenances associated with the well field.

(dd) "Underground natural gas storage well" means a well used for the injection or withdrawal of natural gas into or out of an underground natural gas storage cavern.

(ee) "Usable water formation" means an aquifer or any portion of the aquifer that meets any of the following criteria:

- (1) Supplies any public water system;
- (2) contains a supply of groundwater that is sufficient to supply a public water system and that currently supplies drinking water for human consumption; or
- (3) contains fewer than 10,000 mg/L total dissolved solids and is not an exempted aquifer.

(ff) "Variance" means the secretary's written approval authorizing an alternative action to the requirements of these regulations or the standards adopted by these regulations and incorporated into the permit.

(gg) "Working gas" means the gas placed in the storage cavern above the base gas. (Authorized by and implementing K.S.A. 65-171d; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45a-2. Permit required. (a) No person shall create, operate, or maintain an underground storage well for natural gas in bedded salt without obtaining a permit from the secretary.

(b) Underground storage caverns for natural gas shall be constructed only in bedded salt.

(c) A variance may be granted by the secretary if both of the following conditions are met:

(1) The variance is protective of public health, safety, and the environment.

(2) The applicant or permittee agrees to perform additional testing, monitoring, or well improvements, or any combination of these, if required by the secretary.

(d) Each applicant or permittee seeking a variance shall submit a written request, including justification for the variance and any supporting data, to the secretary for review and consideration for approval. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45a-3. Well conversions and reentry.

(a) The conversion of an existing well to underground natural gas storage shall be prohibited if the well was not originally designed for the underground storage of natural gas, unless the secretary determines that the conversion is protective of public health, safety, and the environment.

(b) The conversion of an underground natural gas storage well for other purposes shall be prohibited, unless the secretary determines that the conversion is protective of public health, safety, and the environment.

(c) The reentry of a plugged underground natural gas storage well for the purpose of reactivating activities associated with the underground storage of natural gas or liquid hydrocarbons shall be prohibited. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45a-4. Application for permit. (a) Each applicant shall submit a completed applica-

tion for a permit to create, operate, and maintain an underground natural gas storage well, on an application form furnished by the department. Upon review of the application, one of the following shall be issued by the secretary:

(1) A permit, if the application is approved; or
 (2) a notice that the permit has been denied if the applicant has not complied with the requirements of this article of regulations. The notice shall include justification for the permit denial.

(b) Each permittee of an existing underground natural gas storage well shall submit to the secretary, before April 1, 2004, either of the following:

(1) A permit application for the continued operation of the storage well; or

(2) a plan and schedule for plugging the well.

(c) The existing permit or authorization for the underground natural gas storage facility shall remain in effect until the requirement specified in subsection (b) is met and a permit for the underground natural gas storage well is issued. Each permittee of any existing underground natural gas storage cavern shall comply with the provisions of this article of regulations before injecting any working gas into the underground storage cavern.

(d) Each applicant for a permit for a new underground natural gas storage well shall submit a completed application to the secretary at least 180 days before the proposed commencement date for the construction of the new storage well. Construction shall not begin until the secretary has approved the permit application.

(e) Each permittee of an existing facility and each applicant for a proposed facility shall ensure that the underground natural gas storage facility will be operated and maintained in a manner that will preserve the integrity of the storage cavern and storage well and minimize any potential threat to public health, safety, and the environment.

(f) Each application for a permit shall include a report prepared by a licensed geologist that includes the following:

(1) An evaluation of the geology and hydrogeology, including cross-sections, isopach and structure maps of the salt formation, and water-level or potentiometric maps;

(2) a regional stratigraphic evaluation;

(3) local and regional structural analyses, including maps, cross-sections and available geophysical data;

(4) a flood assessment identifying floodplain and flood-prone areas, including the following:

(A) Flood response procedures; and

(B) design criteria for well and facility equipment; and

(5) an assessment of the potential for ground subsidence.

(g) Each applicant shall submit the following information with the permit application:

(1) A plan view map showing locations of all water, solution mining, monitoring, disposal, injection, oil, and gas wells within a one-mile perimeter of the facility's boundary; and

(2) a plan map view of man-made surface structures and construction activities within a one-mile perimeter of the facility's boundary.

(h) Each permittee shall submit a sample log of cuttings from each newly installed well at the facility to the secretary. The sample log shall be incorporated into the permit.

(1) Cuttings shall be collected at 10-foot intervals or an interval approved by the secretary from surface to total well depth.

(2) Well cuttings shall be collected, described, and logged as specified in department's document titled "procedure for sample logging, procedure #: UICLPG-9," dated July 2002, as adopted by reference in K.A.R. 28-45-6a.

(3) The collection of cuttings shall be supervised by a licensed geologist or a licensed geologist's designee.

(4) The description and logging of the sample cuttings shall be performed by a licensed geologist.

(5) Each permittee shall submit a sample log and a dry sample set to the department within 45 days after well completion.

(i) Each permittee shall provide a minimum of one core from each facility. The following provisions shall apply:

(1) The permittee shall submit a plan describing the coring interval, coring procedure, and core testing to the secretary for review and consideration for approval at least 60 days before the coring event.

(2) Each permittee shall make the core available for inspection upon request by the secretary.

(3) The permittee may submit existing core data if the secretary determines that the core is representative of the geology of the area.

(j) Each permittee shall submit open hole logs for any new underground natural gas storage well. The logging interval shall be from the surface to 100 feet below the top of the salt section. At a minimum, the following logs shall be run:

(1) A gamma ray log;

(2) a neutron log if the source is registered in Kansas, or a sonic log;

(3) a density log; and

(4) a caliper log.

(k) Any permittee may use an alternative log if the secretary determines that the alternative log is substantially equivalent to the logs specified in subsection (j). The permittee shall submit the following information:

(1) A description of the log and the theory of operation for that log;

(2) a description of the field conditions under which the log can be used;

(3) the procedure for interpreting the log; and

(4) an interpretation of the log upon completion of the logging event.

(l) Each permittee shall meet the following design requirements for each underground natural gas storage cavern:

(1) A minimum salt roof thickness of 100 feet above the washed storage cavern shall be maintained at all times.

(2) Underground communication between caverns through fracturing or coalescence shall be prohibited. Underground natural gas storage caverns where communication between caverns exists shall be plugged.

(3) The horizontal distance separating underground natural gas storage caverns shall be no less than 100 feet between cavern boundaries.

(4) The maximum horizontal diameter of each underground natural gas storage cavern shall not exceed 300 feet.

(m) Each permittee shall ensure the integrity of the storage well casing and the storage cavern before commissioning the storage cavern into service. Storage operations may commence when both of the following requirements are met:

(1) Each permittee shall submit a notice of completion of construction, on a form furnished by the department.

(2) Each new underground natural gas storage well shall be inspected by the secretary before storage operations commence. Storage operations shall not commence if the underground natural gas storage well fails the inspection. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45a-5. Public notice. (a) Public notice shall be given by the secretary for any of the following permit actions:

(1) A permit application for an underground natural gas storage well;

(2) any modifications that require a draft permit;

(3) any modifications for an existing storage facility;

(4) the denial of a permit; or

(5) a scheduled hearing.

(b) The public notice and, if applicable, a copy of the draft permit shall be mailed or electronically mailed by the department to the permit applicant.

(c) The public notice shall be mailed by the department to the following:

(1) Any person who submits a written request for placement on the mailing list;

(2) the official county newspaper of each county in which the lands affected by the application are located, for publication in at least two issues; and

(3) the Kansas register.

(d) The public notice shall include the following information:

(1) The name and address of the department processing the permit action for which the notice is being given;

(2) the name and address of the person or company seeking the permit;

(3) a brief description of the business conducted at the facility or the activity described in the permit application;

(4) the name, address, and telephone number of the person that interested persons may contact for further information, including copies of the application, draft permit, or any other appropriate information;

(5) a brief description of the comment procedures for public notice; and

(6) a statement of the procedure to request a hearing and other procedures that allow public participation in the final permit decision.

(e) Any interested person may submit written comments to the secretary on any of the permit actions during the 30-day public comment period. The following requirements shall apply:

(1) All comments shall be submitted by the close of the public comment period.

(2) All supporting materials submitted shall be included in full and shall not be incorporated by reference, unless the supporting materials are any of the following:

(A) Part of the administrative record in the same proceeding;

(B) state or federal statutes and regulations;

(C) state or environmental protection agency documents of general applicability; or

(D) other generally available reference materials.

(3) Commentators shall make supporting materials not already included in the administrative record available to the secretary.

(f) The response to all significant comments concerning any permit actions and the reasons for changing any provisions in the draft permit shall be issued when the final permit decision is issued.

(g) The response to comments shall be made available to the public upon request. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45a-6. Modification and transfer of a permit. (a) The automatic transfer of a permit shall be prohibited. The requirements for each permit transfer shall be as follows:

(1) Each person requesting a permit transfer shall submit a completed application to the secretary at least 60 days before the effective date of the proposed transfer.

(2) Each permittee shall comply with the requirements of the existing permit until the secretary reissues the permit.

(b) Any permit for an underground natural gas storage well may be modified by the secretary under any of the following conditions:

(1) The secretary receives information that was not available when the permit was issued.

(2) The secretary receives a request for a modification.

(3) The secretary conducts a review of the permit file and determines that modification is necessary.

(c) Only the permit actions subject to modification shall be reopened.

(d) Minor modifications that shall not require public notification include the following, except as otherwise specified:

(1) Correction of typographical errors;

(2) requirements for more frequent monitoring or reporting by the permittee;

(3) a date change in a schedule of compliance;

(4) a change in ownership or operational control of the facility, unless the secretary determines that public notification is necessary to protect the public interest;

(5) a change in construction requirements, if approved by the secretary; and

(6) any amendments to a plugging plan.

(e) A draft permit and notification to the public shall be required if any of the following conditions is met:

(1) A permittee proposes substantial alterations or additions to the facility or proposes an activity that justifies a change in the permit requirements, including cumulative effects on public health, safety, and the environment.

(2) Information has become available that would have initially justified different permit conditions.

(3) Standards or regulations on which the permit was based have changed due to the promulgation of new or amended standards or due to a judicial decision after the permit was issued.

(f) Any permittee may request a permit modification within 180 days after any of the following:

(1) The adoption of new regulations or standards;

(2) any deadline to achieve compliance with regulations or standards before the expiration date of the permit; or

(3) any judicial remand and stay of a promulgated regulation if the permit condition was based on the remanded regulation. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45a-7. Signatories for permit applications and reports. (a) Each permittee of an existing underground natural gas storage well and each applicant for a permit for a proposed underground natural gas storage well shall designate signatories to sign the permit applications and all reports required by the secretary.

(b) Positions that may be approved by the secretary to be signatories shall include the following:

(1) Plant or operations manager;

(2) cavern specialist;

(3) superintendent; and

(4) a position with responsibility at least equivalent to that required by the positions listed in this subsection.

(c) Any signatory may submit written notification to the secretary specifying a position having responsibility for the overall operation of the regulated facility or activity to act as a designated signatory.

(d) Each signatory and each signatory's designee shall submit a signature statement, on a form furnished by the department, with the permit application. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45a-8. Siting requirements for new underground natural gas storage wells. (a) Each applicant shall assess the geographical, topographical, and physical data for any proposed natural gas storage well location to determine whether the siting requirements have been met. The following siting requirements shall be met:

(1) Each new underground natural gas storage facility shall be located at least three miles from the established boundaries of municipal population centers.

(2) Each proposed new facility or boundary expansion for any existing facility shall be located as follows:

(A) Not less than five miles from an active or abandoned conventional shaft mining operation; and

(B) not less than two miles from the facility's boundary of any solution mining operation.

(3) Each applicant shall assess the extent and nature of current or past conventional subsurface mining activities within five miles of the underground natural gas storage facility boundary to determine any potential impact to public health, safety, or the environment resulting from proposed activities at the facility.

(4) Each applicant shall identify and assess all wells, including abandoned wells, from available sources of information, within a one-mile perimeter of the facility's boundary to determine if the following conditions exist:

(A) All wells have been constructed in a manner to protect public health, safety, and the environment.

(B) All abandoned wells, including oil, gas, water, and monitoring wells, have been properly plugged.

(b) Each applicant shall conduct a regional geological evaluation to determine if the integrity of the proposed storage cavern will be adversely affected by either of the following:

(1) Salt thinning due to any stratigraphic change; or

(2) a dissolution zone in the salt.

(c) Each applicant shall determine if the facility's location is in a floodplain or flood-prone area.

(d) No new underground natural gas storage facility boundary or the expansion of an existing facility's boundary shall be located less than one mile from any existing underground porosity storage facility.

(e) Each applicant shall identify potential risks to the storage operation from activities conducted at adjacent facilities.

(f) Each applicant shall identify all utilities having right-of-way, including pipeline, railway, roadway, and electrical lines, and shall assess the potential impact of the utilities on the location or operation of the storage facility. If facilities are exposed and subject to hazards, including vehicular traffic, railroads, electrical power lines, and aircraft or shipping traffic, the facility shall be protected from accidental damage, by distance or barricades.

(g) No outer boundary of an underground natural gas storage cavern shall be less than 100 feet from any of the following:

(1) The property boundary of any owners who have not consented to subsurface storage under their property;

(2) any existing surface structure not owned by the facility's owner; or

(3) any public transportation artery. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45a-9. Financial assurance for underground natural gas storage facility closure.

(a) Each permittee of an underground natural gas storage facility shall establish financial assurance for the following:

(1) Closure of the facility; and

(2) the plugging of any underground natural gas storage well.

(b) Each permittee of an existing underground natural gas storage well and each applicant for a permit for a new underground natural gas storage well shall submit proof of financial assurance with the permit application and, thereafter, annually on or before January 31 of each year. The following requirements shall apply:

(1) Each permittee and each applicant shall submit a detailed written estimate, in current dollars, of the cost to close all underground natural gas storage wells and storage caverns at the facility with closure procedures specified in K.A.R. 28-45a-18. The estimate shall be reviewed and approved by a professional engineer or licensed geologist.

(2) Each permittee and each applicant shall develop an estimate of the closure cost for all underground natural gas storage wells and storage caverns at the facility based on the cost charged by a third party to plug the underground natural gas storage wells.

(3) Each permittee shall increase the closure cost estimate and the amount of financial assur-

ance provided if any change in the facility operation or closure plan increases the maximum cost of closure at any time.

(c) Each permittee shall provide continuous financial assurance coverage for closure until the secretary approves the facility closure.

(d) Each permittee and each applicant shall comply with the provisions of the department's document titled "procedure for demonstrating financial assurance for an underground natural gas storage well, procedure #: UICLPG-7," dated March 2003, which is hereby adopted by reference. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45a-10. Operations and maintenance plan.

(a) Each permittee of an existing underground natural gas storage facility and each applicant for a permit for a new underground natural gas storage facility shall submit a plan for the long-term operation and maintenance of the facility with the permit application.

(b) Each operation and maintenance plan shall include the following:

(1) A description of the methods to be used to prevent the overpressuring of wells and storage caverns;

(2) a plan map view of the location of any disposal wells or corrosion control wells; and

(3) the location, depth, and construction details for all shallow and deep groundwater monitoring wells.

(c) Each permittee shall maintain at the facility and make available for inspection by the secretary the following information:

(1) A location map of all wells within the facility's boundaries and a listing of the global positioning system coordinates for each well;

(2) a schematic of the gathering line system that connects all wells within the underground storage facility to a central distribution point; and

(3) a schematic of the product lines for each cavern.

(d) Each permittee shall utilize a blanket pad to prevent the uncontrolled leaching of the storage cavern roof during solutioning or washing. Each permittee shall submit the description of a procedure for solutioning or washing the cavern, with the operations and maintenance plan, to the secretary for review and consideration for approval. The procedure description shall include the following:

(1) A list of acceptable blanket pad materials;

(2) the methods for monitoring the solutioning or washing process; and

(3) a monitoring schedule.

(e) The criteria for determining the maximum allowable operating pressure shall be as follows:

(1) The maximum allowable operating pressure and test pressure shall not exceed 0.75 pounds per square inch per foot of depth measured at the higher elevation of either the casing seat or the highest interior elevation of the storage cavern roof.

(2) The storage cavern shall not be subjected to pressures in excess of the maximum allowable operating pressure, including pressure pulsations and abnormal operating conditions.

(f) Each permittee shall maintain a minimum operating pressure that is protective of cavern integrity at each underground natural gas cavern.

(g) Each permittee shall meet the notification requirements in the facility's emergency response plan, give oral notification to the department within two hours, and submit written notification within one week to the department if any of the following events occurs:

(1) The overpressuring of a storage cavern;

(2) the loss of integrity for the underground natural gas storage well;

(3) the release of product or any other parameter that poses a threat to public health, safety, or the environment;

(4) any other condition that could pose a risk to public health, safety, or the environment;

(5) the establishment of communication between caverns;

(6) the triggering of any alarms verifying that permit safety requirements have been exceeded; or

(7) any equipment malfunction or failure that could result in potential harm to public health, safety, or the environment. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45a-11. Emergency response plan and safety and security measures.

(a) Each permittee of an existing underground natural gas storage facility and each applicant for a permit for a proposed underground natural gas storage facility shall prepare an emergency response plan as part of the permit application or the plugging plan. The following requirements shall apply:

(1) Each permittee and each applicant shall maintain the emergency response plan at the fa-

cility and at the company headquarters and shall make it available for inspection by the secretary.

(2) Each permittee and each applicant shall make a copy of the plan available to all coordinating agencies or committees involved in emergency response.

(b) Each permittee shall update the plan annually and also shall update the plan whenever new information regarding the requirements for the emergency response plan becomes available.

(c) Each plan shall include a description of the facility's response to the following events:

- (1) Spills and releases;
- (2) fires and explosions;
- (3) cavern subsidence and collapse; and
- (4) any other activity that endangers public health and safety, or that constitutes a threat to the environment.

(d) Each plan shall include the following information:

(1) A description of the warning systems in operation at the facility;

(2) a description of the facility's emergency response communication system that includes the following:

(A) A plat showing the location of all occupied buildings within two miles of the facility's perimeter; and

(B) a list of addresses and telephone numbers for all persons to contact within two miles of the facility's perimeter if a release or emergency condition occurs;

(3) the procedures for coordination of emergency response with local emergency planning committees, including emergency notification and evacuation of citizens and employees;

(4) a description of employee training for emergency response;

(5) a plat of the facility, showing locations for the following:

- (A) All underground storage wells;
- (B) all underground injection control wells;
- (C) all monitoring wells;
- (D) all brine and product lines, if present;
- (E) railroad and transportation routes;
- (F) all brine ponds, if present; and
- (G) any other appurtenances at the facility; and
- (6) a plan map of all man-made surface structures and any construction activities within one mile of the facility's perimeter.

(e) Each permittee shall establish an educational program for community safety and awareness of the emergency response plan.

(f) Each permittee of an underground natural gas storage facility shall provide security measures to protect the public and to prevent unauthorized access. These security measures shall include the following:

(1) Methods for securing the facility from unauthorized entry and for providing a convenient opportunity for escape to a place of safety;

(2) clearly visible, permanent signs at all points of entry and along the facility's boundary, identifying the well or storage facility name, owner, and contact telephone number;

(3) security lighting;

(4) alarm systems;

(5) appropriate warning signs in areas that may contain accumulations of hazardous or noxious vapors or where physical hazards exist; and

(6) a direct communication link with the control room or remote control center for service and maintenance crews.

(g) Warning systems and alarms shall consist of the following:

(1) Leak detectors, fire detectors, heat sensors, pressure sensors, and emergency shutdown instrumentation shall be integrated with warning systems audible and visible in the local control room and at any remote control center;

(2) circuitry designed so that the failure of a detector or heat sensor, excluding meltdown and fused devices, will activate the warning; and

(3) a manually operated alarm, audible to facility personnel.

(h) Each wellhead and storage cavern shall be protected with safety devices to prevent pressures in excess of the maximum allowable operating pressure from being exerted on the storage well or storage cavern and to prevent backflow if a flow-line ruptures.

(i) Each wellhead shall be equipped with manual isolation valves. Each port on each wellhead shall be equipped with either a valve or a blind flange. The valve or blind flange shall be rated at the same pressure as that for the wellhead.

(j) Each permittee shall install a supervisory control and data acquisition monitoring system approved by the secretary to monitor storage operations for individual storage caverns. Each of the following instruments shall be connected to an alarm:

(1) Flow indicators for natural gas;

(2) gas indicators; and

(3) pressure indicators on the product lines of the wellhead.

(k) Each permittee shall install emergency shut-down valves on all natural gas lines and, if present, brine or water lines. Each emergency shutdown valve shall meet the following requirements:

(1) Meet either of the following pressure-ratings:

(A) Be rated at least equivalent to 125% of the maximum pressure that could be exerted at the surface; or

(B) Meet a pressure-rating standard equivalent to that specified in paragraph (k)(1)(A) and determined by the secretary to be protective of public health, safety, and the environment;

(2) fail to a closed position;

(3) be capable of remote and local operation; and

(4) be activated by any overpressuring in the natural gas system.

(l) Each permittee shall conduct annual inspections of all wellhead instrumentation.

(m) Each permittee shall function-test each critical control system and emergency shutdown valve semiannually.

(n) Each permittee shall perform trip testing of each loop, including the instrumentation, valves, shutdown equipment, and all wiring connections, to ensure the integrity of the circuit.

(o) Each permittee shall ensure that the equipment automatically closes all inlets and outlets to the storage cavern and safely shuts down or diverts any operation associated with the storage cavern, in case of overfilling or emergency.

(p) Each permittee shall ensure that the automatic valve closure times meet the valve design limits for closure times.

(q) Each permittee shall cease operations or shall comply with the instructions from the secretary if the secretary determines that an imminent threat to public health, safety, or the environment exists due to any unsafe operating condition. The permittee may resume operations if the secretary determines that the facility's operations no longer pose a risk to public health, safety, or the environment. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45a-12. Design and construction of underground natural gas storage wells. (a) Each permittee of an existing underground natural gas storage well and each applicant for a permit for a new underground natural gas storage well shall ensure that each underground natural gas storage well is constructed with surface casing. The following requirements shall apply:

(1) Surface casing shall be set through all fresh and usable water formations and into competent bedrock.

(2) Surface casing shall be cemented by circulating cement through the bottom of the casing to the surface.

(3) The annular space between the casing and the formation shall be filled with cement.

(b) Each new and each existing underground natural gas storage well shall have double casing protection. The following requirements shall apply:

(1) The production casing shall extend a minimum of 105 feet into the salt formation.

(2) A tubing and mechanical packer assembly shall be installed inside the production casing.

(3) The packer shall be set at a depth approved by the secretary for the protection of public health, safety, and the environment.

(c) Each permittee of an underground natural gas storage facility shall install and maintain a corrosion control system. The following requirements shall apply:

(1) The corrosion control system shall be capable of protecting the well casings.

(2) The corrosion control system shall be assessed according to the protocol and time schedule recommended by the corrosion control system manufacturer, and the results reported to the secretary.

(d) The casing and tubing shall meet the performance standards for collapse resistance, internal yield pressure, and pipe body yield strength for the well's setting depths using criteria specified in the American petroleum institute's bulletin 5C2, twenty-first edition, dated October 1999, as adopted by reference in K.A.R. 28-45-15.

(e) Only new steel casing shall be installed in new underground natural gas wells. Used parts, materials, and equipment that have been tested and certified for continued service may be used for repairs.

(f) Liners shall extend from the surface to a depth near the bottom of the production casing allowing room for any workover operations.

(g) The following cementing requirements shall be met:

(1) The cement shall be compatible with the rock formation waters and the drilling fluids. Salt-saturated cement shall be used when cementing through the salt section.

(2) The cement across the confining zone and to the surface shall have a compressive strength of not less than 1,000 pounds per square inch.

(3) Remedial cementing shall be completed if there is evidence of either of the following:

(A) Communication between the confining zone and other horizons; or

(B) annular voids that would allow either fluid contact with the casing or channeling across the confining zone or above the confining zone.

(4) The following requirements for cement evaluation shall apply:

(A) Samples shall be obtained at the start and end of the cementing operation for evaluation of cement properties. All cement samples collected shall be representative of the cement being utilized.

(B) All samples shall be tested for compressive strength.

(C) A cement bond log shall be run on the surface casing, intermediate casing, and cemented production casing after the neat cement has cured for a minimum of 72 hours.

(h) Casing patches shall be prohibited, unless the secretary determines that the casing patches are protective of public health, safety, and the environment.

(i) Each permittee shall pressure-test the production casing for leaks when the well construction is completed.

(j) Each permittee shall submit a casing inspection base log for the entire cased interval for the innermost casing string or for the cemented liner that extends the entire length of the casing after the well construction is completed.

(k) Each container utilized in drilling or workover operations to contain workover wastes, drilling fluids, drilling mud, and drill cuttings shall be required to be approved in advance by the secretary. Drilling fluids, drilling mud, and drill cuttings shall be disposed of in a manner determined by the secretary to be protective of public health, safety, and the environment.

(l) A licensed professional engineer or licensed geologist, or licensed professional engineer's or licensed geologist's designee, shall supervise the installation of each underground natural gas storage well. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45a-13. Monitoring. (a) Each permittee shall ensure that each underground natural gas storage well is equipped with pressure sensors to continuously monitor wellhead pressures on the product line at the wellhead. The following requirements shall apply:

(1) The pressure sensor shall be capable of recording the maximum and minimum operating pressures during a 24-hour period.

(2) The pressure sensor shall be capable of recording operating pressures at an interval approved by the secretary.

(3) The permittee shall provide pressure data, including historic continuous monitoring, to the secretary upon request.

(b) Each permittee shall submit a plan for any monitoring activity, including logging and sonar surveys, to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment, at least 60 days before the commencement of these monitoring activities.

(c) Each permittee shall submit a summary and the results of the monitoring activity to the secretary within 30 days after completion of the monitoring activity.

(d) Each permittee shall monitor the thickness of the salt roof for each cavern with gamma ray and density logs or other log specified in K.A.R. 28-45a-4 (k) as follows:

(1) Every five years;

(2) at any time that the secretary determines that cavern integrity is suspect; and

(3) before plugging the well.

(e) Each permittee shall determine the cavern storage capacity and the cavern geometry with a sonar survey. The sonar survey shall be conducted as follows:

(1) Before placing the natural gas storage cavern in service;

(2) for determining the capacity of the natural gas storage cavern, if the capacity determined by the volume of gas injected into and withdrawn from the storage cavern does not correspond with the reported cavern capacity;

(3) before plugging the well, if a sonar survey has not been run in the past five years;

(4) for determining the stability of the cavern and the overburden, if the salt roof thickness and cavern geometry indicate that the stability of the cavern or overburden is at risk; and

(5) after any solutioning that results in a solution volume increase of 20 percent or more of cavern capacity.

(f) Any permittee may use an alternative method for the sonar survey if the secretary determines that the alternative method is substantially equivalent to the method specified in subsection (e). The permittee shall submit the following information:

(1) A description of the proposed method and the theory for its operation;

(2) a description of the storage well and cavern conditions under which the log can be used;

(3) the procedure for interpreting the survey results; and

(4) an interpretation of the capacity and stability of the cavern upon completion of the survey.

(g) Each permittee of an underground natural gas storage well equipped with a production casing and a tubing and packer assembly shall monitor the annular space. Each permittee shall submit the following to the secretary for review and consideration for approval:

(1) A diagram of the well construction; and

(2) a plan for monitoring the annulus that includes the following:

(A) A diagram of the instrumentation for monitoring the annular pressure and fluid levels;

(B) a description of how the annular pressure and fluid levels will be recorded; and

(C) a description of, and justification for, the testing methods to demonstrate the mechanical integrity of the system.

(h) Each permittee shall submit a survey plan for monitoring ground subsidence, with the permit application, to the secretary for review and consideration for approval.

(1) The survey plan shall include the following information:

(A) A description of the method for conducting the elevation survey; and

(B) the criteria for establishing monuments, benchmarks, and wellhead survey points.

(2) The criteria for subsidence monitoring shall be the following:

(A) Level measurements to the accuracy of 0.01 foot shall be made.

(B) Surface elevation changes in excess of 0.10 foot shall be reported within 24 hours to the department.

(C) No established benchmark shall be changed unless the permittee submits a justification that the change is protective of public health, safety, and the environment.

(D) If a benchmark is changed, the elevation change from the previous benchmark shall be noted in the elevation survey report.

(E) Each permittee shall submit the elevation before and after any wellhead work that results in a change in the survey point at the wellhead.

(3) The survey shall be conducted by a licensed professional land surveyor.

(4) Biennial survey results, including certified and stamped field notes, shall be submitted to the department within 30 days after completion of the survey.

(i) Each permittee shall submit an inventory balance plan for measuring the volume of natural gas injected or withdrawn from each underground natural gas storage well, including methods for measuring and verifying volume, to the secretary for review and consideration for approval. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45a-14. Testing and inspections. (a) Each permittee shall submit a plan to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment before conducting any underground natural gas storage well or cavern testing. Testing shall not commence without prior approval from the secretary.

(b) Each permittee shall submit a summary of the test to the secretary within 45 days after completion of the test. The summary shall include the following:

(1) A chronology of the test;

(2) copies of all logs;

(3) storage well completion information;

(4) pressure readings;

(5) volume measurements; and

(6) an explanation of the test results.

(c) Each permittee shall test each underground natural gas storage well and each underground natural gas storage cavern for integrity. The following requirements shall apply:

(1) Each permittee of any new underground natural gas storage cavern shall test for integrity using a nitrogen interface test before the cavern is initially placed in service.

(2) Each permittee shall conduct a hydraulic pressure test for each underground natural gas storage well every five years.

(3) Each permittee shall conduct a pressure test for each underground natural gas storage cavern every five years.

(4) Integrity tests shall be conducted as follows:

(A) After each workover;

(B) before injecting working gas into any existing underground natural gas storage well that was prohibited from being injected with working gas as specified in K.S.A. 55-1,117 and amendments thereto; and

(C) before plugging the well.

(5) Each permittee shall submit a test procedure plan to the secretary, on a form furnished by the department, for review and consideration for approval, at least 60 days before test commencement. The plan shall include the following:

- (A) The justification for the test parameters;
- (B) the test sensitivities; and
- (C) the pass and fail criteria for the test.

(6) Each permittee shall notify the secretary at least five days before conducting any integrity test.

(7) The integrity test shall be conducted at the maximum allowable operating pressure.

(8) All test procedures shall use certified gauges and pressure transducers that are calibrated annually.

(d) Any permittee may use an alternative integrity test method if the secretary determines that the alternative test method is substantially equivalent to the integrity test specified in subsection (c). The permittee shall submit the following information:

(1) A description of the test method and the theory of operation including the test sensitivities, a justification for the test parameters, and the pass and fail criteria for the test;

(2) a description of the well and cavern conditions under which the test can be conducted;

(3) the procedure for interpreting the test results; and

(4) an interpretation of the test upon completion of the test.

(e) Each permittee shall ensure the mechanical integrity of the underground natural gas storage cavern and well before placing the cavern and well into service.

(f) Each permittee shall submit a casing evaluation for each underground natural gas storage well. Acceptable casing evaluation methods shall include magnetic flux and ultrasonic imaging.

(g) Any permittee may use an alternative casing evaluation method if the secretary determines that the alternative casing evaluation method is substantially equivalent to the casing evaluation methods specified in subsection (f). The permittee shall meet the following requirements:

(1) Each permittee shall submit a description of the logging method, including the theory of operation and the well conditions suitable for log use.

(2) Each permittee shall submit the specifications for the logging tool, including tool dimensions, maximum temperature and pressure rating,

recommended logging speed, approximate image resolution, and hole size range.

(3) Each permittee shall describe the capabilities of the log for determining the following:

(A) The presence of any metal loss due to either of the following:

- (i) Internal or external corrosion; or
- (ii) internal wear;

(B) the degree of penetration of the corrosion or the casing defect; and

(C) the circumferential extent of the corrosion or the casing defect.

(4) Each permittee shall submit a log and an interpretation of the log to the secretary.

(h) Each permittee shall submit a casing evaluation according to the following schedule:

(1) Every 10 years;

(2) before the injection of working gas in an existing underground natural gas storage well; and

(3) after any workover in which the injection string is pulled, if present.

(i) A licensed professional engineer or a licensed geologist, or a licensed professional engineer's or licensed geologist's designee, shall supervise all test procedures and associated field activity.

(j) A licensed professional engineer or a licensed geologist shall review all test results.

(k) Each permittee shall visually inspect the wellhead monthly for any leakage.

(l) Each permittee shall conduct an inspection of facility records, using a form furnished by the department, every two years to ensure that the required records are being properly maintained. The permittee shall maintain these records at the facility and shall make the records available to the secretary upon request. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45a-15. Groundwater monitoring. (a)

Each permittee of an existing underground natural gas storage facility and each applicant for a permit for a new underground natural gas storage facility shall submit a groundwater monitoring plan with the permit application to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment.

(b) Each permittee shall ensure that each groundwater monitoring well meets the following requirements:

(1) Each permittee shall set the screen in each shallow monitoring well at a depth that is inclusive of the seasonal fluctuation of the water table.

(2) Each permittee shall ensure that all deep groundwater monitoring wells extend a minimum of 25 feet into the bedrock, or to a depth based on the geology and hydrogeology at the facility and approved by the secretary.

(c) Each well location and the spacing between all well locations shall be based on the geology and the hydrogeology at the facility and approved by the secretary.

(d) Each permittee shall submit a quality assurance plan, including techniques prescribed for sampling and analysis, with the permit application to the secretary for review and consideration for approval to ensure protection of public health, safety, and the environment.

(e) Each permittee shall collect groundwater samples and analyze the samples for chlorides and any other parameter determined by the secretary to pose a threat to public health, safety, and the environment. The reporting format shall be determined by the secretary.

(f) Each permittee shall submit the results for chloride analyses from groundwater samples to the department on a quarterly basis.

(g) Each permittee shall monitor monthly for the presence of combustible gas in the headspace in monitoring wells and shall submit the results to the department on a quarterly basis.

(h) Each permittee shall submit a static groundwater level measurement for each monitoring well with the quarterly chloride results specified in subsection (f).

(i) Any permittee of an underground storage facility where groundwater chloride concentrations exceed 250 milligrams per liter may be required by the secretary to submit a work plan, for review and consideration for approval, that describes methods to delineate any potential source area and to control migration of the chloride contamination.

(j) Each permittee of a facility with any detection of combustible gas shall submit a work plan that describes the methods to eliminate any source areas and return the combustible gas levels to levels that do not pose a risk to public health, safety, and the environment. The plan shall be approved if the secretary determines that the plan is protective of public health, safety, and the environment. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45a-16. Record requirements and retention. (a) Each permittee shall complete and submit an annual report, on a form furnished by the department, on or before April 1 of each year. The annual report shall include the following:

(1) A description of any incident of uncontrolled or unanticipated product loss;

(2) the well number and date of any logs or sonar surveys conducted;

(3) the estimated storage capacity for all unplugged caverns;

(4) a list of any caverns being washed;

(5) a list of the product volume injected and withdrawn for each well; and

(6) a list, by well number, of the maximum and minimum product storage pressures encountered during the report year.

(b) Each permittee shall retain and maintain the following records at the facility for the following time periods:

(1) For 10 years, the following records:

(A) The maximum and minimum operating pressures for each well; and

(B) the annual inspections required by the secretary;

(2) for the life of the underground natural gas storage well, the following records:

(A) The casing records for each well;

(B) the cementing records for each well; and

(C) all workover records; and

(3) for the life of the facility, the following records:

(A) All logging events;

(B) all mechanical integrity tests and other testing;

(C) all groundwater monitoring data; and

(D) all correspondence relating to the permit, including electronic mail.

(c) Surface elevation surveys shall be maintained and retained for the life of facility plus 20 years after the facility's closure.

(d) All required facility records, reports, and documents shall be transferred to the new permittee with the transfer of the permit. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45a-17. Well workovers. (a) Each permittee shall submit a workover plan to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment. The following provisions shall apply:

(1) Each permittee shall submit the workover plan at least 10 days before performing any downhole or wellhead work that involves dismantling or removal of the wellhead.

(2) The permittee shall not be required to submit a workover plan for routine maintenance or replacement of gauges, sensors, or valves.

(3) Verbal authorization to initiate downhole or wellhead work may be issued by the secretary.

(b) Each permittee shall ensure that a blowout preventer with a pressure rating greater than the pressures to be encountered is used during each workover.

(c) Each permittee shall ensure that logging procedures are conducted through a lubricator unit with a pressure rating greater than the pressures anticipated to be encountered.

(d) Each permittee shall provide the person performing the logging or well workover with all relevant information concerning the status and condition of the well and storage cavern before initiating any work. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45a-18. Plugging requirements. (a) Each permittee shall submit a plugging plan to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment, at least 60 days before the plugging event.

(b) Each permittee shall follow plugging procedures specified in the department's document titled "procedure for the plugging and abandonment of a natural gas storage well, procedure #: UICLPG-8," dated March 2003, which is hereby adopted by reference.

(c) Each permittee shall restore and preserve the integrity of the site as follows:

(1) Dispose of all liquid waste in an environmentally safe manner;

(2) clear the area of debris;

(3) drain and fill all excavations;

(4) remove all unused concrete bases, machinery, and materials; and

(5) level and restore the site. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

28-45a-19. Underground natural gas storage fees. (a) Effective on and after January 1, 2004, each permittee shall submit an annual

permit fee of \$18,890 per facility and \$305 per unplugged underground natural gas storage well on or before April 1 of each year.

(b) Each permittee shall submit a permit fee of \$305 for any unplugged underground natural gas storage well inadvertently omitted from the collection of permit fees for the year 2003.

(c) Each applicant for a permit for a proposed new underground natural gas storage well shall submit a fee of \$700 with the permit application.

(d) Fees shall be made payable to the "Kansas department of health and environment—subsurface hydrocarbon storage fund."

(e) The fees collected under the provisions of this regulation shall not be refunded.

(f) If the ownership of a storage well or storage facility changes during the term of a valid permit, no additional fee shall be required, unless a change occurs that results in a new storage well or an expanded facility operation. (Authorized by and implementing K.S.A. 2002 Supp. 55-1,117; effective, T-28-4-1-03, April 1, 2003; effective Aug. 8, 2003.)

Article 45b.—UNDERGROUND CRUDE OIL STORAGE WELLS AND ASSOCIATED BRINE PONDS

28-45b-1. Definitions. (a) "Active well" means an unplugged well that is in service or in monitoring status.

(b) "American petroleum institute gravity" and "API gravity" mean the specific gravity scale developed by the American petroleum institute for measuring the relative density of various petroleum liquids, expressed in degrees API.

(c) "Applicant" means the operator and the owner requesting a permit as specified in this article. If the operator and the owner are not the same person, the owner and the operator shall jointly submit an application for a permit.

(d) "Brine" means saline water with a sodium chloride concentration equal to or greater than 90 percent.

(e) "Brine pond" means the excavated or diked structure used for the surface containment of brine used in the creation, maintenance, and operation of an underground crude oil storage well.

(f) "Crude oil" means unrefined, liquid petroleum.

(g) "Crude oil reserve" means the storage of crude oil for future use.

(h) "Crude oil storage well," "underground crude oil storage well," and "storage well" mean a

well used for the injection or withdrawal of crude oil into or out of an underground crude oil storage cavern.

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

(j) “Draft permit” means a document that is pending approval by the secretary to be issued as a permit.

(k) “Fracture gradient” means the pressure gradient, measured in pounds per square inch per foot, that causes the geological formations to physically fracture.

(l) “Freshwater” means water containing not more than 1,000 milligrams per liter of total dissolved solids (TDS).

(m) “Licensed geologist” means a geologist licensed to practice geology in Kansas by the Kansas board of technical professions.

(n) “Licensed professional engineer” means a professional engineer licensed to practice engineering in Kansas by the Kansas board of technical professions.

(o) “Licensed professional land surveyor” means a professional land surveyor licensed to practice land surveying in Kansas by the Kansas board of technical professions.

(p) “Liner” means the casing normally installed within the production casing.

(q) “Maximum allowable operating pressure” means the maximum pressure authorized by the department and measured at the product side of the wellhead.

(r) “Maximum allowable synthetic membrane liner leakage rate” means a monitored or a calculated leakage rate of 10 percent of the collection and leak return system capacity.

(s) “Maximum operating pressure” means the maximum pressure monitored during a 24-hour period and measured at the product side of the wellhead.

(t) “Monitoring status” means temporary status for a well that has been placed out of service by removing the product and filling the cavern with brine.

(u) “Municipal population center” means an incorporated city.

(v) “Operator” means the person recognized by the secretary as being responsible for the physical operation of an underground crude oil storage facility or a brine pond.

(w) “Owner” means the person owning all or part of any underground crude oil storage facility or brine pond.

(x) “Permit” means an authorization, license, or equivalent control document issued to the owner and the operator by the secretary. A permit may be issued for any of the following:

(1) A new underground crude oil storage facility and the associated crude oil storage wells;

(2) an existing underground crude oil storage facility and the associated crude oil storage wells; or

(3) a brine pond.

(y) “Permittee” means the owner and the operator issued a permit, as defined in this regulation, by the secretary.

(z) “Person” means any individual, company, corporation, institution, association, partnership, municipality, township, and local, state, or federal agency.

(aa) “Plugged well” means a storage well that has been plugged or placed into plugging-monitoring status pursuant to K.A.R. 28-45b-18.

(bb) “Plugging-monitoring status” means the status of a storage well that will not be returned to active status but will be filled with brine to monitor cavern stabilization in lieu of plugging.

(cc) “Porosity storage” means the storage of hydrocarbon gas in underground porous and permeable strata that have been converted to hydrocarbon gas storage.

(dd) “Pressure gradient” means the ratio of pressure per unit depth, expressed as pounds per square inch per foot of depth.

(ee) “Product” means crude oil.

(ff) “Saturated brine” means saline water with a sodium chloride concentration that is equal to or greater than 90 percent.

(gg) “Secretary” means secretary of the department of health and environment.

(hh) “Solutioning” means the process of injecting fluid into a well to dissolve salt or any other readily soluble rock or mineral.

(ii) “Sour crude oil” means crude oil with a sulfur content greater than 0.5 percent.

(jj) “Supervisory control and data acquisition” means an automated surveillance system in which the monitoring and control of storage activities are accomplished at a central or remote location.

(kk) “Sweet crude oil” means crude oil with a sulfur content not greater than 0.5 percent by weight.

(ll) “Type” means the description of the product that includes American petroleum institute gravity, non-hydrocarbon impurities, and hydrogen sulfide content.

(mm) “Underground crude oil storage cavern,” “cavern,” and “storage cavern” mean the storage space for crude oil created in a salt formation by solution mining.

(nn) “Underground crude oil storage facility” and “facility” mean the acreage associated with the storage field, with facility boundaries approved by the secretary. This term shall include the brine ponds, storage wells, wellbore tubular goods, the wellheads, and any related equipment, including any appurtenances associated with the well field.

(oo) “Unplugged,” when used to describe a well, means a storage well that either is not plugged or is in plugging-monitoring status.

(pp) “Unsaturated brine” means saline water with a sodium chloride concentration less than 90 percent.

(qq) “Usable water formation” means an aquifer or any portion of the aquifer that meets any of the following criteria:

- (1) Supplies any public water system;
- (2) contains a supply of groundwater that is sufficient to supply a public water system and that currently supplies drinking water for human consumption; or
- (3) contains fewer than 10,000 milligrams per liter total dissolved solids and is not an exempted aquifer.

(rr) “Variance” means the secretary’s written approval authorizing an alternative action to one or more of the requirements of these regulations. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

28-45b-2. Permit required for facilities and storage wells; variances. (a) No person shall create, operate, or maintain an underground crude oil storage facility or any crude oil storage well without first obtaining a permit from the secretary.

(b) The storage of crude oil in caverns constructed in any rock formations other than bedded salt shall be prohibited.

(c) A variance to any requirement of this article may be granted by the secretary if both of the following conditions are met:

- (1) The variance is protective of public health, safety, and the environment.
- (2) The applicant or permittee agrees to perform any additional testing, monitoring, or well improvements, or any combination, if required by the secretary.

(d) Each applicant or permittee seeking a variance shall submit a written request, including justification for the variance and any supporting data, to the secretary for review and consideration for approval. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

28-45b-3. Well conversions and reentry.

(a) The conversion of an existing well that was not originally designed for crude oil storage to an underground crude oil storage well shall be considered for approval if both of the following conditions are met:

(1) The applicant submits a completed application as required by K.A.R. 28-45b-4.

(2) The secretary determines that the conversion is protective of public health, safety, and the environment.

(b) Any permittee may convert an unplugged underground crude oil storage well to monitoring status if all of the following requirements are met:

(1) Each permittee shall verify the integrity of the storage well and cavern by conducting a mechanical integrity test before converting the well to monitoring status.

(2) Each permittee shall run a gamma-density log, a thermal neutron decay time log, or a pulsed neutron log to verify the roof thickness before converting the well to monitoring status.

(3) Each permittee shall meet the requirements specified in the department’s document titled “procedure for converting a crude oil storage well to monitoring status,” procedure #UICLPG-27, dated October 2008, which is hereby adopted by reference.

(4) Each permittee of an underground crude oil storage cavern that is in monitoring status shall conduct a casing inspection evaluation before placing the cavern into service. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

28-45b-4. Permit required for facility and associated storage wells.

(a) Each applicant who intends to construct a new underground crude oil storage well shall submit a completed permit application to the secretary, on a form approved by the department, at least 180 days before the proposed commencement date for the construction of the new crude oil storage well. Well construction shall not begin until the secretary has issued the permit.

(b) Each applicant who intends to convert an existing well to a crude oil storage well shall submit a completed permit application to the secretary, on a form approved by the department, at least 180 days before the proposed date for operation of the crude oil storage well. Well modifications and operations shall not commence until the secretary has issued the permit.

(c) Each applicant who intends to construct a new storage well for the purpose of creating a crude oil reserve shall submit a completed permit application to the secretary at least 180 days before the proposed commencement date for storage well construction. Well construction shall not begin until the secretary has issued the permit.

(d) Each applicant who wishes to convert an existing storage well for the purpose of creating a crude oil reserve shall submit a completed permit application to the secretary at least 180 days before the proposed date for operation of the crude oil storage well. Well modifications and operations shall not commence until the secretary has issued the permit.

(e) Each applicant who intends to create a crude oil reserve shall include the following with the permit application:

(1) A description of monitoring and testing methods to demonstrate that the quality of the crude oil is maintained during storage;

(2) a description of methods and a schedule for routinely testing the integrity of the wellhead, casing, and transfer equipment; and

(3) a description of the brine transfer system, including brine source, disposal method, and means of transfer.

(f) Upon review of each application, one of the following shall be issued by the secretary:

(1) A permit, if the application is approved; or

(2) a notice that the permit has been denied if the applicant has not complied with the requirements of this article. The notice shall include justification for the permit denial.

(g) Each application for a permit shall include a report prepared by a licensed geologist and shall include the following:

(1) An evaluation of the geology and hydrogeology, including cross-sections, isopach and structure maps of the salt formation, and water-level or potentiometric maps;

(2) a regional stratigraphic evaluation;

(3) local and regional structural analyses, including maps, cross-sections, and available geophysical data;

(4) a flood assessment identifying floodplain and flood-prone areas, including the following:

(A) Flood response procedures; and

(B) design criteria for the well and facility equipment; and

(5) an assessment of the potential for ground subsidence.

(h) Each applicant shall submit the following information with the application:

(1) A plan view map showing locations of all water, solution-mining, storage, monitoring, disposal, injection, oil, and gas wells within a one-mile perimeter of the facility's boundary; and

(2) a plan view map of man-made surface structures and activities within a one-mile perimeter of the facility's boundary.

(i) Each permittee shall submit a compliance audit every 10 years, on a form furnished by the department, for review and consideration for approval for the continued operation of each storage well.

(j) Each permittee shall submit a sample log of well cuttings from any new well drilled at the facility, including new crude oil storage wells, monitoring wells, and stratigraphic test holes.

(1) Cuttings shall be collected at 10-foot intervals from surface to total well depth or at an interval specified by the department.

(2) Well cuttings shall be collected, described, and logged as specified in the department's document titled "procedure for sample logging," which is adopted by reference in K.A.R. 28-45-6a.

(3) The collection of cuttings shall be supervised by a licensed geologist or a licensed geologist's designee.

(4) The description and logging of the sample cuttings shall be performed by a licensed geologist.

(5) Each permittee shall submit a sample log and a dry sample set to the department within 45 days after the completion of the well.

(k) Each permittee shall provide a minimum of one core from each facility. The following provisions shall apply:

(1) Each permittee shall submit a plan for a new core describing the coring interval, coring procedures, and core testing with the permit application to the secretary for review and consideration for approval. The plan shall be submitted at least 60 days before the coring event.

(2) Each permittee shall submit the core analysis for a new core after installing the first storage well and before developing the storage field.

(3) Any permittee may submit existing core data if the secretary determines that the core is representative of the geology of the area.

(4) Each permittee shall submit the core analysis for an approved existing core with the permit application.

(5) Each permittee shall make the core available for inspection upon request by the secretary.

(1) Each permittee shall submit a water analysis for any water-bearing formation encountered in drilling a new monitoring well. The water shall be analyzed for the following parameters:

(1) Chloride;

(2) total dissolved solids; and

(3) any parameter that the secretary determines could pose a potential threat to public health, safety, and the environment.

(m) Each permittee shall ensure that the stored crude oil, formation water, lithology, and substances used in the solutioning of the storage caverns are compatible.

(n) Each permittee shall submit open-hole logs for any new crude oil storage well. The logging interval shall be from the surface to at least 100 feet below the top of the salt section. At a minimum, the following logs shall be run:

(1) A gamma ray log;

(2) a neutron log, if the source is registered in Kansas, or a sonic log;

(3) a density log; and

(4) a caliper log.

(o) Any permittee may use an alternative log if the secretary determines that the alternative log is substantially equivalent to one of the logs specified in subsection (n). The permittee shall submit the following information:

(1) A description of the log and the theory of operation for that log;

(2) a description of the field conditions under which the log can be used;

(3) the procedure for interpreting the log; and

(4) an interpretation of the log upon completion of the logging event.

(p) If a facility has a new storage cavern, the permittee shall ensure that a minimum salt roof thickness of 100 feet is maintained above the storage cavern.

(q) Each permittee shall submit supporting data showing that a minimum crude oil inventory in each storage cavern shall be maintained to protect the salt roof during short time periods when changing service, conducting workover activities, or performing surface facility maintenance.

(r) If a facility has an existing cavern approved for crude oil storage with a salt roof thickness greater than 50 feet but less than 100 feet, the permittee shall meet the following requirements:

(1) The permittee shall use only saturated brine to displace product.

(2) The permittee shall submit a schedule for monitoring brine salinity.

(3) The salt roof thickness shall be monitored with gamma ray and density logs, or any other log specified in subsection (o), every three years.

(4) The permittee shall provide any additional information, including a geomechanical study from core analysis, that may be requested by the secretary to verify the integrity of the salt roof.

(s) Underground crude oil storage caverns with a salt roof thickness of 50 feet or less shall be prohibited.

(t) Underground communication between underground crude oil storage caverns in the upper 50 feet of the salt formation shall be prohibited.

(u) Underground communication between underground crude oil storage caverns below the upper 50 feet of the salt formation shall be prohibited, unless the secretary determines that the communication is protective of public health, safety, and the environment. The permittee shall submit the following:

(1) A sonar survey for each cavern that is in communication with another cavern; and

(2) a plan describing the monitoring and testing that the permittee will conduct to ensure that the integrity of the underground crude oil storage wells and caverns will be maintained.

(v) The horizontal distance separating new underground crude oil storage caverns shall be at least 100 feet between the cavern boundaries.

(w) Any existing cavern approved for crude oil storage with horizontal separation less than 100 feet may operate if the following requirements are met:

(1) Each permittee shall submit a justification for each existing underground crude oil storage cavern with horizontal separation less than 100 feet. The following requirements shall apply:

(A) The justification shall include spacing-to-diameter ratios, cavern pressure differentials, and analyses of cavern shape, size, and depth.

(B) The horizontal spacing shall be reevaluated every five years.

(2) Horizontal spacing of less than 50 feet between caverns shall be prohibited.

(x) The maximum horizontal diameter of each cavern shall not exceed 300 feet.

(y) Each permittee shall ensure the integrity of the storage well, including the wellhead and casing, and storage cavern before commissioning any new storage cavern into service. Storage operations may commence when the following requirements are met:

(1) The permittee shall submit a notice of completion of construction on a form furnished by the department.

(2) Each new storage well shall be inspected by the secretary before storage operations commence. If the well fails the inspection, the permittee shall not commence storage operations. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

28-45b-5. Public notice. (a) Public notice shall be given by the secretary for any of the following permit actions:

(1) Any permit application for a crude oil storage well;

(2) the denial of a permit; or

(3) a scheduled hearing.

(b) Public notice and, if applicable, a copy of the draft permit shall be mailed or electronically mailed by the department to the permit applicant.

(c) Each public notice shall be mailed by the department to the following:

(1) Any person who submits a written request for placement on the mailing list;

(2) the official county newspaper of each county in which the lands affected by the application are located, for publication in at least two issues; and

(3) the Kansas register.

(d) Each public notice shall include the following information:

(1) The name and address of the department processing the permit action for which the notice is being given;

(2) the name and address of the person or company seeking the permit;

(3) a brief description of the business conducted at the facility or the activity described in the permit application;

(4) the name, address, and telephone number of the departmental contact whom interested persons may contact for further information, including copies of the application, draft permit, or any other appropriate information;

(5) a brief description of the comment procedures for public notice; and

(6) a statement of the procedure to request a hearing and any other procedures that allow public participation in the final permit decision.

(e) Any interested person may submit written comments on any permit action to the secretary during the 30-day public comment period. The following requirements shall apply:

(1) All comments shall be submitted by the close of the public comment period.

(2) All supporting materials submitted shall be included in full. The supporting materials shall not be incorporated by reference, unless the supporting materials are any of the following:

(A) Part of the administrative record in the same proceeding;

(B) state or federal statutes and regulations;

(C) state or environmental protection agency documents of general applicability; or

(D) other generally available reference materials.

(3) Commentators shall make supporting materials not already included in the administrative record available to the secretary.

(f) The response to all relevant comments concerning any permit actions and the reasons for changing any provisions in the draft permit shall be issued when the permit decision is issued.

(g) The response to comments shall be made available to the public upon request. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

28-45b-6. Modification and transfer of a permit. (a) The automatic transfer of a permit shall be prohibited. The requirements for each permit transfer shall be as follows:

(1) Each person requesting a permit transfer shall notify the secretary at least 60 days before the effective date of the proposed transfer.

(2) Each owner and each operator shall comply with the conditions of the existing permit until the secretary reissues the permit.

(b) Any permit may be modified by the secretary under any of the following conditions:

(1) The secretary receives information that was not available when the permit was issued.

(2) The secretary receives a request for the modification of a permit.

(3) The secretary conducts a review of the permit file and determines that a modification is necessary.

(c) Only the permit actions subject to modification shall be reopened.

(d) Minor modifications that do not require public notification shall include the following, except as otherwise specified:

- (1) Correction of typographical errors;
 - (2) requirements for more frequent monitoring or reporting by the permittee;
 - (3) a date change in a schedule of compliance;
 - (4) a change in ownership or operational control of the facility, unless the secretary determines that public notification is necessary to protect the public interest;
 - (5) a change in construction requirements, if the secretary determines that the change is protective of public health, safety, and the environment; and
 - (6) any amendments to a facility plugging plan.
- (e) A draft permit and notification to the public shall be required if any of the following conditions is met:

(1) A permittee proposes substantial alterations or additions to the facility or proposes an activity that justifies a change in the permit requirements, including cumulative effects on public health, safety, or the environment.

(2) Information has become available that would have initially justified different permit requirements.

(3) Regulations on which the permit was based have changed due to the promulgation of new or amended regulations or due to a judicial decision after the permit was issued.

(f) Any permittee may request a permit modification within 180 days after any of the following:

- (1) The adoption of new regulations;
- (2) any deadline to achieve compliance with regulations; or
- (3) any judicial remand and stay of a promulgated regulation if the permit requirement was based on the remanded regulation. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

28-45b-7. Signatories for permit applications and reports. (a) Each applicant for a permit shall designate at least one signatory to sign the permit applications and all reports required by the secretary.

(b) The positions that may be approved by the secretary to be signatories shall be the following:

- (1) Plant or operations manager;
- (2) cavern specialist;

(3) superintendent; and

(4) any position with responsibility at least equivalent to that required by the positions listed in this subsection.

(c) Any signatory may submit written notification to the secretary specifying a position having responsibility for the overall operation of the facility or activity to act as a designated signatory.

(d) Each signatory and each signatory's designee shall submit a signature statement, on a form furnished by the department, to the secretary with each permit application. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

28-45b-8. Siting requirements for new storage wells and facilities. (a) Each applicant shall assess the geographical, topographical, and physical data for any proposed underground crude oil storage well location to determine whether siting requirements have been met. The following siting requirements shall be met:

(1) Each new storage facility shall be located at least three miles from the established boundaries of municipal population centers.

(2) Each proposed new facility or boundary expansion for an existing facility shall be located as follows:

- (A) Not less than five miles from an active or abandoned conventional shaft mining operation; and
- (B) not less than two miles from the facility's boundary of any solution mining operation.

(3) Each applicant shall assess the extent and nature of current or past conventional subsurface mining activities within five miles of the underground crude oil storage facility's boundary to determine any potential impact to public health, safety, or the environment resulting from the proposed activities at the facility.

(4) Each applicant shall identify and assess all wells, including abandoned wells, from available sources of information, within a one-mile perimeter of the facility's boundary to determine if the following conditions are met:

(A) The wells have been constructed in a manner to protect public health, property, and the environment.

(B) The abandoned wells, including water, oil, gas, monitoring, and underground storage wells, have been properly plugged.

(b) Each applicant shall conduct a regional geological evaluation to determine if the integrity of each proposed storage cavern will be adversely affected by any of the following:

(1) Salt thinning due to any stratigraphic change;
 (2) a dissolution zone in the bedded salt; or
 (3) abrupt changes in the lithology within the salt interval.

(c) Each applicant shall determine if the facility's location is in a floodplain or flood-prone area.

(d) No new facility's boundary or the expansion of an existing facility's boundary shall be located less than one mile from any existing underground porosity storage facility.

(e) Each applicant shall identify potential risks to the storage operation from activities conducted at adjacent facilities.

(f) Each applicant shall identify all utilities having a right-of-way, including pipeline, railway, roadway, and electrical lines, and shall assess the potential impact of the utilities on the location or operation of the facility. If a facility is exposed and subject to hazards, including vehicular traffic, railroads, electrical power lines, and aircraft traffic, the facility shall be protected from accidental damage, by distance or barricades.

(g) No outer boundary of an underground crude oil storage cavern shall be less than 100 feet from any of the following:

(1) The property boundary of any owners who have not consented to subsurface storage under their property;

(2) any existing surface structure not owned by the facility's owner; or

(3) any public transportation artery. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

28-45b-9. Financial assurance for closure of underground crude oil storage facility. (a) Each applicant shall submit, with the permit application and annually thereafter on or before the permit renewal date, proof of financial assurance to the secretary for the following:

(1) Closure of the facility; and

(2) the plugging of any crude oil storage well.

(b) Each applicant shall meet the following requirements:

(1) Submit a detailed written estimate, in current dollars, of the cost to close all underground storage wells and storage caverns at the proposed facility following the closure procedures specified in K.A.R. 28-45b-18. The estimate shall be reviewed and approved by a licensed professional engineer or licensed geologist; and

(2) prepare an estimate of the closure cost for

all storage wells and storage caverns at the proposed facility based on the cost charged by a third party to plug the underground storage wells.

(c)(1) Each permittee shall increase the closure cost estimate and the amount of financial assurance provided if any change in the facility operation or closure plan increases the maximum cost of closure at any time.

(2) Each permittee shall provide continuous financial assurance coverage for closure until the secretary approves the facility closure.

(d) Each permittee shall comply with the provisions of the department's document titled "procedure for demonstrating financial assurance for an underground crude oil storage well," procedure #UICLPG-28, dated October 2008, which is hereby adopted by reference. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

28-45b-10. Operations and maintenance plan. (a) Each applicant shall submit a plan for the long-term operation and maintenance of the facility with the permit application.

(b) Each operation and maintenance plan shall include the following information:

(1) A description of the methods to be used to prevent the overpressuring of wells and storage caverns;

(2) a plan view map of the location of any disposal wells and corrosion control wells; and

(3) the location, depth, and well construction for all shallow and deep groundwater monitoring and observation wells.

(c) Each permittee shall maintain at the facility and make available for inspection by the secretary the following information:

(1) A location map of all wells within the facility's boundaries and a listing of the global positioning system coordinates for each well;

(2) a schematic of the brine and product lines for each cavern; and

(3) a schematic of the gathering line system that connects all wells within the underground crude oil storage facility to a central distribution point.

(d) Each applicant shall submit a plan for solutioning or washing any cavern to the secretary for review and consideration for approval. The plan shall include the following:

(1) A list of acceptable blanket pad materials;

(2) methods for monitoring the solutioning or washing process; and

(3) a monitoring schedule.

(e) Only saturated brine shall be used to displace any product.

(f) The maximum allowable operating pressure and test pressure shall not exceed 0.8 pounds per square inch per foot of depth measured at the higher elevation of either the casing seat or the highest interior elevation of the storage cavern roof.

(g) Each permittee shall submit justification for a minimum operating pressure that is protective of cavern integrity and shall maintain the minimum operating pressure at each storage well.

(h) Each permittee shall meet the notification requirements in the facility's emergency response plan, give oral notification to the department within two hours, and submit written notification within one week to the department if any of the following events occurs:

(1) The overpressuring or the overfilling of an underground crude oil storage cavern;

(2) the loss of integrity for an underground crude oil storage well or cavern;

(3) the release of brine, product, or any other chemical parameter that poses a threat to public health, safety, or the environment;

(4) any uncontrolled or unanticipated loss of product or brine that is detectable by any monitoring or testing;

(5) any other condition that could endanger public health, safety, or the environment;

(6) the establishment of communication between storage caverns;

(7) the triggering of any alarms verifying that the permit safety requirements have been exceeded; or

(8) any equipment malfunction or failure that could result in potential harm to public health, safety, or the environment.

(i) Each permittee shall notify the secretary of any change in the type of product stored in any storage cavern and shall certify that the compatibility of product types and the changes in pressure will not adversely affect the wellhead, casing, tubing, and cavern. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

28-45b-11. Emergency response plan and safety and security measures. (a)(1) Each applicant for a permit for an underground crude oil storage facility shall make the emergency response plan available for inspection by the secretary when the permit application is submitted to the department.

(2) Each permittee shall maintain the emergency response plan at the facility and at the company headquarters and shall make the plan available for inspection by the secretary.

(b) Each permittee shall update the emergency response plan annually and also shall update the plan whenever new information regarding the requirements for the emergency response plan becomes available.

(c) Each emergency response plan shall include a description of the facility's response to the following events:

(1) Spills and releases;

(2) fires and explosions;

(3) cavern subsidence and collapse; and

(4) any other activity that endangers public health and safety or that constitutes a threat to the environment.

(d) Each emergency response plan shall include the following information:

(1) A description of the warning systems in operation at the facility;

(2) a description of the facility's emergency response communication system that includes the following:

(A) A plat showing the location of all occupied buildings within a two-mile perimeter of the facility's boundaries; and

(B) a list of addresses and telephone numbers for all persons to contact within a two-mile perimeter of the facility's boundaries if a release or emergency condition occurs;

(3) the procedures for coordination of emergency response with local emergency planning committees, including emergency notification and evacuation of citizens and employees;

(4) a description of employee training for emergency response;

(5) a plat of the facility, showing the following locations:

(A) All crude oil storage wells;

(B) all underground injection control wells;

(C) all monitoring wells;

(D) all brine and product lines;

(E) railroad and transportation routes;

(F) brine ponds; and

(G) any other appurtenances at the facility; and

(6) a plan map of man-made surface structures and any construction activities within a one-mile perimeter of the facility's boundaries.

(e) A copy of the emergency response plan shall be available at the facility, the company headquarters, and the office of each coordinating

agency or committee involved in the emergency response plan.

(f) Each permittee shall establish an educational program for community safety and awareness of the emergency response plan.

(g) Each permittee of an underground crude oil storage facility shall provide security measures to protect the public and to prevent unauthorized access. These security measures shall include the following:

(1) Methods for securing the facility from unauthorized entry and for providing a convenient opportunity for escape to a place of safety;

(2) at least one visible, permanent sign at each point of entry and along the facility's boundary, identifying the storage well or facility name, owner, and contact telephone number;

(3) security lighting;

(4) alarm systems;

(5) appropriate warning signs in areas that could contain accumulations of hazardous or noxious vapors or where physical hazards exist; and

(6) a direct communication link with the local control room or any remote control center for service and maintenance crews.

(h) Warning systems and alarms shall consist of the following:

(1) Combustible gas detectors, hydrogen sulfide detectors, heat sensors, pressure sensors, and emergency shutdown instrumentation integrated with warning systems audible and visible in the local control room and at any remote control center;

(2) circuitry designed so that the failure of a detector or heat sensor, excluding meltdown and fused devices, will activate the warning; and

(3) a manually operated alarm that is audible to facility personnel.

(i) Each wellhead shall be protected with safety devices to prevent pressures in excess of the maximum allowable operating pressure from being exerted on the storage well or cavern and to prevent the backflow of any stored crude oil if a flowline ruptures.

(j) Each wellhead shall be equipped with manual isolation valves. Each port on a wellhead shall be equipped with either a valve or a blind flange. The valve or blind flange shall be rated at the same pressure as that for the wellhead.

(k) Each permittee shall ensure that the facility has a supervisory control and data acquisition system approved by the secretary to monitor storage operations for individual storage wells. Each of

the following instruments shall be connected to an alarm:

(1) Flow indicators for crude oil;

(2) combustible gas and hydrogen sulfide detection indicators; and

(3) pressure indicators on both the product and brine lines at the wellhead.

(l) Each permittee shall install emergency shutdown valves on all crude oil, brine, and water lines. Criteria for emergency shutdown valves shall include the following:

(1) (A) Be rated at least equivalent to 125 percent of the maximum pressure that could be exerted at the surface; or

(B) meet a pressure-rating standard equivalent to that specified in paragraph (1)(1)(A) and determined by the secretary to be protective of public health, safety, and the environment;

(2) fail to the closed position;

(3) be capable of remote and local operation; and

(4) be activated by the following:

(A) Overpressuring;

(B) underpressuring; and

(C) gas and heat detection.

(m) Each permittee shall conduct annual inspections of all wellhead instrumentation.

(n) Each permittee shall function-test each critical control system and emergency shutdown valve semiannually.

(o) Each permittee shall perform trip-testing of each loop, including the instrumentation, valves, shutdown equipment, and all wiring connections, to ensure the integrity of the circuit.

(p) Each permittee shall ensure that the equipment automatically closes all inlets and outlets to the storage cavern and safely shuts down or diverts any operation associated with the storage cavern, in case of overfilling or an emergency.

(q) Each permittee shall ensure that the automatic valve closure times meet the valve design limits for closure times.

(r) Each permittee shall cease operations or shall comply with the instructions from the secretary if the secretary determines that an imminent threat to public health, safety, or the environment exists due to any unsafe operating condition. The permittee may resume operations if the secretary determines that the facility's operations no longer pose a risk to public health, safety, or the environment. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

28-45b-12. Design and construction of storage wells. (a) Each permittee shall ensure that each storage well is constructed with surface casing. The following requirements shall apply:

(1) The surface casing shall be set through all fresh and usable water formations and into competent bedrock.

(2) The surface casing shall be cemented by circulating cement through the bottom of the casing to the surface.

(3) The annular space between the casing and the formation shall be filled with cement.

(b) Each permittee shall install in each storage well double casing protection with an intermediate casing and a production casing set into the upper part of the salt formation. The following requirements shall apply:

(1) The intermediate casing shall extend at least 105 feet into the salt formation.

(2) The production casing shall extend at least to the depth of the intermediate casing.

(3) The annular space between the intermediate and production casings and between the intermediate casing and formation shall be filled with cement by circulating cement through the bottom of the casing to the surface.

(c) For each existing storage well that does not have double casing protection, the permittee shall provide a casing protection evaluation as specified in K.A.R. 28-45b-14.

(d) The casing and tubing shall meet the performance standards for collapse resistance, internal yield pressure, and pipe body yield strength for the well's setting depths using criteria specified in the American petroleum institute's bulletin 5C2, which is adopted by reference in K.A.R. 28-45-14.

(e) Each permittee shall designate and maintain a maximum fill level above the bottom of the brine string. The permittee shall submit the following information:

(1) A schematic of the well construction;

(2) the cavern capacity as determined from the most recent sonar survey;

(3) supporting data that shows calculations used to determine the maximum fill level; and

(4) the method that will be used to maintain the maximum fill level.

(f) Only new steel casing shall be installed in a new storage well. Used parts, materials, and equipment that have been tested and certified for continued service may be used for repairs.

(g) Liners shall extend from the surface to a

depth near the bottom of the production casing that allows room for workover operations.

(h) The following cementing requirements shall be met:

(1) The cement shall be compatible with the rock formation water and the drilling fluids. Salt-saturated cement shall be used when cementing through the salt section.

(2) The cement across the confining zone and to the surface shall have a compressive strength of not less than 1,000 pounds per square inch.

(3) Remedial cementing shall be completed if there is evidence of either of the following:

(A) Communication between the confining zone and other horizons; or

(B) annular voids that would allow either fluid contact with the casing or channeling across the confining zone or above the confining zone.

(4) The following requirements for cement evaluation shall apply:

(A) Samples shall be obtained at the start and end of the cementing operation for evaluation of cement properties. All cement samples collected shall be representative of the cement being utilized.

(B) All samples shall be tested for compressive strength.

(C) A cement bond log shall be run on the surface casing, intermediate casing, and cemented production casing after the neat cement has cured for at least 72 hours.

(i) Casing patches shall be prohibited, unless the secretary determines that the use of casing patches is protective of public health, safety, and the environment. The following requirements shall apply:

(1) Each permittee shall submit a plan for the installation of the casing patch to the secretary.

(2) Each permittee shall meet the requirements specified in the department's document titled "procedure for internal casing repair," which is adopted by reference in K.A.R. 28-45-14.

(j) Each permittee shall pressure-test each production casing for leaks when the well construction is completed.

(k) Each permittee shall submit a casing inspection base log for the entire cased interval for the innermost casing string or for the cemented liner that extends the entire length of the casing after the well construction is completed.

(l) Each permittee shall contain, in a tank, all workover wastes, drilling fluids, drilling mud, and drill cuttings from any drilling operation or workover. Drilling fluids, drilling mud, and drill cut-

tings shall be disposed of in a manner determined by the secretary to be protective of public health, safety, and the environment.

(m) A licensed professional engineer shall review and approve the construction plans for the crude oil storage well and cavern system.

(n) A licensed professional engineer or a licensed geologist, or the licensed professional engineer's or licensed geologist's designee, shall supervise the installation of each storage well.

(o) Each permittee shall maintain a corrosion control system. The following requirements shall apply:

(1) The corrosion control system shall be capable of protecting the well casings.

(2) The corrosion control system shall be assessed according to the protocol and time schedule recommended by the corrosion control system manufacturer, and the results shall be reported to the secretary. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

28-45b-13. Monitoring. (a) Each permittee shall ensure that pressure sensors continuously monitor wellhead pressures for both the product and brine sides at the wellhead for each storage well. The following requirements shall apply:

(1) The pressure sensor shall be capable of recording the maximum and minimum operating pressures during a 24-hour period.

(2) The pressure sensor shall be capable of recording operating pressures at an interval approved by the secretary.

(3) Each permittee shall provide pressure data, including historic continuous monitoring, to the secretary upon request.

(b) Each permittee shall submit a plan for any monitoring activity, including logging and sonar surveys, to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment, at least 60 days before the commencement of these monitoring activities.

(c) Each permittee shall submit a summary and the results of the monitoring activity to the secretary within 45 days after completion of the monitoring activity.

(d) Each permittee shall monitor the thickness of the salt roof for each cavern with a gamma ray log and a density log, or with another log as specified in K.A.R. 28-45b-4, as follows:

(1) Every five years;

(2) every three years, if the cavern meets criteria specified in K.A.R. 28-45b-4;

(3) at any time that the secretary determines that cavern integrity is suspect; and

(4) before plugging the well.

(e) Each permittee shall monitor the cavern storage capacity and the cavern geometry with a sonar survey. The sonar survey shall be conducted as follows:

(1) Before placing the underground crude oil storage cavern in service;

(2) every 10 years;

(3) for determining the stability of the cavern and the overburden if the salt roof thickness and cavern geometry indicate that the stability of the cavern or overburden is at risk;

(4) after any growth of the cavern that results in a solution volume increase of 20 percent or more of cavern capacity; and

(5) before plugging the well if a sonar survey has not been run in the past five years.

(f) Any permittee may use an alternative method for the sonar survey if the secretary determines that the alternative method is substantially equivalent to the method specified in subsection (e). The permittee shall submit the following information for the secretary's consideration:

(1) A description of the proposed method and the theory for its operation;

(2) a description of the storage well and cavern conditions under which the log can be used;

(3) the procedure for interpreting the survey results; and

(4) an assessment of the capacity and stability of the cavern upon completion of the survey.

(g)(1) Each applicant shall submit a ground subsidence monitoring plan to the secretary with the permit application. The ground subsidence monitoring plan shall include the following information:

(A) A description of the method for conducting an elevation survey; and

(B) the criteria for establishing monuments, benchmarks, and wellhead survey points.

(2)(A) Each permittee shall meet the following requirements:

(i) Ensure level measurements to the accuracy of 0.01 foot;

(ii) report any surface elevation changes in excess of 0.10 foot within 24 hours to the secretary;

(iii) for any change in established benchmarks, submit justification that the change is protective of public health, safety, and the environment; and

(iv) for each change in established benchmarks, note the elevation change from the previous benchmark noted in the elevation survey report.

(B) Each permittee shall submit the elevation before and after any wellhead work that results in a change in the survey point at the wellhead.

(C) The elevation survey shall be conducted by a licensed professional land surveyor.

(D) Each permittee shall submit biennial survey results to the department within 30 days after completion of the survey.

(h) Before commencing facility operations, each permittee shall submit to the secretary, for review and consideration for approval, an inventory balance plan for measuring the volume of crude oil injected into or withdrawn from each underground crude oil storage well, including methods for measuring and verifying volume. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

28-45b-14. Testing and inspections. (a) Each permittee shall submit a plan to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment, before conducting any testing of a storage well or a cavern. Testing shall not commence without prior approval from the secretary.

(b) Each permittee shall submit a summary of the testing to the secretary within 45 days after completing the test. The summary shall include the following:

- (1) A chronology of the test;
- (2) copies of all logs;
- (3) storage well construction information;
- (4) pressure readings;
- (5) volume measurements; and
- (6) an explanation of the test results.

(c) Each permittee shall test each unplugged storage well and cavern for mechanical integrity. The following requirements shall apply:

(1) Integrity tests shall be conducted on the storage well and cavern as follows:

(A) Before the cavern is initially placed in service;

(B) every five years after the initial service date;

(C) before the storage well is placed back in service after being in monitoring status; and

(D) before the well is plugged, unless the mechanical integrity test has been performed in the last five years.

(2) Integrity tests shall be conducted on the underground crude oil storage well after each workover that involves physical changes to any cemented casing string.

(3) Each underground crude oil storage cavern shall be tested for mechanical integrity using a product-brine interface test.

(4) The nitrogen-brine test may be used if the surface equipment is rated for the nitrogen pressure on the upstream side of the well head valves.

(5) Each underground crude oil storage well shall be tested for mechanical integrity using one of the following:

(A) An interface test capable of identifying the location of a leak in the casing; or

(B) a hydraulic casing test.

(6) Each permittee shall submit a test procedure plan, on a form furnished by the department, to the secretary for review and consideration for approval at least 30 days before test commencement. The plan shall include the following information:

(A) The justification for test parameters;

(B) the test sensitivities; and

(C) the pass and fail criteria for the test.

(7) Each permittee shall notify the secretary at least five days before conducting any integrity test.

(8) The integrity test shall be conducted at the maximum allowable operating pressure.

(9) All test procedures shall use certified gauges and pressure transducers that have been calibrated annually.

(d) Any permittee may use an alternative integrity test if the secretary determines that the alternative integrity test is substantially equivalent to the integrity tests specified in subsection (c). The permittee shall submit the following information for the secretary's consideration:

(1) A description of the test method and the theory of operation, including the test sensitivities, a justification for the test parameters, and the pass and fail criteria for the test;

(2) a description of the well and cavern conditions under which the test can be conducted;

(3) the procedure for interpreting the test results; and

(4) an interpretation of the test upon completion of the test.

(e) No storage well and cavern shall be used for storage if the mechanical integrity is not verified.

(f) Each permittee shall submit a casing evaluation for each underground crude oil storage well. Acceptable casing evaluation methods shall include magnetic flux and ultrasonic imaging.

(g) Any permittee may use an alternative casing evaluation method if the secretary determines that the alternative casing evaluation method is substantially equivalent to the casing evaluation methods specified in subsection (f). The permittee shall meet the following requirements:

(1) Each permittee shall submit a description of the logging method, including the theory of operation and the well conditions suitable for log use.

(2) Each permittee shall submit the specifications for the logging tool, including tool dimensions, maximum temperature and pressure rating, recommended logging speed, approximate image resolution, and hole size range.

(3) Each permittee shall describe the capabilities of the log for determining the following:

(A) The presence of any metal loss due to either of the following:

- (i) Internal or external corrosion; or
- (ii) internal wear;

(B) The degree of penetration of the corrosion or the casing defect; and

(C) the circumferential extent of the corrosion or the casing defect.

(4) Each permittee shall submit a log and an interpretation of the log to the secretary.

(h) Each permittee shall submit a casing evaluation according to the following time schedule:

(1) Every 10 years for either of the following conditions:

(A) The storage well has double casing protection; or

(B) an existing storage well has a liner and a production casing;

(2) after any workover involving the cemented casing; and

(3) every five years, if the storage well does not have double casing protection or if a determination is made by the secretary that the integrity of the long string casing could be adversely affected by any naturally occurring condition or man-made activity.

(i) Each permittee shall submit a cement bond log with the casing evaluation if a cement bond log has not been previously submitted.

(j) A licensed professional engineer or licensed geologist, or licensed professional engineer's or licensed geologist's designee, shall supervise all test procedures and associated field activity.

(k) Each permittee shall have a licensed professional engineer or licensed geologist review all test results.

(l) Each permittee shall visually inspect each wellhead monthly for any leakage.

(m) Each permittee shall conduct an inspection of facility records, using a form furnished by the department, every two years to ensure that the required records are being maintained in accordance with these regulations. The permittee shall maintain these records at the facility and shall make the records available to the secretary upon request. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

28-45b-15. Groundwater monitoring. (a)

Each applicant shall submit a groundwater monitoring plan with the permit application to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment.

(b) Each permittee shall ensure that the groundwater monitoring wells meet the following requirements:

(1) Each permittee shall set the screen in each shallow monitoring well at a depth that is inclusive of the seasonal fluctuation of the water table.

(2) Each permittee shall ensure that all deep groundwater monitoring wells extend a minimum of 25 feet into the bedrock, or to a depth based on the geology and hydrogeology at the facility and approved by the secretary to ensure the protection of public health, safety, and the environment.

(c) All well locations and the spacing between all well locations shall be based on the geology and the hydrogeology at the facility and shall be required to be approved by the secretary to ensure the protection of public health, safety, and the environment.

(d) Before commencing facility operations, each applicant shall submit a quality assurance plan, including techniques for sampling and analysis, to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment.

(e) Each permittee shall collect groundwater samples and analyze the samples for chlorides and any other parameter determined by the secretary to pose a threat to public health, safety, and the environment. The reporting format shall be determined by the secretary.

(f) Each permittee shall submit the results for chloride analyses from groundwater samples to the department on a quarterly basis.

(g) Each permittee shall monitor monthly for the presence of combustible gas in the headspace

in monitoring wells and shall quarterly submit the results to the department.

(h) Each permittee shall submit a static groundwater level measurement for each monitoring well with the quarterly chloride analyses results specified in subsection (f).

(i) Any permittee of a facility where chloride concentrations in the groundwater exceed 250 milligrams per liter may be required by the secretary to submit a work plan, for review and consideration for approval, that describes the methods to delineate potential source areas and to control migration of the chloride contamination.

(j) Each permittee of a well in which combustible gas is detected shall submit a work plan to the secretary for review and consideration for approval. Each permittee shall describe the proposed methods to eliminate any source areas and return the combustible gas levels to levels that do not pose a potential threat to public health, safety, or the environment. The plan shall be approved if the secretary determines that the plan is protective of public health, safety, and the environment. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

28-45b-16. Record requirements and retention. (a) Each permittee shall submit an annual report, on a form approved by the department, on or before April 1 of each year. The annual report shall include the following:

- (1) A description of any incident of uncontrolled or unanticipated product loss;
- (2) the well number and date of any logs or sonar surveys conducted;
- (3) the estimated storage capacity for each cavern associated with an unplugged well;
- (4) a list of any caverns being washed;
- (5) a list of the volume of product injected and withdrawn for each storage well;
- (6) a list, by well number, of the type of product stored; and
- (7) a list, by well number, of the maximum and minimum product storage pressures encountered during the report year.

(b) Each permittee shall maintain facility records at the facility or at a location approved by the secretary for the following time periods:

- (1) A period of 10 years, for the following records:
 - (A) The maximum and minimum operating pressures for each storage well; and

(B) the annual inspections required by the secretary;

(2) the life of each storage well, for the following records:

- (A) The casing records for each storage well;
- (B) the cementing records for each storage well;
- (C) the workover records;
- (D) monitoring information, including calibration and maintenance records; and

(E) continuous monitoring data; and

(3) the life of the facility, for the following records:

- (A) All logging events;
- (B) all mechanical integrity tests and other testing;
- (C) all groundwater monitoring data; and
- (D) all correspondence relating to the permit, including electronic mail.

(c) Surface elevation surveys shall be maintained and retained for the life of facility plus 20 years after the facility's closure.

(d) If the facility permit is transferred, the former permittee shall provide all required facility records, reports, and documents to the new permittee. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

28-45b-17. Well workovers. (a) Each permittee shall submit a workover plan to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment. The following provisions shall apply:

(1) Each permittee shall submit the workover plan at least 10 days before performing any downhole or wellhead work that involves dismantling or removal of the wellhead.

(2) A permittee shall not be required to submit a workover plan for routine maintenance or replacement of gauges, sensors, or valves.

(3) Verbal authorization to initiate downhole or wellhead work may be issued by the secretary if the permittee has fulfilled the requirements of this subsection.

(b) Each permittee shall ensure that a blowout preventer with a pressure rating greater than the pressures anticipated to be encountered is used during each workover.

(c) Each permittee shall ensure that all logging procedures are conducted through a lubricator unit with a pressure rating greater than the pressures anticipated to be encountered.

(d) Each permittee shall provide to the person logging a storage well or performing a well work-over all relevant information concerning the status and condition of the storage well and cavern before initiating any work. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

28-45b-18. Plugging and plugging-monitoring requirements. (a) Each permittee shall submit a plugging plan, including monitoring and testing requirements, to the secretary for review and consideration for approval at least 60 days before each plugging event.

(b) Each permittee shall follow the plugging procedure for a plugging event specified in the department's document titled "procedure for the plugging and abandonment of a crude oil storage well," procedure #UICLPG-29, dated October 2008, which is hereby adopted by reference.

(c) Each permittee wishing to place a storage well and cavern into plugging-monitoring status shall submit a plugging-monitoring plan to the secretary for review and consideration for approval at least 60 days before the plugging-monitoring event. The plan shall include the following:

(1) A schematic of the storage well configuration;

(2) the most recent results from the gamma-density log, the casing inspection log, the cement bond log, and the sonar survey; and

(3) the procedure for placing the cavern into plugging-monitoring status.

(d) Each permittee of a crude oil storage well to be placed into plugging-monitoring status may be required to perform additional testing or logging before placing the cavern into plugging-monitoring status if either of the following conditions exists:

(1) The required logging and testing are not current.

(2) A lack of storage well or cavern integrity poses a threat to public health, safety, or the environment.

(e) Each permittee of a storage well and cavern placed into plugging-monitoring status shall monitor the cavern pressure with a gauge on a weekly basis or continue to monitor pressures with a pressure transducer connected to a supervisory control and data acquisition system.

(f) Each permittee shall report any unexpected increase or decrease in pressure at a well in plugging-monitoring status to the secretary within 24 hours. Testing, logging, or any other necessary

measures may be required by the secretary to determine if a threat to public health, safety, or the environment exists.

(g) Each permittee shall restore and preserve the integrity of the site as follows:

(1) Dispose of all liquid waste in an environmentally safe manner;

(2) clear the area of debris;

(3) drain and fill all excavations;

(4) remove all unused concrete bases, machinery, and materials; and

(5) level and restore the site. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

28-45b-19. Underground crude oil storage fees. (a) Each permit applicant shall submit a fee of \$700 for each proposed storage well with the permit application.

(b) Each permittee shall submit an annual permit fee of \$18,890 per facility and \$305 per unplugged storage well on or before April 1 of each year.

(c) Fees shall be made payable to the "Kansas department of health and environment — subsurface hydrocarbon storage fund."

(d) The fees collected under the provisions of this regulation shall not be refunded.

(e) If ownership of an underground crude oil storage well or underground crude oil storage facility changes during the term of a valid permit, no additional fee shall be required unless a change occurs that results in a new storage well or an expanded facility operation. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

28-45b-20. Permit required for a brine pond. Since the underground storage of crude oil and the access to and transfer of crude oil are dependent on the safe and secure operation and maintenance of associated brine ponds, no person shall construct, operate, or maintain any brine pond associated with an underground crude oil storage facility without first obtaining a brine pond permit from the secretary. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

28-45b-21. Brine pond permit application; permit renewal. (a)(1) Each applicant for a permit for a new brine pond shall submit an appli-

cation to the secretary at least 90 days before the construction of the new brine pond commences. Brine pond construction shall not begin until the secretary has issued the permit.

(2) Upon review of the application, either of the following shall be issued by the secretary:

(A) A final permit if the application is approved; or

(B) a notice that the permit has been denied if the applicant has not complied with the applicable requirements of this article. The notice shall include justification for the permit denial.

(b) Each permit for a brine pond shall be authorized for a term not to exceed 10 years.

(c) Each permittee wanting to renew the permit shall submit a completed renewal application at least 90 days before the expiration date of the permit in effect.

(d) Each permit application for a new brine pond shall include a hydrogeological investigation conducted under the direction of a licensed geologist or a licensed professional engineer. Each hydrogeological investigation for a new brine pond shall include the following information:

(1) A site characterization for brine pond construction, which shall meet the following requirements:

(A) The bottom of the brine pond shall be determined by the lowest surface elevation of compacted or excavated soils used in creating the pond structure;

(B) all required excavations or boreholes shall be drilled to a depth of at least 10 feet below the bottom of the brine pond;

(C) the separation distance between the bottom of the brine pond and the water table, which shall meet one of the following requirements:

(i) A separation distance of at least 10 feet shall be maintained between the brine pond bottom and the water table; or

(ii) a separation distance of less than 10 feet shall require the installation of a clay tertiary sub-liner; and

(D) the surface area shall be measured at the interior top dike elevation;

(2) the location and elevation of each borehole or excavation, based on surface area, which shall be determined by the following criteria:

(A) At least two boreholes or excavations for each five acres of proposed brine pond surface area; or

(B) at least two boreholes or excavations if the brine pond surface area is less than five acres; and

(3) the following information for each borehole or excavation:

(A) A log of soil types encountered in each borehole or excavation; and

(B) a groundwater level measurement at each borehole or excavation.

(e) Each permittee shall notify the department at least five days before conducting any field activities for the hydrogeological investigation. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

28-45b-22. Public notice for a brine pond.

(a) Public notice shall be given by the secretary for the following permit actions:

(1) A permit application for any new brine pond associated with an underground crude oil storage well;

(2) a denied permit; and

(3) a scheduled hearing.

(b) The public notice and, if applicable, a copy of the draft permit shall be mailed or electronically mailed by the department to the permit applicant.

(c) Each public notice shall be mailed by the department to the following:

(1) Any person who submits a written request for placement on the mailing list;

(2) the official county newspaper of each county in which the lands affected by the application are located, for publication in at least two issues; and

(3) the Kansas register.

(d) Each public notice shall include the following information:

(1) The name and address of the department processing the permit action for which the notice is being given;

(2) the name and address of the person seeking the permit;

(3) a brief description of the activity described in the permit application;

(4) the name, address, and telephone number of the person that interested persons may contact for further information, including copies of the application, draft permit, or other appropriate information;

(5) a brief description of the comment procedures for public notice; and

(6) a statement of the procedure to request a hearing and other procedures that allow public participation in the final permit decision.

(e) Any interested person may submit written comments to the secretary on any permit action

during the 30-day public comment period. The following requirements shall apply:

(1) Comments shall be submitted by the close of the public comment period.

(2) All supporting materials submitted shall be included in full. The supporting materials shall not be incorporated by reference, unless the supporting materials are any of the following:

(A) Part of the administrative record in the same proceeding;

(B) state or federal statutes and regulations;

(C) state or environmental protection agency documents of general applicability; or

(D) other generally available reference materials.

(3) Commentators shall make available to the secretary all supporting materials not already included in the administrative record.

(f) The response to all relevant comments concerning any permit actions and the reasons for changing any provisions in the draft permit shall be issued when the final permit decision is issued.

(g) The response to comments shall be made available to the public upon request. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

28-45b-23. Modification and transfer of a brine pond permit; variance. (a) Any reissuance or modification of a brine pond permit and any variance may be authorized by the secretary for a term of less than 10 years.

(b) The automatic transfer of a brine pond permit shall be prohibited. The terms of a permit transfer shall include the following:

(1) Each person requesting a permit transfer shall submit a completed application to the secretary at least 60 days before the proposed effective date of the transfer.

(2) Each permittee shall comply with the requirements of the existing permit until the secretary reissues the permit.

(c) Any permit for a brine pond may be modified by the secretary for any of the following reasons:

(1) The secretary receives information not available when the permit was issued.

(2) The secretary receives a request for a modification.

(3) The secretary conducts a review of the permit file and determines that a modification is necessary.

(d) Only the permit actions subject to modification shall be reopened.

(e) Minor modifications that shall not require public notification shall include the following:

(1) Correction of typographical errors;

(2) requirements for more frequent monitoring or reporting by the permittee;

(3) date change in a schedule of compliance;

(4) change in ownership or operational control of the facility, unless the secretary determines that public notification is necessary to protect the public interest;

(5) change in construction requirements, if approved by the secretary; and

(6) amendments to a brine pond closure plan.

(f) A draft permit and notification to the public shall be required if any of the following conditions is met:

(1) A permittee proposes substantial alterations to the brine ponds or proposes any activity that justifies a change in permit requirements, including cumulative effects on public health, safety, or the environment.

(2) Information has become available that would have initially justified different permit conditions.

(3) The regulations on which the permit was based have changed because of the promulgation of new or amended regulations or because of a judicial decision.

(g) Any permittee may request a permit modification within 180 days after any of the following:

(1) The adoption of any new regulations;

(2) any deadline to achieve compliance with regulations before the expiration date of the permit; or

(3) any judicial remand and stay of a promulgated regulation, if the permit condition was based on the remanded regulation. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

28-45b-24. Signatories for brine pond permit applications and reports. (a) Each applicant for a permit for a new brine pond shall designate at least one signatory to sign the permit applications and reports required by the secretary.

(b) The positions that may be approved by the secretary as signatories shall include any of the following:

(1) Operations manager;

(2) brine pond specialist; or

(3) any position with responsibility at least equivalent to that required by the positions listed in this subsection.

(c) Any signatory may submit written notification to the secretary specifying a position having responsibility for the overall operation of the facility or activity to act as a designated signatory.

(d) Each signatory and each signatory's designee shall submit a signature statement, on a form furnished by the department, to the secretary with the brine pond permit application. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

28-45b-25. Financial assurance for brine pond closure. (a) Each applicant for a permit for a new brine pond shall submit, with the application and annually thereafter on or before the permit renewal date, proof of financial assurance to the secretary.

(b)(1) Each brine pond permittee shall establish financial assurance for the decommissioning and abandonment of any brine pond permitted by the secretary under this article.

(2) Each applicant and each permittee shall meet the following requirements:

(A) Submit a detailed written estimate, in current dollars, of the cost to close any brine pond at the facility. The estimate shall be reviewed and approved by a licensed professional engineer or licensed geologist;

(B) develop an estimate of the closure cost for each brine pond at the facility as follows:

(i) The estimate shall be based on the cost charged by a third party to decommission the brine pond in accordance with this article; and

(ii) the brine pond shall be assumed to be at maximum storage capacity; and

(C) increase the closure cost estimate and the amount of financial assurance provided if any change in the brine pond closure plan or in the operation increases the maximum cost of brine pond closure at any time.

(c) Each permittee shall provide continuous financial assurance coverage for closure until the secretary approves the brine pond closure.

(d) Each permittee shall comply with the provisions of the department's document titled "procedure for demonstrating financial assurance for a brine pond associated with a storage facility," procedure # UICLPG-30, dated October 2008, which is hereby adopted by reference. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

28-45b-26. Design, construction, and maintenance of brine ponds. (a) Each applicant for a brine pond permit shall submit a design and construction plan for each new brine pond associated with an underground crude oil storage facility to the secretary. The design and construction plan shall be approved if the secretary determines that the plan is protective of public health, safety, and the environment. Each brine pond shall be designed by a licensed professional engineer.

(b) Each applicant shall ensure that the impermeable synthetic membrane liner system for each brine pond consists of primary and secondary impermeable synthetic membrane liners with an intermediate leak detection system. The following requirements shall apply:

(1) The primary and secondary liners shall each be at least 30 mils in thickness.

(2) The engineer designing the brine pond shall obtain a certification from the liner manufacturer providing the following information:

(A) Confirmation that the specified liner is compatible for use with the brine;

(B) confirmation that the specified liner is ultraviolet-resistant; and

(C) data for the manufacturer's estimated leakage, permeability, or transmissivity rate for specific liners, including the rate of movement of fluids through the synthetic membrane liner due to the properties and thickness of the liner material, expressed in units of volume per area per time;

(D) any normally expected manufacturing defects in the liner material; and

(E) any normally expected defects associated with the seaming and installation process.

(c) Each brine pond permittee shall submit a contingency plan to the secretary that outlines the procedures for brine containment issues associated with brine pond maintenance and dewatering due to liner failure, repair, replacement, or expansion of the brine pond. The contingency plan shall be approved if the secretary determines that the plan is protective of public health, safety, and the environment.

(d) Each permittee of an existing brine pond and each applicant for a permit for a new brine pond shall submit a flood response plan if the brine pond is located in a floodplain or a flood-prone area.

(e) Each permittee shall cease operations or shall comply with instructions from the secretary if the secretary determines that an imminent threat to public health, safety, or the environment

exists due to any unsafe operating condition. The permittee may resume operations if the secretary determines that the brine pond operations no longer pose a risk to public health, safety, or the environment.

(f) Each permittee shall ensure that the primary and secondary liners for each brine pond are separated to provide a conduit for the movement of any fluid between the liners to the leak detection monitoring location for detection and removal.

(g) Each permittee shall ensure that all materials between the primary and secondary liners are capable of transmitting at least $\frac{1}{64}$ inch per acre per day of flow with a head of no more than two feet placed on the secondary liner. Acceptable materials shall include the following:

- (1) Clean sand;
- (2) pea gravel;
- (3) geotextile fabric;
- (4) geonet-type material; and

(5) any alternatives recommended by the liner manufacturer, if the secretary determines that the alternatives are substantially equivalent to materials listed in this subsection.

(h) Each permittee shall ensure that the leak detection system design for each brine pond limits the maximum travel time required for fluid penetrating the liner to reach the leak detection monitoring location to 24 hours or less.

(i) Each permittee shall ensure that the bottom of each brine pond has a slope adequate for the proper operation of the leak detection system, with not less than 0.5 percent for the slope for the collection pipes and 1.0 percent for all other slopes.

(j) Each permittee shall ensure that the dewatering system design for each brine pond is capable of the following:

(1) Monitoring the volume of fluid removed from the intermediate space between the primary and secondary liners; and

(2) pumping the volume of fluid generated equal to 10 times the maximum allowable liner leakage rate.

(k) Each permittee shall ensure that the compaction of all brine pond embankments and of the upper six inches of the interior lagoon bottom below the secondary liner meets all of the following requirements:

(1) The maximum standard proctor density shall be at least 95 percent at optimum moisture to optimum moisture plus three percent.

(2) The maximum thickness of the layers of material to be compacted shall not exceed six inches.

(3) The moisture content range of the compacted soils shall be optimum moisture to optimum moisture plus three percent.

(4) The maximum size of dirt clods in the compacted soil shall be less than one inch in diameter.

(1) Each permittee shall ensure that the following requirements for the installation of the liners at each brine pond are met:

(1) The primary and secondary liners shall be anchored at the top of the brine pond dike in accordance with the liner manufacturer's instructions.

(2) Installation shall be performed in accordance with the liner manufacturer's instructions.

(3) Installation shall be performed by a contractor experienced in the installation of impermeable synthetic membrane liners.

(4) On-site supervision of the liner installation shall be provided by an individual that has experience in liner installation practices.

(m) Each permittee shall ensure that the volume of fluid monitored from the intermediate leak detection system at the brine pond is based on a rate of 10 percent of leak return system capacity and does not exceed 1,000 gallons per day per acre of pond area.

(n) Each permittee shall submit, to the secretary, a seam testing method to verify the adequacy of the seaming process for the liners at each brine pond. The following requirements shall apply:

(1) The testing method shall include the following:

(A) The methods for destructive and nondestructive seam testing;

(B) the protocol describing the number of tests per lineal foot of field seam;

(C) the size of the destructive test specimen required; and

(D) any other pertinent quality control provisions recommended by the liner manufacturer.

(2) All field seams shall be subjected to nondestructive testing.

(o) Each permittee shall install an oil-brine separator to separate entrained product from the brine used to transfer product. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

28-45b-27. Groundwater monitoring for brine ponds. (a) Each applicant for a permit for a new brine pond shall submit a groundwater monitoring plan with the application for a brine pond permit to the secretary for review and con-

sideration for approval. The monitoring plan shall be approved if the secretary determines that the plan is protective of public health, safety, and the environment.

(b) Each applicant for a permit for a new brine pond shall meet the following requirements:

(1) Install monitoring wells around the perimeter of the brine pond. The well spacing shall be based on the geology and hydrogeology at the facility and shall be approved by the secretary if the secretary determines that the well spacing is protective of public health, safety, and the environment; and

(2) set the screen in all shallow groundwater monitoring wells at a depth that is inclusive of the seasonal fluctuation of the water table.

(c) Each applicant for a permit for a new brine pond shall submit, with the groundwater monitoring plan, a quality assurance plan to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment.

(d) Each permittee shall collect groundwater samples and analyze the samples for chloride and any other parameter determined by the secretary as posing a potential threat to public health, safety, and the environment. The reporting format shall be determined by the secretary.

(1) Each permittee shall submit the following to the department on a quarterly basis:

(A) The results for the chloride analyses from groundwater samples; and

(B) a static groundwater level measurement for each monitoring well.

(2) Each permittee shall monitor monthly for the presence of combustible gas in the headspace in monitoring wells and submit the results to the department on a quarterly basis.

(e) Any permittee of a brine pond where chloride concentrations in the groundwater exceed 250 milligrams per liter may be required by the secretary to submit a work plan, for review and consideration for approval, that describes proposed methods to delineate the extent of the contamination and to control migration of the chloride contamination. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

28-45b-28. Brine pond closure requirements. (a) Each brine pond permittee shall submit a closure plan, including monitoring and testing requirements, to the secretary for review and

consideration for approval at least 60 days before the closure of a brine pond. The closure plan shall be approved if the secretary determines that the closure plan is protective of public health, safety, and the environment.

(b) The permittee shall not commence closure activities without the secretary's prior approval.

(c) Each permittee shall include the following information in the brine pond closure plan:

(1) The procedure for deactivating the various brine lines employed at the facility;

(2) the procedures for the remediation, removal, or disposal of brine, accumulated sludge in the brine pond, contaminated soils, and contaminated groundwater;

(3) a description regarding the proposed maintenance, deactivation, conversion, or demolition of the brine pond structure; and

(4) procedures addressing the plugging of any water wells or groundwater monitoring wells associated with the brine pond. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

Article 46.—UNDERGROUND INJECTION CONTROL REGULATIONS

28-46-1. General requirements. (a) Any reference in these regulations to standards, procedures, or requirements of 40 CFR Parts 124, 136, 144, 145, 146, or 261 shall constitute adoption by reference of the entire part, subpart, and paragraph so referenced, including any notes, charts, and appendices, unless otherwise specifically stated in these regulations, except for any references to NPDES, RCRA, PSD, ocean dumping permits, dredge and fill permits under section 404 of the clean water act, the non-attainment program under the clean air act, national emissions standards for hazardous pollutants (HESHAPS), EPA issued permits, and any internal CFR citations specific to those programs. Each reference to 40 CFR 146.04, 40 CFR 146.06, 40 CFR 146.07, and 40 CFR 146.08 shall mean 40 CFR 146.4, 40 CFR 146.6, 40 CFR 146.7, and 40 CFR 146.8, respectively.

(b) When used in any provision adopted from 40 CFR Parts 124, 136, 144, 145, 146, or 261, references to "the United States" shall mean the state of Kansas, "environmental protection agency" shall mean the Kansas department of health and environment, and "administrator," "regional administrator," "state director," and "director"

shall mean the secretary of the department of health and environment.

(c) When existing Kansas statutory and regulatory requirements are more stringent than the regulations adopted in subsection (a), the Kansas requirements shall prevail. (Authorized by and implementing K.S.A. 2009 Supp. 65-171d; effective May 1, 1982; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

28-46-2. (Authorized by and implementing K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; revoked March 2, 2007.)

28-46-2a. Definitions. (a) The following federal regulations, as in effect on July 1, 2008, are hereby adopted by reference, except as specified:

(1) 40 CFR 124.2, except for the following terms and their definitions:

- (A) "Application";
- (B) "director";
- (C) "draft permit";
- (D) "eligible Indian tribe";
- (E) "environmental appeals board";
- (F) "facility or activity";
- (G) "Indian tribe";
- (H) "major facility";
- (I) "owner or operator";
- (J) "permit";
- (K) "regional administrator";
- (L) "SDWA"; and
- (M) "state";

(2) 40 CFR 144.3, except for the following terms and their definitions:

- (A) "Application";
- (B) "approved state program";
- (C) "appropriate act and regulations";
- (D) "director";
- (E) "draft permit";
- (F) "eligible Indian tribe";
- (G) "Indian tribe";
- (H) "state";
- (I) "total dissolved solids"; and
- (J) "well";

(3) 40 CFR 144.61;

(4) 40 CFR 146.3, except for the following terms and their definitions:

- (A) "Application";
- (B) "director";

(C) "exempted aquifer";

(D) "facility or activity";

(E) "Indian tribe";

(F) "owner or operator";

(G) "permit";

(H) "SDWA";

(I) "site"; and

(J) "well"; and

(5) 40 CFR 146.61(b), except for the term "cone of influence" and its definition.

(b) In addition to the definitions adopted in subsection (a), the following definitions shall apply in this article:

(1) "Application" means the standard departmental form or forms required for applying for a permit, including any additions, revisions, and modifications to the forms.

(2) "Authorized by rule," when used to describe an injection well, means that the well meets all of the following conditions:

(A) The well is a class V injection well.

(B) The well is in compliance with this article.

(C) The well is not prohibited, as specified in K.A.R. 28-46-26a.

(D) The well is not required by the secretary to have a permit.

(3) "Cone of impression" means the mound in the potentiometric surface of the receiving formation in the vicinity of the injection well.

(4) "Cone of influence" means the area around a well within which increased injection pressures caused by injection into the well would be sufficient to drive fluids into an underground source of drinking water (USDW).

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

(6) "Director" means director of the division of environment of the Kansas department of health and environment.

(7) "Draft permit" means a document prepared by the department after receiving a complete application or making a tentative decision that an existing permit shall be modified and reissued, indicating the secretary's tentative decision to either issue a permit or deny a permit. A draft permit is not required for a minor modification of an existing permit.

(8) "Existing salt solution mining well" means a well authorized and permitted by the secretary before the effective date of these regulations.

(9) "Fracture pressure" means the wellhead pressure that could cause vertical or horizontal fracturing of rock along a well bore.

(10) “Gallery” means a series of two or more salt solution mining wells that are artificially connected within the salt horizon and are produced as a system with one or more wells designated for withdrawal of solutioned salt.

(11) “Injection well facility” and “facility” mean the acreage associated with the injection field and with facility boundaries approved by the secretary. These terms shall include the injection wells, wellhead, and any related equipment, including any appurtenances associated with the well field.

(12) “Maximum allowable injection pressure” means the maximum wellhead pressure not to be exceeded as a permit condition.

(13) “Motor vehicle waste disposal well” and “MVWDW” mean a disposal well that received, receives, or has the potential to receive fluids from vehicular repair or maintenance activities.

(14) “Notice of intent to deny” means a draft permit indicating the secretary’s tentative decision to deny a permit.

(15) “Production casing,” when used for a class III well, means the casing inside the surface casing of a well that extends into the salt formation.

(16) “Salt roof” means a distance, determined in feet, from the highest point of a salt solution mining cavern to the top of the salt formation. This distance shall be approved by the secretary.

(17) “Secretary” means the secretary of the Kansas department of health and environment or the secretary’s authorized representative.

(18) “Transportation artery” means any highway, county road, township road, private road, or railroad, excluding any existing right-of-way, not owned or leased by the permittee.

(19) “Well” means any of the following:

(A) A bored, drilled, or driven shaft whose depth is greater than the largest surface dimension;

(B) A dug hole whose depth is greater than the largest surface dimension;

(C) A sinkhole modified to receive fluids; or

(D) A subsurface fluid distribution system. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective March 2, 2007; amended Aug. 6, 2010.)

28-46-3. Classification of injection wells. 40 CFR 144.6, 40 CFR 144.80, 40 CFR 144.81, and 40 CFR 146.5, as in effect on July 1, 2008, are adopted by reference. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec.

22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

28-46-4. Injection of hazardous or radioactive wastes into or above an underground source of drinking water. The injection of hazardous or radioactive wastes into or above an underground source of drinking water shall be prohibited. (Authorized by and implementing K.S.A. 2009 Supp. 65-171d; effective May 1, 1982; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended Aug. 6, 2010.)

28-46-5. Application for injection well permits. (a) 40 CFR 124.3, except (d), and 40 CFR 144.31, except (c)(1), as in effect on July 1, 2008, are adopted by reference. In addition, the provisions of K.S.A. 65-3437, and amendments thereto, that relate to hazardous waste injection wells shall apply to class I hazardous waste injection wells.

(b) A draft permit shall not be prepared if an applicant fails or refuses to correct deficiencies in the permit application. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

28-46-6. Conditions applicable to all permits. 40 CFR 144.51(a) through (p), as in effect on July 1, 2008, are adopted by reference. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

28-46-7. Draft permits. (a) Once an application is complete, a draft permit shall be issued by the secretary.

(b) Each draft permit issued after the secretary’s decision to issue a permit shall contain the following information:

(1) All conditions under 40 CFR 144.51(a) through (p);

(2) all compliance schedules under 40 CFR 144.53;

(3) all monitoring requirements under 40 CFR 144.54; and

(4) all permit conditions under 40 CFR 144.52.

(c) If the secretary determines, after issuing a notice of intent to deny, that the decision to deny the permit application was incorrect, the notice of intent to deny shall be withdrawn and a draft permit issued under subsection (b). (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

28-46-8. Fact sheets. 40 CFR 124.8, except (b)(9), as in effect on July 1, 2008, is adopted by reference. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

28-46-9. Establishing permit conditions. 40 CFR 144.52, except for references to 40 CFR 144.4, 40 CFR 144.36, and part 145, as in effect on July 1, 2008, is adopted by reference. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

28-46-10. Term of permits. (a) Class I, III, and V permits shall be effective for a fixed term not to exceed 10 years.

(b) If a permittee wishes to continue an activity regulated by the permit after the expiration date of the permit, the permittee shall submit an application to renew the permit. Each application to renew the permit shall be filed with the department at least 180 days before the permit expiration date. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended May 1, 1987; amended March 21, 1994; amended Aug. 6, 2010.)

28-46-11. Schedules of compliance. 40 CFR 144.53, except references to 40 CFR part 145, as in effect on July 1, 2008, is adopted by reference. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec.

19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

28-46-12. Requirements for recording and reporting of monitoring results. 40 CFR 144.54, as in effect on July 1, 2008, is adopted by reference. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

28-46-13. Effect of a permit. 40 CFR 144.35, as in effect on July 1, 2008, is adopted by reference. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

28-46-14. Transfer of permits. 40 CFR 144.38, as in effect on July 1, 2008, is adopted by reference. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

28-46-15. Modification and reissuance of permits. (a) Any permit may be modified and reissued either at the request of any interested person, including the permittee, or upon the secretary's initiative after conducting a review of the permit file.

(b) Each request from any interested person or the permittee shall be submitted in writing and shall contain facts or reasons supporting the request.

(c) If at least one of the causes listed in subsection (d) for modification or reissuance exists, a draft permit including the modifications to the existing permit shall be issued.

(d) Each of the following shall be cause for modification and reissuance:

(1) There are material and substantial alterations or additions to the permitted facility or activity that occurred after permit issuance and justify the application of permit conditions that are different from or absent in the existing permit.

(2) The secretary has received information indicating that the terms of the permit need modifica-

tion because the information was not provided to the secretary when the permit was issued.

(3) The regulations on which the permit was based have been changed by promulgation of new or amended regulations or by judicial decision after the permit was issued.

(4) The secretary determines that good cause exists for modification of a compliance schedule, including an act of God, strike, flood, materials shortage, or any other event over which the permittee has little or no control and for which there is no reasonably available remedy.

(5) Cause exists for termination under K.A.R. 28-46-16, and the secretary determines that modification and reissuance is appropriate.

(6) The secretary determines that the waste being injected is a hazardous waste either because the definition of hazardous waste has been revised or because a previous determination has been changed.

(7) The secretary determines that the location of the facility is unsuitable because new information indicates that a threat to human health or the environment exists that was unknown at the time of permit issuance.

(e)(1) If the secretary decides to modify and reissue a permit, a draft permit under K.A.R. 28-46-7 shall be prepared by the secretary incorporating the proposed changes. Additional information may be requested by the secretary, and the submission of an updated application may be required by the secretary.

(2) If a permit is modified, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect.

(3) A permit may be modified to make minor modifications to a permit without the issuance of a draft permit. Minor modifications shall include the following:

(A) Correcting typographical errors;

(B) requiring more frequent monitoring or reporting by the permittee;

(C) changing an interim compliance date in a schedule of compliance, if the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

(D) allowing for a change in ownership or operational control of a facility if the secretary determines that no other change in the permit is necessary, if a written agreement containing a specific date for transfer of permit responsibility, cov-

erage, and liability between the current and new permittee has been submitted to the secretary;

(E) changing quantities or types of fluids injected that are within the capacity of the facility as permitted, if the change meets the following conditions:

(i) The change would not interfere with the operation of the facility;

(ii) the change would not interfere with the facility's ability to meet conditions described in the permit; and

(iii) the change would not change the facility's classification;

(F) changing construction requirements previously approved by the secretary; and

(G) amending a plugging and abandonment plan that has been updated. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

28-46-16. Termination of permits. 40 CFR 144.40, as in effect on July 1, 2008, is adopted by reference. (Authorized by K.S.A. 2009 Supp. 55-1,117 and 65-171d; implementing K.S.A. 2009 Supp. 55-1,117 and K.S.A. 65-165; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

28-46-17. Minor modifications of permits. 40 CFR 144.41, as in effect on July 1, 2008, is adopted by reference. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

28-46-18. Area permits. 40 CFR 144.33, as in effect on July 1, 2008, is adopted by reference. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

28-46-19. Emergency permits. 40 CFR 144.34, as in effect on July 1, 2008, is adopted by reference. (Authorized by and implementing

K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

28-46-20. Corrective action. 40 CFR 144.55, except reference to 40 CFR 146.33(b), 40 CFR 146.7, and 40 CFR 146.64, as in effect on July 1, 2008, are adopted by reference. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

28-46-21. Public notice, public comments, and public hearings. 40 CFR 124.10 through 40 CFR 124.12 and 40 CFR 124.17, except references to 40 CFR 145.11, as in effect on July 1, 2008, are adopted by reference. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

28-46-22. Signatories. 40 CFR 144.32, as in effect on July 1, 2008, is adopted by reference. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

28-46-23. Claims of confidentiality. (a) Applicants for injection permits may claim confidentiality of information to protect trade secrets. These claims shall be submitted in writing at the time application is made for a permit. Upon agreement between the applicant and the secretary, the confidential information shall be stamped "confidential", and the documents shall not be released to the public by the secretary without the prior written consent of the applicant, to the extent provided by law.

(b) Claims of confidentiality shall not apply to release of confidential materials to governmental agencies with responsibilities in water pollution control or to the release of that material due to a court order.

(c) Prohibition of confidentiality. Claims of confidentiality shall not include the name and address of the applicant or permittee or information dealing with the existence, absence, or level of contaminants in drinking water. (Authorized by K.S.A. 1984 Supp. 65-171d; implementing K.S.A. 65-170g; effective May 1, 1982; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986.)

28-46-24. Requirements for wells injecting hazardous wastes. 40 CFR 144.14, as in effect on April 1, 1993, is adopted by reference. In addition to 40 CFR 144.14 the following requirements shall be applicable to class I hazardous waste injection wells.

(a) Liability coverage and long-term assurances. Insurance requirements, closure and postclosure requirements, and financial requirements shall be met by compliance with K.A.R. 28-31-8(a). Higher amounts for insurance, bonds or their equivalent may be required by the secretary.

(b) Injection fluids received from multiple generators. Hazardous waste injection wells shall be subject to the requirements in K.A.R. 28-31-8(d).

(c) Disclosure statement. Each applicant shall be subject to the requirements in K.A.R. 28-31-9(c).

(d) Monitoring fees. The monitoring fee schedule shall be as specified in K.A.R. 28-31-10(c).

(e) Pretreatment requirements. Prior to hazardous waste injection, the fluids shall meet minimum pretreatment requirements that are set by the secretary. To the extent feasible, pretreatment shall render the injected fluid compatible with the injection well tubing and casing and with the disposal formation. In setting minimum pretreatment requirements, the secretary shall consider values 100 times greater than the applicable drinking water standards and values 100 times greater than the applicable 10^{-5} cancer risk levels, or other values necessary to prevent contamination of underground drinking water supplies, to protect the public health, and to take into account environmental considerations. (Authorized by and implementing K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994.)

28-46-25. Prohibition of unauthorized injection. (a) Class I and III injection wells shall not be constructed, and underground injection shall not take place, unless authorized by a permit issued by the secretary.

(b) A class V injection well shall no longer be authorized by rule if any of the following conditions is met:

(1) The well is not in compliance with this article.

(2) The well has been closed.

(3) The well has been abandoned.

(4) The secretary has issued a permit for the well. (Authorized by K.S.A. 2005 Supp. 65-171d; implementing K.S.A. 65-165 and K.S.A. 2005 Supp. 65-171d; effective May 1, 1982; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 2, 2007.)

28-46-26. (Authorized by and implementing K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; revoked March 2, 2007.)

28-46-26a. Prohibited class V wells. The following types of class V wells shall be prohibited:

(a) Motor vehicle waste disposal wells; and

(b) wells receiving untreated or inadequately treated domestic sewage, as specified in K.A.R. 28-5-5. (Authorized by and implementing K.S.A. 2005 Supp. 65-171d; effective March 2, 2007.)

28-46-27. Prohibition of fluid movement into underground sources of drinking water. 40 CFR 144.12, except references to 40 CFR 144.21 through 144.24, as in effect on July 1, 2008, is adopted by reference. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

28-46-28. Establishing maximum injection pressure. (a) A maximum allowable injection pressure for each injection well shall be established by the secretary as a permit condition.

(b)(1) All class I wells operating on other than gravity flow shall be prohibited.

(2) In the case of gravity flow, the positive well-head pressure for a class I well shall not exceed 35 pounds per square inch gauge.

(c) For all wells, the maximum operating pressure shall not be allowed to exceed fracture pressure, except under either of the following conditions:

(1) The development of fractures for well stimulation operations; or

(2) the connection of a class III salt solution mining well to any other class III well for operation as a salt solution mining gallery. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

28-46-29. Design and construction requirements. 40 CFR 146.12 and 40 CFR 146.65, governing class I wells, and 40 CFR 146.32, governing class III wells, as in effect on July 1, 2008, are adopted by reference. In addition, the following requirements shall apply to class III salt solution mining wells:

(a) Each salt solution mining well cavern wall shall meet the following requirements:

(1) Be located at least 50 feet from any other active or abandoned brine-supply wells or other holes or excavations penetrating the salt section, unless the wells, holes, or excavations have been properly plugged; and

(2) be located at least 50 feet from any existing surface structures not owned by the permittee, including any transportation artery.

(b) The cavern wall for each solution mining well shall be located at least 50 feet from the property boundaries of any owners who have not consented to the mining of salt under their property.

(c) Each salt solution mining wellhead shall be located at least 150 feet from the property boundaries of any owners who have not consented to the mining of salt under their property.

(d) For each new salt solution mining well, new steel surface casing shall be set through all freshwater formations and encased in cement from bottom to top by circulating cement through the bottom of the casing to the surface.

(e) For each new salt solution mining well, production casing shall be set into the upper part of the salt formation and encased in cement as specified in this regulation. The casing shall extend at least 55 feet into the salt formation. Centralizers shall be used on the outside of the production casing and shall not be spaced more than 100 feet apart. Before setting and cementing the production casing, the mudcake on the bore wall shall be removed by the use of scratchers or a washing method approved by the director. The cement for that part of the casing opposite the salt formation shall be prepared with salt-saturated cement.

(f) A variance for each well not meeting the requirements of this regulation may be granted by the secretary if all the following conditions are met:

(1) The variance is protective of public health, safety, and the environment.

(2) The permittee agrees to perform any additional monitoring or well improvements, or any combination of these, if required by the secretary.

(3) The permittee agrees to conduct a geomechanical study in support of the variance request. The geomechanical study shall be conducted by a contractor experienced in conducting and interpreting geomechanical studies.

(g) Each permittee seeking a variance shall submit a written request to the secretary for review and consideration for approval. Each request shall include justification for the variance, the geomechanical study and interpretation, and any additional supporting information.

(h) A cement bond log shall be conducted on the production casing after the cement mixture has cured for at least 72 hours and shall be submitted to the department within 45 days after completion of the test. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

28-46-29a. Operation of class III salt solution mining wells. (a) A class III salt solution mining well shall not be operated under any of the following conditions:

(1) The salt roof is less than 50 feet in thickness above the washed cavern.

(2) The solution cavern has been developed as a single well, and the dimensions of the cavern across a horizontal plane exceed 400 feet at any depth or 300 feet in the upper one-third of the potential cavern height.

(3) The top of the solution cavern is less than 250 feet from the ground surface.

(4) The solution cavern has been developed as part of a gallery, and the dimensions of the cavern across a horizontal plane exceed 400 feet at any depth or 300 feet in the upper one-third of the potential cavern height, except the route of interconnection between wells.

(5) The depth to the top of the salt section is less than 400 feet below land surface, and the dimensions of the cavern across a horizontal plane

exceed 300 feet in diameter, except the route of interconnection between wells.

(6) The distance between adjacent galleries is less than 100 feet from the wall of a cavern in an adjacent gallery.

(7) There are leaks or losses of fluid in the casing or surface pipe of a well.

(b) A variance for any well not meeting the conditions in paragraphs (a)(2) and (a)(4) through (a)(6) may be granted by the secretary if all of the following conditions are met:

(1) The variance is protective of public health, safety, and the environment.

(2) The applicant or permittee agrees to perform any additional monitoring or well improvements, or any combination, if required by the secretary.

(3) The applicant or permittee agrees to conduct a geomechanical study in support of the variance request. The geomechanical study shall be conducted by a contractor experienced in conducting and interpreting geomechanical studies.

(c) Each applicant or permittee seeking a variance shall submit a written request to the secretary that includes justification for the variance, a geomechanical study and interpretation, and any additional supporting information for review and consideration for approval. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective Aug. 6, 2010.)

28-46-30. Monitoring and reporting requirements for class I wells. 40 CFR 146.13, 40 CFR 146.67, 40 CFR 146.68, and 40 CFR 146.69, as in effect on July 1, 2008, are hereby adopted by reference. In addition to 40 CFR 144.14, as adopted in K.A.R. 28-46-24 and 28-46-31, and 40 CFR 146.70, as adopted in K.A.R. 28-46-31, all of the following requirements shall apply to each class I hazardous waste injection well:

(a) Records of the continuously monitored parameters shall be maintained in addition to the monthly average of and the minimum and maximum values of the following parameters:

(1) Injection pressure;

(2) flow rate;

(3) injection volume; and

(4) annular pressure.

(b) The monitoring results shall be reported to the department on a monthly basis on forms provided by the department.

(c) The necessary number of monitoring wells in appropriate geologic zones for the early detection

of contaminant migration shall be determined by the secretary to protect public health, safety, and the environment. (Authorized by and implementing K.S.A. 2009 Supp. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

28-46-30a. Monitoring and reporting requirements for class III salt solution mining wells. 40 CFR 146.33, as in effect on July 1, 2008, is hereby adopted by reference. In addition, all of the following requirements shall apply to each permittee of a class III salt solution mining well:

(a) Within two years of the effective date of this regulation, each permittee shall submit a facility plan for monitoring the injection and withdrawal volumes and injection pressures that meets the secretary's approval and ensures the protection of public health, safety, and the environment.

(b) Each permittee shall monthly submit the following monitoring records to the department on a form provided by the department:

(1) The weekly injection and withdrawal volume for each salt solution mining well or gallery;

(2) the weekly injection and withdrawal ratio for each salt solution mining well or gallery; and

(3) a summary of the weekly minimum and maximum injection pressures for each salt solution mining well or gallery.

(c) Each permittee shall annually submit a report to the department, on a form provided by the department, which shall include the following information:

(1) For each well, a percentage of the remaining amount of salt that can potentially be mined in accordance with these regulations; and

(2) a summary of facility activities regarding abnormal fluid loss, well drilling, well plugging, geophysical well logging, sonar caliper surveys, mechanical integrity testing, calibration and maintenance of flow meters and gauges, elevation survey results, and the description of the model theory used to calculate the percentage of the total amount of remaining salt that can potentially be mined in accordance with these regulations.

(d) If an unanticipated loss of fluid has occurred or the monitoring system indicates that leakage has occurred and has been verified, the permittee shall notify the department orally within 24 hours of discovery and shall provide written confirmation within seven days regarding the abnormal loss or leakage.

(e) A sonar caliper survey shall be conducted on each well when calculations based on a model, approved by the secretary, indicate that 20 percent of the total amount of remaining salt that can be potentially mined in accordance with these regulations has been mined. The well shall be checked by the permittee to determine the dimensions and configuration of the cavern developed by the solutioning. Thereafter, a sonar caliper survey shall be conducted when the calculations indicate that each additional 20 percent of the remaining salt that can be potentially mined in accordance with these regulations has been mined.

(f) Any permittee may use an alternative method for determining the dimensions and configuration of the solution mining cavern if the secretary determines that the alternative method is substantially equivalent to the sonar caliper survey. The permittee shall submit the following information for the secretary's consideration:

(1) A description of the survey method and theory of operation, including the survey sensitivities and justification for the survey parameters;

(2) a description of the well and cavern conditions under which the survey can be conducted;

(3) the procedure for interpreting the survey results; and

(4) an interpretation of the survey upon completion of the survey.

(g) More frequent monitoring of the cavern dimensions and configuration by sonar caliper survey may be required by the secretary if the secretary receives information that the cavern could be unstable. Each existing well shall meet the requirements of the survey frequency established in the well permit. The results of the survey, including logs and an interpretation by a contractor experienced in sonar interpretation, shall be submitted to the department within 45 days of completing the survey.

(h) Any permittee may submit a variance request regarding the sonar caliper survey frequency to the department, if both of the following conditions are met:

(1) The variance is protective of public health, safety, and the environment.

(2) The permittee agrees to perform any additional monitoring or well improvements, or any combination of these, if required by the secretary.

(i) Each permittee seeking a variance shall submit a written request, including justification for the variance and any supporting data to the secretary for review and consideration for approval.

(j) Each permittee shall check the thickness of the salt roof at the end of two years of use and biennially thereafter, unless otherwise permitted by the secretary, by gamma ray log or any other method approved by the secretary. A report of the method used and a copy of the survey shall be submitted to the department within 45 days from completion of the test.

(k) Each permittee shall give oral notification to the department of a verified exceedence of the maximum permitted injection pressure within 24 hours of discovery of the exceedence and submit written notification within seven calendar days to the department.

(l) Each new well shall have a meter to measure injection or withdrawal volume. The permittee shall maintain records of these flow volumes at the facility and shall make the records available to the secretary upon request.

(m) Each permittee shall submit a ground subsidence monitoring plan to the secretary within two years after the effective date of these regulations. The following requirements shall apply:

(1) The ground subsidence monitoring plan shall include the following information:

(A) A description of the method for conducting an elevation survey; and

(B) the criteria for establishing monuments, benchmarks, and wellhead survey points.

(2) The ground subsidence monitoring plan shall meet all of the following criteria:

(A) Level measurements to the accuracy of 0.01 foot shall be made.

(B) Verified surface elevation changes in excess of 0.10 foot shall be reported within 24 hours of discovery to the department.

(C) No established benchmark shall be changed, unless the permittee submits a justification that the change is protective of public health, safety, and the environment.

(D) If a benchmark is changed, the elevation change from the previous benchmark shall be noted in the elevation survey report.

(E) Each permittee shall submit the elevation before and after any wellhead work that results in a change in the survey point at the wellhead.

(3) The elevation survey shall be conducted by a licensed professional land surveyor.

(4) All annual elevation survey results shall be submitted to the department within 45 days after completion of the survey.

(5) All certified and stamped field notes shall be made available by the permittee upon request by

the secretary. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective Aug. 6, 2010.)

28-46-30b. Groundwater monitoring for class III salt solution mining wells.

(a) Each permittee of a salt solution mining well shall submit a groundwater monitoring plan within two years after the effective date of these regulations to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment.

(b) Within two years after the effective date of these regulations, each permittee shall submit a quality assurance plan, including techniques for sampling and analysis, to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment.

(c) Each permittee shall collect groundwater samples and analyze the samples for chloride and any other parameters determined by the secretary to ensure the protection of public health, safety, and the environment. The sampling results shall be submitted to the department on forms provided by the department.

(d) Each permittee shall submit the results for chloride analyses from groundwater samples to the department on an annual basis or on a more frequent basis as determined by the secretary to ensure the protection of public health, safety, and the environment. These results shall be submitted on forms provided by the department.

(e) Each permittee shall submit a static groundwater level measurement for each monitoring well with the chloride analyses results as specified in subsection (d).

(f) At any facility where chloride concentrations in the groundwater exceed 250 milligrams per liter or the established background chloride concentration, the permittee may be required to submit a workplan that describes the methods to delineate potential source areas and to control migration of the chloride contamination to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective Aug. 6, 2010.)

28-46-31. Information to be considered by the secretary. 40 CFR 146.14, except for reference to 40 CFR 122.42 (g), 40 CFR 146.62,

40 CFR 146.66, 40 CFR 146.70 and 40 CFR part 144, subpart F, for class I wells and 40 CFR 146.34, for class III wells, as in effect on July 1, 2008, are adopted by reference. In addition, all of the following requirements shall be applicable to class I hazardous waste injection wells:

(a) Each applicant shall demonstrate that the well meets the requirements of K.S.A. 65-3439, and amendments thereto, relating to hazardous waste injection wells and applicable to class I hazardous waste injection wells.

(b) Each applicant shall be responsible for providing information to the department necessary to substantiate that well injection of the hazardous waste liquid in question is the most reasonable method of disposal after all other options have been considered.

(1) Factors to be considered in determining the most reasonable method shall include those required by K.S.A. 65-3439, and amendments thereto.

(2) All factors considered shall be documented in a report submitted to the department for review and consideration for approval.

(c) Each applicant shall determine, through a detailed record search and field survey, the location of each abandoned oil and gas well and exploratory hole within the area of review, as specified in K.A.R. 28-46-32.

(1) An interview with those responsible for drilling, producing, plugging, or witnessing these activities shall be a part of the record.

(2) The results of the field survey shall be documented in a report submitted to the department.

(3) A map geographically documenting the location of all the holes and abandoned wells within the area of review, as specified in K.A.R. 28-46-32, shall be included as a part of the report specified in paragraph (c)(2). (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

28-46-32. Area of review. (a) The area of review for each class I hazardous waste injection well shall be no less than 2½ miles or shall extend to the limits of the calculated cone of influence, whichever is greater.

(b) The area of review for each class I nonhazardous waste injection well shall be no less than one mile or shall extend to the limits of the calculated cone of influence, whichever is greater.

(c) The area of review for each class III injection well shall be no less than ¼ mile.

(d) The area of review for each class V injection well shall be no less than ¼ mile. (Authorized by and implementing K.S.A. 65-171d; effective May 1, 1982; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended May 1, 1987; amended March 21, 1994.)

28-46-33. Mechanical integrity testing.

(a) A mechanical integrity test consisting of a pressure test with a liquid to evaluate the absence of a significant leak in the casing, tubing, or packer and a test to determine the absence of significant fluid movement through vertical channels adjacent to the wellbore shall be required of each class I and class III permittee on each injection well at least once every five years.

(1) For class I hazardous waste injection wells, the mechanical integrity test shall be conducted in accordance with 40 CFR 146.8, except for reference to 40 CFR 146.33(b), as in effect July 1, 2008, which is hereby adopted by reference, and 40 CFR 146.68(d), as adopted in K.A.R. 28-46-30, by conducting all of the following:

(A) A pressure test with a liquid of the casing, tubing, and packer at least annually and if there has been a well workover;

(B) a test of the bottom-hole cement by use of an approved radioactive survey at least annually;

(C) a temperature, noise, or oxygen activation log to test for movement of fluid along the borehole at least once every five years; and

(D) a casing inspection log at least once every five years.

(2) For class I non-hazardous waste injection wells, the mechanical integrity test shall be conducted in accordance with 40 CFR 146.8.

(3) For class III injection wells, the mechanical integrity test shall be conducted in accordance with 40 CFR 146.8, except the casing shall be pressure tested by the use of a mechanical packer or retrievable plug.

(b) Each permittee shall be notified at least 30 days in advance by the secretary that a mechanical integrity test shall be performed, or a permittee may notify the department that a voluntary mechanical integrity test will be performed at least 14 days in advance of the test.

(c) Each permittee shall be required to cease injection operations immediately and to conduct a mechanical integrity test if continued use of an injection well constitutes a threat to public health

or to waters of the state. Injection operations shall not be resumed until all of the following conditions are met:

- (1) The test has been conducted.
- (2) The test has demonstrated that the well has mechanical integrity.
- (3) The well has been approved for use by the secretary.
- (d) The secretary's authorized representative shall witness all of the pressure mechanical integrity tests performed.
- (e) Each permittee shall submit results of all mechanical integrity tests to the secretary, in writing, within 30 days after the test has been conducted.
- (f) 40 CFR 144.51(q), as in effect on July 1, 2008, is adopted by reference. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

28-46-34. Plugging and abandonment. 40 CFR 144.51(n), 40 CFR 144.52(a)(6), 40 CFR 146.10, except for reference to 40 CFR 144.23(b) and 40 CFR 146.04, 40 CFR 146.71, 40 CFR 146.72, and 40 CFR 146.73, as in effect on July 1, 2008, are adopted by reference. In addition, both of the following requirements shall apply to class III salt solution mining wells:

- (a) The plugging of each salt solution mining well shall be conducted as specified in the department's document titled "procedure for plugging and abandonment of a class III salt mining well," procedure #: UICIII-7, dated March 2005, and hereby adopted by reference.
- (b) Any permittee may use an alternative method for the plugging of each salt solution mining well if the secretary determines that the alternative method is substantially equivalent to the procedure specified in subsection (a) and is protective of public health, safety, and the environment. The permittee shall submit a detailed description of the alternative plugging method for the secretary's consideration. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

28-46-34a. Closure of class V motor vehicle waste disposal wells (MVWDW) and large-capacity cesspools. (a) The following documents are hereby adopted by reference:

- (1) The following federal regulations as in effect on July 1, 2005:
 - (A) 40 CFR 144.12(a);
 - (B) 40 CFR 144.89; and
 - (C) 40 CFR 146.10(c); and
- (2) "class V underground injection control motor vehicle waste disposal well (MVWDW) sampling and closure procedures," procedure # UICV-2, published by the department and dated August 2006.
- (b) Each class V motor vehicle waste disposal well shall be closed in a manner that meets the requirements of all of the documents adopted by reference in subsection (a).
- (c) Each large-capacity cesspool shall be closed in a manner that meets the requirements of the federal regulations adopted by reference in paragraphs (a) (1) (A), (B), and (C). (Authorized by and implementing K.S.A. 2005 Supp. 65-171d; effective March 2, 2007.)

28-46-35. State inspection and right of entry. Each well owner or operator shall allow an authorized representative of the secretary access to the well facility for the purpose of determining compliance with these regulations. (Authorized by K.S.A. 2009 Supp. 55-1,117 and 65-171d; implementing K.S.A. 2009 Supp. 55-1,117 and K.S.A. 65-170b; effective May 1, 1982; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended Aug. 6, 2010.)

28-46-36. Waiver of requirements by secretary. 40 CFR 144.16, as in effect on April 1, 1993, is adopted by reference. (Authorized by and implementing K.S.A. 1984 Supp. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994.)

28-46-37. (Authorized by and implementing K.S.A. 1984 Supp. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; revoked March 21, 1994.)

28-46-38. Inventory and assessment of class V injection wells. 40 CFR 144.83(a)(1) and (a)(2)(i), as in effect on July 1, 2005, is adopted by

reference. Each well owner or well operator shall submit the required inventory information to the secretary on a form provided by the department. (Authorized by and implementing K.S.A. 2005 Supp. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended March 2, 2007.)

28-46-39. (Authorized by and implementing K.S.A. 1984 Supp. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; revoked March 21, 1994.)

28-46-40. Exempted aquifers. (a) An aquifer may be designated by the secretary as exempt from protection as an underground source of drinking water. Criteria for exemption may include whether the aquifer meets one of the following conditions:

(1) Contains water with more than 10,000 milligrams per liter of total dissolved solids;

(2) produces mineral, hydrocarbon, or geothermal energy; or

(3) is situated at a depth that makes the recovery of water economically impractical.

(b) Each request to exempt an aquifer under subsection (a) shall be first submitted to and approved by the administrator of the United States environmental protection agency. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended Aug. 6, 2010.)

28-46-41. Sharing of information. 40 CFR 145.14, as in effect on July 1, 2008, is adopted by reference. (Authorized by K.S.A. 2009 Supp. 55-1,117 and 65-171d; implementing K.S.A. 2009 Supp. 55-1,117 and 65-170g; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

28-46-42. Exclusion of oil and gas related wells. The following class II injection wells shall be exempted from the provisions in article 46 of these regulations:

(a) any well which injects fluids brought to the surface in connection with the conventional production of oil or gas;

(b) any well which injects wastewaters from gas plants which are an integral part of production operations, unless those waters are classified hazardous at the time of injection; or

(c) any well which injects fluids to enhance the recovery of oil or natural gas. (Authorized by and implementing K.S.A. 65-171d; effective, T-83-7, April 29, 1982; effective May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994.)

28-46-43. Analyses to be performed by laboratory certified by the secretary. If a sample analysis is required by the secretary for the purposes of any permit or application for a permit under these regulations, the analysis shall be performed by a laboratory which has been certified and approved by the secretary for conducting such sample analysis. (Authorized by and implementing K.S.A. 65-171d; effective March 21, 1994.)

28-46-44. Sampling and analysis techniques. (a) Sampling and analysis shall be performed in accordance with the techniques specified in 40 CFR part 136 and the appendices, as in effect on July 1, 2008, which are adopted by reference.

(b) If 40 CFR part 136 does not contain sampling and analytical techniques for the parameter in question or if the sampling and analytical techniques in part 136 are inappropriate for the parameter in question, the sampling and analysis shall be performed using validated analytical methods or other appropriate sampling and analytical procedures approved by the secretary to ensure the protection of public health, safety, and the environment. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective March 21, 1994; amended Aug. 6, 2010.)

28-46-45. Salt solution mining well operations; fees. (a) Each permittee shall submit an annual permit fee of \$12,000 per facility and \$175 per unplugged salt solution mining well to the department on or before April 1 of each year.

(b) Payment shall be made to the "Kansas department of health and environment - subsurface hydrocarbon storage fund."

(c) The fees collected under this regulation shall be nonrefundable.

(d) If ownership of a salt solution mining well or salt solution mining facility changes during the

term of a valid permit, no additional fee shall be required unless a change occurs that results in a new salt solution mining well or expansion of the facility's operation. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117; effective Aug. 6, 2010.)

Article 47.—USE OF OIL AND GAS FIELD SALT WATER IN ROAD CONSTRUCTION AND MAINTENANCE PROJECTS

28-47-1. Scope. This article regulates the spreading of salt water, originating from the production of oil and gas, in road construction and maintenance projects. (Authorized by and implementing K.S.A. 1982 Supp. 55-904; effective, T-83-50, Dec. 22, 1982; effective May 1, 1983.)

28-47-2. Definitions. (a) "Person" means any state, county, township or municipal governing body, and any individual, firm, corporation, partnership, or other association of persons.

(b) "Road" means any highway, county road, township road, or oil or gas company lease road, or any private road under jurisdiction of the applicant.

(c) "Road construction" means any activity connected with developing a subgrade or base during the construction of a road or segment of road.

(d) "Road maintenance" means any activity related to stabilization of the surface of any publicly traveled road or segment of road after construction activities have ceased.

(e) "Lease road" means any formally maintained access road to wells, tank batteries and petroleum and oil field and salt water storage facilities areas under control and operation of a company actively engaged in the production, storage or transportation of oil, gas, or disposal of salt water. (Authorized by and implementing K.S.A. 1982 Supp. 55-904; effective, T-83-50, Dec. 22, 1982; effective May 1, 1983.)

28-47-3. Request for the use of salt water in road construction or maintenance. Any person desiring to use salt water, brought to the surface during the production of oil and gas, for purposes of road maintenance or road construction shall submit a request for the approval of such activity to the department of health and environment. The request shall be submitted 10 days prior to the time work is to begin and shall be accompanied by a plan meeting the requirements of K.A.R. 28-47-4. The request for approval may

be submitted to the appropriate district office of the department. (Authorized by and implementing K.S.A. 1982 Supp. 55-904; effective, T-83-50, Dec. 22, 1982; effective May 1, 1983.)

28-47-4. Plan for use of salt water. A plan shall be submitted to the department prior to using salt water for road maintenance or road construction. The department shall, in writing, approve, deny or require any modification the department deems necessary in order to assure that the maintenance or construction operation will not cause surface or subsurface water pollution or soil pollution. A plan shall not be required for individual lease road maintenance projects which are limited to stabilizing lease roads. Each plan shall include at least the following: (a) A map outlining the roads included in the maintenance or construction project;

(b) a description of the method to be used in salt water spreading or incorporation;

(c) the amount of salt water estimated to be used per mile or fraction of a mile;

(d) the frequency of salt water use for each route described in (a);

(e) security methods to be used by the applicant to prevent unauthorized spraying, dumping, or discharge of salt water;

(f) a copy of any local or county regulation which also affects the applicant's activities; and

(g) the name of each authorized salt water hauler. (Authorized by and implementing K.S.A. 1982 Supp. 55-904; effective, T-83-50, Dec. 22, 1982; effective May 1, 1983.)

28-47-5. Notification to department. Any authorized person spreading salt water in connection with road construction or maintenance shall notify the department, in writing, when any of the following situations arise: (a) The person ceases to use salt water in maintaining any or all of the roads designated on the plan submitted in fulfilling requirements set forth in K.A.R. 28-47-4(a);

(b) the person desires to amend the plan submitted under K.A.R. 28-47-4(a) to include additional roads not covered in the original plan;

(c) the person desires to use a salt water hauler other than the one designated in the original plan;

(d) upon completion of any designated phase of road construction during which the use of salt water was approved;

(e) upon discovery that an illegal act of salt water dumping, spraying, or discharge has occurred

on or adjacent to the road or road right-of-way covered under the plan; or

(f) when an accidental discharge of salt water occurs during road construction or road maintenance operations. In such a case, the applicant or contractor shall provide the appropriate district office of the department of health and environment with a written report of the incident. (Authorized by and implementing K.S.A. 1982 Supp. 55-904; effective, T-83-50, Dec. 22, 1982; effective May 1, 1983.)

28-47-6. Discontinuance of salt water spreading. The secretary may order the discontinuance of salt water spreading if:

(a) A violation of the provisions of K.A.R. 28-47-5 occurs; or

(b) the potential exists for water pollution, due to conditions which were not apparent at the time the request to spread salt water was made. (Authorized by and implementing K.S.A. 1982 Supp. 55-904; effective, T-83-50, Dec. 22, 1982; effective May 1, 1983.)

28-47-7. Waiver of specific requirements. The secretary may grant an exception to a requirement provided in these regulations if a person desiring a waiver can show good cause for the granting of such an exception, and the person presents an alternative to the requirements which will insure that the objectives of these regulations will be achieved. Requests for an exception shall be made, in writing, to the secretary. The secretary shall grant or deny the request within 15 days from the receipt of the request and shall notify the person requesting the exception, in writing, of the decision. If the request is denied, the secretary shall specify in the notice the reasons for the denial of the request. (Authorized by and implementing K.S.A. 1982 Supp. 55-904; effective, T-83-50, Dec. 22, 1982; effective May 1, 1983.)

Article 48.—SPILL REPORTING

28-48-1. Definitions. The following words and phrases when used in these regulations, have the meanings respectively ascribed to them in this section.

(a) “Owner” means individual, partnership, firm, trust, company, association, corporation, institution, political subdivision or agency which is financially responsible for the material or facility.

(b) “Person responsible” means person or organization which has been placed in control of the material or facility by the owner.

(c) “Waters of the state” means all streams and springs, and all bodies of surface or groundwater, whether natural or artificial, within the boundaries of the State. (Authorized by and implementing K.S.A. 1984 Supp. 65-171d; effective May 1, 1986.)

28-48-2. Action required. All sewage, substances, materials, or wastes, as set forth in 65-171d, regardless of phase or physical state, which are, or threaten to contaminate or alter any of the properties of the waters of the state or pollute the soil in a detrimental, harmful, or injurious manner or create a nuisance, shall be reported in the following manner:

(a) The owner or person responsible for the discharge or escape of materials detrimental to the quality of waters of the state or pollution of the soil under conditions other than provided by a valid permit issued by the secretary of health and environment, shall report the discharge or escape to the Kansas department of health and environment.

(b) Emergency or accidental discharge of materials which are detrimental to the quality of waters of the state or tend to cause pollution of the soil shall be immediately reported to the Kansas department of health and environment by the owner, owner’s representative, or person responsible. In the event the pollution causing material is in transit or in storage within the state, the owner, carrier, or person responsible for storage shall be responsible for immediate notification to the Kansas department of health and environment that the pollutant will gain admittance to the waters of the state or the soil. (Authorized by and implementing K.S.A. 1984 Supp. 65-171d; effective May 1, 1986.)

Article 49.—TRAUMATIC HEAD INJURY FACILITIES

28-49-1 to 28-49-8. (Authorized by and implementing K.S.A. 65-461; effective, T-87-18, July 1, 1986; effective May 1, 1987; revoked May 10, 1996.)

Article 50.—ASBESTOS CONTROL

28-50-1. Definitions. As used in this article, the following terms have these definitions: (a) “Accredited asbestos worker” means a person who has fulfilled the training requirements and successfully completed the written examination

requirements prescribed under federal law for persons who conduct response actions with respect to friable asbestos-containing material in either elementary and secondary schools or public and commercial buildings.

(b) "Agent" means any person who is not an employee of a business or public entity that has been specifically authorized by the entity to act in its behalf in regard to carrying out any activity that requires the person to be present in the work area while an asbestos-removal project, an asbestos-encapsulation project, or an asbestos-related dismantling project is in progress.

(c) "Appropriate protective clothing" means outer clothing intended to be worn by a person who is engaged in asbestos-removal or asbestos-encapsulation activities. This clothing shall facilitate the removal of asbestos fibers from the person before that person moves from an area that contains asbestos fibers into an area that is intended to remain free of these fibers. Protective clothing shall consist of coveralls or a similar whole-body covering, head covers, gloves, and foot covers. Protective clothing shall be worn at all times that friable asbestos-containing materials are being handled directly and when otherwise required by OSHA or EPA regulations, work specifications governing the activities, or work plans submitted to the department in compliance with the requirements of K.A.R. 28-50-8.

(d) "Appropriate respirator" means an air-purifying or air-supplied respirator meeting either of the following criteria:

(1) A respirator approved by NIOSH for respiratory protection, under 42 C.F.R. Part 84, as in effect on October 1, 1998, for particulates and hazardous chemicals contained in encapsulants; or

(2) a respirator providing a higher protection factor if its use is specified by any of the following requirements applying to asbestos-removal or asbestos-encapsulation activities:

(A) OSHA and EPA regulations;

(B) work specifications governing the activities; or

(C) a work plan submitted to the department in accordance with the requirements of K.A.R. 28-50-8.

(e) "Appropriate warning sign" means any asbestos hazard warning sign that complies with federal OSHA or EPA regulations and is required when airborne concentrations of asbestos exceed the prescribed limits.

(f) "Approved waste disposal site" means a solid waste disposal area that is operated under a

permit issued by the department, as provided in K.S.A. 65-3407, and amendments thereto, and is authorized by the department to receive friable asbestos-containing solid wastes.

(g) "Asbestos-encapsulation project" means activities that include, and are incidental to, the coating of a friable asbestos-containing surface material with a coating or penetrating type of sealing substance, when the intended purpose of the activities is to prevent the continued release of asbestos fibers from the material into the air. The following activities shall be exempt from this definition:

(1) The repainting of a previously painted asbestos-containing surface primarily for the intended purpose of improving the appearance;

(2) the application of a sealing material to a surface after the removal of asbestos from it;

(3) the application of an encapsulant to asbestos-containing material while the material is being removed;

(4) the application of a sealing substance to 10 or fewer square feet of friable asbestos-containing material that is contiguous to other types of material;

(5) the application of a sealing substance to asbestos-containing material that has previously been enclosed or encapsulated; or

(6) the painting of friable asbestos-containing material located in a privately owned single-family residence.

(h) "Asbestos label" means a label that complies with applicable federal EPA, DOT, and OSHA regulatory requirements and is to be securely affixed to a waste container that contains friable asbestos materials.

(i) "Asbestos-related demolition project" means any activity that includes the razing of all or a portion of a structure that contains friable asbestos-containing materials or other asbestos-containing materials that may become airborne if the materials are crushed or broken. This definition shall not include the demolition of a residential structure or structures unless the demolition activity is subject to the requirements of 40 C.F.R. Part 61, subpart M, as adopted by reference in K.A.R. 28-19-735.

(j) "Asbestos-related dismantling project" means activities that include the disassembly, handling, and moving of the components of any structural or equipment item that has been covered with friable asbestos-containing material without first removing this material from the item. This

definition shall not include these activities when conducted for the purpose of repair, replacement, or maintenance of the item and require the removal of either 25 or fewer lineal feet of friable asbestos-containing materials from the surface of a pipe or 10 or fewer square feet of friable asbestos-containing materials from any other type of surface in order to dismantle the item.

(k) "Asbestos-related maintenance operation" means any operation that involves the removal or cleanup of either 25 or fewer lineal feet of friable asbestos-containing material from the surface of a pipe or 10 or fewer square feet of friable asbestos-containing material from any other type of a structural or equipment item in order to repair, replace, or maintain the item or any appurtenances to it.

(l) "Asbestos-removal project" means activities that involve, and are required by these regulations to be carried out in relation to, the removal of a friable asbestos-containing material from any of the following surfaces:

(1) A structural or equipment item that is intended to remain in place; or

(2) a structural or equipment item after its removal as a result of an asbestos-related dismantling operation.

This definition shall include activities associated with the cleanup of loose, friable asbestos-containing debris and refuse from floors and other surfaces.

This definition shall not include activities that are associated with the removal of friable asbestos-containing materials as part of an asbestos-related maintenance operation or the collection of samples for asbestos analysis.

(m) "Asbestos repair" means returning damaged friable asbestos-containing-material to an undamaged state or to an intact state to contain fiber release.

(n) "Class I asbestos worker" means a person who is certified to engage in asbestos-removal or asbestos-encapsulation projects in a nonsupervisory capacity.

(o) "Class II asbestos worker" means a person who is certified to supervise and direct asbestos-removal and asbestos-encapsulation projects in compliance with the requirements of these regulations and applicable federal regulations.

(p) "Control curtain" means either of the two following types of closure devices that are to be constructed of not less than four-mil-thick plastic sheeting material and installed in an entryway of

an area that is considered to be contaminated with free asbestos fibers:

(1) A ventilation curtain that is intended to allow unrestricted air flow movement into a contaminated area when it is being ventilated with an exhaust fan. This curtain shall consist of a single flap that opens into the contaminated area and is securely fastened across the top of the entryway framework in a manner that will allow it to overlap both sides of the entryway by a distance of no fewer than 12 inches and the base of the entryway by a distance of no fewer than three inches; or

(2) a confinement curtain that is intended to restrict the movement of air into, and from, an unventilated and contaminated area. This curtain shall consist of three constructed baffles that cover the entire area of the entryway and are securely fastened along the top of the entryway framework and along alternate sides of it at locations and in a manner that will allow two of the curtains to fully cover the entryway opening while a person passes through the third curtain. An airlock arrangement consisting of two baffle curtain entryways that are located at least three feet apart may be substituted for the triple baffle arrangement.

(q) "Department" means staff employed by the Kansas department of health and environment.

(r) "DOT" means the federal department of transportation.

(s) "EPA" means the federal environmental protection agency.

(t) "Emergency situation" means a condition that exists as the result of a sudden and unexpected event and is likely to cause immediate and substantial damage to persons or property.

(u) "Encapsulation" means the treatment of a friable asbestos-containing material with a substance to prevent the release of fibers into the air.

(v) "Enclosure" means the construction of an airtight, impermeable, permanent barrier around friable asbestos-containing material to control the release of fibers into the air.

(w) "Equipment" means any item that is designed or intended to perform any operation and shall include any item attached to it to assist in the operation.

(x) "Furnishings" means removable furniture, drapes, rugs, and decorative items.

(y) "Grade D breathing air" means an air supply that contains the following:

(1) 19.5-23.5 percent oxygen on a volumetric basis;

(2) not more than 10 volumes of carbon monoxide per million volumes of air;

(3) not more than 1,000 volumes of carbon dioxide per million volumes of air;

(4) not more than five milligrams of condensed hydrocarbons per cubic meter of air; and

(5) no objectionable odors.

(z) "HEPA filter" means a filter capable of trapping and retaining at least 99.97 percent of all mono-dispersed particles of 0.3 micrometers in diameter. The equivalent particulate filters, as referenced by NIOSH in 42 C.F.R. Part 84, as in effect on October 1, 1998, are the N100, R100, and P100 filters.

(aa) "NIOSH-approved respirator" means a respirator and any required attachments, including filters, that have been approved by the federal national institute for occupational safety and health under provisions of federal law.

(bb) "Occupied spaces" means a building, structure, or adjoining area that is accessible to the public, and in which a business entity, state agency, or political or taxing subdivision of the state is engaging in an asbestos project, as defined in subsections (g)(i), (j), (k), and (l) of this regulation.

(cc) "OSHA" means the federal occupational safety and health administration.

(dd) "Sealing material" means a liquid substance that does not contain asbestos and that is used to cover a surface that has previously been coated with a friable asbestos-containing material for the intended purpose of preventing any asbestos fibers remaining on the surface from being disbursed into the air. Sealants shall be colored a different color than the surface to which they are applied.

(ee) "Structural item" means roofs, walls, ceilings, floors, structural supports, pipes, ducts, fittings, and fixtures that have been installed as an integral part of any structure.

(ff) "Type C respirator system" means an airline respirator designed for atmospheres not immediately dangerous to life or health and consisting of a source of respirable breathing air, an air hose with a detachable coupling, flow control fittings, and a facepiece, helmet, or hood.

(gg) "Waste generator" means the business entity that is most directly responsible for the supervision of activities that result in the accumulation of friable asbestos-containing waste materials.

(hh) "Wet cleaning" means the process of using water or other liquid and a wet brush, mop, cloth, sponge, or similar wet cleaning device to completely remove any residue of asbestos-

containing materials from surfaces on which they may be located. This definition shall not include the use of a wet vacuum cleaner to pick up wet friable asbestos-containing debris, or asbestos-contaminated wastewater.

(ii) "Wetting agent" means any chemical that is added to water to decrease its surface tension and allow it to spread more easily over or penetrate into friable asbestos-containing materials.

(jj) "Work area" means a specific room or physically isolated portion of a room, other than the space enclosed within a glove bag, in which friable asbestos-containing material is required to be handled in accordance with the requirements of this article. These areas shall be designated as work areas from the time that the room, or portion of it, is being prepared in order to carry out the removal, encapsulation, or dismantling activity until the time that the area has been cleaned in accordance with any requirements applicable to these operations. (Authorized by and implementing K.S.A. 1998 Supp. 65-5303; effective, T-87-1, Jan. 6, 1986; effective May 1, 1987; amended, T-88-54, Dec. 16, 1987; amended May 1, 1988; amended Feb. 4, 1991; amended Oct. 1, 1999.)

28-50-2. Business entity license. (a) A business entity shall not engage in an asbestos-removal project, an asbestos-encapsulation project, or an asbestos-related dismantling project unless the secretary has issued, or renewed, a license authorizing the business entity to engage in the activities. This requirement shall apply to business entities that conduct the activities in occupied spaces as defined in K.A.R. 28-50-1(bb).

(b) A business entity shall not be issued a license, or a license shall not be renewed or remain in effect, unless the business entity demonstrates that it has met the following requirements:

(1) The business entity shall be owned by, or shall employ, one or more identified individuals who shall be required to be physically present at, and directly supervise, each project for which the license is required and who shall be responsible for compliance with this article. This individual shall hold a currently valid certificate as a class II asbestos worker that has been issued in accordance with this article.

(2) Each employee or agent of the business entity who will come into contact with asbestos or who will engage in an asbestos-removal project, an asbestos-encapsulation project, or an asbestos-

related dismantling project shall be certified and accredited as appropriate in accordance with this article.

(3) The business entity shall provide, or make available at its cost, medical examinations for all employees to the extent that the examinations are required by OSHA and EPA.

(4) The business entity shall designate an individual who is responsible for the establishment and maintenance of its respiratory protection program. The business entity shall submit a written description of the program to the department for its approval.

(5) The business entity shall own and maintain in operable condition, at minimum, the following equipment items for use in each asbestos-removal or asbestos-encapsulation project that it proposes to engage in:

(A) Two HEPA filter-equipped portable exhaust fan units with a minimum rated capacity of 500 cubic feet per minute;

(B) two HEPA filter-equipped portable vacuum-cleaning devices equipped with hoses and attachments necessary for cleaning dry surfaces;

(C) a type C pressure demand or continuous flow respirator system. The air supply equipment shall be capable of providing sufficient volumes and pressures of grade D breathing air to accommodate the manufacturer's specifications for all respirators intended to be connected to it. A sufficient number of respirators to meet all anticipated requirements shall be maintained for use with the compressor, and all respirators, hoses, and regulators shall be designated as being NIOSH approved; and

(D) a sufficient number of air-purifying respirators to meet all anticipated requirements. At least 10 filter cartridges specifically designated for use with each of these respirators shall be maintained on a continuing inventory basis.

(6) The business entity shall not prohibit the department from inspecting any work area where an asbestos-removal project, an asbestos-encapsulation project, or an asbestos-related dismantling project is being conducted under a license issued in accordance with this regulation.

(c) Any requirement of paragraph (b)(5) of this regulation may be waived by the department if the business entity demonstrates to the satisfaction of the department that compliance with the requirement is not necessary in order to assure compliance with all requirements, procedures, and standards of OSHA, EPA, and K.A.R. 28-50-9 through 28-50-14 that are applicable to asbestos

abatement and encapsulation projects for which the application for license, or license renewal, has been submitted.

(d) Each application for a license, or license renewal, shall be made on a form provided by the department and shall be accompanied by a check or money order for the fee prescribed in subsection (e) of this regulation.

(e) Business entities applying for a license, or renewal of a license, to engage in asbestos-removal or asbestos-encapsulation projects shall pay an annual licensing fee of \$1,000.00. The fee shall cover a 12-month period beginning on the effective date of the issuance or renewal of the license. No portion of the fee shall be refunded if the license is suspended or revoked during the 12-month period or if the business entity otherwise discontinues the licensed activities within the state during the 12-month period.

(f) The applicant shall be notified by the department of each deficiency that it considers sufficient to deny the license or renewal of the license. The license shall be denied if the listed deficiencies are not corrected within 60 days of the mailing date of the notification. The application fee shall be retained by the department if a license is denied or the application is withdrawn. Each reapplication for a license shall be accompanied by the full fee prescribed in subsection (e) of this regulation. (Authorized by K.S.A. 1998 Supp. 65-5303; implementing K.S.A. 1998 Supp. 65-5303, K.S.A. 65-5304, 65-5305, 65-5306, 65-5309; effective, T-86-1, Jan. 6, 1986; effective May 1, 1987; amended, T-88-54, Dec. 16, 1987; amended May 1, 1988; amended Oct. 1, 1999.)

28-50-3. Public agency engaging in asbestos projects. A state agency or political or taxing subdivision of the state that engages in an asbestos removal, an asbestos encapsulation project, or an asbestos related dismantling project using its own employees shall comply with all requirements of K.A.R. 28-50-2 that are applicable to business entities, except that:

(a) A letter of approval issued by the department shall replace the license required by K.A.R. 28-50-2(a); and

(b) the fee payment requirements of K.A.R. 28-50-2(d) and 28-50-2(e) shall not be applicable.

The letter of approval shall remain in effect unless the public agency is notified, in writing, that the approval is being withdrawn because of the agency's failure to continue to comply with

applicable requirements of K.A.R. 28-50-2. The approval shall not be withdrawn until the department has conducted adjudicative proceedings that comply with the requirements of the Kansas administrative procedure act. (Authorized by K.S.A. 65-5303; implementing K.S.A. 65-5312; effective, T-87-1, Jan. 6, 1986; effective May 1, 1987.)

28-50-4. (Authorized by K.S.A. 65-5303; implementing K.S.A. 65-5302, 65-5308; effective, T-87-1, Jan. 6, 1986; effective May 1, 1987; amended, T-88-54, Dec. 16, 1987; amended May 1, 1988; revoked Oct. 1, 1999.)

28-50-5. Asbestos worker certification. (a) A person shall not supervise or engage in an asbestos-removal project, an asbestos-encapsulation project, or an asbestos-related dismantling project unless that person has a valid class I or class II asbestos worker certificate that has been issued in accordance with this regulation. Original certificates for each person who is engaged in a project that requires certification shall be available for inspection by the department at the project site.

(b) A class I or class II asbestos worker certificate shall not be issued to any person, or renewed for that person, unless the following requirements are met:

(1) The person has successfully completed a basic training or annual review course within the preceding year that has been approved in accordance with the requirements of K.A.R. 28-50-6 or otherwise approved by the department.

(2) The person applies for a certificate or renewal of a certificate on a form provided by the department and submits, along with this application, a check or money order for the fee prescribed in subsection (c) of this regulation. Failure to comply with all requirements of this subsection within 60 days of initial submittal of the application form shall void the application. Fees accompanying voided applications shall not be returned.

(3) The person has complied with requirements of paragraphs (1) and (2) of this subsection and has submitted an application for renewal of a certificate not later than six months after the certificate has expired. Failure to renew a certificate within this time period shall require compliance with all requirements applicable to initial application for a certificate.

(c) Persons applying for a class I or class II asbestos worker certificate or renewal of these cer-

tificates shall pay an annual fee of \$20.00 for a class I certificate or an annual fee of \$40.00 for a class II certificate. This fee shall cover a 12-month period beginning on the effective date of issuance of the certificate or renewal. No portion of this fee shall be refunded if the certificate is denied, suspended, or revoked during the 12-month period or if the person no longer plans to engage in asbestos-abatement or asbestos-removal projects during any portion of the 12-month period.

(d) A certificate issued under this regulation may be suspended or revoked by the secretary if the secretary determines that the holder has performed any of the following:

(1) Fraudulently or deceptively complied with the requirements of subsection (b) of this regulation;

(2) willfully disobeyed any instructions or written procedural policies provided by an employer for the purpose of complying with these regulations;

(3) knowingly permitted another person to represent that person as the holder of the certificate; or

(4) altered or modified the certificate in a manner to represent facts that are untrue.

(e) Other provisions of this regulation notwithstanding, a person shall not supervise or engage in removal, encapsulation, enclosure, or repair of any friable asbestos-containing material located in an elementary or secondary school or public and commercial building, except as part of an asbestos-related maintenance operation, unless that person is currently an accredited asbestos worker. Persons who engage in these activities shall provide evidence, acceptable to the department, that the person has been accredited by successfully completing a federal EPA-approved training course, has been certified under a state program that has been approved by the federal EPA, or has been certified in Kansas at the class I or class II level, as appropriate, after completing training in compliance with the requirements of this article. (Authorized by K.S.A. 1998 Supp. 65-5303; implementing K.S.A. 1998 Supp. 65-5303, 65-5308, K.S.A. 65-5309, 65-5310; effective, T-86-1, Jan. 6, 1986; effective May 1, 1987; amended, T-88-54, Dec. 16, 1987; amended May 1, 1988; amended Feb. 4, 1991; amended Oct. 1, 1999.)

28-50-6. Asbestos worker training course approval. (a) Any person, business entity, state agency, political or taxing subdivision of the state, or other entity may develop and present a class I or class II asbestos worker certification train-

ing course that is intended to comply with the requirements of K.A.R. 28-50-5(b)(1). The training course shall be approved by the department before its official presentation for the purpose of complying with the regulatory requirements. Training courses shall be approved in writing, and the approval shall remain in effect until withdrawn in accordance with the provisions of subsection (f) of this regulation.

(b) Application for approval of a training course, as provided for in subsection (a) of this regulation, shall be made on forms provided by the department. The application shall include the following information:

(1) A listing of the persons who will present the training course, and their experience, education, and other qualifications;

(2) a description of the course, including the title and length of each lecture to be presented, the general nature of the information to be included in the lecture, the training aids and handouts intended to be used in its presentation, and the written examination to be given;

(3) the maximum number of students to be enrolled in each course presentation;

(4) the dates or time period over which individual courses are intended to be presented;

(5) the proposed charge for each course; and

(6) other information that the department considers necessary to evaluate the probable effectiveness and acceptability of the training course, including copies of the course manual and other handouts that are to be provided to the students and a copy of the written examination that is intended to be given.

Approval of a course may be denied by the department if the applicant fails to provide information required by this subsection within 60 days of receipt of written notice that an application is deficient.

(c) The applicant shall immediately inform the department, in writing, whenever there is any change in the information provided under subsection (b) of this regulation.

(d) Provisions shall be made to allow a representative of the department to attend one or more presentations of any course for which approval is required, at no cost to the department, and this course shall be given at a location within the state or at a border city as defined in K.A.R. 1-16-18. This attendance shall be for the purpose of determining compliance with this regulation and the correctness of the information being pre-

sented and shall be completed before a course is approved and any time thereafter that the department deems necessary. The applicant shall give the department at least 30-day notice before presenting the course, to allow time for scheduling departmental attendance. Approval of any course may be denied, withdrawn, or suspended by the department on the basis of findings resulting from this attendance.

(e) Training courses approved in accordance with these regulations shall meet the following criteria:

(1) Lectures shall be presented by persons who have education and experience that are appropriate for the subject matter presented.

(2) Training courses for class I asbestos workers may include respirator fit-testing of each student and shall provide a total of at least four training days of instruction consisting of the following:

(A) A discussion concerning the identification of asbestos, including its physical characteristics and a summary of its uses and the abatement procedures used for its control;

(B) a general discussion concerning the health hazards associated with exposure to asbestos, including special problems associated with smoking and a general description of common diagnostic procedures used to detect asbestos-related disease;

(C) a general description of state-of-the-art work practices used to reduce asbestos exposures to workers and the public during asbestos-removal and asbestos-encapsulation operations and emergency clean-up operations and maintenance operations, including use of wet removal methods, control of spraying operations, use of ventilation equipment, use of barriers and decontamination enclosures, use of glove bags, use of HEPA filtered vacuum-cleaning devices, and proper clean-up and waste disposal procedures;

(D) a general description of the use of personal protective clothing and the need for good personal hygiene practices, including a discussion of proper procedures for entering and exiting asbestos work areas and the need to abstain from eating, drinking, or smoking in these areas;

(E) a detailed description of the level of protection afforded by different types of respirators, the procedures for proper use and care of respirators, including donning, seal testing, cleaning, and storage, and the components of a proper respirator protection program;

(F) a general description of other hazards commonly encountered in asbestos control work,

including electrical shock, falls, cuts, fires, heat exhaustion or heat stroke, confined spaces, air contaminants other than asbestos, and measures that need to be taken to avoid and respond to them;

(G) a general description of state and federal regulations intended to provide protection to asbestos workers, including information on federal requirements pertaining to medical examinations and air monitoring and how people responsible for their enforcement may be contacted;

(H) no fewer than 14 hours of hands-on training in the proper use of work procedures identified in paragraph (e)(2) (C); and

(I) a separate final review session to discuss key information that is presented during the remainder of the course.

(3) Training courses for class II asbestos workers may include respirator fit-testing of each student and shall provide a total of at least five training days of instruction. The instruction shall include discussion of the following topics, in addition to the instruction required by paragraph (e)(2) of this regulation:

(A) A detailed discussion of asbestos-related notification and record-keeping requirements included in state and federal regulations and records recommended to be kept for legal and insurance purposes;

(B) a detailed discussion of Kansas and federal requirements concerning work procedures to be followed in asbestos-removal and asbestos-encapsulation projects, including the following requirements:

(i) Requirements of Title II of the federal toxics substance control act;

(ii) requirements of Kansas and federal air pollution control regulations that pertain to asbestos removal associated with the renovation and demolition of structures;

(iii) requirements of OSHA pertaining to respiratory protection practices and programs that are applicable to asbestos-control activities;

(iv) requirements of the OSHA construction and general industry standard pertaining to asbestos;

(v) requirements of the OSHA construction industry standards applicable to safe work practices at temporary work sites, including requirements concerning fire safety and hazard communication; the use of scaffolds, ladders, and electrical equipment; and working in confined spaces;

(vi) requirements of the EPA worker protection rule that applies to public employees who engage in asbestos-control activities; and

(vii) work practice requirements defined in K.A.R. 28-50-9 through 28-50-14;

(C) a general discussion of the principles and procedures involved in assessing the hazards associated with exposures to asbestos-containing building materials before undertaking abatement actions;

(D) a general discussion of the principles and procedures involved in collecting, analyzing, and interpreting the results of clearance-type airborne asbestos samples collected under federal EPA regulatory requirements after response actions have been completed in schools;

(E) a general discussion of insurance and liability issues that are encountered in relation to asbestos-control activities, including the type of coverage and exclusions associated with worker's compensation and other types of insurance and third party liabilities and defenses;

(F) a general discussion about the purpose, development, and use of contract specifications in asbestos-control work; and

(G) a general discussion about supervisory practices that are effective in the establishment and maintenance of proper and safe work practices at asbestos-control work sites.

(4) Training courses intended to provide annual review training required by state statute for class I and class II asbestos workers shall consist of at least one full training day and shall provide information on one or more topics listed in paragraphs (2) and (3) of this subsection, including a general presentation concerning new state and federal asbestos control-related regulatory requirements that are in effect or pending at the time that the training is presented and any other subject matter that may be prescribed by the department before the presentation of the training. The annual review training courses for class I and class II asbestos workers shall be conducted as separate and distinct courses and shall not be combined with any other training throughout the course.

(5) Training courses for initial certification of class I and class II asbestos workers shall include the administering and grading of a written, closed book examination for all persons who attend the course. The examinations shall adequately cover the subject matter prescribed by paragraphs (2) and (3) of this subsection and shall consist of 50 multiple-choice questions for class I worker training courses and 100 multiple-choice questions for class II worker training courses. Only persons who correctly answer 70 percent or more of the ques-

tions included in the examination shall be considered to have successfully completed the training course for the purpose of certification under the provisions of K.A.R. 28-50-5(b)(1).

(f) Approval of any training course that fails to comply with the requirements of this regulation or is otherwise deemed unacceptable may be withdrawn by the department. The person responsible for presentation of the training course shall be notified by the department of the basis for the proposed withdrawal in writing, and a 30-day time period shall be allowed for the identified deficiencies to be corrected before a final written notice is issued to indicate that the approval is withdrawn.

(g) Each person who has attended any asbestos control-related training course that is required for asbestos worker certification or accreditation in any other state where the person is certified or accredited or any other asbestos training course that has been approved by the federal EPA may be considered to have met the requirements of K.A.R. 28-50-5(b)(1) for initial certification or certification renewal if the department determines that the training course essentially complies with the requirements of subsection (e) of this regulation. Each person requesting that the determination be made shall submit the following information to the department:

(1) The date or dates that the course was attended and the location;

(2) the name and address of the business, organization, institution, or agency that presented the course;

(3) a schedule or outline of the course that indicates the subject matter that was presented and the amount of time devoted to each subject; and

(4) a written, personal certification that the person attended all course presentations in their entirety on the dates specified.

(h) Each person who applies for initial certification or certification renewal under the provisions of subsection (g) of this regulation may be required to complete additional training on topics included in subsection (e) before issuance or renewal of a certificate if the department determines that the credited course did not substantially comply with the requirements of subsection (e) of this regulation. (Authorized by K.S.A. 1998 Supp. 65-5303; implementing K.S.A. 1998 Supp. 65-5303, 65-5308; effective, T-87-1, Jan. 6, 1986; effective May 1, 1987; amended, T-88-54, Dec. 16, 1987; amended May 1, 1988; amended Feb. 4, 1991; amended Oct. 1, 1999.)

28-50-7. (Authorized by and implementing K.S.A. 65-5303; effective, T-87-1, Jan. 6, 1986; effective May 1, 1987; amended, T-88-54, Dec. 16, 1987; amended May 1, 1988; amended Feb. 4, 1991; revoked Oct. 1, 1999.)

28-50-8. Asbestos project notification requirements. (a)(1) Each licensee, state agency, or political or taxing subdivision of the state that proposes to use its own employees to engage in an asbestos-removal project, an asbestos-encapsulation project, an asbestos-related dismantling project, or an asbestos-related demolition project shall notify the department of this intent by submitting a properly completed written notification in a manner that will reasonably assure its receipt at the department's offices not later than 10 working days before the project is intended to be started. This requirement shall apply to projects conducted in occupied spaces as defined in K.A.R. 28-50-1(bb). Improperly completed notifications may be returned for correction and required to be resubmitted in accordance with the requirements of this subsection. For the purpose of this regulation, "working days" means days other than Saturdays, Sundays, or legal holidays.

(2) The 10-day notification requirement may be waived by the department in emergency or other situations if the written notification required by subsection (b) is received a sufficient amount of time before initiation of the project to allow the department to complete any proposal reviews or inspections that it considers to be necessary. An emergency notification may be made verbally but shall be verified in writing within one working day afterwards.

(b) The notification required by subsection (a) of this regulation shall be submitted on forms provided by the department and shall be accompanied by a check or money order for payment of the fee prescribed by subsection (d) of this regulation, except as otherwise provided by that subsection. The notification shall include the following information and any additional information that is requested by the department in order to determine the nature of the project and to identify any state and federal laws or regulations that are applicable to it:

(1) A description of the structure in which the activities will be carried out;

(2) the anticipated dates during which the activities will be carried out;

(3) the anticipated amount and type of friable asbestos-containing material that will be involved in the activity;

(4) a general description of the work practices that will be followed, including containment and worker protection measures that are proposed;

(5) a listing of the employees that will be involved in the project or operation and information concerning whether or not the employees have been certified in accordance with these regulations or have received special asbestos-related work training; and

(6) the manner in which asbestos-containing materials are to be disposed of.

(c) Each notification that is provided in accordance with the requirements of subsections (a) and (b) of this regulation and indicates that the activity for which the notification has been provided will be, or is likely to be, carried out in violation of any of the requirements of an asbestos-control regulation that pertains to the project shall be considered to be an invalid notification. The person who submits the notification shall be notified by the department of the nature of the identified violation as quickly as practicable before the activity is scheduled to start. A notification that has been revised to eliminate the identified violation shall be submitted in accordance with the requirements of subsection (a) of this regulation and shall be approved by the department before the activity is initiated.

(d) Each business entity that engages in an asbestos-removal project, an asbestos-encapsulation project, an asbestos-related dismantling project, or an asbestos-related demolition project that is required to be reported under this regulation shall pay a project evaluation fee that has been calculated in accordance with the following requirements:

(1) A baseline fee of \$50 shall be paid for each activity required to be individually reported under this regulation.

(2) An additional fee shall be paid for each asbestos-removal project, asbestos-encapsulation project, asbestos-related dismantling project, and asbestos-related demolition project involving 260 lineal feet or more of friable asbestos-containing material that is installed on a pipe surface or 160 square feet or more of friable asbestos-containing material that is installed on the surface of any other type of structural or equipment item. The additional fee shall be based upon the amount of money proposed to be paid to the business entity for the completion of all project-related activities that are subject to the requirements of these regulations and shall be calculated

as 0.5 percent of the amount of this payment, except that the fee shall be rounded off to the nearest whole dollar and shall not exceed \$2,500. If the business entity is to be paid a lump sum to cover the work done on facilities that are required to be reported on more than one notification form, or a lump sum that will only be reasonably determinable upon completion of one or more reportable activities, an alternate schedule that will permit delayed payment of the fee established under this subsection may be approved by the department.

(3) If the department agrees to waive the normal 10-day notification period for other than emergency situations, under provisions of subsection (a) of this regulation, the project evaluation fee shall be two times the amount that is calculated in accordance with the provisions of paragraphs (d)(1) and (d)(2) of this regulation.

(4) If the payment used to calculate the fees established by paragraph (d)(2) of this regulation subsequently changes, the department shall be immediately advised of the reason for, and the amount of, this change. When the payment is proposed to be increased, the fee shall also be increased in accordance with the provisions of paragraphs (d)(1) and (d)(2). No portion of a fee that is initially paid shall be refunded if the payment to the contractor has been reduced below the amount that was used to originally calculate the fee. (Authorized by K.S.A. 1998 Supp. 65-5303; implementing K.S.A. 1998 Supp. 65-5302, 65-5303, K.S.A. 65-5307, 65-5312, 65-5309; effective, T-87-1, Jan. 6, 1986; effective May 1, 1987; amended, T-88-54, Dec. 16, 1987; amended May 1, 1988; amended Feb. 4, 1991; amended Oct. 1, 1999.)

28-50-9. Work practices for asbestos-removal projects in occupied spaces. (a) Each asbestos-removal project that involves the removal of friable asbestos-containing materials from a structural item or equipment that is located in any area that can be expected to subsequently be reoccupied by any person after the project is completed, or in an area that is only directly accessible from an area that is, or subsequently will be, occupied by any person other than persons directly involved in the project, shall be conducted in accordance with the following requirements:

(1) Each proposed work area shall be isolated from other areas of the building and outside areas by erecting temporary partitions that are rigid and airtight around the work area or by installing

airtight seals over doorways, windows, and ventilation system openings, except that doorways between the work area and decontamination facilities and waste load-out areas shall be closed off with a control curtain. At least one temporary partition or seal shall contain a clear viewing area that is 18 inches or more in height and width and is installed in a manner that will allow direct visual observation of the work area from a location outside of the work area. Plastic sheeting used for the construction of airtight seals shall be not less than four mils thick. Whenever possible, each heating and ventilation system serving the work area shall be shut down and locked out. If these systems cannot be shut down, special provisions shall be made to assure that airborne contamination from the work area cannot enter the ventilation system and be carried to other areas of the building. Appropriate warning signs shall be prominently posted at all entryways into the work area. Provisions shall be made to prevent any person other than those persons having responsibilities directly related to the project from entering the area before the requirements of paragraphs (9) and (12) of this subsection are met and the project is approved in accordance with all other applicable requirements.

(2) All movable furnishings, equipment, and fixtures in the proposed work area shall be pre-cleaned with a HEPA filter-equipped vacuuming device or wet cleaning methods. After cleaning, the items shall be removed from the work area and stored in an area that is not subject to contamination with asbestos fibers. The items shall not be returned to the work area until final room cleanup has been completed and approved in accordance with requirements applicable to the project.

(3) All structural item surfaces, other than those from which asbestos is to be removed, and all non-movable furnishings, equipment, and fixtures remaining in the proposed work area shall be pre-cleaned with a HEPA filter-equipped vacuuming device or wet cleaning methods and covered with not less than four-mil-thick plastic sheeting, except that floors shall be covered with a minimum of two layers of six-mil-thick plastic sheeting that extends up the walls at least 12 inches. Plastic sheeting on walls shall be affixed to the wall in a manner that assures that it will remain in position throughout the length of the project and shall overlap the floor sheeting at least 12 inches above the intersection of the walls with the floor. Any tears that are noted in the protective plastic

sheeting required by this subsection shall be immediately repaired.

(4) HEPA filter-equipped ventilation fans shall be installed in a manner that will continually exhaust air from all locations within the work area. The total capacity of the fans shall be sufficient to remove the entire volume of air contained in the workroom area within 15 minutes or less, unless a longer time period is specifically approved by the department. The removed air shall be discharged through a duct that has been installed through the plastic on the walls in a manner that will provide an airtight seal between the plastic and the outside surface of the duct. The exhausted air shall be discharged outside of the building whenever possible and shall not be discharged inside the building, unless this discharge is specifically approved by the department in writing. Each ventilation fan shall be continuously operated throughout the duration of the project until the action required by paragraph (12) of this subsection is completed. Each fan shall be operated in a manner that establishes, and maintains, a flow of air into the work area from all adjacent areas of the building as demonstrated by use of smoke-producing tubes. At a minimum, these determinations shall be made and the results recorded before initiation of asbestos-removal operations and at the start of each day's operation.

(5)(A) A decontamination facility shall be provided between the work area and building areas intended to remain uncontaminated with asbestos fibers generated by the asbestos-removal operations. All persons entering or leaving the work area shall pass through and use the decontamination facility. Each decontamination facility shall consist of the following designated areas, which are each to be entered through a doorway that is covered by a control curtain:

(i) A clean room that shall be maintained free of asbestos-containing debris and shall be first entered by any persons entering the work area. The clean room shall be constructed in a manner that provides adequate space for removing or putting on street clothing, putting on and fit-testing respirators, and putting on protective clothing and other protective equipment required to be worn in the work area.

(ii) A shower room that shall be first passed through by any person that moves from the work area into the clean room. These persons shall be required to shower before entering the clean room. Each shower room shall be provided with

at least one shower head that is supplied with hot and cold water. Adequate quantities of soap, hair shampoo, and towels shall be provided to accommodate each person who emerges from the work area. Shower enclosures shall be leak proof and constructed of disposable or easily washable material. Shower water may be drained directly into the building's plumbing system or collected for subsequent disposal in accordance with the requirements of K.A.R. 28-50-14.

(iii) An equipment room that shall be passed through before the shower room can be entered from the work area. The equipment room shall be used for temporary storage of contaminated tools, equipment, and protective clothing used in the work area. The floor and walls of the room shall be lined with not less than six-mil-thick plastic sheeting. Tools, equipment, and protective clothing shall be free of gross contamination before removal from the work area into the equipment room.

(B) All decontamination facility areas shall be fully enclosed and shall be contiguous to each other and the work area unless connected to one another by enclosed passageways that are effectively isolated from areas intended to remain free of asbestos contamination. Decontamination facilities shall remain in place and in functional condition until removal of airtight seals and partitions is authorized in accordance with the requirements of K.A.R. 28-50-9(a)(12).

(6) A waste load-out area may be constructed between the work area and the exit through which asbestos-containing waste materials are intended to be removed from the work area. If a waste load-out area is provided, it shall be totally enclosed, and the doorway between the work area and the waste load-out area shall consist of a combination of control curtain and rigid door. The floor of the load-out area shall be covered with not less than six-mil-thick plastic sheeting, which shall be kept clean and free of visible asbestos-containing debris. Floor covering shall be removed upon completion of the project and disposed of in compliance with the requirements of K.A.R. 28-50-14. Asbestos-containing waste shall not be transferred from the waste load-out area unless it has been placed in containers that comply with the requirements of K.A.R. 28-50-14(a). Waste containers shall be removed from the waste load-out area only by persons who enter the load-out area from an area that is intended to be maintained free of asbestos-containing debris generated by the re-

moval operations. The doorway between the work area and load-out area shall be kept secured except when waste materials are being transferred from the work area. The load-out area doorway shall not be used as an entrance or exit by persons who leave or enter the work area.

(7) All exposed surfaces of friable asbestos-containing materials shall be maintained in a wet condition while the material is being removed or cleaned up from structural or equipment items. Any friable asbestos-containing material shall be wetted with a water solution containing an effective wetting agent. The wetting solution shall be applied with a low pressure spraying system. The effectiveness of the solution in penetrating the asbestos-containing materials shall be determined by applying it to a small representative sample of the material before the gross removal operation is initiated. The removed friable asbestos-containing materials shall be maintained in a wet condition until placed in sealed containers for disposal in accordance with the requirements of K.A.R. 28-50-14. All accumulations of loose debris shall be removed from floors and other surfaces and placed in sealed bags or containers as quickly as practicable and at least daily.

(8) After the asbestos-containing materials have been removed from the structural or equipment items, all plastic sheeting, equipment, and surfaces in the work area shall be cleaned with a HEPA filter-equipped vacuuming device or by wet cleaning methods and shall be free of all visible debris, but if more than one layer of plastic sheeting has been used on walls and floors, this additional layer of sheeting may be removed and disposed of instead of being cleaned. Sheetting that is removed shall be disposed of in compliance with the requirements of K.A.R. 28-50-14. Any liquid or material that has leaked through these additional layers of sheeting shall be removed by wet cleaning methods.

(9) The surfaces from which the friable asbestos-containing materials have been removed shall be cleaned free of all visible residues and then covered with an effective sealing material before the final layer of plastic sheeting covering the floors, walls, and non-movable items is removed.

(10) After the sealant has dried, the plastic wall and floor coverings shall be removed and disposed of in compliance with the requirements of K.A.R. 28-50-14. After removal of the plastic wall and floor coverings, all surfaces in the work area shall be cleaned with a HEPA filter-equipped vacuum-

ing device or by wet cleaning methods and shall be free of all visible debris.

(11) After completing the requirements in paragraph (10) of this subsection, clearance monitoring, as described in 40 C.F.R. 763.90(i), as in effect on July 1, 1998 and hereby adopted by reference, may be conducted. In the absence of clearance monitoring, an air stream from a high speed leaf blower or equivalent device shall be swept across all surfaces within the work area for a period of not less than five minutes for each 1,000 square feet of surface area.

(12) Each temporary partition and airtight seal provided for doors, windows, and duct openings in accordance with paragraph (1) of this subsection shall remain in place until the sampling results from the clearance monitoring, referenced in K.A.R. 28-50-9(a)(11), indicate compliance or in the absence of clearance monitoring, the temporary partitions and airtight seals shall remain in place for no fewer than 24 hours after completion of the actions required by paragraph (11) of this subsection and until the cleanup is approved in accordance with any other special requirements applicable to the project.

(b) Any individual requirement of subsection (a) of this regulation may be waived by the department for asbestos-removal projects if the notification submitted in accordance with K.A.R. 28-50-8 identifies the requirements for which waiver is requested, the reason for requesting the waiver, and any alternate procedure that is proposed. A waiver shall not be granted unless the health and safety of the workers and building occupants are adequately protected. The following minimum requirements shall also be met:

(1) The work area in which the asbestos is to be removed shall be completely isolated from any other areas of the building by the construction or installation of airtight barriers that shall continually remain in place for the duration of the asbestos removal project until final cleanup is completed and approved in accordance with requirements applicable to the project.

(2) Appropriate warning signs shall be prominently posted at all entryways into the work area, and access to the work area shall be restricted to only those persons that are required to enter it because of responsibilities directly related to the project until the requirements of paragraphs (3) and (4) of this subsection are met and the project is approved in accordance with all other applicable requirements.

(3) The surfaces from which the asbestos-containing materials have been removed shall be cleaned free of all visible residue and covered with an effective sealant before the warning signs required by paragraph (2) of this subsection are removed and access to the work area of persons other than those directly involved in the project is permitted.

(4) All visible asbestos-containing debris shall be removed from the work area before the warning signs required by paragraph (2) of this subsection are removed or access to the work area of persons other than those directly involved in the project is permitted.

(5) Asbestos contamination shall be removed from all persons that have been in the work area before they leave the premises or enter any area intended to remain free from asbestos contamination. All equipment used on the project shall be cleaned free of visible debris before it is removed from the work area.

(6) The waiver and all proposed alternative procedures shall be approved by the department in writing before the project is initiated, except that verbal approval may be provided if the 10-day notification period has been waived in accordance with the provisions of K.A.R. 28-50-8(a).

(c) The requirements of subsections (a) and (b) of this regulation may be waived by the department for the removal of friable asbestos-containing materials from the surface of pipes, structural items, or other similar conduits if the following minimum requirements are met:

(1) All friable asbestos-containing materials proposed to be removed in the work area shall be removed using six-mil-thick or thicker leak-proof glove bags in accordance with the manufacturer's instructions. Glove bags shall not be used to remove asbestos-containing materials from surfaces having a temperature of 150°F or more unless written authorization to do so is provided by the department before the removal.

(2) Appropriate warning signs shall be prominently posted at all entryways into the work area. Provisions shall also be made to prevent any person other than those persons that have responsibilities directly related to the project from entering the work area until the actions required by paragraphs (6), (7), and (8) of this subsection are completed and the project is approved in accordance with all other applicable requirements.

(3) Each person using the glove bag shall avoid damaging or otherwise causing the release of

asbestos fibers from any other friable asbestos-containing materials that are located within the work area, including any debris that may have accumulated in the area before the start of the project. Each section of the pipe, structural item, or conduit from which damaged or loose hanging friable asbestos-containing material is to be removed that is not immediately enclosed within a glove bag shall be tightly enclosed in six-mil-thick plastic sheeting until a glove bag is placed over it and the asbestos-containing material is removed.

(4) Glove bags shall be sealed to the pipe, structural item, or conduit in a manner that provides an airtight seal around the area from which the asbestos is to be removed until the glove bag is removed, unless the manufacturer's instructions require air pressure within the bag to be maintained below the pressure outside of the bag. Glove bags shall not be moved and used for removal at more than one location except under written authorization provided by the department and in compliance with any special requirement imposed as a condition for granting the authorization.

(5) All exposed surfaces of friable asbestos-containing materials shall be wetted with a water solution containing an effective wetting agent while the material is removed, and the removed material shall be maintained in a wet condition while it remains in the glove bag until the bag is sealed for final disposal in accordance with the requirements of K.A.R. 28-50-14.

(6) Surfaces from which asbestos-containing materials have been removed shall be cleaned free of all visible residues before the glove bag is removed.

(7) A sealing material shall be applied to all surfaces from which the asbestos-containing material is removed, and to all friable asbestos-containing material surfaces that become exposed as a result of this removal before the warning signs required by paragraph (2) of this subsection are removed or access to the work area of persons other than those directly involved in the project is permitted.

(8) The work area shall be free of all visible asbestos-containing debris, including accumulations that existed before the start of the project and before the warning signs required by paragraph (2) of this subsection are removed or access to the work area of persons other than those directly involved in the project is permitted.

(9) Each project activity in the work area shall be immediately discontinued if any asbestos contamination of the general work area results from

damage or improper use of the glove bags or if there is damage to any other friable asbestos-containing materials located within the area. Project activities shall not be resumed until all surfaces in the area that are likely to have become contaminated with asbestos fibers have been thoroughly cleaned with a HEPA filter-equipped vacuuming device or by wet cleaning methods. Each person who is likely to be contaminated with asbestos fibers resulting from these sources, including the cleanup operation, shall remove, or use a HEPA filter-equipped vacuuming device or wet cleaning methods to clean all contaminated outer work clothing before leaving the work area.

(d) The requirements of subsections (a) and (b) of this regulation may be waived by the department for an asbestos-removal project that involves the removal of friable asbestos-containing materials from structural items or equipment that is installed in, and accessible from, outdoor areas, if the following minimum requirements are met:

(1) Each door, window, or other opening into enclosed areas that is adjacent to the work area shall be securely covered with not less than four-mil-thick plastic sheeting if the opening is located 100 or fewer feet from the work area.

(2) A person other than the persons that have responsibilities directly related to the project shall not be allowed to occupy or pass through any unenclosed area that is located 50 or fewer feet from the work area. This area shall be identified and defined by fences or other effective means. Appropriate warning signs shall be prominently posted at all entryways into the area until the requirements of paragraphs (4) and (5) of this subsection are met and the project is approved in accordance with all other applicable requirements.

(3) All exposed surfaces of friable asbestos-containing material shall be wetted with a water solution that contains an effective wetting agent while the material is being removed. All removed material, including debris on surfaces below the location from which the material is removed, shall be maintained in a wet condition until placed in sealed containers for disposal in accordance with the requirements of K.A.R. 28-50-14.

(4) All friable asbestos-containing debris, including accumulations that existed before the start of the project, shall be removed from the work area before the warning signs required by paragraph (2) of this subsection are removed or access to the area of persons other than those hav-

ing responsibilities directly related to the project is permitted.

(5) All surfaces from which asbestos-containing materials are removed shall be cleaned free of visible residues and covered with an effective sealant before the warning signs required by paragraph (2) of this subsection are removed or access to the area of persons other than those having responsibilities directly related to the project is permitted.

(6) Each person who removes asbestos-containing materials or otherwise occupies the restricted area identified in paragraph (2) of this subsection shall remove outerwear that is worn in the area before entering any enclosed area that is occupied by any person other than those persons engaged in the project.

(e) The requirements of subsections (a) and (b) of this regulation may be waived by the department for an asbestos project that involves the removal of friable asbestos-containing materials from structural items that are installed in, and accessible from, any structure or portion of a structure that is demolished after the material is removed, if the following minimum requirements are met:

(1) Appropriate warning signs shall be prominently posted at all areas into the work area, and persons other than the persons that have responsibilities directly related to the asbestos-removal project shall not be allowed to occupy or pass through the work area until the requirement of paragraph (4) of this subsection is met and the project is approved in accordance with any other applicable requirements.

(2) Each window, door, and other direct opening between any area where asbestos is to be removed and any other area of the structure that is not intended to be demolished shall be sealed airtight, with securely fastened plastic sheeting, until the project is completed. The plastic sheeting seals shall be not less than four mils thick.

(3) All exposed surfaces of friable asbestos-containing material shall be maintained in a wet condition while the material is being removed. The material shall be wetted with a water solution containing an effective wetting agent. All removed friable asbestos-containing material, including debris that falls on surfaces below the location from which the material is removed, shall be maintained in a wet condition until placed in sealed containers in accordance with the requirements of K.A.R. 28-50-14.

(4) All friable asbestos-containing debris, including accumulations that existed before the start of the project, shall be removed from the work area before the warning signs required by paragraph (1) of this subsection are removed or access to the work area of persons other than those having responsibilities directly related to the project is permitted.

(5) Each person who removes asbestos-containing materials or otherwise occupies the work area before the project is completed shall remove outerwear that is worn in the area before entering any enclosed area that is occupied by any person other than those persons engaged in the project.

(6) Structural items from which friable asbestos-containing material is removed shall not be sold or reused for any purpose unless the surfaces from which the material has been removed are free from visible residue and have been covered with an effective sealing material, unless the sealing requirement is waived by the department in writing.

(f) Each person engaged in an asbestos-removal project or entering an asbestos-removal project work area shall be provided with, and shall wear, an appropriate respirator and protective clothing.

(g) Airborne asbestos exposures of each person engaged in an asbestos-removal project shall be determined in accordance with applicable OSHA or EPA exposure-monitoring requirements. Copies of the results of the analyses of samples collected at a project subject to the requirements of this regulation shall be submitted to the department as soon as practicable, after receipt of a written request for the results of the analyses from the department. (Authorized by and implementing K.S.A. 1998 Supp. 65-5303; effective, T-86-1, Jan. 6, 1986; effective May 1, 1987; amended, T-88-54, Dec. 16, 1987; amended, T-89-8, March 18, 1988; amended, T-89-15, April 26, 1988; amended Sept. 19, 1988; amended Feb. 4, 1991; amended Oct. 1, 1999.)

28-50-10. Work practices for asbestos-encapsulation projects. (a) Use of encapsulation as a method of controlling asbestos fiber release from friable asbestos-containing materials on structural items or equipment shall be subject to the following requirements:

(1) Encapsulating materials shall not be applied to fibrous, sprayed-on, asbestos-containing materials or to cementitious asbestos-containing materials that show signs of poor adhesion.

(2) Encapsulating material shall not be applied to friable asbestos-containing materials that are installed on surfaces in locations that are subject to frequent abrasive or other physical damage.

(3) Penetrating encapsulating agents shall be tested for, and shall demonstrate, acceptable adhesive and penetrating characteristics. Testing shall consist of applying the encapsulant to the surface of the material in the prescribed manner and then removing a core sample of this material for physical and visual inspection. Representative testing shall be conducted at one or more randomly selected locations within the structure before initiation of the project. Test core holes shall be repaired immediately after the visual inspection is completed.

(4) Encapsulant materials shall have acceptable flame retardant characteristics and shall not be noxious or toxic to applicators or to persons that occupy the structure after the project is completed.

(5) Each damaged portion of a surface to which the encapsulant material is to be applied shall be repaired with asbestos-free patching materials before it is applied.

(b) An encapsulation project that involves the encapsulation of friable asbestos-containing materials shall be conducted in accordance with the work practices contained in 29 C.F.R. 1926.1101, as in effect on July 1, 1998 and hereby adopted by reference.

(c) Each person engaged in an asbestos-encapsulation project or entering an asbestos-encapsulation project work area shall be provided with, and shall wear, an appropriate respirator and protective clothing. (Authorized by and implementing K.S.A. 1998 Supp. 65-5303; effective, T-87-1, Jan. 6, 1986; effective May 1, 1987; amended Feb. 4, 1991; amended Oct. 1, 1999.)

28-50-11. (Authorized by and implementing K.S.A. 65-5303; effective, T-87-1, Jan. 6, 1986; effective May 1, 1987; revoked Feb. 4, 1991.)

28-50-12. Work practices for asbestos related dismantling projects. (a) Structural or equipment items that are covered with friable asbestos containing materials and are intended to be moved without first removing the asbestos containing materials from the surfaces of them shall be handled in the following manner:

(1) The removal of friable asbestos containing materials from any portion of the surface of a structural or equipment item for the purpose of me-

chanically disassembling or cutting the item into smaller components shall be conducted in accordance with the requirements of K.A.R. 28-50-9.

(2) Structural or equipment items, or component parts of them, that are covered with friable asbestos containing material shall either be securely wrapped in not less than a double layer of six mil thick plastic sheeting or shall be placed in a disposable fiber or metal container that is equipped with a plastic bag liner and a tight fitting and firmly attached lid before being removed from the work area. All exposed surfaces of the friable asbestos containing material covering the item or component shall be wetted with a water solution containing a wetting agent before the item or component is wrapped or placed in a container. The exterior surface of the container or wrapping shall be cleaned free of all visible residues by wet cleaning methods before the item or component is moved and the item or component shall be handled in a manner that will prevent damage to the container or wrapping. If damage to a wrapping or container occurs, a new wrapping or container shall be immediately provided and all friable asbestos containing debris released from the damaged wrapping container shall be immediately cleaned up using wet cleaning procedures or a HEPA filter equipped vacuum cleaner.

(b) Structural or equipment items, or component parts of them, that have been removed in accordance with the provisions of subsection (a) of this regulation shall be disposed of in compliance with the requirements of K.A.R. 28-50-14(a) (4) unless the friable asbestos containing material covering the items is subsequently removed in compliance with the following requirements:

(1) Items, or component parts, from which asbestos containing material is removed shall not be sold or reused for any purpose until the surfaces from which the material has been removed are free of visible residue and have been covered with an effective sealing material, unless the sealing requirement is waived by the department in writing.

(2) The removal of the friable asbestos containing material outdoors shall be carried out in compliance with the requirements of K.A.R. 28-50-9(d).

(3) The removal of the friable asbestos containing material indoors shall only be done in an area specifically designated for this purpose and in compliance with the following requirements:

(A) Access to the area must be controlled to prevent any person other than those responsible

for the removal operations from entering it. An appropriate warning sign shall be posted at each entryway into the area.

(B) The area shall not be served by a common heating and ventilation system that serves other enclosed occupied areas on the premises.

(C) A local exhaust system that is approved by the department shall be provided. Air exhausted from the removal area shall be discharged to the outside air after being passed through an air cleaning device that has been approved by the department.

(D) Each person working in the area shall be provided a convenient area immediately adjacent to the removal area to take showers and change into uncontaminated clothing, unless other arrangements are approved by the department.

(E) Each person entering into the area shall be provided with and wear an appropriate respirator and protective clothing.

(F) The designated asbestos removal area shall not be used for any other purpose until the removal operations have been discontinued and the area has been cleaned of all visible residue and debris with a HEPA filter equipped vacuuming device or by wet cleaning methods.

(G) All exposed surfaces of the friable asbestos containing material shall be maintained in a wet condition while the material is being removed from the structural or equipment item, or component, unless dry removal is approved by the department. The friable material shall be wetted with a water solution containing an effective wetting agent.

(H) Friable asbestos containing materials that are removed from any structural or equipment item, or component, shall be handled in accordance with the requirements of K.A.R. 28-50-14. (Authorized by and implementing K.S.A. 65-5303; effective, T-87-1, Jan. 6, 1986; effective May 1, 1987.)

28-50-13. Work practices for asbestos-related demolition projects. (a) The following requirements shall be met before a structure that contains structural items that are covered with friable asbestos-containing material is demolished:

(1) The structural items shall be removed from the structure in accordance with the requirements of K.A.R. 28-50-12; or

(2) all friable asbestos-containing materials covering the structural materials shall be removed from the materials while they remain in place in accordance with the requirements of K.A.R. 28-50-9.

(b) Any business entity, state agency, political or taxing subdivision of the state, or person that demolishes a structure which contains any structural item covered with, or composed of, asbestos fiber-containing material shall assure that the item is handled in a manner that will prevent the asbestos fibers from becoming airborne. (Authorized by K.S.A. 65-5303; implementing K.S.A. 65-5303; effective, T-87-1, Jan. 6, 1986; effective May 1, 1987; amended Feb. 4, 1991.)

28-50-14. Asbestos waste disposal. (a) All solid waste materials containing friable asbestos that result from an asbestos-removal project, an asbestos-encapsulation project, an asbestos-related dismantling project, or an asbestos-related demolition project shall be handled in the following manner:

(1) All friable asbestos-containing waste shall be placed in tightly sealed containers in a wet condition before it is removed from the work area. Waste containers shall be double bagged in not less than six-mil-thick, liquid-tight, clear plastic bags unless the waste contains rigid or heavy objects that are likely to tear the bags. If bag damage is likely to occur, the waste shall be placed in fiber or metal containers that are equipped with a plastic bag liner and a tight-fitting lid that can be firmly fastened in position. Large sections of structural items, including pipe or ductwork that has been removed with friable asbestos-containing materials left in place, may be tightly wrapped in not less than a double layer of six-mil-thick, clear plastic sheeting for disposal purposes if they cannot be placed in containers. All exposed surfaces of the friable asbestos-containing material shall be in a wet condition when each item is wrapped.

(2) The exterior surface of each container or individually wrapped object shall be cleaned free of all visible debris, and an asbestos label shall be securely attached before the container or wrapped object is removed from the work area to another area for storage or transport purposes.

(3) Before each container or wrapped object of friable asbestos-containing material is removed from the work area to another area for storage or transport purposes, the waste generator shall place on the exterior of each container or wrapped object specific information that will identify the asbestos-removal project, asbestos-encapsulation project, asbestos-related dismantling project, or asbestos-related demolition project at which the waste was generated. The identifying information

shall be legible and printed with indelible ink. The waste generator shall mark each container or wrapped object by any of the following methods:

(A) Printing or attaching to each container or wrapped object a label that contains the name of the licensed business entity or approved public agency that carried out the project and the project location at which the waste was generated;

(B) printing on the exterior surface of each container or wrapped object the identifying number provided by the department for each project upon receipt of a project notification submitted in compliance with the requirements of K.A.R. 28-50-8; or

(C) attaching to each container or wrapped object a label that meets the requirements of applicable federal EPA or OSHA regulations pertaining to the identification of containers or wrapped objects used for the disposal of asbestos-containing materials.

(4) Each waste container shall be carefully handled and transported in order to prevent breaking or opening. Whenever a container breaks or otherwise becomes unable to completely contain the waste, the waste shall be immediately transferred into another sealed container that complies with the requirements of paragraphs (a)(1) and (a)(2) of this regulation. Any friable asbestos-containing solid waste materials that come out of the original container shall be immediately cleaned up after being saturated with water and placed in the replacement container.

(5) Waste shall be transported in vehicles that have completely enclosed cargo areas, or a four-sided cargo area that shall be completely covered with six-mil-thick plastic sheeting or other equivalent covering while the waste is being transported. All visible debris remaining in the vehicle cargo area after the waste has been deposited at the disposal area shall be immediately removed by wet cleaning methods and disposed of in accordance with the requirements of this subsection.

(6) The waste generator shall remain responsible for storage, transport, and disposal of the waste in accordance with this subsection until the time that the waste is delivered to and accepted by the operator of an approved waste disposal site. The waste generator shall be released from further responsibility for handling of the waste when the disposal site operator acknowledges, in writing, that the delivered waste has been properly identified as friable asbestos-containing material and has been delivered in a manner and condition that is acceptable to the disposal site operator.

(b) Wastewater and other liquid waste that contains friable asbestos-containing materials that result from an asbestos-removal project, an asbestos-encapsulation project, or an asbestos-related maintenance, dismantling, or demolition operation may be disposed of by mixing them with solid waste materials and disposing of the mixture in accordance with the requirements of subsection (a) of this regulation. Wastewater that cannot be handled in this manner shall be disposed of by one of the following methods:

(1) Wastewater from decontamination showers and final cleanup of waste containers and equipment may be disposed of in public sewer systems either by discharge into the plumbing system where the waste is generated or by storing the waste and discharging it directly into the sewer system at a location designated by the operator of the system. The wastewater shall be free of any material that is likely to cause stoppage in the plumbing or sewer systems.

(2) Discharge of any other asbestos-contaminated wastewater or liquid waste or the use of any other method for the disposal of contaminated liquid wastes shall only be at a location and in a manner specifically approved by the department in writing. (Authorized by and implementing K.S.A. 1998 Supp. 65-5303; effective, T-87-1, Jan. 6, 1986; effective May 1, 1987; amended, T-88-54, Dec. 16, 1987; amended May 1, 1988; amended Feb. 4, 1991; amended Oct. 1, 1999.)

Article 51.—HOME HEALTH AGENCY LICENSURE

28-51-100. Definitions. (a) “Administrator” means either a person who has training and experience in health services administration and at least one year of supervisory or administrative experience in health care, or a qualified health professional.

(b) “Admission note” means a dated notation that is written by a professional member of the health team after the initial assessment of a patient and that documents the relevant diagnoses; the patient’s health history; environmental, safety, and social factors of the patient’s home; the patient’s nutritional requirements, medications, and treatments; and the patient’s physical and mental levels of functioning.

(c) “Branch office” means a location or site from which a home health agency provides services within a portion of the total geographic area

served by the parent agency. The branch office shall be part of the home health agency and shall be located close to share administration, supervision, and services in a manner that renders it unnecessary for the branch to independently meet the conditions of licensure as a home health agency. Each branch office shall be within 100 miles of the parent agency.

(d) "Bylaws" means a set of rules adopted by a home health agency for governing the agency's operation.

(e) "Clinical record" means a legal document containing facts that meet the following criteria:

(1) Provide a basis for planning and implementing the patient's care program;

(2) indicate the patient's status and response to treatment;

(3) serve as a record of communication for the professional groups responsible for the patient's care; and

(4) serve as a repository of data that can be used to review and evaluate the care provided.

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

(g) "Direct supervision" means that the supervisor is on the facility premises and is accessible for one-on-one consultation, instruction, and assistance, as needed.

(h) "Discharge summary report" means a concise statement, signed by a qualified health professional, reflecting the care, treatment, and response of the patient in accordance with the patient's plan of care and the final disposition at the time of discharge.

(i) "Home health aide" means an individual who has a home health aide certificate issued by the licensing agency as specified in K.A.R. 28-51-113.

(j) "Home health aide trainee" means an individual who meets either of the following:

(1) The individual has completed a 90-hour nurse aide course prescribed in K.A.R. 28-39-165.

(2) The individual's training has been endorsed as specified in K.A.R. 28-51-115.

(k) "Licensed nursing experience" means experience as a registered nurse or licensed practical nurse.

(l) "Licensing agency" means the Kansas department of health and environment.

(m) "Occupational therapist" means a person who is licensed with the Kansas state board of healing arts as an occupational therapist.

(n) "Occupational therapy assistant" means a person who is licensed with the Kansas state board of healing arts as an occupational therapy assistant.

(o) "Parent home health agency" means a home health agency that develops and maintains administrative control of subunits or branch offices, or both.

(p) "Physical therapist" means a person who is licensed with the Kansas state board of healing arts as a physical therapist.

(q) "Physical therapist assistant" means a person who is certified by the Kansas state board of healing arts as a physical therapist assistant.

(r) "Physician" means a person licensed in Kansas or an adjoining state to practice medicine and surgery.

(s) "Plan of care" means a plan based on the patient's diagnosis and the assessment of the patient's immediate and long-range needs and resources. The plan of care is established in consultation with the home health services team. If the plan of care includes procedures and services that, according to professional practice acts, require a physician's authorization, the plan of care shall be signed by a physician and shall be renewed every 62 days.

(t) "Progress note" means a dated, written notation by a member of the home health services team summarizing the facts about the patient's care and response during a given period of time.

(u) "Qualified health professional" means a physician, a registered nurse, a physical therapist, an occupational therapist, a respiratory therapist, a speech therapist, a dietitian, or a social worker.

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

(w) "Respiratory therapist" means a person who is licensed by the Kansas state board of healing arts as a respiratory therapist.

(x) "Simulated laboratory" means an enclosed area that is in a school, adult care home, or other facility and that is similar to a home setting. In a simulated laboratory, trainees practice and demonstrate basic home health aide skills while an instructor observes and evaluates the trainees.

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

(z) "Speech therapist" means a person who is licensed by the Kansas department of health and environment as a speech-language pathologist.

(aa) "Summary report" means a concise statement, signed by a qualified health professional, that reflects the care and treatment given and the response by the patient.

(bb) "Supervision" means the authoritative procedural guidance that is given by a qualified health professional. This term shall include initial direction and periodic inspection of the act of accomplishing the function or activity. (Authorized by and implementing K.S.A. 65-5109; effective, T-86-23, July 1, 1985; amended May 1, 1987; amended Feb. 28, 1994; amended Dec. 29, 2003; amended Oct. 27, 2006.)

28-51-101. Licensing procedure. (a) License application. Each application for an initial home health agency license shall be filed on forms provided by the licensing agency before the agency begins treating patients. A license shall remain in effect unless suspended or revoked by the licensing agency.

(b) Annual report and fees. Each licensed agency shall file an annual report and annual fee upon uniform dates and forms provided by the licensing agency.

(c) Change of administrator. Each licensee shall notify the licensing agency, in writing, within five days following the effective date of a change of administrator. The notification shall include the name, address, and qualifications of the new administrator.

(d) New services. Each licensee shall notify the licensing agency whenever it begins offering a new service covered under these regulations.

(e) Change of address or name. Each licensee shall notify the licensing agency, in writing, within five days following the change of address or name of the home health agency. The home health agency shall forward the previously issued license certificate to the licensing agency with a request for an amended license certificate reflecting the new address.

(f) Change of ownership. Each home health agency involved in a change of ownership shall comply with the provisions of K.S.A. 65-5104(e).

(g) Plan of correction. A license shall be granted if:

- (1) The applicant is found to be in substantial compliance with these regulations; and
- (2) the applicant submits an acceptable plan for correcting any deficiencies cited.

(h) Annual statistical report. Each home health agency shall submit an annual statistical report.

(Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5103, 65-5104, and 65-5106; effective, T-86-23, July 1, 1985; effective May 1, 1986; amended Feb. 28, 1994.)

28-51-102. License fee. (a) Each initial license application for an agency shall be accompanied by a fee in the amount of \$100.00.

(b) The annual report for each licensed agency shall be accompanied by a fee determined in accordance with the following schedule. The visits shall be all those performed by the agency during the calendar year prior to submittal of the annual report.

Visits	Fee
0-500	\$ 25.00
501-1,000	60.00
1,001-2,000	120.00
2,001-3,000	170.00
3,001-4,000	220.00
4,001-5,000	280.00
5,001-6,000	330.00
6,001-7,000	380.00
7,001-8,000	440.00
8,001-10,000	490.00
10,001-20,000	550.00
Over 20,000	580.00

(c) If an agency performs services on an hourly basis, four hours of service shall be considered the equivalent of one visit. All home visits made by county or regional public health department personnel that are public health services, as determined by the secretary of health and environment, shall not be required to be included in the number of visits used to determine the annual fee. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5103; effective, T-86-23, July 1, 1985; effective May 1, 1986; amended Feb. 28, 1994.)

28-51-103. Organization and administration. (a) Governing body. Each home health agency shall have a governing body or a clearly defined body having legal authority to operate the agency. The governing body shall:

- (1) Have bylaws or their equivalent which shall be renewed annually;
- (2) employ a qualified administrator as defined in K.A.R. 28-51-100(a);
- (3) adopt, revise, and approve procedures for the operation and administration of the agency as needed;

(4) provide the name and address of each officer, director, and owner of the agency to the licensing agency;

(5) disclose corporate ownership interests of 10 percent or more to the licensing agency; and

(6) disclose past home health agency ownership or management, including the name of the agency, its location, and current status, to the licensing agency.

(b) Administrator. The administrator shall be responsible for the management of the agency to the extent authority is delegated by the governing body. A qualified person shall be designated to act in the absence of the administrator. The administrator shall have at least the following responsibilities:

(1) Organize and direct the agency's ongoing functions;

(2) act as a liaison between the governing body and staff;

(3) employ qualified personnel in accordance with job descriptions;

(4) provide written personnel policies and job descriptions that are made available to all employees;

(5) maintain appropriate personnel records, administrative records, and all policies and procedures of the agency;

(6) provide orientation for new staff, regularly scheduled inservice education programs, and opportunities for continuing education of the staff;

(7) ensure the completion, maintenance, and submission of such reports and records as required by the secretary of health and environment; and

(8) ensure that each patient admitted to the home health agency receives, in writing, the patient's bill of rights listed at K.A.R. 28-51-111.

(c) Personnel records. Current personnel records shall be maintained for each employee. The personnel records for an employee shall include:

(1) The title of that employee's position and a description of the duties and functions assigned to that position;

(2) the qualifications for the position;

(3) evidence of licensure or certification if required;

(4) performance evaluations made within six months of employment and annually thereafter;

(5) documentation of reference checks and a personal interview prior to employment; and

(6) evidence of good general health and a negative tuberculin skin test or chest X-ray upon

employment. Subsequent periodic health assessments or physical examinations shall be given in accordance with agency policies.

(d) Personnel under hourly or per visit contracts. There shall be a written contract between the agency and personnel under hourly or per visit arrangements. The contract shall include the following provisions:

(1) A statement that patients are accepted for care only by the primary home health agency;

(2) a description of the services to be provided;

(3) a statement that each employee shall conform to all applicable agency policies, including those related to qualifications;

(4) a statement that the employee shall be responsible for participating in the development of plans of care;

(5) a description of the manner in which services will be controlled, coordinated, and evaluated by the primary agency;

(6) the procedures for submitting clinical and progress notes, scheduling patient care, and conducting periodic patient evaluations; and

(7) the procedures for determining charges and reimbursement.

(e) Abuse, neglect, or exploitation. Each employee of the agency shall be responsible for reporting in accordance with agency policies and K.S.A. 39-1430 et. seq., and amendments thereto, any evidence of abuse, neglect, or exploitation of any patient served by the agency. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5104; effective, T-86-23, July 1, 1985; effective May 1, 1986; amended Feb. 28, 1994.)

28-51-104. Home health services. (a) General provisions. Each home health agency shall accept a patient only when the agency reasonably expects that the patient's medical, rehabilitation, and social needs can be met adequately by the agency in the patient's place of residence.

(b) Provision of services.

(1) Patient care shall follow a written plan which is periodically reviewed by the supervising nurses or other appropriate health professionals.

(2) All personnel providing services to the same patient shall maintain a liaison with the supervising professional to assure that their efforts effectively complement one another and support the objectives as outlined in the plan of care.

(3) For each patient receiving professional services, including the services of a registered nurse, physical therapy, occupational therapy, speech

therapy, and dietary consultation, a written summary report shall be sent to the attending physician every 62 days. Services under arrangement with another agency shall be subject to a written contract conforming to these requirements.

(4) A registered nurse shall be available or on call to the staff during all hours that nursing or home health aide services are provided.

(c) Supervision of home health aide services.

(1) A physician, a registered nurse, or an appropriate qualified health professional shall visit each patient's home every two weeks to supervise home health aide services when skilled nursing or other therapy services, or both are also being furnished to a patient.

(2) This visit may be made less often if only home health aide services are being furnished to a patient and this is documented in the clinical record. A supervisory visit shall then be made at least every 60 days. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5104; effective, T-86-23, July 1, 1985; effective May 1, 1986; amended Feb. 28, 1994.)

28-51-105. Nursing services. (a) Nursing services shall be provided under the supervision of a registered nurse and in accordance with a plan of care.

(b) A registered nurse shall make an initial evaluation visit to each patient, shall regularly reevaluate the patient's nursing needs, and shall initiate the patient's plan of care and make any necessary revisions. (Authorized by K.S.A. 1984 Supp. 65-5109, as amended by 1985 H.B. 2468; implementing K.S.A. 1984 Supp. 65-5104, as amended by 1985 H.B. 2468; effective, T-86-23, July 1, 1985; effective May 1, 1986.)

28-51-106. Therapy services. (a) Therapy services offered directly or under arrangement shall be provided by the following:

- (1) A physical therapist;
 - (2) A physical therapist assistant functioning under the supervision of a physical therapist;
 - (3) An occupational therapist;
 - (4) An occupational therapist assistant functioning under the supervision of an occupational therapist;
 - (5) A speech therapist; or
 - (6) A respiratory therapist.
- (b) The therapist shall make an evaluation visit to each patient requiring services, shall regularly reevaluate the patient's therapy needs, and shall

initiate the patient's therapy plan of care and make any necessary revisions. (Authorized by K.S.A. 1984 Supp. 65-5109, as amended by 1985 H.B. 2468; implementing K.S.A. 1984 Supp. 65-5104, as amended by 1985 H.B. 2468; effective, T-86-23, July 1, 1985; effective May 1, 1986.)

28-51-107. Social services. (a) Services shall be given by a social worker according to the patient's plan of care.

(b) The social worker shall participate in the development of the patient's plan of care. (Authorized by K.S.A. 1984 Supp. 65-5109, as amended by 1985 H.B. 2468; implementing K.S.A. 1984 Supp. 65-5104, as amended by 1985 H.B. 2468; effective, T-86-23, July 1, 1985; effective May 1, 1986.)

28-51-108. Home health aide services. Each home health aide shall be supervised by a registered nurse and shall be given written instructions for patient care prepared by a qualified health professional. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5101; effective, T-86-23, July 1, 1985; effective May 1, 1986; amended March 12, 1990; amended Feb. 28, 1994; amended Dec. 29, 2003.)

28-51-109. Nutritional and dietary consultation. (a) Nutritional and dietary consultation services offered directly or under arrangement shall be given in accordance with the written plan of care.

(b) If nutritional services are provided, a dietitian shall evaluate the nutritional needs of each patient requiring such services and shall participate in developing the plan of care for that patient. (Authorized by K.S.A. 1984 Supp. 65-5109, as amended by 1985 H.B. 2468; implementing K.S.A. 1984 Supp. 65-5104, as amended by 1985 H.B. 2468; effective, T-86-23, July 1, 1985; effective May 1, 1986.)

28-51-110. Clinical records. (a) General provisions. A clinical record containing pertinent past and current findings shall be maintained in accordance with accepted professional standards for each patient receiving home health services.

(b) Content of record. Each patient's clinical record shall contain at least the following:

- (1) The patient's plan of care;
- (2) the name of the patient's physician;
- (3) drug, dietary, treatment, and activity orders;
- (4) signed and dated admission and clinical

notes that are written the day the service is rendered and incorporated at least weekly;

(5) copies of summary reports sent to the physician;

(6) copies of progress notes; and

(7) the discharge summary.

(c) Retention. Clinical records shall be retained in a retrievable form for at least five years after the date of the last discharge of the patient. If the home health agency discontinues operation, provision shall be made for retention of records.

(d) Safeguard against loss or unauthorized use. Written policies and procedures shall be developed regarding use and removal of records and the conditions for release of information. The patient's or guardian's written consent shall be required for release of information not required by law. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5104; effective, T-86-23, July 1, 1985; effective May 1, 1986; amended Feb. 28, 1994.)

28-51-111. Patients' bill of rights. The governing body shall establish a bill of rights that will be equally applicable to all patients. At a minimum, the following provisions shall be included in the patients' bill of rights.

(a) Each patient shall have the right to choose care providers and the right to communicate with those providers.

(b) Each patient shall have the right to participate in planning of the patient's care and the right to appropriate instruction and education regarding the plan.

(c) Each patient shall have a right to request information about the patient's diagnosis, prognosis, and treatment, including alternatives to care and risks involved, in terms that the patient and the patient's family can readily understand so that they can give their informed consent.

(d) Each patient shall have the right to refuse home health care and to be informed of possible health consequences of this action.

(e) Each patient shall have the right to care that is given without discrimination as to race, color, creed, sex, or national origin.

(f) Each patient shall be admitted for service only if the agency has the ability to provide safe, professional care at the level of intensity needed.

(g) Each patient shall have the right to reasonable continuity of care.

(h) Each patient shall have the right to be advised in advance of the disciplines that will furnish

care and the frequency of visits proposed to be furnished.

(i) Each patient shall have the right to be advised in advance of any change in the plan of care before the change is made.

(j) Each patient shall have the right to confidentiality of all records, communications, and personal information.

(k) Each patient shall have the right to review all health records pertaining to them unless it is medically contraindicated in the clinical record by the physician.

(l) Each patient denied service for any reason shall have the right to be referred elsewhere.

(m) Each patient shall have the right to voice grievances and suggest changes in services or staff without fear of reprisal or discrimination.

(n) Each patient shall have the right to be fully informed of agency policies and charges for services, including eligibility for, and the extent of payment from third-party reimbursement sources, prior to receiving care. Each patient shall be informed of the extent to which payment may be required from the patient.

(o) Each patient shall have the right to be free from verbal, physical, and psychological abuse and to be treated with dignity.

(p) Each patient shall have the right to have his or her property treated with respect.

(q) Each patient shall have the right to be advised in writing of the availability of the licensing agency's toll-free complaint telephone number. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5104; effective, T-86-23, July 1, 1985; effective May 1, 1986; amended Feb. 28, 1994.)

28-51-112. Home health aide training program.

(a) Each individual employed or contracted by a home health agency who is not licensed or registered to provide home health services but who assists, under supervision, in the provision of home health services and who provides related health care to patients shall meet the training requirements in K.A.R. 28-51-113 through K.A.R. 28-51-116.

(b) This regulation shall not apply to any individual providing only attendant care services as defined in K.S.A. 65-6201, and amendments thereto. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5115; effective, T-86-23, July 1, 1985; effective May 1, 1986; amended Feb. 28, 1994; amended Oct. 27, 2006.)

28-51-113. Home health aide training program. (a) Each home health aide candidate shall be a Kansas-certified nurse aide in good standing on the public nurse aide registry and complete a 20-hour home health aide course approved by the licensing agency.

(b) Upon completing a home health aide course as specified in subsection (a) of this regulation, each home health aide shall be required to pass a state test as specified in K.A.R. 28-51-116.

(c) Each person who completes the requirements specified in subsections (a) and (b) of this regulation shall be issued a home health aide certificate by the licensing agency and shall be listed on the public nurse aide registry.

(d) (1) Each home health aide trainee shall be allowed to provide home health aide services to clients of the home health agency under the supervision of a registered nurse.

(2) Each home health aide trainee who completes an approved 20-hour course shall be issued a home health aide certificate by the licensing agency, upon completion of the requirements specified in subsections (a) and (b) of this regulation, within 90 days from the beginning date of the initial course in order to continue employment providing home health aide services. Home health aide trainee status shall be for one 90-day period only.

(3) Any Kansas certified nurse aide who is eligible for employment and who is enrolled in a 20-hour home health aide course may work for a home health agency as a home health aide trainee. The home health agency's registered nurse shall retain in the trainee's personnel file a department-approved form attesting that the trainee has met the minimum competencies for a home health aide trainee.

(e) Each 20-hour home health aide course shall be administered according to the following criteria:

(1) Any person issued a nurse aide certificate by the licensing agency or enrolled in a 90-hour nurse aide course as specified in K.A.R. 28-39-165 may enroll in a 20-hour home health aide course after being prescreened and tested for reading comprehension at an eighth-grade level.

(2) Each 20-hour course shall be sponsored by one of the following:

- (A) A home health agency;
- (B) A postsecondary school under the jurisdiction of the state board of regents; or
- (C) A postsecondary school accredited by the north central association of colleges and schools.

(3) A home health agency shall not sponsor or provide clinical instruction for a 20-hour home health aide course if that home health agency meets any of the conditions listed in 42 C.F.R. 484.36(a)(2)(i), as in effect on October 1, 2001, which is hereby adopted by reference.

(4) Each 20-hour course shall be prepared and administered in accordance with the guidelines established by the licensing agency in the "Kansas certified home health aide guidelines (20 hours)," dated July 1, 2005, and the "Kansas home health aide sponsor and instructor manual," excluding the appendices, dated July 1, 2005, which are hereby adopted by reference.

(f) No correspondence course shall be accepted as a 20-hour home health aide course.

(g) Distance-learning educational offerings and computer-based educational offerings shall meet the requirements specified in subsection (e) of this regulation. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5115; effective Dec. 29, 2003; amended Oct. 27, 2006.)

28-51-114. Home health aide course instructors. (a) Each instructor for the 20-hour course shall meet the following requirements:

(1) Each person who intends to be a course instructor shall submit a completed instructor approval application form to the licensing agency at least three weeks before offering an initial course and shall be required to receive approval as an instructor before the first day of an initial course.

(2) Each instructor shall be a registered nurse with a minimum of two years of licensed nursing experience, including at least 1,750 hours of experience in the provision of home health care services.

(b) Each instructor and course sponsor shall be responsible for ensuring that the following requirements are met:

(1) Each student in a 20-hour home health aide course shall be prescreened and tested for reading comprehension of the written English language at an eighth-grade reading level before enrolling in the course.

(2) A completed course approval application form shall be submitted to the licensing agency at least three weeks before offering the course. Approval of the course shall be obtained from the licensing agency at the beginning of each course whether the course is being offered initially or after a previous approval. Each change in course location, schedule, or instructor shall require prior approval by the licensing agency.

(3) All course objectives shall be accomplished.

(4) Health care professionals with appropriate skills and knowledge may be selected to conduct any part of the training. Each health care professional shall have at least one year of experience in the subject area in which the individual is providing training.

(5) Each person providing a portion of the training shall do so under the direct supervision of the instructor.

(6) If clinical instruction is included in the course, each student shall be under the direct supervision of the instructor.

(7) During the clinical instruction, the instructor shall perform no other duties than the provision of direct supervision to the students.

(8) The 20-hour home health aide course shall be prepared and administered in accordance with the guidelines in the "Kansas certified home health aide guidelines (20 hours)" and the "Kansas home health aide sponsor and instructor manual," as adopted in K.A.R. 28-51-113.

(c) Any instructor or course sponsor who does not fulfill the requirements of this regulation may be subject to withdrawal of approval to serve as a course instructor or a course sponsor. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5115; effective Dec. 29, 2003; amended Oct. 27, 2006.)

28-51-115. Allied health training endorsement for home health aide. (a) Each person who meets one of the following conditions shall be deemed to have met the requirements of K.A.R. 28-51-113(a) and shall be eligible to take the state test as specified in K.A.R. 28-51-116:

(1) The person has been licensed in Kansas or another state, within 24 months from the date of application, as a licensed practical nurse whose license is inactive or a registered nurse whose license is inactive, and there are no pending or current disciplinary actions against the individual's license.

(2) The person is currently licensed in Kansas or another state, or has been licensed within 24 months from the date of application, as a licensed mental health technician, and there are no pending or current disciplinary actions against the individual's license.

(3) The person has received training from an accredited nursing or mental health technician training program within the 24-month period before applying for endorsement. Training shall have included a basic skills component comprised of personal hygiene, nutrition and feeding, safe

transfer and ambulation techniques, normal range of motion and positioning, and supervised clinical experience in geriatrics.

(b) Each person qualified under subsection (a) of this regulation shall receive written notice from the licensing agency that the person is eligible to take the state test. Upon receiving written approval from the licensing agency, that person may be employed by a home health agency as a home health aide trainee to provide patient care on behalf of the home health agency. Each person employed as a home health aide trainee shall be certified as a home health aide by the licensing agency, upon successful completion of the requirements specified in K.A.R. 28-51-113(a) or subsection (a) of this regulation, within one 90-day period starting from the date of approval, in order to continue employment providing home health aide services on behalf of the home health agency. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5115; effective Dec. 29, 2003; amended Oct. 27, 2006.)

28-51-116. State home health aide test eligibility. (a) Each person shall have a maximum of three attempts per year from the beginning date of the course to pass the state written test after successfully completing an approved 20-hour course pursuant to K.A.R. 28-51-113.

(1) If the person does not pass the state test within one year from the starting date of taking an approved 20-hour course, the person shall retake the entire course to be eligible to retake the state test.

(2) If a person whose training has been endorsed as specified in K.A.R. 28-51-115 does not pass the state test on the first attempt, the person shall complete an approved 20-hour course as specified in K.A.R. 28-51-113 before retaking the state test.

(3) The state test shall be comprised of 30 multiple-choice questions for persons who have successfully completed an approved 20-hour course or have successfully completed training that has been endorsed as specified in K.A.R. 28-51-115. A score of 22 or higher shall constitute a passing score.

(b) Each home health aide trainee shall pay a nonrefundable application fee of \$20.00 before taking the state test. A nonrefundable test application fee shall be required each time the test is scheduled to be taken. Each person who fails to take the state test and who has made payment for the test shall submit another fee before being scheduled for another opportunity to take the test.

(c) Each course instructor shall collect the application fee for each home health aide trainee eligible to take the state test and shall submit the fees, class roster, and application forms to the licensing agency or its designated agent.

(d) Each person who is eligible to take the state test and who has submitted the application fee and application form shall be issued written approval, which shall be proof of eligibility to sit for the test.

(e) Any reasonable test accommodation or auxiliary aid to address a disability may be requested by any person who is eligible to take the state test.

(1) A request for reasonable accommodation or auxiliary aid shall be submitted each time a candidate is scheduled to take the test.

(2) No test shall be given orally or by a sign language interpreter since reading and writing instructions or directions is an essential job task of a home health aide.

(3) Each person requesting a test accommodation shall submit an accommodation request form along with an application form to the instructor. The instructor shall forward these forms to the licensing agency or its designated agent at least three weeks before the desired test date. Each instructor shall verify the need for the accommodation by signing the accommodation request form.

(f) Each person whose second language is English shall be allowed to use a bilingual dictionary while taking the state test. Limited English proficiency shall not constitute a disability with regard to accommodations. An extended testing period of up to one additional hour may be offered to persons with limited English proficiency. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5115; effective Dec. 29, 2003; amended Oct. 27, 2006.)

Article 52.—MEDICAL CARE FACILITIES

28-52-1. General requirements. (a) Each medical care facility shall establish a written plan for risk management and patient care quality assessment on a facility-wide basis.

(b) The plan shall be approved and reviewed annually by the facility's governing body.

(c) Findings, conclusions, recommendations, actions taken, and results of actions taken shall be documented and reported through procedures established within the risk management plan.

(d) All patient services including those services provided by outside contractors or consultants

shall be periodically reviewed and evaluated in accordance with the plan.

(e) Plan format. Each submitted plan shall include the following:

(1) Section I—a description of the system implemented by the facility for investigation and analysis of the frequency and causes of reportable incidents within the facility;

(2) Section II—a description of the measures used by the facility to minimize the occurrence of reportable incidents and the resulting injuries within the facility;

(3) Section III—a description of the facility's implementation of a reporting system based upon the duty of all health care providers staffing the facility and all agents and employees of the facility directly involved in the delivery of health care services to report reportable incidents to the chief of the medical staff, chief administrative officer, or risk manager of the facility;

(4) Section IV, organization—a description of the organizational elements of the plan including:

(A) Name and address of the facility;

(B) name and title of the facility's risk manager;

(C) description of involvement and organizational structure of medical staff as related to risk management program, including names and titles of medical staff members involved in investigation and review of reportable incidents;

(D) organizational chart indicating position of the facility's review committee as defined in K.S.A. 65-4923 and L. 1986, Ch. 229, New Section 4(a)(2); and

(E) mechanism for ensuring quarterly reporting of incident reports to proper licensing agency.

(5) Section V—a description of the facility's resources allocated to implement the plan; and

(6) Section VI—documentation that the plan as submitted has been approved by the facility's governing body.

(f) Plan submittal. On and after November 1, 1986, each medical care facility shall submit the plan to the department at least 60 days prior to the license renewal date. After an initial plan is approved, any amendments to the plan shall be submitted to the department.

(g) Departmental review. Upon review of the facility's risk management plan or any amendments, the department shall notify the facility in writing if the plan of amendments have been approved or disapproved. The written notification will specify the reason for disapproval.

(h) Revised plan. Within 60 days of the date the

facility receives notification the plan has been disapproved, the facility shall submit a revised plan to the department.

(i) Plan publication. The plan shall be disseminated to personnel in accordance with the plan. (Authorized by and implementing L. 1986, Chapter 229, Sec. 3; effective, T-87-50, Dec. 19, 1986; effective May 1, 1987.)

28-52-2. Incident reporting. (a) Each medical care facility shall identify a written form on which employees and health care providers shall report clinical care concerns to the risk manager, chief of staff, or administrator. The original or complete copy of the incident report shall be sent directly to the risk manager, chief of staff, or administrator, as authorized in the facility's risk management plan.

(b) The risk manager, chief of staff, or administrator shall acknowledge the receipt of each incident report in writing. This acknowledgment may be made in the following manner:

- (1) file stamping each report;
- (2) maintaining a chronological risk management reporting log;
- (3) signing or initialing each report in a consistent fashion; or
- (4) entering pertinent information into a computer database.

(c) Incident reports, investigational tools, minutes of risk management committees, and other documentation of clinical analysis for each reported incident shall be maintained by the facility for not less than one year following completion of the investigation. (Authorized by and implementing K.S.A. 65-4922; effective Feb. 27, 1998.)

28-52-3. Risk management committee. (a) Each medical care facility shall designate one or more executive committees responsible for making and documenting standard-of-care determinations with respect to each incident report, pursuant to K.A.R. 28-52-2. The jurisdiction of each risk management committee shall be clearly delineated in the facility's risk management plan, as approved by the facility's governing body.

(b) The activities of each risk management committee shall be documented in its minutes at least quarterly, and this documentation shall demonstrate that the committee is exercising overall responsibility for standard-of-care determinations delegated by the committee to individual clinical reviewers and subordinate committees. (Autho-

rized by and implementing K.S.A. 65-4922; effective Feb. 27, 1998.)

28-52-4. Standard-of-care determinations. (a) Each facility shall assure that analysis of patient care incidents complies with the definition of a "reportable incident" set forth at K.S.A. 65-4921. Each facility shall use categories to record its analysis of each incident, and those categories shall be in substantially the following form:

- (1) Standards of care met;
- (2) standards of care not met, but with no reasonable probability of causing injury;
- (3) standards of care not met, with injury occurring or reasonably probable; or
- (4) possible grounds for disciplinary action by the appropriate licensing agency.

(b) Each reported incident shall be assigned an appropriate standard-of-care determination under the jurisdiction of a designated risk management committee. Separate standard-of-care determinations shall be made for each involved provider and each clinical issue reasonably presented by the facts. Any incident determined by the designated risk management committee to meet category (a) (3) or (a)(4) shall be considered a "reportable incident" and reported to the appropriate licensing agency in accordance with K.S.A. 65-4923.

(c) Each standard-of-care determination shall be dated and signed by an appropriately credentialed clinician authorized to review patient care incidents on behalf of the designated committee. In those cases in which documented primary review by individual clinicians or subordinate committees does not occur, standard-of-care determinations shall be documented in the minutes of the designated committee on a case-specific basis. Standard-of-care determinations made by individual clinicians and subordinate committees shall be approved by the designated risk management committee on at least a statistical basis. (Authorized by and implementing K.S.A. 65-4922; effective Feb. 27, 1998.)

Article 53.—CHARITABLE HEALTH CARE PROVIDERS

28-53-1. Definitions. (a) "Agreement" means a written understanding between the secretary and a "charitable health care provider," as defined in K.S.A. 75-6102 and amendments thereto, regarding the rendering of professional services to a medically indigent person.

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

(c) “Federally qualified health center” means one of the following:

(1) An entity that meets the requirements for federal funding in 42 USC 1396d(l)(2)(B) and has been designated as a “federally qualified health center” by the federal government; or

(2) an entity that, based on the recommendation of the federal health resources and services administration, is deemed to meet the requirements of the federal grant program and has been designated a “federally qualified health center look-alike” by the federal government but does not receive the federal grant funding specified in 42 USC 1396d(l)(2)(B).

(d) “Indigent health care clinic” has the meaning specified in K.S.A. 75-6102, and amendments thereto.

(e) “Local health department” has the meaning specified in K.S.A. 65-241, and amendments thereto.

(f) (1) “Point of entry” means an entity that performs the following:

(A) Determines whether an individual meets the criteria for a medically indigent person;

(B) refers any medically indigent person to a charitable health care provider;

(C) has submitted a completed application to the department on forms prescribed by the department; and

(D) agrees to maintain records and submit an annual activity report as prescribed by the secretary.

(2) This term may include any of the following:

(A) An entity meeting the definition of “federally qualified health center” or “federally qualified health center look-alike”;

(B) an entity meeting the definition of “indigent health care clinic”; or

(C) an entity meeting the definition of “local health department.”

(g) “Secretary” means secretary of the Kansas department of health and environment. (Authorized by K.S.A. 75-6120; implementing K.S.A. 2010 Supp. 75-6102 and K.S.A. 75-6120; effective April 1, 1991; amended July 13, 1992; amended March 20, 2009; amended May 6, 2011.)

28-53-2. Agreement. (a) Each person or entity applying for an agreement shall submit a completed application to the department on forms prescribed by the department.

(b) An agreement may be terminated by the secretary, the charitable health care provider, or the point of entry with 30 days of prior written notice to the department. Failure of the charitable health care provider to maintain the required licensure shall constitute concurrent cancellation of the agreement. (Authorized by K.S.A. 75-6120; implementing K.S.A. 2010 Supp. 75-6102 and K.S.A. 75-6120; effective April 1, 1991; amended July 13, 1992; amended March 20, 2009; amended May 6, 2011.)

28-53-3. Eligibility criteria for a medically indigent person. An individual shall qualify as a medically indigent person if a point of entry determines that the individual meets either of the following requirements:

(a) Is determined to be a member of a family unit earning at or below 200% of the current federal poverty level and is not indemnified against costs arising from medical and dental care by a policy of accident and sickness insurance, an employee health benefits plan, or any similar coverage; or

(b) is eligible for publicly funded health care programs administered by the Kansas health policy authority or the department or is qualified for Indian health services. (Authorized by and implementing K.S.A. 75-6120; effective April 1, 1991; amended March 20, 2009.)

28-53-4. Records and reports. (a) Each charitable health care provider either shall meet the following requirements or shall ensure that each point of entry through which the charitable health care provider delivers care meets the following requirements:

(1) Maintains the completed forms prescribed by the department; and

(2) submits a completed annual activity report to the department on a form prescribed by the department.

(b) Failure of the charitable health care provider or the point of entry to comply with this regulation shall be grounds for termination of the agreement with the charitable health care provider. (Authorized by K.S.A. 75-6120; implementing K.S.A. 2010 Supp. 75-6102 and K.S.A. 75-6120; effective April 1, 1991; amended March 20, 2009; amended May 6, 2011.)

28-53-5. Referrals. Each referral of professional services shall be documented in the records of the point of entry. (Authorized by and imple-

menting K.S.A. 75-6120; effective April 1, 1991; amended March 20, 2009.)

Article 54.—TRAUMA SYSTEM PROGRAM

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

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

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

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

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

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

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

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

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

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

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

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

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

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

hereby adopted by reference, excluding all sections titled “reference” or “rationale.”

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

(A) All type I designation criteria;

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

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

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

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

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

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

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

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

(1) Level I trauma centers;

(2) level II trauma centers;

(3) level III trauma centers; and

(4) level IV trauma centers.

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

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

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

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

(b) for each level IV trauma center, the successful completion of an on-site survey. (Authorized by and implementing K.S.A. 2016 Supp. 75-5665; effective Nov. 2, 2007; amended March 16, 2012; amended Aug. 25, 2017.)

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

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

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

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

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

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

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

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

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

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

28-54-4. Application for change of designation. (a) Any administrator of a designated trauma facility may request a change of designation by submitting an application for a change of

designation on the form provided by the department and the following to the secretary:

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

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

(B) a nonrefundable fee of \$500.

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

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

(B) a nonrefundable fee of \$250.

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

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

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

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

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

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

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

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

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

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

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

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

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

28-54-6. Voluntary termination of certificate of designation. (a) Each administrator of a trauma facility that decides not to maintain the trauma facility's certificate of designation shall notify the secretary in writing of that decision.

(b) The notification shall include the anticipated date of termination, which shall be at least 60 days after the date on which the notice is mailed, and shall describe the procedures by which the administrator will notify the medical care service providers in the regional trauma council in which the trauma facility is located. (Authorized by and implementing K.S.A. 2006 Supp. 75-5665; effective Nov. 2, 2007.)

28-54-7. Misrepresentation of certificate of designation. (a) The certificate of designation shall apply only to the hospital for which the administrator submitted the designation application and shall not extend to any of the hospital's satellite facilities or affiliates.

(b) No hospital administrator shall represent that the hospital is a trauma facility unless the hospital has a current certificate of designation or certificate of verification by the American college of surgeons. (Authorized by and implementing K.S.A. 2006 Supp. 75-5665; effective Nov. 2, 2007.)

Article 55.—PCB FACILITY CONSTRUCTION PERMIT STANDARDS AND REGULATIONS

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

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

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

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

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

Article 56.—REPORTING OF INDUCED TERMINATIONS OF PREGNANCY

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

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

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

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

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

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

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

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

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

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

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

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

(l) "ICD-9-CM" means volumes one and two, office edition, of the 2011 clinical modification of the "international classification of diseases," ninth revision, sixth edition, published by practice management information corporation, which is used to code and classify morbidity data from inpatient and outpatient records, physician offices, and most surveys from the national center for health statistics. This document, including the appendices, is hereby adopted by reference.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Submit an executed user agreement; and

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

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

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

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

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

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

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

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

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

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

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

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

(11) the patient's ancestry;

(12) the patient's race;

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

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

(15) clinical estimate of gestation;

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

(A) Children born live and now living;

(B) children born live and now dead;

(C) previous induced abortions; and

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

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

(A) Suction curettage;

(B) sharp curettage;

(C) dilation and evacuation;

(D) administration of mifeprestone;

(E) administration of methotrexate;

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

(G) hysterotomy;

(H) hysterectomy;

(I) digoxin induction;

(J) partial birth abortion; or

(K) other procedure, which shall be specified;

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

(A) Suction curettage;

(B) sharp curettage;

(C) dilation and evacuation;

(D) administration of mifeprestone;

(E) administration of methotrexate;

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

(G) hysterotomy;

(H) hysterectomy;

(I) digoxin induction;

(J) partial birth abortion; or

(K) other procedure, which shall be specified;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The physician's confidential code number;

(2) the date the report was submitted; and

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

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

28-56-8. Late term affidavits. (a) The referring physician and the physician performing an abortion shall each submit a late term affidavit to the department within 15 business days of the completion of the abortion procedure.

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

(1) Name of the referring physician;

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

(3) a statement that the referring physician and the physician performing the abortion have no legal or financial affiliation with each other as specified in K.S.A. 65-6703, and amendments thereto; and

(4) the date the late term affidavit was signed and notarized.

(c) The late term affidavit completed by the physician performing an abortion shall contain the

information required in subsection (b). (Authorized by K.S.A. 2011 Supp. 65-445, 65-6703, and 65-6724; implementing K.S.A. 2011 Supp. 65-445 and 65-6703; effective June 15, 2012.)

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

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

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

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

- (1) A copy of the abortion report and any subsequent corrections;
- (2) a copy of the voluntary and informed consent form;
- (3) a copy of the late term affidavit of the physician who performed the abortion;
- (4) a copy of a court-ordered bypass of parental consent as specified in K.S.A. 65-6705, and amendments thereto, or consent of both parents or the legal guardian if the minor is not emancipated;
- (5) the physical or mental medical history of the patient;
- (6) all sonogram results;
- (7) a copy of the medical basis and reasons related to partial birth abortion, late term abortion, or emergency abortion procedure on a minor;
- (8) a copy of the patient-specific counseling information provided in addition to state-required material;
- (9) a copy of the postabortion instructions;
- (10) a record and description of any complications;

- (11) the type and amount of anesthesia used;
- (12) any report of physical, mental, or emotional abuse or neglect of a minor pursuant to K.S.A. 38-2223, and amendments thereto;
- (13) a list of all medical tests performed and the results of each test;
- (14) a record of any return visit by patient, if indicated by the physician;
- (15) emergency contact information for the patient;
- (16) a copy of the medical referral from the referring physician; and
- (17) if known, the name, address, and telephone number of the father of the unborn child if the patient is less than 16 years old.

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

Article 59.—DIETITIAN

28-59-1. Application for a license or temporary license. (a) Each applicant for a license or temporary license shall submit a completed, department-approved application form and any requested supporting documentation to the department, together with the appropriate fee specified in K.A.R. 28-59-7.

(b) Each applicant for a license or temporary license shall provide the department with the applicant's academic transcripts and proof of receipt of a baccalaureate or postbaccalaureate degree. These documents shall be provided directly to the department by the academic institution.

(c) A temporary license may be issued for either of the following purposes:

- (1) The applicant's completion of the examination specified in K.A.R. 28-59-4; or
- (2) the applicant's accrual of continuing education credits required to reinstate a lapsed license.

(d) Each applicant for renewal of a temporary license shall submit a letter to the secretary requesting the renewal and describing why the applicant has failed to obtain a license in the last six months and what measures are being taken to secure a license, together with the temporary license renewal fee specified in K.A.R. 28-59-7. (Authorized by K.S.A. 65-5904; implementing K.S.A. 65-5906 and 65-5907; effective Feb. 18, 1991; amended March 16, 2001.)

28-59-2. Application for a person licensed in another state. (a) Each applicant who is presently or has been previously licensed in another state shall submit a completed, department-approved application form with the license fee specified in K.A.R. 28-59-7.

(b) Each applicant shall meet current requirements for licensure in Kansas. The requirements of one of the states that issued a license to the applicant shall be at least equal to Kansas licensure requirements at the time the applicant seeks a Kansas license.

(c) Each applicant shall be in good standing with each licensing agency that has issued a license to the applicant.

(d) "Good standing" means both of the following:

(1) The applicant's license is not under any administrative proceeding.

(2) The applicant's license is not under any disciplinary action. (Authorized by K.S.A. 65-5904; implementing K.S.A. 65-5910; effective Feb. 18, 1991; amended March 16, 2001.)

28-59-3. Educational and experience requirements. (a) To determine whether an applicant has complied with the requirement that the person has received a baccalaureate or postbaccalaureate degree pursuant to K.S.A. 65-5906, and amendments thereto, consideration shall be given to whether the course of study is accredited or approved by the American dietetic association or is deemed equivalent by the secretary.

(b) Each applicant who has received a baccalaureate or postbaccalaureate degree outside the United States or its territories and whose transcript is not in English shall submit an officially translated English copy of the applicant's transcript and, if necessary, supporting documents. The transcript shall be translated by a source and in a manner that are acceptable to the secretary. Each applicant shall pay any transcription fee directly to the transcriber.

(c) Each applicant who has received a baccalaureate or postbaccalaureate degree outside of the United States and its territories shall obtain an equivalency validation from an agency that is approved by the secretary and that specializes in educational credential evaluations. Each applicant shall pay the required equivalency validation fee directly to the validation agency.

(d) Each applicant who received a baccalaureate or postbaccalaureate degree and whose course

of study was not from an American dietetic association accredited or approved program shall obtain an equivalency validation from a college or university accredited or approved dietetics program approved by the secretary.

(e) To determine whether an applicant has complied with the requirement that a person complete 900 clock hours of dietetic experience pursuant to K.S.A. 65-5906, and amendments thereto, consideration shall be given to whether or not the supervised experience is acquired through an American dietetic association approved or accredited program for dietitians or is deemed its equivalent by the secretary.

(f) Each applicant who did not receive the supervised experience from an American dietetic association accredited or approved program shall obtain an equivalency validation from a college or university accredited or approved dietetics program approved by the secretary.

(g) Each applicant shall submit the necessary documentation for an equivalency validation to be made. Each equivalency validation evaluation and corresponding documentation shall be sent directly to the department by the agency providing the validation. After consideration of the evaluation and documentation, the applicant shall be notified in writing of the decision of the secretary.

(h) "American dietetic association" means the national professional association that accredits or approves educational programs and supervised experience programs in dietetics. (Authorized by K.S.A. 65-5904; implementing K.S.A. 65-5905 and 65-5906; effective Feb. 18, 1991; amended March 16, 2001.)

28-59-4. Examination requirement. The following shall be the procedures for the examination of applicants:

(a) Each applicant for a license shall pass an examination for dietitians approved by the secretary. The minimum passing score for the examination shall be 25.

(b) Each applicant shall have successfully completed a course of study and supervised experience pursuant to K.S.A. 65-5906, and amendments thereto, before submitting an application to sit for the examination.

(c) Each applicant shall pay the required examination fee directly to the testing agency. (Authorized by K.S.A. 65-5904; implementing K.S.A. 65-5906; effective Feb. 18, 1991; amended March 16, 2001.)

28-59-5. License renewal. This regulation shall not apply to temporary licenses. (a) Each applicant for renewal of a license shall submit a completed, secretary-approved application form and any requested supporting documentation with the license renewal fee specified in K.A.R. 28-59-7.

(b) Each applicant for renewal of a license shall have completed 15 clock-hours of documented and approved continuing education during each renewal period. Approved continuing education clock-hours completed in excess of the 15-hour requirement shall not be carried over to the subsequent renewal period. "One clock-hour" shall mean at least 50 minutes of direct instruction, exclusive of registration, breaks, and meals.

(c) Each application for renewal of a license shall be filed on or before the last day of February of the calendar year in which the license expires. Licenses shall be renewable biennially, with the day of expiration being the last day of February of the applicable year.

(d) "Sponsorship" means an approved, long-term sponsoring of programs for the purpose of fulfilling renewal or reinstatement continuing education requirements. Each approved sponsor shall be accountable for upholding the standards in place for the approval of continuing education programs under the authority of the secretary. Each sponsor shall make application and fulfill requirements as prescribed on secretary-approved forms. Failure to comply with sponsorship requirements shall result in one or more of the following actions or additional requirements by the secretary:

- (1) Supplementary documentation;
- (2) program restrictions; or
- (3) temporary or permanent suspension of long-term sponsorship approval.

(e) (1) Continuing education may be accrued from any of the following:

- (A) Academic courses;
- (B) workshops, seminars, video conferences, internet-based seminars, journal club meetings, or poster sessions, which are also called poster displays;
- (C) self-directed study materials;
- (D) presentations;
- (E) food exhibits;
- (F) publication of a journal article or book; or
- (G) initial certification in any of the following programs:

(i) Certified nutrition support dietitian (CNSD) with the American association of diabetes ed-

ucators/American nurses credentialing center (AADE/ANCC);

(ii) certified nutrition support dietitian (CNSD) with the American association of parenteral and enteral nutrition (ASPEN);

(iii) certification as a specialist in pediatric nutrition by the commission on dietetic registration (CDR);

(iv) certification as a specialist in renal nutrition by the commission on dietetic registration (CDR);

(v) certification as a lactation consultant by the international board of lactation consultant examiners (IBLCE);

(vi) certified diabetes instructor with the national certification board for diabetes educators (NCBDE); or

(vii) certified diabetes educator with the American association of diabetes educators (AADE).

(2) Academic courses shall be from a regionally accredited college or university.

(3) Self-study materials may include audio tapes, study kits, internet-based offerings, journal articles, DVDs, and videotapes. Journal articles shall include articles published in the "journal of the ADA" or "today's dietitian" or by a dietetic practice group. Any applicant may submit a maximum of seven journal articles for continuing education credit for each licensure period.

(f) The content and objective of the continuing education activity shall be primarily related to the practice of dietetics pursuant to K.S.A. 65-5902, and amendments thereto. The purpose of the educational activity shall be the furthering of the applicant's education and shall not be a part of the applicant's job responsibilities. In-service shall be considered to be part of the applicant's job responsibilities.

(g) (1) Approval for a continuing education activity may be obtained by either of the following methods:

(A) The instructor or sponsor of a single-offering continuing education activity submitting information and documentation on forms approved by the secretary before the activity's occurrence; or

(B) the applicant submitting information and documentation on forms approved by the secretary requesting approval for an activity before the program date.

(2) An organization, institution, agency, or individual shall be qualified for approval as a long-term sponsor of continuing education activities if, after review of the application, the secretary de-

termines that the applicant agrees to perform all of the following:

- (A) Present organized programs of learning;
- (B) present subject matter that integrally relates to the practice of dietetics;
- (C) approve and present program activities that contribute to the professional competency of the licensee; and
- (D) sponsor program presenters who are individuals with education, training, or experience qualifying them to present the subject matter of the programs.

(h) All continuing education sponsors that received approval as specified in paragraph (g)(2) shall provide a certificate of attendance to each licensee who attends a continuing education activity. This certificate shall state the following:

- (1) The sponsor's name and approval number;
- (2) the date of the program;
- (3) the name of the participant;
- (4) the total number of clock-hours of the approved activity attended, excluding introductions, registration, breaks, and meals;
- (5) the activity title and its presenter;
- (6) the location; and
- (7) an indication of whether or not the activity has been approved for dietetics continuing education.

(i) Assignment of clock-hours to approved continuing education activities shall be determined by the following criteria:

(1) One academic-semester credit hour course shall be equivalent to 15 clock-hours of continuing education. One academic-trimester credit hour course shall be equivalent to 14 clock-hours of continuing education. One academic-quarter credit hour course shall be equivalent to 10 clock-hours of continuing education.

(2) One academic-semester credit hour course audited shall be equivalent to eight clock-hours of continuing education. One academic-trimester credit hour course audited shall be equivalent to seven clock-hours of continuing education. One academic-quarter credit hour course audited shall be equivalent to five clock-hours of continuing education.

(3) One clock-hour of contact between a presentation instructor and the applicant shall be equivalent to one clock-hour of continuing education for the applicant.

(A) Contact time shall be rounded down to the nearest one-half hour.

(B) The presenting instructor may be given two clock-hours of continuing education for every one

clock-hour of contact between the instructor and the attendees for each first-time preparation and presentation of a new workshop, seminar, or poster session.

(C) If the presentation was presented by more than one instructor, the continuing education clock-hours shall be prorated among the instructors.

(4) One clock-hour of time required to complete the self-directed study material, as specified by the sponsor of the material, shall be equivalent to one clock-hour of continuing education. The criteria for approving self-directed study shall include the following:

(A) Contact time shall be rounded down to the nearest one-half hour.

(B) Each applicant shall provide validation of actual completion of the material.

(C) A maximum of 10 clock-hours shall be awarded for self-directed study material for each licensure period.

(5) One clock-hour shall be awarded for attendance at food exhibits upon verification of six poster sessions or six vendors at each exhibit. The licensee shall provide documentation of at least six vendor contacts for each food exhibit. A maximum of two clock-hours for attendance at food exhibits shall be awarded for each licensure period.

(6) Five clock-hours shall be awarded for the initial publication of an article in a peer-reviewed journal or a chapter of a book. Ten clock-hours shall be awarded for the initial publication of a book. Documentation of publication shall include a copy of any of the following:

(A) Each article published in a peer-reviewed journal;

(B) each chapter published in a book; or

(C) the title page, the page containing the copyright and copyright date, and the table of contents for each book.

(7) Fifteen clock-hours shall be awarded upon attainment of certification in each program as specified in paragraph (e)(1)(G).

(j) Each applicant shall maintain individual records of information and documentation on approved continuing education hours. If the licensee's application is selected for an audit, the licensee shall submit verification of these records to the secretary as part of the license renewal application.

(k) Each licensee whose initial licensure period is less than 24 months shall be required to obtain at least one-half hour of continuing education for

each month in the initial licensure period. (Authorized by and implementing K.S.A. 65-5904 and K.S.A. 65-5909; effective Feb. 18, 1991; amended Sept. 26, 1994; amended March 16, 2001; amended April 25, 2008.)

28-59-5a. Reinstatement of license. Each applicant for reinstatement of a license shall meet the following criteria:

(a) Submit an application on department-approved forms accompanied by the appropriate fee specified in K.A.R. 28-59-7; and

(b) document and verify the accumulation of not less than 15 hours of approved continuing education as specified in K.A.R. 28-59-5 for the previous complete or partial licensure period. The required hours of approved continuing education shall have been accumulated within the past two calendar years before the date of application for reinstatement. (Authorized by and implementing K.S.A. 65-5904 and K.S.A. 1999 Supp. 65-5909; effective Sept. 26, 1994; amended March 16, 2001.)

28-59-6. Unprofessional conduct. Any of the following acts shall be evidence of unprofessional conduct of a licensee, temporary licensee, or applicant:

(a) Misrepresenting any professional qualifications or credentials;

(b) promoting or endorsing products in a manner that is misleading or false;

(c) making false or misleading claims about the efficacy of any dietetic services;

(d) permitting the use of one's name or credentials for the purpose of certifying that dietetic services have been rendered when the licensee or applicant has not provided or supervised the provision of the services;

(e) failing to maintain the knowledge and skills required for continuing professional competence;

(f) failing to exercise appropriate supervision over persons if there is a supervisory relationship;

(g) impersonating another person who is licensed;

(h) knowingly allowing another person to use one's license;

(i) assisting another person to obtain a license under false pretense;

(j) failing to report to the department alleged violations of K.S.A. 65-5901, et seq., and amendments thereto, and article 59 of these regulations;

(k) failing to notify the department of any disci-

plinary action or limitation, restriction, or revocation of an individual's license, or of termination or suspension of employment in a dietetic practice for some form of misfeasance, malfeasance, or nonfeasance;

(l) refusing to cooperate in a timely manner with the department's investigation of complaints lodged against a licensee, temporary licensee, or applicant;

(m) acquiring or providing a commission or rebate or any other form of remuneration for referral to any other service or for the use of any services;

(n) failing to disclose to a client any interest in commercial enterprises that the licensee, temporary licensee, or applicant promotes for the purpose of personal gain or profit;

(o) using undue influence on a client, including the promotion of the sales of services and products in a manner that exploits the client for financial gain or personal gratification;

(p) failing to provide prospective clients with information, including obligation for fee payment and financial arrangements, that might affect the client's decision to enter into the relationship;

(q) misrepresenting professional competency by performing or offering to perform services that are clearly unwarranted on the basis of education, training, or experience; or

(r) failing to conform to generally accepted principles and standards of dietetic practice, which shall be those generally recognized by the profession as appropriate for the situation presented, including those promulgated or interpreted by professional or governmental bodies. (Authorized by and implementing K.S.A. 1999 Supp. 65-5911(a)(2); effective Feb. 18, 1991; amended March 16, 2001.)

28-59-7. Fees. (a) The license application fee shall be \$140.00. The license application fee for an initial licensure period of less than 24 months shall be prorated at \$5.50 per month for any full or partial month, until the last day of February of the calendar year that is not less than 12 months and not more than 24 months from the date of application.

(b) The license renewal fee shall be \$135.00.

(c) The license renewal late fee shall be \$50.00.

(d) The temporary license application fee shall be \$70.00.

(e) The temporary license renewal fee shall be \$70.00.

(f) The application fee for reinstatement of a lapsed or revoked license shall be \$100.00 in addition to the license renewal fee established in subsection (b) of this regulation.

(g) The wall or wallet card license replacement fee shall be \$10.00.

(h) The sponsorship application fee shall be \$150.00. (Authorized by and implementing K.S.A. 1999 Supp. 65-5913; effective Feb. 18, 1991; amended Dec. 7, 1992; amended Sept. 26, 1994; amended March 16, 2001.)

28-59-8. Change of name or address. (a) Each licensee shall notify the department of any changes in name or mailing address within 15 days of these changes.

(b) Notification of address changes shall be made directly to the department and shall include the name, old mailing address, new mailing address, and zip code.

(c) Within 90 days of the notification of name change, the following shall be received by the department:

(1) A copy of a marriage certificate, the court decree evidencing the change, or a social security card reflecting the new name; and

(2) payment of the applicable fee specified in K.A.R. 28-59-7 if a new wallet card is requested.

In addition, the previously issued identification card shall be returned to the department. (Authorized by and implementing K.S.A. 65-5904; effective Feb. 18, 1991; amended March 16, 2001.)

Article 60.—CREDENTIALING PROGRAM

28-60-1. Definitions. (a) “Applicant” means the organization or organizations who submit to the department of health and environment a notice of intent and a credentialing application requesting that a specific profession or occupation be credentialed. The organization or organizations need not be comprised of members of the specific profession or occupation that is the subject of the credentialing application.

(b) “Manual for applicant” means the “Kansas credentialing review program: manual for applicants,” which is produced by the department of health and environment and includes descriptions of the process, policies, procedures, and standards of the credentialing review program as established by K.S.A. 1987 Supp. 65-5001, as amended by L. 1988, Ch. 246, Sec. 22, *et seq.* and amendments thereto and K.A.R. 28-60-1, *et seq.*

(c) “Profession or occupation” means the specific vocation that is the subject of the credentialing application.

(d) “Record” means the evidence and testimony gathered during the technical committee meetings and the secretary’s review of the credentialing application. The record shall include but not be limited to the following:

(1) The application;

(2) the minutes of the technical committee meetings;

(3) the written materials, written testimony, and oral testimony presented in accordance with K.A.R. 28-60-6(c) at the technical committee meetings;

(4) the preliminary and final report of the findings and recommendations of the technical committee; and

(5) the secretary’s final report to the legislature.

(e) “Standards” means the conditions set by the secretary, as listed in the May 1987 manual for applicants, that the technical committee and secretary may use to aid in determining whether certain portions of the criteria have been met. (Authorized by and implementing K.S.A. 1987 Supp. 65-5009; effective May 1, 1987; amended, T-88-36, Sept. 17, 1987; amended May 1, 1988; amended Dec. 5, 1988.)

28-60-2. Notice of intent. (a) Each applicant seeking to have a credentialing application reviewed, according to the provisions of K.S.A. 1987 Supp. 65-5001, *et seq.*, as amended by L. 1988, Ch. 246, Sec. 22, and amendments thereto, shall first submit to the secretary a notice of intent.

(b) Each notice of intent shall contain the following information regarding the applicant:

(1) The names of the organizations and the number of members in each organization;

(2) the names of the national organizations, if the organizations are state affiliates of national organizations; and

(3) the names, addresses, organization affiliations, and telephone numbers of the persons designated to represent the applicant.

(c) Each notice of intent shall contain the following information regarding the profession or occupation that the applicant is seeking to have credentialed:

(1) Each name and title of the profession or occupation;

(2) the approximate number of members of the profession or occupation practicing in Kansas;

(3) the titles, addresses, and telephone numbers of all other organizations in Kansas consisting of members of the profession or occupation;

(4) a list and description of each function typically performed by members of the profession or occupation that pertain to services rendered directly or indirectly for the purpose of:

(A) Preventing physical, mental, or emotional illness;

(B) detecting, diagnosing, and treating illness;

(C) facilitating recovery from illness; and

(D) providing rehabilitative or continuing care following illness;

(5) the approximate percentage of time spent in each function listed in paragraphs (4), (A), (B), (C), and (D) of this subsection;

(6) the training, education, or experience required to perform the functions of the profession or occupation;

(7) the titles of all other health professions or occupations that:

(A) Perform the same type of functions as the profession or occupation, but at a different level of skill or training;

(B) perform different, but related, functions in association with the profession or occupation; and

(C) perform the same functions as the profession or occupation, but in a different setting or employment situation;

(8) a description of the relationship between the other health professions or occupations identified in paragraphs (7)(A), (B), and (C) of this subsection and the profession or occupation; and

(9) an approximate date on which a credentialing application will be submitted.

(d) Any additional information needed to make a determination as to whether the profession or occupation is properly classified as health care personnel may be requested by the secretary.

(e) A determination as to whether the profession or occupation meets the definition of health care personnel shall be made by the secretary on the basis of the contents of the notice of intent and any additional information requested by the secretary.

(f) Each notice of intent shall be approved or denied by the secretary within 60 days after receiving the notice of intent and any additional information requested, and the applicant shall be given written notice of the decision.

(1) If the secretary approves any notice of intent, the applicant may submit a credentialing application; and

(2) if the secretary denies any notice of intent, the applicant may appeal the secretary's decision.

(g) Any applicant may appeal to the secretary in writing within 60 days after receiving the written denial notification by the secretary.

(h) Each appeal to the secretary shall specify in detail the reasons the applicant disagrees with the decision.

(i) If, after examining the applicant's written appeal, the secretary finds the profession or occupation meets the definition of health care personnel, the applicant may submit a credentialing application to the secretary.

(j) If the secretary finds the profession or occupation does not meet the definition of health care personnel and after exhausting the review procedures outlined in the Kansas judicial review act, the applicant shall not submit a credentialing application to the secretary.

(k) Each applicant shall be given written notice of the final decision by the secretary. (Authorized by K.S.A. 1987 Supp. 65-5009(b); implementing K.S.A. 1987 Supp. 65-5001, as amended by L. 1988, Ch. 246, Sec. 22, effective May 1, 1987; amended, T-88-36, Sept. 17, 1987; amended May 1, 1988; amended Dec. 5, 1988.)

28-60-3. Filing of the credentialing application. (a) Each applicant shall complete the forms of the credentialing application that are printed in the manual for applicants.

(b) "Kansas resident" means any person 18 years old or older who resides in Kansas.

(c) Each credentialing application received from an applicant whose notice of intent has been approved shall be reviewed by the department of health and environment to determine if the credentialing application is fully answered and complete.

(1) If the credentialing application is not complete, the applicant shall be requested by the department of health and environment to submit additional information.

(2) If the credentialing application is complete, an approximate date for the technical committee to begin the review of the credentialing application shall be selected by the secretary and the applicant shall be notified of the approximate date. (Authorized by K.S.A. 1987 Supp. 65-5009(b); implementing K.S.A. 1987 Supp. 65-5002; effective May 1, 1987; amended, T-88-36, Sept. 17, 1987; amended May 1, 1988; amended Dec. 5, 1988.)

28-60-4. Withdrawing a credentialing application. (a) Each applicant that has withdrawn a credentialing application shall not submit a new notice of intent, application, and application fee for one year after the date the final report of the technical committee has been issued.

(b) The technical committee shall prepare a final report within 120 days after completing the technical committee meetings in accordance with K.A.R. 28-60-6.

(c) Each credentialing application already on file shall be reviewed by the technical committee before a new credentialing application submitted by an applicant group that has previously withdrawn a credentialing application will be reviewed. (Authorized by 1987 Supp. 65-5009(b); implementing K.S.A. 1987 Supp. 65-5003; effective May 1, 1987; amended, T-88-36, Sept. 17, 1987; amended May 1, 1988; amended Dec. 5, 1988.)

28-60-5. Selection of a technical committee. (a) A written memorandum requesting nominations for individuals to serve on each technical committee shall be distributed by the secretary to:

(1) Persons who have asked the department of health and environment to keep them informed of credentialing activities; and

(2) various professional associations and state regulatory boards.

(b) The memorandum shall contain:

(1) A request for nominations;

(2) the names of the professions or occupations of the applications the technical committee will review;

(3) the review schedules;

(4) a description of the review process and responsibilities of the technical committee members; and

(5) instructions and a closure date for submission of nominations.

(c) Additional information shall be requested by the secretary from each nominee to determine whether the nominee has any direct, economic or personal interest in the credentialing or noncredentialing of the professions or occupations whose credentialing applications will be reviewed by the technical committee.

(d) Each nominee shall remain on the list of nominees for one year.

(e) Additional technical committees may be established if approved by the secretary.

(f) Each technical committee shall review only one credentialing application at a time. Each tech-

nic committee shall review a maximum of two applications. (Authorized by K.S.A. 1987 Supp. 65-5009(b); implementing K.S.A. 1987 Supp. 65-5003; effective May 1, 1987; amended, T-88-36, Sept. 17, 1987; amended May 1, 1988; amended Dec. 5, 1988.)

28-60-6. Technical committee meetings.

(a) Each credentialing application shall be reviewed by a technical committee under the following sequential proceedings:

(1) Applicant review. A copy of each application shall be mailed by the department of health and environment to the technical committee members at least 30 days before the applicant review meeting. Each applicant shall present, in person, an overview and description of the profession or occupation and shall summarize the contents of the credentialing application. The applicant's response to each question in the credentialing application shall be discussed by the technical committee at this meeting. The committee may ask for clarification or additional information from the applicant.

(2) Analysis. Any information requested at the applicant review meeting by the technical committee that has not been previously accepted may be submitted by the applicant. The information gathered from the application and applicant review meeting shall be compared with the criteria and standards, and then prepared as a report by the department of health and environment. At the analysis meeting, the technical committee shall discuss the report and shall develop preliminary findings and recommendations as to whether the criteria have been met.

(3) Public hearing. At the public hearing meeting, both supporting and opposing comments and information about the application and the preliminary findings and recommendations of the technical committee may be presented by the public. Any information requested at the applicant review meeting and analysis meeting by the technical committee that has not been previously accepted may be submitted by the public and the applicant. No new information shall be accepted or considered by the technical committee after the public hearing meeting.

(4) Final findings and recommendations. At the final findings and recommendations meeting, information presented at the public hearing and the information contained in the record to date shall be discussed by the technical committee. The final findings and recommendations as to whether the

criteria have been met shall then be developed by the technical committee.

(b) Additional technical committee meetings may be held if approved by the technical committee chairperson.

(c) The rules of conduct for public hearings shall include the following:

(1) Information presented at the technical committee meetings shall be in the record and shall not be presented again at public hearing meeting.

(2) Materials already entered into the record from the technical committee meetings shall be available for inspection at the public hearing meeting.

(3) Each person interested in presenting oral testimony shall contact the department of health and environment to be placed on the appropriate public hearing meeting agenda.

(4) The technical committee chairperson shall determine the amount of time allotted for each oral presentation based on the number of speakers and the anticipated length of time of the public hearing.

(5) At the conclusion of the agenda, the technical committee chairperson may allow time for:

(A) Persons to testify who were not previously on the agenda; and

(B) the applicant to provide any additional comments.

(6) Each person who presents oral testimony shall provide a written copy of the testimony for insertion into the record at or within seven days after the public hearing.

(7) Any technical committee member may ask questions and request further information or documentation of anyone testifying or providing information during the technical committee meetings.

(8) Written testimony may be submitted in lieu of oral testimony.

(9) Written testimony shall be submitted to the department of health and environment prior to the public hearing or at the public hearing and shall be entered into the record of the public hearing.

(d) "Criteria" means the conditions established by K.S.A. 1987 Supp. 65-5006, and amendments thereto, and K.S.A. 1987 Supp. 65-5007, and amendments thereto. Each application shall meet the conditions in K.S.A. 1987 Supp. 65-5006, and amendments thereto, before credentialing may be recommended by the technical committee and secretary. (Authorized by K.S.A. 1987 Supp. 65-5009(b); implementing K.S.A. 1987 Supp. 65-

5003; effective May 1, 1987; amended, T-88-36, Sept. 17, 1987; amended May 1, 1988; amended Dec. 5, 1988.)

28-60-7. (Authorized by 1987 Supp. 65-5009(b); implementing K.S.A. 1987 Supp. 65-5003; effective May 1, 1987; amended T-88-36, Sept. 17, 1987; amended May 1, 1988; revoked Dec. 5, 1988.)

28-60-8. (Authorized by K.S.A. 65-5009(b), as amended by L. 1986, Ch. 246, Sec. 8; implementing K.S.A. 65-5004, as amended by L. 1986, Ch. 246, Sec. 4; effective May 1, 1987; revoked, T-88-36, Sept. 17, 1987; revoked May 1, 1988.)

28-60-9. The standards listed in the "Kansas credentialing review program manual for applicants," May 1987, pages 9-12, as jointly developed by the secretary and the statewide health coordinating council, and as in effect May 1, 1987, is hereby adopted by reference. (Authorized by and implementing K.S.A. 1987 Supp. 65-5009(b); effective T-88-36, Sept. 17, 1987; amended May 1, 1988; amended Dec. 5, 1988.)

Article 61.—LICENSURE OF SPEECH LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

28-61-1. Definitions. (a) "American academy of audiology" means a national professional association for audiologists that provides continuing education programs and approves continuing education sponsors in clinical audiology.

(b) "American speech-language-hearing association" means a national professional association that accredits academic and clinical practicum programs and continuing education sponsors in speech-language pathology and audiology and that issues a certificate of clinical competence in speech-language pathology and audiology.

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

(d) "Licensure period" means the period of time beginning on the date a license is issued and ending on the date the license expires. All full licenses shall expire biennially on October 31.

(e) "Screening" means a pass-fail procedure to identify any individual who requires further assessment.

(f) "Sponsorship" means an approved, long-term sponsoring of programs for the purpose of fulfilling renewal or reinstatement continuing

education requirements. Each approved sponsor shall be accountable for upholding the department's standards for the approval of continuing education programs. Each sponsor shall submit an application and the sponsor's annual report on department-approved forms. The authority to sanction or otherwise discipline an approved sponsor shall be maintained by the department. These sanctions may include the following:

- (1) Supplementary documentation;
- (2) program restrictions; or
- (3) temporary or permanent suspension of long-term sponsorship approval.

(g) "Supervision of methods and procedures related to hearing and the screening of hearing disorders" means consultation on at least a monthly basis by a licensed audiologist, a licensed speech-language pathologist, or any person exempted by K.S.A. 65-6511(a), (b), or (c), and amendments thereto. Any consultation may include any of the following:

- (1) On-site visits;
- (2) review of written documentation and reports; or
- (3) conference calls. (Authorized by K.S.A. 65-6503; implementing K.S.A. 65-6501 and K.S.A. 65-6503; effective Dec. 28, 1992; amended March 16, 2001; amended Aug. 19, 2005; amended April 16, 2010.)

28-61-2. Qualifications for licensure. (a) To determine whether or not an applicant has completed the educational requirements in the area for which the applicant seeks licensure pursuant to K.S.A. 65-6505 and amendments thereto, consideration shall be given to whether or not the academic course of study and practicum content are accredited by the American speech-language-hearing association or are deemed equivalent to the course of study and practicum content of Kansas universities by the secretary.

(b) Each applicant who completed the educational requirements specified in K.S.A. 65-6505, and amendments thereto, in a program not accredited by the American speech-language-hearing association shall meet both of the following requirements:

(1) Obtain an equivalency validation of the academic course of study or practicum content, or both, from a Kansas college or university with a speech-language pathology or audiology program accredited by the American speech-language-hearing association; and

(2) provide transcripts and supervised practicum records verifying that the applicant has successfully completed coursework or supervised practicum experiences related to the principles and methods of prevention, assessment, and intervention for individuals with communication and swallowing disorders in the following subject areas:

- (A) Articulation;
- (B) fluency;
- (C) voice and resonance, including respiration and phonation;
- (D) receptive and expressive language in speaking, listening, reading, writing, and manual modalities;
- (E) hearing, including the impact on speech and language;
- (F) swallowing;
- (G) cognitive aspects of communication;
- (H) social aspects of communication; and
- (I) communication modalities, including oral, manual, augmentative, and alternative communication, and assistive technologies.

(c) To determine whether or not an applicant has complied with the requirement that the degree be from an educational institution with standards consistent with the standards of Kansas universities pursuant to K.S.A. 65-6505 and amendments thereto, consideration shall be given to whether or not the institution is accredited by an accrediting body recognized by either the council on postsecondary accreditation or the secretary of the U.S. department of education, or is deemed equivalent by the secretary.

(d) Each applicant who completed the educational requirements specified in K.S.A. 65-6505, and amendments thereto, outside the United States or its territories and whose transcript is not in English shall submit an officially translated English copy of the applicant's transcript to the secretary and, if necessary, supporting documents. The transcript shall be translated by a source and in a manner that are acceptable to the secretary.

(e) Each applicant who completed the educational requirements specified in K.S.A. 65-6505, and amendments thereto, outside the United States or its territories shall obtain an equivalency validation from an agency approved by the secretary that specializes in educational credential evaluations.

(f) Each applicant shall pay any transcription or equivalency validation fee directly to the transcriber or the validating agency.

(g) The supervised clinical practicum as specified in K.S.A. 65-6505, and amendments thereto, shall be at least 400 hours, 25 of which shall be observation and 375 of which shall be direct client contact. At least 325 of the 400 hours of supervised clinical practicum shall be earned at the graduate level in the area in which licensure is sought.

(h) Each applicant, after completing the requirements in K.S.A. 65-6505 and amendments thereto, shall successfully complete the supervised postgraduate professional experience requirement in the area for which the applicant seeks licensure. The applicant may complete the requirement on a full-time or part-time basis.

(1) "Full-time" means 35 hours per week for nine months.

(2) "Part-time" means 15 to 19 hours per week for 18 months, 20 to 24 hours per week for 15 months, or 25 to 34 hours per week for 12 months.

(3) Each applicant working full-time shall spend 80 percent of the week in direct client contact and activities related to client management.

(4) Each applicant working part-time shall spend 100 percent of the week in direct client contact and activities related to client management.

(5) "Direct client contact" means assessment, diagnosis, evaluation, screening, habilitation, or rehabilitation of persons with speech, language, or hearing handicaps.

(6) Each postgraduate professional experience supervisor shall be currently and fully licensed in Kansas for speech-language pathology or audiology or, if the experience was completed in another state, either be currently and fully licensed in that state or hold the certificate of clinical competence issued by the American speech-language-hearing association. The supervisor's license or certificate shall be in the area for which the applicant seeks licensure.

(7) The supervisor shall evaluate the applicant on no less than 36 occasions of monitoring activities with at least four hours per month. The supervisor shall make at least 18 on-site observations with at least two hours per month.

(8) Monitoring occasions may include on-site observations, conferences in person or on the telephone, evaluation of written reports, evaluations by professional colleagues, or correspondence.

(9) The supervisor shall maintain detailed written records of all contacts and conferences during this period. If the supervisor determines that the applicant is not providing satisfactory services at any time during the period, the supervisor shall

inform the applicant in writing and submit written reports to the applicant during the period of resolution.

(10) No licensee shall be approved to serve as a supervisor for a postgraduate professional experience once the secretary initiates a disciplinary proceeding pursuant to K.S.A. 65-6508, and amendments thereto. After the disciplinary action or actions have been concluded, a licensee whose license has been reinstated or otherwise determined to be in good standing may be considered as a supervisor.

(i) Each applicant shall be required to pass the specialty area test of the national teacher examination of the educational testing service in the area for which licensure is being sought. The passing score for the examination shall be 600.

(1) The educational testing service shall administer the examinations at least twice a year within Kansas.

(2) Each applicant shall register to take the examination through the educational testing service, pay the examination fee directly to the educational testing service, and request that the test score be sent directly to the department from the educational testing service. (Authorized by K.S.A. 65-6503; implementing K.S.A. 2010 Supp. 65-6505; effective Dec. 28, 1992; amended March 16, 2001; amended April 16, 2010; amended April 8, 2011.)

28-61-3. Application for a license. (a) Each individual applying for a license shall submit to the department a completed department-approved application form, the required supporting documentation showing completion of all qualifications for licensure, and the appropriate fee as specified in K.A.R. 28-61-9.

(b) Each applicant shall provide to the department the applicant's academic transcripts and proof of completion of the educational requirements specified in K.S.A. 65-6505, and amendments thereto. These documents shall be provided directly to the department by the academic institution.

(c) Each applicant who seeks licensure in both speech-language pathology and audiology shall submit a separate application for each license, meet the qualifications for each license, and pay the fee for each license as specified in K.A.R. 28-61-9. (Authorized by K.S.A. 65-6503; implementing K.S.A. 2010 Supp. 65-6505 and K.S.A. 65-6506; effective Dec. 28, 1992; amended March 16, 2001; amended April 8, 2011.)

28-61-4. Application for a temporary license. (a) Each applicant who has completed the education and clinical practicum pursuant to K.S.A. 65-6505, and amendments thereto, but has not completed a supervised postgraduate professional experience or examination, or both, shall apply for a temporary license. This temporary license shall be issued for a period of 12 months and may be renewed for one subsequent 12-month period upon request and with the secretary's approval.

(b) Each applicant applying for a temporary license shall submit to the department a completed department-approved application form, the required supporting documentation showing completion of education and clinical practicum, and the appropriate fee as specified in K.A.R. 28-61-9.

(c) Each applicant shall provide to the department the applicant's academic transcripts and proof of completion of the educational requirements specified in K.S.A. 65-6505, and amendments thereto. These documents shall be provided directly to the department by the academic institution.

(d) Each applicant seeking a temporary license for the purpose of completing a supervised postgraduate professional experience shall receive a temporary license before beginning the supervised postgraduate professional experience.

(1) Each applicant shall provide to the department a plan for completion of the supervised postgraduate professional experience that has been signed by a supervisor who is currently fully licensed in Kansas in the area in which the applicant seeks licensure.

(2) Each applicant shall report any changes in the plan to the department.

(3) At the conclusion of the supervised postgraduate professional experience, each supervisor shall sign and submit to the department a report that documents satisfactory completion of the supervised postgraduate professional experience.

(e) To renew a temporary license, each applicant shall submit to the secretary a letter of appeal, supporting documentation showing that the examination or supervised postgraduate professional experience, or both, was not completed, and the temporary licensure fee as specified in K.A.R. 28-61-9.

(f) Each applicant who seeks temporary licensure in both speech-language pathology and audiology shall submit a separate application for each temporary license, meet the qualifications for

each temporary license, and pay the fee for each temporary license.

(g) A temporary license may be issued to enable an applicant for reinstatement to complete the continuing education requirements. This license shall be valid for not more than 12 months and shall not be renewed. (Authorized by K.S.A. 65-6503; implementing K.S.A. 2010 Supp. 65-6505 and K.S.A. 65-6506; effective Dec. 28, 1992; amended March 16, 2001; amended April 8, 2011.)

28-61-5. License renewal. (a) Each applicant for renewal of a license shall submit the following to the secretary:

(1) A completed secretary-approved application form;

(2) the required supporting documentation; and

(3) the license renewal fee as specified in K.A.R. 28-61-9.

(b) Each applicant for renewal of a license shall have completed the required clock-hours of documented and approved continuing education during each licensure period immediately preceding renewal of the license. Approved continuing education clock-hours completed in excess of the requirement shall not be carried over to the subsequent renewal period. There shall be 20 hours of approved continuing education required for each applicant holding a single two-year license and 30 hours required if the applicant is licensed in both speech-language pathology and audiology.

(c) Each applicant shall maintain individual records consisting of documentation and validation of approved continuing education clock-hours, a summary of which shall be submitted to the secretary on the approved form as part of the license renewal application.

(d) For the purpose of measuring continuing education credit, "one clock-hour" shall mean at least 50 minutes of direct instruction, exclusive of registration, breaks, and meals.

(e) The content and objective of the continuing education activity shall be primarily related to the practice of speech-language pathology as defined by K.S.A. 65-6501, and amendments thereto, or the practice of audiology as defined by K.S.A. 65-6501, and amendments thereto.

(1) The educational activity shall be for the purpose of furthering the applicant's education in one of the following three content areas:

(A) Basic communication processes, including information applicable to the normal development and use of speech, language, and hearing.

Issues related to this content area may include any of the following:

(i) Anatomic and physiologic bases of the normal development and use of speech, language, and hearing;

(ii) physical bases and processes of the production and perception of speech, language, and hearing;

(iii) linguistic and psycholinguistic variables related to normal development and use of speech, language, and hearing; or

(iv) technological, biomedical, engineering, and instrumentation information;

(B) professional areas, including information pertaining to disorders of speech, language, and hearing. Issues related to this content area may include any of the following:

(i) Various types of communication disorders, their manifestations, classifications, and causes;

(ii) evaluation skills, including procedures, techniques, and instrumentation for assessment; or

(iii) management procedures and principles in habilitation and rehabilitation of communication disorders; or

(C) related areas, including study pertaining to the understanding of human behavior, both normal and abnormal, as well as services available from related professions that apply to the contemporary practice of speech-language pathology, audiology, or both. Issues related to this content area may include any of the following:

(i) Theories of learning and behavior;

(ii) services available from related professions that also deal with persons who have disorders of communications;

(iii) information from these professions about the sensory, physical, emotional, social, or intellectual states of child or adult; or

(iv) other areas, including general principles of program management, professional ethics, clinical supervision, counseling, and interviewing.

(2) Unacceptable content areas shall include marketing, personal development, time management, human relations, collective bargaining, and tours.

(3) The educational activity shall not be a part of the applicant's job responsibilities. In-service shall be considered part of the applicant's job responsibilities.

(f) Continuing education may be accrued by any of the following methods:

(1) Academic coursework related to the contemporary practice of speech-language pathology or audiology, offered by a regionally accredited

college or university and documented by transcript or grade sheet:

(A) One academic-semester credit hour shall be equivalent to 15 clock-hours of continuing education. One academic-trimester credit hour shall be equivalent to 14 clock-hours of continuing education. One academic-quarter credit hour shall be equivalent to 10 clock-hours of continuing education; and

(B) one audited academic-semester credit hour shall be equivalent to eight clock-hours of continuing education. One audited academic-trimester credit hour shall be equivalent to seven clock-hours of continuing education. One audited academic-quarter credit hour shall be equivalent to five clock-hours of continuing education;

(2) workshops, seminars, poster sessions, and educational sessions sponsored by an organization, agency, or other entity that has been approved by the secretary:

(A) One clock-hour of contact between either a presenter or instructor and the applicant shall be equivalent to one clock-hour of continuing education for the applicant;

(B) contact time shall be rounded down to the nearest one-half hour interval; and

(C) one-half clock-hour of continuing education credit shall be awarded for attendance at two poster displays, with a maximum of two clock-hours of continuing education awarded for attendance at poster displays per licensure period;

(3) preparation and presentation of a new seminar, lecture, or workshop according to the following criteria:

(A) "New" shall mean that the applicant is preparing and making the presentation for the first time in any setting;

(B) credit shall be awarded only for the first presentation at the rate of two clock-hours of continuing education for every one clock-hour of contact between the instructor and attendees; and

(C) if the presentation was given by more than one instructor, the continuing education clock-hours shall be prorated among the instructors;

(4) preparation and presentation of a new undergraduate or graduate course in speech-language pathology or audiology at an accredited college or university:

(A) "New" shall mean that the applicant is teaching the course for the first time in any setting;

(B) six clock-hours of credit shall be awarded per new course, up to a maximum of 12 clock-hours per licensure period; and

(C) if the course was prepared and presented by more than one instructor, the continuing education clock-hours shall be prorated among the instructors;

(5) the successfully completed supervision of a postgraduate professional experience as specified in K.A.R. 28-61-2 and K.A.R. 28-61-4:

(A) The licensee's name and signature shall appear as the supervisor on the temporary license application submitted by the supervisee as specified in K.A.R. 28-61-4(d)(1);

(B) five clock-hours of credit per supervisee shall be awarded to the licensee; and

(C) the maximum amount of credit awarded for the supervision of a postgraduate professional experience shall be five clock-hours per licensee per licensure period; or

(6) self-directed study courses that are directly oriented to improving the applicant's professional competence and that are approved by the secretary:

(A) Self-directed study courses shall receive prior approval from the secretary;

(B) courses shall be sponsored by a nationally recognized professional organization in audiology or speech-language pathology and shall be accompanied by an examination or measurement tool to determine successful completion of the course;

(C) self-study materials may include audiotapes, videotapes, study kits, digital video discs (DVDs), and courses offered through the internet or other electronic medium; and

(D) one clock-hour of time required to complete the self-directed study material, as specified by the sponsor of the material, shall be equivalent to one clock-hour of continuing education.

(g) Continuing education sponsors seeking prior approval for a single offering of a continuing education activity shall apply to the secretary. Approval may be granted by the secretary by one of the following methods.

(1) An organization, institution, agency, or individual shall be qualified for approval as a sponsor of a continuing education activity if, after review of the application, the secretary determines that the applicant meets all of the following conditions:

(A) The sponsor presents organized programs of learning.

(B) The sponsor presents subject matters that integrally relate to the practice of speech-language pathology or audiology, or both, as specified in subsection (e).

(C) The sponsor's program activities contribute to the professional competency of the licensee.

(D) The sponsor's program presenters are individuals who have education, training, or experience that qualifies them to present the subject matter of the program.

(2) An organization, institution, agency, or individual shall be qualified for approval as a sponsor of continuing education if the American speech-language-hearing association or the American academy of audiology has approved the organization, institution, agency, or individual as a continuing education sponsor and the sponsor presents subject matter as specified in subsection (e).

(h) Continuing education sponsors seeking long-term sponsorship for continuing education activities shall apply to the secretary. Approval may be granted by the secretary if the organization, institution, agency, or individual agrees to perform all of the following:

(1) Present organized programs of learning;

(2) present subject matter that integrally relates to the practice of speech-language pathology or audiology, or both, and subsection (e);

(3) approve and present program activities that contribute to the professional competency of the licensee; and

(4) sponsor program presenters who are individuals with education, training, or experience that qualifies them to present the subject matter of the programs.

(i) All approved continuing education sponsors that received approval by the method specified in subsection (g) shall provide the following:

(1) A certificate of attendance to each licensee who attends a continuing education activity. The certificate shall state the following:

(A) The sponsor's name and approval number;

(B) the date of the program;

(C) the name of the participant;

(D) the total number of clock-hours of the program, excluding introductions, registration, breaks, and meals;

(E) the program's title and its presenter;

(F) the program site; and

(G) a designation of whether the program is approved for speech-language pathology or audiology, or both; and

(2) a list of attendees, license numbers, and the number of continuing education clock-hours completed by each licensee upon request and in a format approved by the secretary.

(j)(1) Each licensee who attends any activities of continuing education sponsored by the American speech-language-hearing association or the American academy of audiology shall retain either of the following:

(A) The letter of confirmation received from the continuing education registry of the American speech-language-hearing association or the American academy of audiology that includes the following:

(i) The licensee's name, address, and social security number;

(ii) the course title;

(iii) the sponsor's name; and

(iv) the number of continuing education units awarded; or

(B) the licensee's transcript from the continuing education registry of the American speech-language-hearing association or the American academy of audiology.

(2) One continuing education unit shall be equivalent to 10 clock-hours of continuing education.

(k) All continuing education sponsors that received approval by the method outlined in subsection (g) shall report to the secretary annually to maintain the designation as an approved sponsor. The application shall require a list of all continuing education programs provided by the approved sponsor during the previous calendar year and any additional documentation deemed necessary by the secretary to ensure that the approved sponsor is meeting or exceeding the standards set forth in this article.

(l) Each licensee who completes a continuing education activity that was not sponsored by an approved continuing education sponsor shall retain course documentation for review by the secretary at the time of license renewal.

(m) Each licensee whose initial licensure period is less than 24 months shall be required to obtain at least one clock-hour of continuing education for each month in the initial licensure period if the licensee holds a single license and at least one and one-quarter clock-hours of continuing education for each month in the initial licensure period if the licensee holds a dual license. (Authorized by K.S.A. 65-6503; implementing K.S.A. 65-6506; effective Dec. 28, 1992; amended March 16, 2001; amended April 16, 2010.)

28-61-6. Application for person with license issued by another state. (a) Each applicant applying for a license who is presently or has

been licensed in another state shall submit a completed department-approved application form with the license fee as specified in K.A.R. 28-61-9.

(b) Each application shall be evaluated by comparing the qualifications met to obtain the original license, and any subsequent licenses, with the current qualifications for Kansas licensure. The qualifications of one of the states that issued a license shall be equal to or in excess of the Kansas licensure qualifications at the time the applicant seeks a Kansas license.

(c) Each applicant shall be in good standing with each licensing agency that has issued a license to the applicant.

(d) "Good standing" means both of the following:

(1) The applicant's license is not under any administrative proceeding.

(2) The applicant's license is not under any disciplinary action. (Authorized by K.S.A. 65-6503; implementing K.S.A. 1999 Supp. 65-6506; effective Dec. 28, 1992; amended March 16, 2001.)

28-61-7. Reinstatement of a lapsed license. (a) Each applicant whose license has lapsed shall pay the reinstatement fee and license renewal fee as specified in K.A.R. 28-61-9.

(b) Each applicant whose license has lapsed shall, within five years of the most recent expiration date, reinstate that license by submitting evidence that the applicant has accumulated, within the past two calendar years before the date of application for reinstatement, 20 contact hours of approved continuing education.

(c) Each applicant whose Kansas license has lapsed for more than five years beyond its expiration date shall reinstate by submitting any of the following types of evidence:

(1) Current licensure in another jurisdiction that requires completion of a number of contact hours of continuing education for license renewal that is equivalent to or greater than the number of hours required in Kansas;

(2) licensure in another jurisdiction sometime during the preceding five-year period, and completion of 20 contact hours of approved continuing education within two calendar years before the date of application for reinstatement; or

(3) satisfactory completion of a plan for reinstatement that has been submitted to and approved by the speech-language pathology and audiology advisory board and by the department. (Authorized by K.S.A. 65-6503; implementing

K.S.A. 1999 Supp. 65-6506; effective Dec. 28, 1992; amended March 16, 2001.)

28-61-8. Assistants. (a) Each speech-language pathology assistant and each audiology assistant shall meet the following criteria:

(1) Have received a high school diploma or equivalent;

(2) complete a training program conducted by a Kansas-licensed speech-language pathologist or audiologist. This training shall include the following:

(A) Ethical and legal responsibilities;

(B) an overview of the speech, language, and hearing disorders;

(C) response discrimination skills;

(D) behavior management;

(E) charting of behavioral objectives and recordkeeping;

(F) teaching principles, if applicable to the employment setting; and

(G) other skill training as required by the employment setting; and

(3) receive ongoing supervised training by a Kansas-licensed speech-language pathologist or audiologist for at least one hour per month.

(b) Any speech-language pathology assistant or audiology assistant may perform the following:

(1) Follow documented treatment plans and protocols that are planned, designed, and supervised by a Kansas-licensed speech-language pathologist or audiologist;

(2) record, chart, graph, report, or otherwise display data relative to client performance, including hearing screenings, and report this information to a supervising speech-language pathologist or audiologist;

(3) participate with a Kansas-licensed speech-language pathologist or audiologist in research projects, public relations programs, or similar activities;

(4) perform clerical duties, including preparing materials and scheduling activities as directed by a Kansas-licensed speech-language pathologist or audiologist;

(5) prepare instructional materials; and

(6) perform equipment checks and maintain equipment, including hearing aids.

(c) A speech-language pathology assistant or audiologist assistant shall not perform any of the following:

(1) Perform standardized or nonstandardized diagnostic tests, conduct formal or informal eval-

uations, or provide clinical interpretations of test results;

(2) participate in parent conferences, case conferences, or any interdisciplinary team without the presence of a supervising Kansas-licensed speech-language pathologist or audiologist;

(3) perform any procedure for which the assistant is not qualified, has not been adequately trained, or is not receiving adequate supervision;

(4) screen or diagnose clients for feeding or swallowing disorders;

(5) write, develop, or modify a client's individualized treatment plan in any way;

(6) assist clients without following the individualized treatment plan prepared by a Kansas-licensed speech-language pathologist or audiologist or without access to supervision;

(7) sign any formal documents, including treatment plans, reimbursement forms, or reports. An assistant shall sign or initial informal treatment notes for review and signing by a Kansas-licensed speech-language pathologist or audiologist;

(8) select clients for services;

(9) discharge a client from services;

(10) make referrals for additional services;

(11) use a checklist or tabulate results of feeding or swallowing evaluations;

(12) demonstrate swallowing strategies or precautions to clients, family, or staff; or

(13) represent that person as a speech-language pathologist or audiologist.

(d) Each assistant shall be supervised by a Kansas-licensed speech-language pathologist or audiologist. The supervisor shall be licensed to practice in the field in which the assistant is providing services.

(1) Each supervisor shall be responsible for determining that the assistant is satisfactorily qualified and prepared for the duties assigned to the assistant.

(2) Each supervisor shall obtain, retain, and maintain on file documentation of the assistant's qualifications and training outlined in subsection (a).

(3) Only the supervisor shall exercise independent judgment in performing professional procedures for the client. The supervisor shall not delegate the exercise of independent judgment to the assistant.

(4) A speech-language pathologist or audiologist who holds a temporary license shall not be eligible to supervise assistants.

(e) Each supervisor shall directly supervise at least 10 percent of the assistant's client con-

tact time. No portion of the assistant's direct client contact shall be counted toward the ongoing training required in subsection (a). No portion of the assistant's time performing activities under indirect supervision shall be counted toward client contact time.

(f) "Direct supervision" shall mean the on-site, in-view observation and guidance provided by a speech-language pathologist or audiologist to an assistant while the assistant performs an assigned activity.

(g) "Indirect supervision" shall mean the type of guidance, other than direct supervision, that a speech-language pathologist or audiologist provides to an assistant regarding the assistant's assigned activities. This term shall include demonstration, record review, and review and evaluation of audiotaped sessions, videotaped sessions, or sessions involving interactive television.

(h) Each supervisor shall, within 30 days of employing an assistant, submit written notice to the department of the assistant's name, employment location, and verification that the assistant meets the qualifications listed in subsection (a). Each supervisor shall notify the department of any change in the status of an assistant.

(i) Each supervisor shall perform all of the following tasks:

(1) Develop a system to evaluate the performance level of each assistant under the licensee's supervision;

(2) retain and maintain on file documentation of the performance level of each assistant supervised; and

(3) report to the department at the time of the supervisor's license renewal, on a department-approved form, the name and employment location of each assistant. (Authorized by K.S.A. 65-6503; implementing K.S.A. 65-6501; effective Dec. 28, 1992; amended March 16, 2001; amended April 16, 2010.)

28-61-9. Fees. (a) The license fee shall be \$135.00. The license application fee for an initial licensure period of less than 24 months shall be prorated at \$5.50 per month for any full or partial month, until October 31 of the calendar year that is not less than 12 months and not more than 24 months from the date of application.

(b) The temporary license fee and temporary license renewal fee shall be \$65.00.

(c) The license renewal fee shall be \$135.00.

(d) The late license renewal fee shall be \$50.00.

(e) The license reinstatement fee shall be \$135.00.

(f) The wall or wallet card license replacement fee shall be \$10.00.

(g) The sponsorship application fee shall be \$150.00. (Authorized by and implementing K.S.A. 1999 Supp. 65-6512; effective Dec. 28, 1992; amended March 16, 2001.)

28-61-10. Change of name or address.

(a) Each licensee shall notify the department of any name or address change within 15 days of the change. Each licensee who fails to comply with this regulation may be subject to disciplinary action by the department pursuant to K.S.A. 65-6508, and amendments thereto.

(1) Notice of each address change shall be submitted to the department and shall include the licensee's name, license number, previous mailing address, and new mailing address.

(2) Complete notification of each name change shall meet the following criteria:

(A) Be submitted to the department in writing within 90 days of the change;

(B) include the licensee's previous name, new name, and license number; and

(C) be accompanied by a copy of a marriage certificate, court decree evidencing the change, or a social security card reflecting the new name.

(b) Each licensee seeking a replacement license or license renewal card, or both, shall perform the following:

(1) Submit a department-approved form for each and payment of the applicable replacement fee; and

(2) return, if possible, the most recently issued license or license renewal card, or both. (Authorized by and implementing K.S.A. 65-6503; effective Dec. 28, 1992; amended March 16, 2001.)

28-61-11. Unprofessional conduct. Each of the following acts by a licensee shall be evidence of unprofessional conduct:

(a) Misrepresenting any professional qualifications or credentials, including any of the following:

(1) Impersonating another licensed professional;

(2) knowingly allowing the use of one's license or license number by another person; or

(3) using an academic title that has not been conferred by an accredited educational institution;

(b) improper certification of services rendered when these services were not provided or supervised by the licensee;

(c) falsifying documents of personal data or qualifications in the application for licensure;

(d) aiding in the submission of false information or sanctioning the submission of false information for the purpose of another person obtaining licensure;

(e) misrepresenting services provided under one's professional license;

(f) promoting or endorsing products in a false or misleading manner;

(g) making unsupported or misleading claims about the efficacy of any professional service;

(h) performing services that fall under the scope of practice but for which the licensee has not received training that can be documented by an academic transcript or a certificate of training completion;

(i) performing or offering to perform services that are unwarranted;

(j) billing or receiving remuneration for services not rendered;

(k) withholding or failing to provide information that might affect a client's decision regarding the establishment or continuation of the professional relationship;

(l) failing to disclose to a client a proprietary interest in any commercial enterprise that might affect the client's decision regarding services;

(m) using undue influence, the threat of harm, or any false claim of future risk in order to promote sales, services, or products for personal gain or profit;

(n) failing to exercise appropriate supervision over clinical practicum students, temporarily licensed postgraduate professionals, or assistants with whom the licensee has a supervisory relationship;

(o) failing to report to the department alleged violations by speech-language pathologists and audiologists of Kansas statutes or regulations pertaining to the practice of speech-language pathology and audiology; and

(p) refusing to cooperate in a timely manner with the investigation of complaints under the jurisdiction of the Kansas department of health and environment. (Authorized by K.S.A. 65-6503 and 65-6508; implementing K.S.A. 65-6508; effective March 16, 2001; amended April 25, 2008.)

Article 65.—EMERGENCY PLANNING AND RIGHT-TO-KNOW

GENERAL REGULATIONS

28-65-1. General provisions. (a) The provisions of 40 C.F.R. Parts 350, 355, 370, and 372, dated July 1, 2018, including any notes and appendices, unless otherwise specifically stated in this article of the department's regulations, are hereby adopted by reference. If the same term is defined both in the Kansas statutes or this article of the department's regulations and in any federal regulation adopted by reference in this article of the department's regulations and the term is defined differently, the definition prescribed in the Kansas statutes or this article of the department's regulations shall control.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

(1) "The United States" shall be replaced with "the state of Kansas."

(2) "Environmental protection agency," "EPA," and "agency" shall be replaced with "Kansas department of health and environment," "KDHE," and "department," respectively, unless the term is used in reference to the EPA web site.

(3) "Administrator" and "regional administrator" shall be replaced with "secretary of the department of health and environment."

(4) "Federal register" shall be replaced with "Kansas register."

(5) "40 C.F.R. 350.16" shall be replaced with "K.A.R. 28-65-3(f)."

(6) "This chapter" and "this section" shall be replaced by "these regulations."

(7) "5 U.S.C. 552(b)(4)" shall be replaced by "K.S.A. 65-3015, and amendments thereto."

(8) "18 U.S.C. 1905" shall be replaced by "K.S.A. 45-215 et seq., and amendments thereto."

(9) "The Office of General Counsel, U.S. Environmental Protection Agency, Mailcode 2310A, 1200 Pennsylvania Avenue, NW, Washington DC 20460" shall be replaced by "the Office of General Counsel, Kansas Department of Health and Environment, 1000 SW Jackson Street, Topeka, Kansas 66612."

(c) The following sections shall be deleted:

(1) 40 C.F.R. 350.3(c); and

(2) 40 C.F.R. 350.16. (Authorized by and implementing K.S.A. 65-5704; effective, T-88-62, Dec.

30, 1987; effective May 1, 1988; amended Nov. 22, 1993; amended June 4, 1999; amended March 26, 2021.)

28-65-2. Definitions. As used in this article of the department's regulations, each of the following terms shall have the meaning specified in this regulation: (a) "Commission" has the meaning specified in K.S.A. 65-5702, and amendments thereto.

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

(c) "Extremely hazardous substance" means a substance listed in the appendices to 40 C.F.R. Part 355, emergency planning and notification, dated July 1, 2018 or on the list of Kansas reportable chemicals authorized by K.S.A. 65-5704, and amendments thereto.

(d) "Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person, or by any person who controls, is controlled by, or is under common control with, that person. For purposes of emergency release notification, the term shall include motor vehicles, rolling stock, and aircraft. For the purposes of toxic release reporting, any facility may contain more than one establishment, as defined in 40 C.F.R. 372.3, which is adopted in K.A.R. 28-65-1.

(e) "Federal act" has the meaning specified in K.S.A. 65-5702, and amendments thereto.

(f) "Kansas tier II form" and "tier II form" mean the hazardous chemical inventory form developed by the department.

(g) "Kansas tier II software" means the computer software developed for the department to allow an owner or operator of a facility to file the Kansas tier II form by electronic submission.

(h) "Material safety data sheets," "MSDS," "safety data sheets," and "SDS" mean reporting sheets required under the occupational safety and health act, 29 U.S.C. 651 et seq., as amended, and 29 C.F.R. 1910.1200.

(i) "Operator" means the owner or owner's designee who is director of a business, service, or industrial concern and conducts the affairs or manages an activity.

(j) "Owner" means proprietor or the person in whom is vested ownership, dominion, possession, or title of property. (Authorized by and implementing K.S.A. 65-5704; effective, T-88-62, Dec. 30, 1987; effective May 1, 1988; amended Nov.

22, 1993; amended Nov. 28, 1994; amended June 4, 1999; amended March 26, 2021.)

28-65-3. Submitting notifications and reports. (a) Each notification and report required to be submitted to the commission under sections 302 and 311 of the federal act and this article of the department's regulations shall be completed using the Kansas tier II form, which shall be submitted to the department's radiation control program in hard copy or by electronic submission.

(b) Each notification and report required to be submitted to the commission under section 312 of the federal act and this article of the department's regulations shall be completed using the Kansas tier II software. The Kansas tier II form shall be submitted to the radiation control program of the department electronically.

(c) Each toxic chemical release form submitted pursuant to section 313 of the federal act shall be submitted to the department's radiation control program before July 1 of each year for the previous calendar year.

(d) Each emergency release notification submitted pursuant to section 304 of the federal act shall be submitted to the division of emergency preparedness of the adjutant general's department.

(e) Each owner or operator of a facility required to report under this regulation shall notify the department within 60 days after either of the following:

(1) A change in the name, address, or both, of the owner or operator responsible for filing the facility report; or

(2) facility closure.

(f) Each claim of trade secrecy under sections 311, 312, and 313 of the federal act and each public petition requesting disclosure of chemical identities claimed as a trade secret shall be filed on a form provided by the department. The address to send all claims of trade secrecy under sections 311, 312, and 313 of the federal act shall be the address on the form provided by the department. (Authorized by and implementing K.S.A. 65-5704; effective, T-88-62, Dec. 30, 1987; effective May 1, 1988; amended, T-89-19, May 27, 1988; amended Sept. 26, 1988; amended Nov. 22, 1993; amended Nov. 28, 1994; amended June 4, 1999; amended March 26, 2021.)

28-65-4. Fees. (a) Except as provided in subsection (d), each owner or operator of a facility

required to report under section 312 of the federal act and K.A.R. 28-65-3 shall pay an annual report fee based upon the sum of the maximum daily reportable quantities of extremely hazardous substances or hazardous chemicals, or both, present at the facility as reported on the Kansas tier II form. These fees shall be calculated on forms provided by the department using the tables in paragraphs (c)(1) and (c)(2) as appropriate. The fees required under this subsection shall be submitted to the department before March 1 of each year at the time of submission of the Kansas tier II form.

(b) Each owner or operator of a facility required to file the toxic chemical release form required under section 313 of the federal act and K.A.R. 28-65-3 shall pay an annual report fee based upon the total quantity of chemicals released as reported on the federal form R. These fees shall be calculated on forms provided by the department using table 3 in paragraph (c)(4). The fees required under this subsection shall be submitted to the department before July 1 of each year at the time of submission of the federal form R.

(c)(1) Fees on the total maximum daily reportable quantity of extremely hazardous substances listed on the Kansas tier II form required under subsection (a) shall be determined using table 1 as follows:

Table 1

Sum of the maximum daily amounts of all extremely hazardous substances reported (pounds)	Annual fee
1 - 9,999	\$25
10,000 - 999,999	\$50
1,000,000 or greater	\$150

(2) Fees on the total maximum daily reportable quantity of hazardous chemicals listed on the Kansas tier II form required under subsection (a) shall be determined using table 2 as follows:

Table 2

Sum of the maximum daily amounts of all hazardous chemicals reported (pounds)	Annual fee
10,000 - 99,999	\$25
100,000 - 999,999	\$50
1,000,000 - 9,999,999	\$150
10,000,000 or greater	\$300

(3) For the purposes of this subsection, the term "hazardous chemical" shall not include any extremely hazardous substances or sand, gravel, clay, salt, or brine or other comparable substances

as approved by the department in the calculation of fees.

(4) Fees payable under subsection (b) on the total quantity of chemicals released reported on the federal form R shall be determined as follows:

Table 3

Sum of the total chemical releases reported (pounds)	Annual fee
100 - 19,999	\$250
20,000 - 99,999	\$700
100,000 - 999,999	\$1,700
1,000,000 or greater	\$3,000

(d) Each owner or operator of an oil or gas well that is required to report under section 312 of the federal act and K.A.R. 28-65-3 shall pay an annual fee of \$25. For the purposes of this subsection, the term "well" shall have the meaning specified in K.S.A. 55-150, and amendments thereto. The fee required under this subsection shall be submitted to the department before March 1 of each year at the time of submission of the Kansas tier II form.

(e) All fees shall be remitted by check, draft, or money order payable to the department and shall be nonrefundable. Any owner or operator may make an aggregate payment covering more than one facility by a single check, draft, or money order if a statement that indicates each individual facility name, address, and the amount of the fee for which payment is made accompanies each aggregate payment.

(f) An owner or operator of a facility subject to this article of the department's regulations shall not be charged a fee for chemical information submitted on a voluntary basis beyond that required under K.A.R. 28-65-3 if the optional nature of the information is clearly marked in the appropriate box on the Kansas tier II form. (Authorized by and implementing K.S.A. 65-5704; effective Nov. 22, 1993; amended Nov. 28, 1994; amended March 26, 2021.)

Article 66.—LOCAL ENVIRONMENTAL PROTECTION GRANT PROGRAM

28-66-1. Definitions. As used in K.A.R. 28-66-1 through 28-66-4 unless otherwise specified:

(a) "Base grant" means state water plan fund monies allocated to the Kansas department of health and environment and awarded to local entities for the purpose of developing and implementing a local environmental protection plan for a term which coincides with the state fiscal year.

(b) "Core program" means services that shall be provided by each local entity that is awarded a base grant, and which include the following:

(1) The development and implementation of an annual local environmental protection plan;

(2) the development, implementation, and enforcement of an environmental code which has been approved by the secretary of KDHE and which establishes standards for the management of on-site wastewater systems for the treatment and disposal of domestic sewage only;

(3) the development, implementation and enforcement of an environmental code which has been approved by the secretary of KDHE and which establishes standards for the management water supply wells which do not meet the definition of a public water supply well pursuant to K.S.A. 65-162a (b);

(4) information, education, and technical assistance; and

(5) organization and coordination of a local environmental protection committee to provide advice and counsel to the local entity on the content and administration of the local environmental protection plan.

(c) "KDHE" means the Kansas department of health and environment.

(d) "Local environmental protection plan" means a document revised annually by the local entity which includes objectives and workplans intended to implement the environmental protection strategy of the state water plan and which serves as the application for a base grant.

(e) "Local entity" means a county health department formed pursuant to K.S.A. 19-3701 et seq. and amendments thereto, other local entity formed under the power of the board of county commissioners to conduct any of the business of the county pursuant to K.S.A. 1992 Supp. 19-101a, or a multi-county entity formed pursuant to K.S.A. 12-2901 et seq. and amendments thereto.

(f) "Program guidelines" means a document prepared by KDHE by April 1 of each year which establishes program priorities, grant application and program reporting procedures, and other pertinent grant instructions for the next state fiscal year.

(g) "Secretary" means the secretary of KDHE.

(h) "Supplemental program" means any of the following:

(1) The development and implementation of a plan for subdivision water and wastewater pursu-

ant to K.S.A. 1992 Supp. 12-747, K.S.A. 65-3311 and amendments thereto;

(2) the development and implementation of a solid waste management plan pursuant to K.S.A. 65-3405 and amendments thereto;

(3) the development and implementation of a hazardous waste management plan that is consistent with K.S.A. 65-3430 and amendments thereto;

(4) participation in the development and implementation of a nonpoint source pollution control plan which identifies the activities and responsibilities of the local environmental protection program in the management of nonpoint pollutant sources; and

(5) the development and implementation of a public water supply protection plan which at a minimum:

(A) specifies the duties of local government agencies, the public water supplier and other local entities in the development and implementation of a public water supply protection plan;

(B) defines the public water supply protection area;

(C) identifies all potential contaminant sources within the defined public water supply protection area;

(D) identifies management practices which may be implemented to prevent contamination of the public water supply by each identified contaminant source, including but not limited to information and education, technical assistance, financial assistance, and the use of local ordinances;

(E) establishes a contingency plan to provide an alternate source of drinking water for each public water supply in the case that the public water supply becomes contaminated;

(F) requires that for any new public water supply all potential contaminant sources within the expected protection area be identified and management practices for each contaminant source identified; and

(G) provides for public participation in the development of any public water supply protection plan.

(i) "Target grant" means funding which may be awarded to a local entity in addition to a base grant for the purpose of conducting an approved program objective for which base grant funds are not sufficient. (Authorized by and implementing K.S.A. 75-5657; effective Feb. 28, 1994.)

28-66-2. Base grants. (a) A local entity may apply for a local environmental protection base grant each year on forms provided by KDHE.

(b) Base grant amounts shall be subject to the availability of funding.

(c) All base grant payments shall be made contingent upon the submission to KDHE of quarterly program and fiscal reports, as required in the grant award agreement, which are determined by KDHE to demonstrate satisfactory progress toward completion of approved program objectives.

(d) Upon approval of its local environmental protection plan by KDHE, a local entity shall be eligible to receive a base grant for the implementation and maintenance of the approved local environmental protection plan.

(e) Allocation of base grants shall be made in accordance with the following formula where population is the population of the local entity as determined by the most recent United States census figures for the state of Kansas:

(1) Counties with a population less than 12,727 shall be eligible for a base grant which is equal to or greater than \$7,000;

(2) counties with a population greater than 227,273 shall be eligible for a base grant which is equal to or greater than \$125,000;

(3) for all other counties the base grant shall be equal to or greater than the product of the county's population \times \$0.55; and

(4) a local entity which consists of multiple counties shall receive a base grant equal to or greater than the sum of the base grants for which each individual county would be eligible under subsections (e) (1) through (e) (3) of this regulation.

(f) During a given grant period, if the appropriation from the state water plan is not adequate to award each local entity the base grant amount for which it is eligible under subsection (e) of this regulation, then the amount for which the local entity would be eligible under subsection (e) shall be divided by the total amount of funding for which all local entities have applied. The quotient shall then be multiplied by the total amount of funding appropriated for local environmental protection grants to determine the amount of the local entity's grant.

(g) Base grant awards shall be made in the form of an agreement which is signed by the secretary and the signatories of the local environmental protection plan as described in K.A.R. 28-66-4 (a)

(1). The agreement shall establish:

(1) A schedule for the payment of the base grant to the local entity;

(2) approved objectives of the local environmental protection plan which the local entity agrees to execute;

(3) quarterly reporting requirements; and

(4) general terms which are necessary to ensure that the grant funds are expended and accounted for in accordance with applicable state statutes.

(h) Local environmental protection grant monies that remain after all base grants have been awarded may be made available to:

(1) Increase the base level of funding for which local entities are eligible as described in subsection (e) of this regulation; or

(2) provide target grants to base grant recipients on a case-by-case basis.

(i) Local environmental protection grant funds may be used to complement but shall not be used to replace financial assistance which a local entity may be eligible to receive from a separate source of funding established to support any core or supplemental program activity.

(j) Eligible program activities and projects. Only those activities and projects which result in the protection and restoration of the waters of the state shall be eligible for base or target grant funding. Eligible program activities include development and implementation of the core program and any supplemental program activity approved by KDHE.

(k) Eligible expenditures. Eligible expenditures of the base grant may include the reasonable and necessary costs of:

(1) Salary of personnel responsible for the execution of a program activity or project included in an approved local environmental protection plan;

(2) in-state and out-of-state travel, except that out-of-state travel shall require prior approval by KDHE unless it is incidental to the implementation of routine program activities included in an approved local environmental protection plan;

(3) capital equipment and supplies necessary to implement all requirements of an environmental code approved by the secretary of KDHE and adopted by resolution by the board of county commissioners, except that all capital equipment purchases greater than \$75.00 shall require prior written approval of KDHE. If a local entity withdraws from the local environmental protection program within three years of any approved capital equipment purchase, KDHE retains the authority to recover the capital equipment;

(4) purchasing, printing, production and dissemination of brochures, educational and technical assistance materials, or surveys;

(5) subcontracts with other governmental entities or private business for the purpose of

completing any portion of an approved local environmental protection plan, except that all subcontracts must receive prior approval by KDHE.

(1) Ineligible expenditures. Ineligible expenditures of the base grant include, but are not limited to, the following:

(1) Costs incurred prior to the beginning of the state fiscal year for which the base grant is awarded unless written approval for reimbursement of such costs is provided by KDHE;

(2) costs incurred after the end of the state fiscal year for which the base grant is awarded unless grant funds have been properly encumbered by the local entity;

(3) vehicle purchases; and

(4) construction costs of any facility or structure. (Authorized by and implementing K.S.A. 75-5657; effective Feb. 28, 1994.)

28-66-3. Target grants. (a) Upon KDHE's announcement of the availability of target grant funds, a target grant may be requested by a base grant recipient to conduct an approved objective for which the base grant is inadequate, except that the following requests shall be considered ineligible:

(1) Salary for permanent staff; and

(2) any activity or item specified in K.A.R. 28-66-2 (k).

(b) Application for target grants shall be made on forms provided by KDHE. Forms for target grants shall not be made available until all base grants have been awarded.

(c) All terms of the base grant agreement shall apply to the target grant. (Authorized by and implementing K.S.A. 75-5657; effective Feb. 28, 1994.)

28-66-4. Local environmental protection plan. (a) A local environmental protection plan shall be developed annually by the local entity and shall be submitted and approved by KDHE prior to any grant award. The local environmental protection plan shall contain the following information:

(1) A cover sheet signed by the chairman of the county board of health and the program director appointed by the county board of health. If the grant applicant is a local entity other than a county health department, the local environmental protection plan shall be signed by the chairman of the board of county commissioners, a board formed pursuant to K.S.A. 12-2901 et seq. or K.S.A. 12-2908, or other legally formed board which has

been approved by KDHE as appropriate for the purposes of implementing a local environmental protection plan;

(2) a description of existing local ordinances and services in each of the core program and supplemental program areas identified in K.A.R. 28-66-1 (b) and K.A.R. 28-66-1 (h) respectively, including the name, address and phone number of the local person responsible for implementing the ordinances and services described;

(3) a statement of each objective for which funding is being requested, and a workplan which identifies the sequence of steps that will be completed in order to accomplish the stated objective and an approximate date of completion for each step; and

(4) a detailed program budget which identifies the costs of program operation including, but not limited to, personnel, travel, supplies, capital expenditures, and subcontracts.

(b) KDHE may issue a base grant after it has been determined that the local environmental protection plan is consistent with the environmental protection strategy of the state water plan, K.S.A. 75-5657, and all other statutes, regulations, documents or guidelines relevant to sanitary or environmental codes, or both, subdivision water and wastewater management, solid waste, hazardous waste, public water supply protection, and nonpoint source pollution.

(c) KDHE may withhold the approval of a local environmental protection plan if it is determined that the local entity has not satisfactorily completed the approved objectives under the previous year's local environmental protection plan, except that the applicant shall be given the opportunity to demonstrate compelling circumstances which prohibited the completion.

(d) Any local environmental protection plan may be amended during the state fiscal year. Each proposed amendment shall be submitted to KDHE in writing and KDHE shall provide written approval of the amendment. (Authorized by and implementing K.S.A. 75-5657; effective Feb. 28, 1994.)

Article 67.—HEALTH CARE DATABASE

28-67-1. Definitions. For purposes of the regulations in this article, the following words, terms and phrases are hereby defined as follows:

(a) "Aggregate data" means data which is obtained by combining like data in a manner which precludes specific identification of an individual.

(b) "Board" means the health care data governing board.

(c) "CHES" means the center for health and environmental statistics.

(d) "Compilation" means the arrangement of data collected by and furnished to the secretary acting under agreement with the secretary for release and dissemination to the public.

(e) "Fee fund" means the health care database fee fund created by K.S.A. 65-6804 and amendments thereto.

(f) "Health care data" means any data relating to health care, health status, including environmental factors, the health care system, costs and outcomes.

(g) "Health care information" means any health data that has been transformed from its raw form into a more general, less-technical form.

(h) "Health care provider" means any person, organization or entity that renders health care services as described in K.S.A. 65-6805 and amendments thereto.

(i) "Individual" means a single human being.

(j) "Patient or client" means an individual who receives any health care service.

(k) "Person" means any individual, association, partnership, corporation or other entity.

(l) "Primary data collection" means data that were previously unavailable for distribution to the public and are initially collected pursuant to this act.

(m) "Public domain data" means data that were previously collected and available to the public by another source.

(n) "Public health data" means data including epidemiological, health status and community health assessment data.

(o) "Public use data" means data that are available to the general public. This includes data available in electronic or any other form.

(p) "Record identifier" means a unique code generated and assigned to an individual record and used to identify that individual record among databases.

(q) "Secretary" means the secretary of the Kansas department of health and environment.

(r) "State agency" means any regents institution or department under the direction of a cabinet secretary, an elected official or regulatory board.

(s) "Third party payer" means any public or private payer of health care services and includes accident and sickness insurers, health maintenance organizations, health plans and alliances, nonprofit medical and hospital service organizations, and

fiscal intermediaries for government-funded programs. (Authorized by and implementing K.S.A. 65-6804, as amended by L. 1994, Ch. 90, sec. 3; effective Dec. 19, 1994.)

28-67-2. Health care database; information collected. Information regarding various health factors shall be obtained. The health factors shall include, but not be limited to:

(a) mortality and natality, including accidental causes of death;

(b) morbidity;

(c) health behavior;

(d) disability;

(e) health care costs and financing;

(f) health care human resources;

(g) health service utilization and availability;

(h) environmental contaminants;

(i) demographics;

(j) familial social and economic conditions affecting health status; and

(k) population-based health care outcomes. (Authorized by and implementing K.S.A. 65-6801, as amended by L. 1994, Ch. 90, sec. 2; effective Dec. 19, 1994.)

28-67-3. Health care data collection and submission. (a) Data shall be:

(1) collected and submitted under uniform parameters established by the secretary and approved by the board;

(2) obtained from existing data sources in the public and private sector, where available to minimize the imposition and cost of new reporting requirements;

(3) submitted by licensing boards and agencies, credentialing and registering agencies and health care providers on a schedule defined by the secretary and approved by the board;

(4) submitted by third party payers, on a calendar year basis, annually by July 1 of the following calendar year and shall:

(A) be derived from standard billing or data collection documents or their replacements; and

(B) include only information for services rendered in the calendar year; and adjustments made for 180 days after the close of the calendar year; and

(5) submitted in a manner that does not identify individuals except through the use of a record identifier established by the secretary and approved by the board; except for public domain data, where data may be submitted that includes identification of individuals.

(b) Special data collections.

(1) Special primary data collection and extrapolations may be used as an alternative to or to supplement collection of existing health data from health care providers. The use of primary data collection shall be approved by the board to the extent it can be shown that the information being requested is consistent with the act and will meet validity and quality standards established by the secretary and approved by the board.

(2) Data may also be collected by the secretary from third party payers and health care providers for the purposes of population-based health outcomes comparisons.

(c) The secretary may be delegated by the board the authority to carry out any of the responsibilities granted to the board under these regulations. (Authorized by and implementing K.S.A. 65-6805, as amended by L. 1994, Ch. 90, sec. 4; effective Dec. 19, 1994.)

28-67-4. Health care data release and re-release. (a) Data and information received by the secretary and maintained in the health care database shall be used for:

(1) health policy decisions;
 (2) health research;
 (3) consumer information; and
 (4) epidemiological and other public health functions necessary to protect and promote the health of the state.

(b) Public use data.

(1) Public use data shall be developed and compilation of data shall be made available for general distribution which shall not include:

(A) record identifiers;
 (B) social security numbers;
 (C) patient or client health insurance identification numbers; or
 (D) health care provider identifiers.

(2) The board shall review and approve the content and format of these public use data and compilation formats.

(3) The data and compilation shall be made public information and may be released on magnetic media or any other form.

(c) Special studies and analyses.

(1) Special studies and analyses may also be conducted by the secretary to:

(A) assist in health policy decision-making;
 (B) fulfill statutory mandates for health policy or public health purposes; or

(C) minimize the duplicate collection of similar data elements.

(2) Prior to the release of any special studies or analyses conducted by the secretary, the board shall review all products generated and approve those not mandated by statute.

(d) Persons or state agencies making requests for data or information from the database other than those from standard reports shall be required to respond to a set of questions developed by the secretary and approved by the board that defines the information needed, description of the project and the intentions for rerelease of the information. Any request which includes record identifiers, social security numbers, patient or client health insurance identification numbers or health care provider identifiers shall be specifically approved by the board. If the request indicates an appropriate use of the data according to the specifications in K.A.R. 28-67-4(a), the data shall be provided to the person making the request. The request shall be denied by the secretary if the request is not consistent with those specifications in K.A.R. 28-67-4(a). A written explanation for the denial shall be filed with the person making the request.

(e) Subject to K.S.A. 65-6804(d), when compilation and special studies are generated by the secretary which identify health care providers, the health care providers shall be provided a copy of the data referencing them and given the opportunity to submit written comments to the secretary. When comments are received by the secretary within 30 days of the postmark on the notification from the secretary, such comments received shall be released with the data.

(f) Data other than those provided in compilation, public domain and public use data, that includes record or health care provider identifiers may be released to persons or state agencies for research purposes. Any request for these data shall comply with K.A.R. 28-67-4(d) and be approved by the board. These data with record or health care provider identifiers shall not be rereleased by the person or state agency in any form with these identifiers that does not comply with K.A.R. 28-67-6 and approval of the board.

(g) Any person or state agency may apply to the secretary for data to be used in a research study. A research protocol shall be submitted which shall include, but not be limited to:

(1) a description of the proposed study;
 (2) the purpose of the study;

(3) a description of the data elements needed for the study;

(4) a description of the information medium or format requested;

(5) where applicable, a statement indicating whether the study protocol has been reviewed and approved by a human subjects review board;

(6) a description of data security procedures, including who shall have access to the data; and

(7) a description of the proposed use and release of the data.

(h) Any person or state agency requesting the data shall agree to the release, confidentiality, and security of data requirements in K.A.R. 28-67-4, K.A.R. 28-67-6 and K.A.R. 28-67-8.

(i) Prior to the release of a subset of data or compilation, a statement instructing the user or reader about the meaning and significance of the data and the restrictions about redisclosure of the information shall be included.

(j) A data provider may obtain data it has submitted to the database as well as aggregate data. A data provider shall not obtain data submitted by another data provider without approval from that provider. Agreement to grant access to data submitted by another provider shall be filed in writing with the secretary.

(k) Unauthorized use of health care data obtained or collected under K.S.A. 65-6805 and amendments thereto by any person or state agency shall result in termination of system access and no further provision of data.

(l) The board may delegate the secretary the authority to carry out any of the responsibilities granted to the board under these regulations. (Authorized by and implementing K.S.A. 65-6804, as amended by L. 1994, Ch. 90, sec. 3; effective Dec. 19, 1994.)

28-67-5. Electronic access to public use data. (a) Persons or state agencies may be granted electronic access to public use data. Definitions of allowable access for data submitted to the database shall be established by the secretary and approved by the board.

(b) All persons or state agencies requesting electronic access to public use data shall complete an application established by the secretary and approved by the board that describes the security procedures to be used to safeguard the data provided according to K.A.R. 28-67-6 and K.A.R. 28-67-8. (Authorized by and implementing K.S.A. 65-6804, as amended by L. 1994, Ch. 90, sec. 3; effective Dec. 19, 1994.)

28-67-6. Confidentiality of the health care database. (a) Data or information that in any manner identifies an individual shall not be released. Researchers demonstrating the need for data containing record identifiers or names of health care providers shall be subject to the release, confidentiality and security requirements pursuant to K.A.R. 28-67-4, K.A.R. 28-67-6, and K.A.R. 28-67-8 and approval of the board.

(b) Any information generated from manipulations of data provided by the database shall be subject to release, confidentiality and security requirements pursuant to K.A.R. 28-67-4, K.A.R. 28-67-6 and K.A.R. 28-67-8.

(c) The individual forms, computer tapes or other forms of data collected by and furnished to the database shall not be available to the public. Special reports prepared for any data requester shall not be made public if the report identifies an individual.

(d) Public domain data obtained for the health care database may be made public through compilation and as public use data in a manner that identifies health care providers.

(e) Primary data collected which identify individuals shall be kept confidential and shall not be made public. Individual data associated with patient numbers, social security numbers and patient or client health care coverage identification numbers, or any other data that can identify individuals shall be kept confidential and shall not be made public. Any release of primary data shall be subject to K.A.R. 28-67-4.

(f) Primary data collected that identifies health care providers shall be kept confidential and shall not be made public except that public health data which identifies health care providers may be released. Release of these data shall be subject to K.A.R. 28-67-4.

(g) In this subsection, "small number" means any number that is not large enough to ensure that the identity of individuals and health care providers is protected. Any data element category which contains small numbers shall be aggregated using procedures established by the secretary. The procedures shall follow commonly accepted statistical methodology. (Authorized by and implementing K.S.A. 65-6804, as amended by L. 1994, Ch. 90, sec. 3; effective Dec. 19, 1994.)

28-67-7. Fees established. (a) Routine compilations produced by the secretary shall be made available to state agencies, health care pro-

viders, purchasers, employers, consumers and other interested parties. A fee sufficient to recover the costs of production or duplication may be charged.

(b) Requests for non-routine compilation requiring special analyses shall be billed under contract between the requester and the secretary to include the hourly rate of the analyst or analysts plus all computer, printing and other costs. State agencies asking for data solely for the purposes of analysis may be exempt.

(c) Compilation of data made available on computer tape or other electronic media shall include the cost of the magnetic tape, diskette, or other electronic media.

(d) Providers of data, board members and interested parties shall receive one free copy of the secretary's routine annual and quarterly compilation.

(e) Persons and state agencies requesting electronic access to public use data may be charged a monthly fee for that access.

(f) Providers contributing data to the system may be charged reduced rates for special reports not to exceed seventy-five percent of the fees charged to the public.

(g) The secretary, on behalf of the health care database and as chairperson of the board, shall reserve the right to request a portion of revenues generated from use of data provided to any person that is above the cost of production of products.

(h) All fees collected pursuant to K.A.R. 28-67-7 shall be deposited in the health care database fee fund. (Authorized by and implementing K.S.A. 65-6804, as amended by L. 1994, Ch. 90, sec. 3; effective Dec. 19, 1994.)

28-67-8. Record security. (a) All staff engaged in the collection, handling, and dissemination of health care data shall be informed of the responsibility to protect the data and the consequences of failure to do so. When employees are hired, each employee shall be instructed on the current procedures used to assure the security and confidentiality of the data. A copy of the confidentiality policy shall be provided to all personnel and a statement of responsibility for data confidentiality shall be explained as a condition of employment.

(b) Employees shall be held accountable for the appropriate use of individual data and for safeguarding the information in their possession. Confidential data may be used only for purposes

reviewed and approved by the secretary. Any unauthorized use of health care data from the database shall be strictly prohibited and may subject an employee to termination.

(c) Access to the database shall be restricted to those who specifically require access in order to perform their assigned duties. Access policies and staff members needing to access the database shall be established by the secretary.

(d) Supervisors shall be responsible for maintaining the security for data in the area of their responsibility. Persons or state agencies engaged in the collection, handling, and dissemination of health care data shall develop procedures to govern the release of information. (Authorized by and implementing K.S.A. 65-6804, as amended by L. 1994, Ch. 90, sec. 3; effective Dec. 19, 1994.)

28-67-9. System security. (a) All health care data shall be maintained on computer systems administered by CHES. A password system shall be used to limit access to computer files. Passwords shall be changed on a schedule determined by CHES staff, and an individual account shall be deleted whenever a staff member terminates employment or is no longer authorized access to the system.

(b) Only CHES staff shall be authorized to load data tapes and install software and file servers. All software shall be checked for computer viruses before being installed.

(c) General access to the central computer area shall be limited to normal work hours only. Access shall be restricted to CHES staff at all other times unless an individual obtains authorization to access the computer area.

(d) Network tape backups shall be stored onsite in a secure fire retardant location. Additional copies of software, documentation, and backups shall be stored at a secure, off-site location.

(e) Non-Kansas department of health and environment staff shall set up a CHES user account in order to access the health care information system. Passwords shall only be issued to non-Kansas department of health and environment users if they are under contract to Kansas department of health and environment or under the terms of a data sharing agreement. Unauthorized use of health care data by any other person or governmental subdivision granted access to the database shall result in termination of system access and no further provision of data.

(f) Network backups shall be done weekly and at the end of each month. Two copies of the

monthly backup tape shall be produced. All network files shall be checked for computer viruses before backup. (Authorized by and implementing K.S.A. 65-6804, as amended by L. 1994, Ch. 90, sec. 3; effective Dec. 19, 1994.)

28-67-10. Eligible contractors. (a) A contractor may be designated to provide data processing services for the collection of health care information. The contractor may be a public or private organization. Eligible contractors shall provide to the secretary assurances that there are no conflicts of interest.

(b) Persons who shall not be contractors include, but shall not be limited to:

(1) a major purchaser, payer or provider of health care services in Kansas;

(2) a subcontractor of an organization in K.A.R. 28-67-10 (b)(1), except those commissioned to perform only data processing functions;

(3) a subsidiary or affiliate of an organization in K.A.R. 28-67-10 (b)(1) in which a controlling interest is held and may be exercised by that organization either independently or in concert with any other organization in K.A.R. 28-67-10 (b)(1); or

(4) an association of major purchasers, payers or providers of health care services.

(c) State agencies are exempt from the requirement under subsection (b) of this regulation regarding eligibility to contract and may offer a bid if the secretary decides to bid the contract for services.

(d) The contractor may be granted the authority to examine confidential materials and perform other functions authorized by the secretary and approved by the board. The contractor shall comply with all confidentiality and record security requirements pursuant to K.A.R. 28-67-6 and K.A.R. 28-67-8. The release of confidential information by the contractor shall constitute grounds for the secretary to terminate any agreement between the contractor and the secretary. (Authorized by and implementing K.S.A. 65-6804, as amended by L. 1994, Ch. 90, sec. 3; effective Dec. 19, 1994.)

28-67-11. Cooperative agreements. (a) Where the need for cooperative agreements and memoranda of understanding facilitate the cost-effectiveness of health care data collection, cooperative agreements and memoranda of understanding may be established by the secretary with organizations described in K.A.R. 28-67-10 (b).

(b) Organizations entering cooperative agreements and establishing memoranda of understanding shall provide the secretary assurances that the data will be collected and utilized for their intended purpose only.

(c) Organizations entering cooperative agreements and establishing memoranda of understanding shall be subject to the confidentiality and record security requirements in K.A.R. 28-67-6 and K.A.R. 28-67-8. (Authorized by and implementing K.S.A. 65-6804, as amended by L. 1994, Ch. 90, sec. 3; effective Dec. 19, 1994.)

28-67-12. Data validation. (a) All data submitted to the health care database shall be evaluated for accuracy and standardization.

(b) Any inconsistencies and non-standard reporting of data submitted to the database shall be documented and reported to the providers of the data. Data providers shall be given 30 days to reconcile the inaccuracies or inconsistencies identified by the secretary.

(c) Comments provided to the secretary pursuant to K.A.R. 28-67-4 (e) may be used to reconcile any inaccuracies or inconsistencies identified by the data provider. (Authorized by and implementing K.S.A. 65-6804, as amended by L. 1994, Ch. 90, sec. 3; effective Dec. 19, 1994.)

Article 68.—KANSAS DRYCLEANER ENVIRONMENTAL RESPONSE ACT

28-68-1. Definitions. For the purposes of K.A.R. 28-68-1 through K.A.R. 28-68-10, the following terms shall be defined as follows. (a) “Applicant” means any person or governmental entity that applies to the dry-cleaning facility release trust fund.

(b) “Contaminated dry-cleaning site” has the meaning specified in K.S.A. 65-34,148, and amendments thereto.

(c) “Dry-cleaning waste” means waste, including dry-cleaning wastewater, that is generated at a dry-cleaning facility and that contains dry-cleaning solvent.

(d) “Dry-cleaning wastewater” means separator water and all other water that is generated during the dry-cleaning process and contains dry-cleaning solvents.

(e) “Existing dry-cleaning facility” means a dry-cleaning facility that was in operation on or before January 3, 1997.

(f) “Floor drain” means any opening that is less than three inches above the floor surface and leads

to a septic tank, storage tank, sanitary sewer, storm sewer, or soils or waters of the state. An opening sealed with a removable seal that prevents dry-cleaning solvent and dry-cleaning wastewater from entering the opening shall not be considered a floor drain.

(g) "Hazardous waste" has the meaning specified in 40 C.F.R. part 261, subparts C and D, as in effect on July 1, 1999, and hereby adopted by reference.

(h) "New dry-cleaning facility" means a dry-cleaning facility that begins operation after January 3, 1997.

(i) "Operator" means any person who manages the daily activities or operations, or both, of a dry-cleaning facility.

(j) "Secondary containment structure" means a tank, tray, containment pallet, containment basin, a floor surface contained within a dike and the dike proper, or a similar structure that is designed to contain spills and leaks from dry-cleaning units, dry-cleaning solvent storage areas, or dry-cleaning waste storage areas. (Authorized by and implementing K.S.A. 1999 Supp. 65-34,143; effective Jan. 3, 1997; amended Dec. 22, 2000.)

28-68-2. Registration of facilities. (a) Each owner of any dry-cleaning facility shall annually submit to the department a separate registration for each operating dry-cleaning facility. Each registration shall be submitted on a form prepared by the department.

(b) Each owner of a new dry-cleaning facility shall submit a registration form not later than 30 days after operations begin.

(c) Each owner of any dry-cleaning facility shall submit a registration fee of \$100.00 with the registration form for each operating dry-cleaning facility. The registration fee shall cover a single calendar year. Registrations shall be submitted and fees paid on or before January 31, or the dry-cleaning facility shall be considered in violation of the Kansas dry cleaner environmental response act.

(d) Each owner of any dry-cleaning facility shall post the owner's registration number in a conspicuous location in the public area of each registered, operating dry-cleaning facility.

(e) If a change in ownership of an operating dry-cleaning facility occurs, the new owner shall submit a new registration form not later than 30 days after assuming ownership. (Authorized by K.S.A. 1999 Supp. 65-34,143; implementing

K.S.A. 1999 Supp. 65-34,145; effective Jan. 3, 1997; amended Dec. 22, 2000.)

28-68-3. Performance standards. (a) Storage and disposal of dry-cleaning wastes.

(1) Each owner or operator of a dry-cleaning facility that generates hazardous waste shall comply with the provisions specified in K.A.R. 28-31-1 through K.A.R. 28-31-4, with the following changes:

(A) Except as provided in paragraph (a)(2), the owner or operator of each dry-cleaning facility that is a small quantity generator as specified in K.A.R. 28-31-2(e), and that accumulates up to 25 kilograms of hazardous waste, shall treat the waste as follows:

(i) Either treat or dispose of the hazardous waste in an acceptable on-site facility, or ensure delivery to an off-site hazardous waste treatment, storage, or disposal facility, or to some other waste management facility approved by the department;

(ii) comply with 40 C.F.R. part 265, subpart I, as in effect on July 1, 1999 and hereby adopted by reference, except 265.176 and 265.178;

(iii) label or clearly mark each container and each tank in which hazardous waste is accumulated or stored with the words "Hazardous Waste"; and

(iv) clearly mark each container and each tank in which hazardous waste will be accumulated and stored for more than 72 hours with the date on which each period of accumulation begins. The date marking shall be in a place visible for inspection.

(B) Dry-cleaning wastewater shall not be stored at a dry-cleaning facility for more than 60 days.

(2) Each owner or operator of an existing dry-cleaning facility that is a small quantity generator and accumulates up to 25 kilograms of hazardous waste shall comply with paragraphs (a)(1)(A)(ii) through (a)(1)(A)(iv) of this regulation.

(b) Prohibition of the discharge of dry-cleaning solvents and waste.

(1) The owner or operator of a dry-cleaning facility shall not discharge dry-cleaning solvents, dry-cleaning wastewater, or both, either directly or indirectly, into any sanitary sewer, storm sewer, or septic tank, or to the soil or waters of the state. The owner or operator of a dry-cleaning facility shall not discharge dry-cleaning waste into any underground tank.

(2) The owner or operator of a dry-cleaning facility shall not locate floor drains within any

secondary containment structure required by paragraph (e)(1) of this regulation.

(c) The owner or operator of a dry-cleaning facility may evaporate dry-cleaning wastewater at the dry-cleaning facility at which it was generated if both of the following conditions are met:

(1) The evaporation unit is a heated unit or a nonthermal unit utilizing air atomization or misting, made of materials compatible with and impervious to the dry-cleaning wastewater being evaporated; and

(2) the dry-cleaning wastewater contains no free-phase dry-cleaning solvent. For the purposes of this paragraph, "free-phase dry-cleaning solvent" means dry-cleaning solvent that is not suspended or dissolved in the dry-cleaning wastewater.

(d) Air emission standards. Each owner or operator of a dry-cleaning facility using chlorinated dry-cleaning solvents shall comply with the provisions specified in K.A.R. 28-19-720, and K.A.R. 28-19-750 through K.A.R. 28-19-753.

(e) Dikes and secondary containment structures.

(1) Installation. Each owner or operator of a dry-cleaning facility shall install a dike or other secondary containment structure around each dry-cleaning unit and around each storage area for dry-cleaning solvent, dry-cleaning waste, or both. Each secondary containment structure shall be maintained in good condition.

(2) Construction materials.

(A) The materials used to construct each secondary containment structure shall be impervious to and compatible with the dry-cleaning solvents and dry-cleaning wastes used or stored within the secondary containment structure.

(B) For any dry-cleaning unit using chlorinated dry-cleaning solvents, and any storage area for chlorinated dry-cleaning solvents, chlorinated solvent dry-cleaning wastes, or both, materials other than epoxy or steel may be used for the construction of the secondary containment structure only upon approval by the department. Departmental approval for the use of a material other than epoxy or steel shall be granted upon demonstration to the department that the material is as compatible with and impervious to dry-cleaning solvent as epoxy or steel.

(C) For any dry-cleaning unit using petroleum dry-cleaning solvents, and any storage area for petroleum dry-cleaning solvents, petroleum dry-cleaning solvent wastes, or both, materials

other than epoxy, steel, or concrete may be used for the construction of the secondary containment structure only upon approval by the department. Departmental approval for the use of a material other than epoxy, steel, or concrete shall be granted upon demonstration to the department that the material is as compatible with and impervious to dry-cleaning solvent as epoxy, steel, or concrete.

(D) All sealant and all caulk used on each secondary containment structure shall be impervious to and compatible with the dry-cleaning solvent and dry-cleaning waste used or stored within the secondary containment structure.

(3) Storage capacity. Each secondary containment structure shall be capable of containing any leak, spill, or release of dry-cleaning solvents, dry-cleaning wastes, or both.

(4) Inspections. The owner or operator of each dry-cleaning facility shall inspect each secondary containment structure weekly.

(A) The owner or operator of each dry-cleaning facility shall repair each deficiency detected during an inspection not later than five calendar days after the deficiency is detected. The owner or operator may request an extension of this five-day time limit from the department.

(B) The owner or operator of each dry-cleaning facility shall keep a log of the following information and provide it to the department upon request:

(i) The dates of inspection for each secondary containment structure;

(ii) a brief description of each deficiency that is detected;

(iii) the date of repair of each deficiency; and

(iv) a brief description of each repair.

(C) Each inspection and repair log shall be kept at the dry-cleaning facility for not less than five years after the log has been completed.

(f) Delivery of solvents.

(1) Chlorinated dry-cleaning solvents. All chlorinated dry-cleaning solvents shall be delivered to dry-cleaning units and solvent storage containers by means of either of the following:

(A) A closed, direct-coupled delivery system; or

(B) a technology determined by the department to provide protection of human health and the environment equivalent to or greater than that provided by direct-coupled delivery systems.

(2) Petroleum-based solvent. All petroleum-based solvents shall be delivered to dry-cleaning units and solvent storage containers according to the requirements of K.A.R. 22-7-9.

(g) Each owner or operator of a new dry-cleaning facility shall comply with this regulation at the time operations begin and thereafter. (Authorized by and implementing K.S.A. 1999 Supp. 65-34,143; effective Jan. 3, 1997; amended May 8, 1998; amended Dec. 22, 2000.)

28-68-4. Removal of dry-cleaning solvents and dry-cleaning wastes from closed facilities. Each owner or operator of a dry-cleaning facility which has ceased operation for 45 continuous days shall remove all dry-cleaning solvents and dry-cleaning wastes from the dry-cleaning facility not later than 45 days after the last day of operation.

(a) Each owner or operator shall dispose of all dry-cleaning wastes in accordance with K.A.R. 28-68-3, subsection (a).

(b) Any owner or operator may request from the department a written extension of the 45-day time limit established in subsection (a). (Authorized by and implementing K.S.A. 1995 Supp. 65-34,143; effective Jan. 3, 1997.)

28-68-5. Application for ranking of contaminated dry-cleaning site. Any contaminated dry-cleaning site may be ranked by the department to establish priorities for fund expenditures based on information the department has at the department's disposal, information contained in an application to the department, or both. If an applicant desires to have a contaminated dry-cleaning site ranked that has not been ranked previously, the applicant shall submit to the department a completed, signed application on a form provided by the department.

(a) If the applicant is not the real property owner, the applicant shall provide proof that the real property owner has been notified of the application.

(b) If the property is leased, and the applicant is not the lessee, the applicant shall provide proof that the lessee has been notified of the application.

(c) The application shall contain the following information, as well as all other known information concerning environmental contamination at the contaminated dry-cleaning site;

(1) The applicant shall provide an analysis of one ground water sample which demonstrates that a release has occurred. The sample shall be taken as follows:

(A) from a water supply well;

(B) from a monitoring well;

(C) using hydraulic push probe sampling equipment; or

(D) using some other sample collection device approved by the department. Departmental approval for use of an alternate sampling device shall be granted upon demonstration that the alternate sampling device collects samples of quality equal to or greater than samples collected as described in paragraphs (A) through (C).

(E) The sample shall be collected and analyzed not more than one year prior to the day the application is received by the department. The analysis shall be performed by a laboratory which is certified for such analyses by the department. If the application is to accompany a request for reimbursement, as set forth in K.A.R. 28-68-7, the sample analysis indicating the highest level of contamination ever recorded at the site shall be submitted.

(F) With prior approval from the department, an analysis of a representative soil sample may be substituted for the groundwater sample analysis.

(2) Each applicant shall submit, if available, one of the following:

(A) a geologic well log or logs from at least one monitoring or supply well; or

(B) hydrogeologic information from the contaminated dry-cleaning site where the ground water sample or soil sample was collected.

(3) The applicant shall state the distance to the nearest known private domestic well, public water supply well, surface water, or other receptor.

(4) The applicant shall provide a description of the present use of the ground water in the area where the sample was collected.

(d) Any applicant may request that the department provide a written exemption from submittal of certain information set forth in subsection (c). An exemption may be granted by the department if the information:

(1) is not necessary for ranking; or

(2) is readily available to the department.

(e) The information set forth in subsection (c) shall be used by the department to rank the contaminated dry-cleaning site in relation to other contaminated dry-cleaning sites to aid in establishing priorities for fund expenditures as set forth in K.A.R. 28-68-8.

(f) The reasonable, direct costs incurred by the applicant to collect the information required by subsection (c) only shall be credited to payment of the deductible set forth in K.A.R. 28-68-6. On request by the department, the applicant shall

furnish invoices or other supporting information containing sufficient detail for the department to determine that the costs were incurred to collect the information and that the costs were paid.

(g) The completed application shall be reviewed and a determination of eligibility shall be made by the department.

(h) A written notice of the determination of eligibility shall be sent by the department to the applicant as soon as a determination is made. If the site is determined ineligible for the fund, the notice of the determination shall state the reason or reasons for ineligibility. (Authorized by and implementing K.S.A. 1995 Supp. 65-34,143; effective Jan. 3, 1997.)

28-68-6. Deductible payment. On initiation of corrective action by the department at a contaminated dry-cleaning site, the applicant shall pay to the department the applicable deductible, minus the reasonable, direct costs incurred by the applicant to collect the application information as specified in K.A.R. 28-68-5(f). The deductible shall be \$5,000.00 for each dry-cleaning facility that has contributed to the contamination of the contaminated dry-cleaning site. Under the conditions specified in K.S.A. 65-34,148, and amendments thereto, the owner of any property that includes an existing or former dry-cleaning facility may be responsible for up to 100% of the costs of corrective action attributable to the owner. (Authorized by K.S.A. 1999 Supp. 65-34,143; implementing K.S.A. 1999 Supp. 65-34,148; effective Jan. 3, 1997; amended Dec. 22, 2000.)

28-68-7. Reimbursement of corrective action costs. (a) Reimbursement. Any applicant may request reimbursement from the fund for the applicant's corrective action costs, minus the deductible set forth in K.S.A. 1995 Supp. 65-34,148, subsection (i), for work performed at a contaminated dry-cleaning site which is determined to be eligible for the fund.

(1) Reimbursable costs shall be limited to costs for corrective action approved by the department, including direct costs incurred by the applicant. Each applicant shall substantiate reimbursable costs with contractor and subcontractor invoices or other reasonably reliable documentation.

(2) For each contaminated dry-cleaning site, reimbursement for corrective action costs incurred prior to July 1, 1995, shall be limited to \$100,000.00, minus the applicable deductible.

(3) Reimbursement for corrective action costs incurred on or after July 1, 1995, for any contaminated dry-cleaning site shall be limited, in any year, to 10 percent of the fund's income for the previous fiscal year. The applicable deductible shall be subtracted from the first-year reimbursement.

(4) Each eligible site shall receive priority for reimbursement according to the ranking of the contaminated dry-cleaning sites set forth in K.A.R. 28-68-8, subsection (b).

(b) Application for reimbursement.

(1) If an application for ranking has not been submitted previously to the department, the applicant shall follow the application procedure set forth in K.A.R. 28-68-5.

(2) Each applicant shall submit a signed request for reimbursement to the department on a form prepared by the department.

(3) If the applicant is not the real property owner, the applicant shall provide proof that the real property owner has been notified of the request for reimbursement.

(4) If the property is leased, and the applicant is not the lessee, the applicant shall provide proof that the lessee has been notified of the request for reimbursement.

(5) Each request for reimbursement shall contain:

(A) a copy of the notice of eligibility from the department;

(B) the name and address of the entity or entities to receive the reimbursement;

(C) a copy of all work plans generated to perform the corrective action for which reimbursement is sought;

(D) a copy of all reports generated during the corrective action;

(E) a copy of the department approval documents for corrective action at the contaminated dry-cleaning site; and

(F) a copy of contractor and subcontractor invoices or other reasonably reliable documentation for work performed prior to July 1, 1995, and approved by the department.

(i) Each applicant shall provide invoices or other reasonable reliable documentation with sufficient detail and supporting information to document that the costs were incurred to perform work discussed in the work plans, corrective action plan, or other work approved by the department.

(ii) Each applicant shall be required to submit to the department copies of cancelled checks, if available, showing payment for the work.

(iii) If cancelled checks are not available, each applicant shall be required to submit to the department an affidavit of expenditures and supporting documentation showing that the costs were incurred and paid to perform work approved by the department. The form for the affidavit of expenditures shall be provided by the department. (Authorized by K.S.A. 1995 Supp. 65-34,143; implementing K.S.A. 1995 Supp. 65-34,148; effective Jan. 3, 1997.)

28-68-8. Prioritization of fund expenditure. Each work item approved by the department for contaminated dry-cleaning sites shall be prioritized to ensure that money from the fund is available for essential corrective action tasks.

(a) Priority shall be given to contaminated dry-cleaning sites requiring emergency action. Emergency status may be established by the department under any of the following conditions:

(1) when a public water supply well or one or more domestic wells, are contaminated, or are threatened with contamination levels above state or federal drinking water limits, and no alternative water source is readily available;

(2) when surface drinking water or a water supply intake is contaminated above acceptable limits, as defined by the department, or contamination is imminent, and no alternative water source is readily available; or

(3) when a high probability exists for direct human exposure to or contact with highly contaminated waste, soil, air, or water.

(b) Each contaminated dry-cleaning site not requiring emergency action shall be ranked by the department according to the risk to human health and the environment presented by the contaminants at the contaminated dry-cleaning site. Contaminated dry-cleaning sites for which an application is submitted for reimbursement of corrective action costs incurred prior to July 1, 1995 shall be ranked separately from other contaminated dry-cleaning sites.

(c) The appropriateness of corrective action alternatives for each contaminated dry-cleaning site shall be evaluated by the department according to the following criteria.

(1) Preference shall be given to the corrective action alternative which is most cost effective, considering both short-term and long-term costs, while adequately protecting human health and the environment.

(2) The incremental cost of the chosen correc-

tive action shall be justified and reasonably related to the incremental risk reduction benefits of the corrective action. (Authorized by and implementing K.S.A. 1995 Supp. 65-34,143; effective Jan. 3, 1997.)

28-68-9. Determining completion of corrective action. A determination of the level at which corrective action shall be considered complete shall be made by the department using the following criteria.

(a) The factors used in prioritizing fund expenditure as set forth in K.S.A. 1995 Supp. 65-34,143, section (d) shall be considered by the department.

(b) The characteristics of the contaminated dry-cleaning site shall be evaluated by the department.

(c) State and federal drinking water standards may be considered by the department in setting corrective action levels. A determination that corrective action levels less stringent than state water quality standards will apply at a contaminated dry-cleaning site may be made by the department based on:

(1) an evaluation or risk;

(2) the effectiveness of available technology; and

(3) the cost of implementation.

(d) Any other factors which the department considers relevant may be used in determining the level at which corrective action shall be considered complete. (Authorized by and implementing K.S.A. 1995 Supp. 65-34,143; effective Jan. 3, 1997.)

Article 70.—CANCER REGISTRY

28-70-1. Definitions. (a) “Adult care home” has the meaning specified in K.S.A. 39-923, and amendments thereto.

(b) “Cancer registry director” means the person at the university of Kansas medical center, department of preventive medicine and public health, who is authorized by the secretary to administer the operations of the cancer registry of the state of Kansas.

(c) “Clinic” means an establishment that meets the following conditions:

(1) Has an organized medical staff of one or more physicians;

(2) consists of a permanent facility that is equipped and operated primarily for the purpose of diagnosing and treating patients; and

(3) does not provide services or other accommodations for any patient to stay for more than 24 hours.

(d) “Confidential data” has the same meaning as in K.S.A. 65-1,168, and amendments thereto.

(e) “Hospice” means a public agency or private organization or subdivision of a public agency or private organization that is primarily engaged in providing care to terminally ill individuals.

(f) “Registry” means the cancer registry of the state of Kansas, as established by K.S.A. 65-1,169, and amendments thereto. (Authorized by and implementing K.S.A. 2004 Supp. 65-1,169; effective Feb. 27, 1998; amended Aug. 5, 2005.)

28-70-2. Reporting requirements. (a)(1) Each administrator of a hospital, an ambulatory surgery center, a radiology oncology center, or a pathology laboratory shall, within six months of the date of diagnosis, report to the registry each case of cancer diagnosed or treated, unless exempted under subsection (d).

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

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

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

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

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

(1) Any information specified in subsection (e), even if the patient’s cancer has not been diagnosed or treated by the hospice or adult care home or by

the health care provider or licensee specified in subsection (a) or (b); or

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

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

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

(2) basal cell carcinoma of the skin, unless located on a lip of the face or in the genital areas or unless spread beyond local tissues at the time of diagnosis; and

(3) carcinoma in situ of the uterine cervix.

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

(1) Patient identifiers and demographics;

(2) cancer screening history;

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

(4) personal and family history;

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

(6) cancer-related treatment information;

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

(8) third-party payer information; and

(9) risk factors for cancer.

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

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

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

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

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

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

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

28-70-3. Use and access. (a) For purposes of ascertaining the accuracy and completeness of cancer data, the medical diagnosis of each person cared for by any health care provider or licensee specified in K.A.R. 28-70-2(a) or (b) by any hospice or adult care home and the medical or administrative records of any person with cancer may be reviewed by the cancer registry director. Each review shall be made by prearrangement with the appropriate administrator or licensee. Pursuant to K.S.A. 65-1,169 and amendments thereto, a copy of any death certificate may be requested by the cancer registry director from the secretary to ensure the completeness of cancer data and to achieve record closure.

(b) Each person who requests access to confidential registry data shall submit a written request to a review panel, as specified in K.S.A. 65-1,173, and amendments thereto. If the person meets the requirements specified in K.S.A. 65-1,172 and amendments thereto, the confidential data may be released by the review panel. (Authorized by K.S.A. 2004 Supp. 65-1,169; implementing K.S.A. 65-1,171, 65-1,172, and 65-1,173; effective Feb. 27, 1998; amended Aug. 5, 2005.)

28-70-4. Confidential data for follow-up patient studies. (a) For the purposes of this regulation, the following definitions shall apply:

(1) "Institutional review board" means an institutional review board established and conducted pursuant to 45 CFR 46.101 through CFR 46.117, as revised on October 1, 2008.

(2) "Person" shall mean a state university, a state agency, or a county health department.

(b) Each person with a proposal for a follow-up cancer study ("study") shall submit the proposal to each of the following for approval before the commencement of the study:

- (1) The person's institutional review board;
- (2) the department's health and environmental institutional review board;
- (3) the university of Kansas medical center's institutional review board; and
- (4) the cancer registry data release board.

(c) Each study not approved by each board specified in subsection (b) shall be returned to the person for revisions. Any unapproved study may be resubmitted to each board.

(d) After receiving the approvals required in subsection (b) and before commencing the study, the person proposing the study shall submit the

proposal for the study to the secretary or the secretary's designee for approval.

(e) Each person conducting an approved study shall reimburse the cancer registry for all costs pertaining to the retrieval of confidential data. The cancer registry shall be credited by the person on any publication or presentation when the cancer registry data is used.

(f) Before proceeding with each study, the cancer registry director shall obtain informed consent from each individual who is the subject of the data or from that individual's parent or legal guardian. The consent form shall accompany or follow the notice specified in subsection (g). Signing the consent form shall indicate that the individual has read and understands the information provided in the notice.

(g) The cancer registry director shall deliver a notice to each subject individual or the subject individual's parent or legal guardian. Each notice shall include the following information:

(1) All details of the study to be conducted, including the purpose, methodology, and public health benefit; and

(2) the following information:

(A) Participation in the study is voluntary;

(B) the method of data collection will be at the convenience of the subject individual. Data will be collected in writing, by telephone, or by personal interview; and

(C) the subject individual will be provided with a summary of the final report of the study. (Authorized by and implementing K.S.A. 2008 Supp. 65-1,172; effective June 12, 2009.)

Article 71.—VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

28-71-1. Definitions. In addition to the terms defined in K.S.A. 65-34,162 and amendments thereto, each of the following terms, as used in this article of the department's regulations, shall have the meaning specified in this regulation:

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

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

(c) "Class two contamination" and "class II" mean that suspected or confirmed soil or ground-

water contamination, or both, resulting from operations that have occurred on the property is suspected or exists on or off the property described in the application, or both.

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

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

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

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

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

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

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

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

(l) “Naturally occurring levels” means ambient concentrations of chemicals or substances present in the environment that are typical of background levels near the property subject to the voluntary agreement when not affected by the identified contamination source.

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

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

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

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

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

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

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

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

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

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

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

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

(a) A person who owns the property;

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

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

(d) a prospective owner of the property;

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

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

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

(h) any unit of government that acquired title or control of the property involuntarily through

bankruptcy, tax delinquency, abandonment, or other circumstances. (Authorized by K.S.A. 65-34,163; implementing K.S.A. 65-34,164; effective June 26, 1998; amended Sept. 29, 2017.)

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

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

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

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

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

(4) portions of a larger property that includes oil and gas activities regulated by the state corporation commission, but the specific portion is not regulated by the state corporation commission, if the property meets the additional criteria required by K.S.A. 65-34,161 et seq., and amendments thereto; and

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

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

(1) An application form provided by the department;

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

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

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

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

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

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

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

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

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

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

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

all of the terms and conditions for implementation of the work anticipated in the VCPRP.

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

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

- (1) For class I, an initial amount of \$2,000; or
- (2) for class II, an initial amount not to exceed \$5,000.

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

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

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

- (1) The review of documents, studies, and test results;
- (2) collection of split samples, laboratory analysis, and sampling supplies;
- (3) travel;
- (4) per diem;
- (5) verification activities; and
- (6) associated indirect costs. (Authorized by K.S.A. 65-34,163; implementing K.S.A. 65-34,165; effective June 26, 1998; amended Sept. 29, 2017.)

28-71-8. Environmental site assessments. (a) Each environmental site assessment shall be prepared by an individual who possesses the education, experience, or licensure sufficient to prepare a competent environmental site assessment.

(b) Each environmental site assessment shall include the following information regarding the

property either described in the application or subject to a voluntary agreement:

- (1) The legal description and a map identifying the location, boundaries, and size of the property;
- (2) the physical characteristics of the property and areas contiguous to the property, including the location of any surface water bodies and groundwater aquifers;
- (3) the location of any water wells located on the property or in an area within a one-half mile radius of the property and a description of the use of the those wells;
- (4) the operational history of the property, based upon the best efforts of the applicant and the current use of areas in the vicinity of the property;
- (5) the present and proposed uses of the property;
- (6) information concerning the nature and extent of any contamination;
- (7) information on releases of contaminants that have occurred at the property, including any environmental impact on areas in the vicinity of the property;
- (8) any sampling results, evidence, or other data that characterizes the soil, groundwater, or surface water on the property; and
- (9) a description of the human and environmental exposures to contamination at the property, based upon current use and any future use proposed by the property owner as approved by the local zoning authority. (Authorized by K.S.A. 65-34,163; implementing K.S.A. 65-34,165 and 65-34,166; effective June 26, 1998; amended Sept. 29, 2017.)

28-71-9. Voluntary cleanup work plans and reports. (a) Upon signature of the voluntary agreement by the voluntary party and the secretary, the voluntary party shall submit each environmental site assessment, investigation report, or both, for review by the department to determine whether the following objectives have been met:

- (1) The sources for contaminants have been adequately identified and investigated.
- (2) The vertical and horizontal extent of contaminants has been determined.
- (3) The human health and environmental receptors have been identified.
- (4) The potential risks and impacts to receptors have been evaluated.
- (5) Quality assurance and quality control have been maintained.
- (6) The work has been performed in accordance with standard industry practices.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) an implementation schedule;

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

(6) a verification plan to document that clean-

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

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

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

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

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

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

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

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

(1) No contamination was detected.

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

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

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

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

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

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

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

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

(1) Comparison to background levels;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) If there are multiple contaminants in the soil, the cleanup level of each contaminant shall not allow the cumulative risks posed by the contaminants to exceed a cancer risk level of 1×10^{-4} , one in 10,000, or a hazard index value of 1.0.

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

(j) Groundwater cleanup levels shall be based on the actual and most probable use of the groundwater considering present and future uses. The most probable use of the groundwater is for a potable water source, unless demonstrat-

ed otherwise by the voluntary party and approved by the secretary.

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

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

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

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

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

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

(1) The public information meeting shall provide the public with information about relevant activities at the property associated with the voluntary cleanup and property redevelopment program. Public information meetings shall be attended by a member of the department and the voluntary party or designated representative, or both.

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

Article 72.—RESIDENTIAL CHILDHOOD LEAD POISONING PREVENTION PROGRAM

28-72-1. (Authorized by and implementing K.S.A. 2001 Supp. 65-1,202; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; revoked April 9, 2010.)

28-72-1a. Definitions. In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, each of the following terms shall have the meaning assigned in this regulation: (a) “Abatement project reinspection fee” means the sum of money assessed to a KDHE-licensed lead activity firm by KDHE when KDHE is unable to inspect an abatement project due to the fault of the lead activity firm or its personnel.

(b) “Accreditation” means approval by KDHE of a training provider for a training course to train individuals for lead-based paint activities.

(c) “Accredited course” means a course that has been approved by the department for the training of lead professionals.

(d) “Act” means the residential childhood lead poisoning prevention act, and amendments thereto.

(e) “Adequate quality control” means a plan or design that ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or paint film samples. Adequate quality control shall also include provisions for representative sampling.

(f) “Audit” means the monitoring by KDHE of a certified individual, a licensed lead activity firm, or an accredited training provider to ensure compliance with the act and this article. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

28-72-1c. Definitions. In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, each of the following terms shall have the meaning assigned in this regulation: (a) “Certified lead professional” means a person who is certified by the secretary as a lead inspector, elevated blood-lead level (EBL) investigator, lead abatement supervisor, lead abatement worker, project designer, or risk assessor.

(b) “Child-occupied facility” means a building, or portion of a building, constructed before 1978, that is visited regularly by the same child who is under six years of age on at least two different days within any calendar week, Sunday through Satur-

day, if each day's visit lasts at least three hours, the combined weekly visits last at least six hours, and the combined annual visits last at least 60 hours. This term may include residences, day care centers, preschools, and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. For common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under the age of six, including restrooms and cafeterias.

(c) "Classroom training" means training devoted to lecture, learning activities, small group activities, demonstrations, evaluations, or any combination of these educational activities.

(d) "Clearance levels" means the following values indicating the maximum amount of lead permitted in dust on a surface following completion of each abatement activity or lead hazard control:

- (1) 40 micrograms per square foot on floors;
- (2) 250 micrograms per square foot on window-sills; and
- (3) 400 micrograms per square foot on window troughs.

(e) "Common area" means the portion of a building that is generally accessible to all occupants. This term may include the following:

- (1) Hallways;
- (2) stairways;
- (3) laundry and recreational rooms;
- (4) playgrounds;
- (5) community centers;
- (6) garages;
- (7) boundary fences; and
- (8) porches.

(f) "Component" and "building component" mean building construction products manufactured independently to be joined with other building elements to create specific architectural design or structural elements or to act as fixtures of a building, residential dwelling, or child-occupied facility. Components are distinguished from each other by form, function, and location. These terms shall include the following:

- (1) Interior components, including the following:
 - (A) Ceilings;
 - (B) crown moldings;
 - (C) walls;
 - (D) chair rails;
 - (E) doors and door trim;
 - (F) floors;

- (G) fireplaces;
- (H) radiators and other heating units;
- (I) shelves and shelf supports;
- (J) stair treads, risers, and stringers; newel posts; railing caps; and balustrades;
- (K) windows and trim, including sashes, window heads, jambs, sills, stools, and troughs;
- (L) built-in cabinets;
- (M) columns and beams;
- (N) bathroom vanities;
- (O) countertops;
- (P) air conditioners; and
- (Q) any exposed piping or ductwork; and
- (R) any product or device affixed to an interior surface of a dwelling; and

(2) exterior components, including the following:

- (A) Painted roofing and chimneys;
- (B) flashing, gutters, and downspouts;
- (C) ceilings;
- (D) soffits and fascias;
- (E) rake boards, cornerboards, and bulkheads;
- (F) doors and door trim;
- (G) fences;
- (H) floors;
- (I) joists;
- (J) latticework;
- (K) railings and railing caps;
- (L) siding;
- (M) handrails;
- (N) stair risers, treads, and stringers;
- (O) columns and balustrades;
- (P) windowsills and window stools, troughs, casing, sashes, and wells; and
- (Q) air conditioners.

(g) "Containment" means a process to protect workers, residents, and the environment by controlling exposures to the lead-contaminated fumes, vapors, mist, dust, and debris created during lead abatement or lead hazard control.

(h) "Course agenda" means an outline of the main topics to be covered during a training course, including the time allotted to teach each topic.

(i) "Course exam blueprint" means written documentation identifying the proportion of course exam questions devoted to each major topic in the course curriculum.

(j) "Course test" means an evaluation of the overall effectiveness of the training, which shall test each trainee's knowledge and retention of the topics covered during the course. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

28-72-1d. Definitions. In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, each of the following terms shall have the meaning assigned in this regulation: (a) “Department” means the Kansas department of health and environment.

(b) “Deteriorated paint” means paint that is cracking, flaking, chipping, chalking, peeling, or otherwise separating from the substrate of a building component.

(c) “Discipline” means one of the specific types or categories of lead-based paint activities identified in the act and this article in which individuals may receive training from accredited courses and become certified by the secretary.

(d) “Distinct painting history” means the application history over time, as indicated by the visual appearance or a record of application, of paint or other surface coatings to a component or room.

(e) “Documented methodologies” means the methods or protocols used to sample for the presence of lead in paint, dust, and soil. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

28-72-1e. Definitions. In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, each of the following terms shall have the meaning assigned in this regulation: (a) “Elevated blood lead level (EBL) child” and “EBL child” mean any child who has an excessive absorption of lead with a confirmed concentration of lead in whole blood of 10 µg (micrograms) of lead per deciliter of whole blood, as specified in K.A.R. 28-1-18.

(b) “Encapsulant” means a substance that forms a barrier between lead-based paint and the environment using a liquid-applied coating, with or without reinforcement materials, or an adhesively bonded covering material.

(c) “Encapsulation” means the application of an encapsulant.

(d) “Enclosure” has the meaning specified in 40 CFR 745.223, as adopted in K.A.R. 28-72-2.

(e) “EPA” means the United States environmental protection agency. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

28-72-1g. Definition. In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, the following term shall have the meaning assigned in this regulation:

“Guest instructor” means an individual who is designated by the training manager or principal

instructor and who provides instruction specific to the lectures, hands-on work activities, or work practice components of a course. Each guest instructor shall be directly employed and monetarily compensated by the accredited training provider. A guest instructor shall not teach more than seven calendar days each quarter. Each guest instructor shall be KDHE-certified in the training course or in an associated advanced training course for which the guest instructor will be providing instruction. If a guest instructor is utilized, KDHE shall be notified at least 24 hours before the training course begins. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

28-72-1h. Definitions. In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, each of the following terms shall have the meaning assigned in this regulation: (a) “Hands-on skills assessment” means an evaluation of the effectiveness of the hands-on training that tests the ability of the trainees to demonstrate satisfactory performance and understanding of work practices and procedures as well as any other skills demonstrated in the course.

(b) “Hands-on training” means training that involves the actual practice of a procedure or the use of equipment, or both.

(c) “Hazardous waste” means any waste as defined in K.S.A. 65-3430, and amendments thereto.

(d) “HEPA vacuum” has the meaning specified in 40 CFR 745.83, as adopted in K.A.R. 28-72-2. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

28-72-1i. Definition. In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, the following term shall have the meaning assigned in this regulation:

“Interim controls” means a set of repair or maintenance activities designed to last less than 20 years that temporarily reduce human exposure or likely exposure to lead hazards, including the following:

- (a) Repairing deteriorated lead-based paint;
- (b) specialized cleaning;
- (c) maintenance;
- (d) painting;
- (e) temporary containment;
- (f) ongoing monitoring of lead hazards or potential hazards; and
- (g) the establishment and operation of management and resident education programs. (Au-

thorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

28-72-1k. Definition. In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, the following term shall have the meaning assigned in this regulation:

“KDHE” means the Kansas department of health and environment. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

28-72-1l. Definitions. In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, each of the following terms shall have the meaning assigned in this regulation: (a) “Large-scale abatement project” means lead abatement for 10 or more residential dwellings or multifamily dwellings for 10 or more units.

(b) “Lead abatement” means any repair or maintenance activity or set of activities designed to last at least 20 years or to permanently eliminate lead-based paint hazards in a residential dwelling, child-occupied facility, or other structure designated by the secretary.

(1) Lead abatement shall include the following:

(A) The removal of lead-based paint and lead contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil;

(B) all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with these measures;

(C) any project for which there is a written contract or other documentation requiring an individual, firm, or other entity to conduct activities in any structure that are designed to permanently eliminate lead hazards;

(D) any project resulting in the permanent elimination of lead hazards that is conducted by lead activity firms; and

(E) any project resulting in the permanent elimination of lead hazards that is conducted in response to a lead hazard control order.

(2)(A) Lead abatement shall not include renovation, remodeling, landscaping, and other activities if these activities are not designed to permanently eliminate lead hazards, but are designed to repair, restore, or remodel a given structure or dwelling, even though these activities could incidentally result in a reduction or an elimination of lead hazards.

(B) Lead abatement shall not include operations and maintenance activities, and other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

(c) “Lead abatement supervisor” means an individual certified by the secretary to perform lead hazard control activities and to prepare occupant protection plans and abatement reports. Each applicant for a lead abatement supervisor shall meet all of the requirements specified in K.A.R. 28-72-8.

(d) “Lead abatement worker” means an individual certified by the secretary and meeting all of the requirements specified in K.A.R. 28-72-7.

(e) “Lead activity firm” means an individual or entity that meets all the requirements listed in K.A.R. 28-72-10.

(f) “Lead-based paint hazard” means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-based paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces and that would result in adverse human health effects.

(g) “Lead-based paint inspection” means any effort to identify lead concentrations in surface coatings by means of a surface-by-surface investigation and the provision of a written report explaining the results of the investigation. The inspection shall not include any attempt to determine lead concentrations in soil, water, or dust.

(h) “Lead-based paint inspector” means an individual certified by the secretary to perform any efforts to identify lead concentrations in surface coatings by means of a surface-by-surface investigation. Each applicant for a lead-based paint inspector shall meet all of the requirements specified in K.A.R. 28-72-5.

(i) “Lead-contaminated dust” means surface dust in residential dwellings or child-occupied facilities that contains 40 micrograms per square foot or more on uncarpeted floors, 250 micrograms per square foot or more on windowsills, and 400 micrograms per square foot or more on window troughs or any other surface dust levels evidenced by research and determined by the secretary as contaminated.

(j) “Lead-contaminated soil” means bare soil on residential real property and on the property of a child-occupied facility that contains lead in excess of 400 parts per million for areas where child contact is likely and in excess of 1,200 parts per million in the rest of the yard, or any other lead in

soil levels evidenced by research and determined by the secretary as contaminated.

(k) "Lead hazard" means any lead source that is readily accessible to humans in, on, or adjacent to a residential property, including paint, as defined in these regulations, in any condition, contaminated soils, dust, or any other item that contains lead in any amount and has been identified through an environmental investigation or risk assessment as a source of lead that could contribute to the lead poisoning of an individual.

(l) "Lead hazard control" means any activity implemented to control known or assumed lead hazards on or in any structure covered by this act. All implemented lead hazard control activities, at a minimum, shall utilize lead-safe work practices and shall be subject to work practice inspections by the KDHE.

(m) "Lead hazard control notice" means the written notification to compel the owner of a child-occupied facility that has been identified by the secretary as the major contributing cause of poisoning an EBL child to eliminate or remediate the lead hazards to make the child-occupied facility safe from continued exposure to lead hazards.

(n) "Lead hazard screen" means a limited risk assessment activity that involves limited deteriorated paint and dust sampling as described in K.A.R. 28-72-13 and K.A.R. 28-72-15. In target housing or a child occupied facility, at least two samples shall be taken from the floors and at least one sample shall be taken from the windows in all of the rooms where one or more children could have access. Additionally, in multifamily dwellings and child-occupied facilities, dust samples shall be taken from any common areas where one or more children have access.

(o) "Lead inspector" means an individual certified by the secretary to perform a surface-by-surface investigation on a structure to determine the presence of lead-based paint and provide a written report explaining the results of the investigation as specified in K.A.R. 28-72-14.

(p) "Lead-safe work practices" means work practices standards established to work safely with lead-based surface coatings as presented in the joint EPA-HUD curriculum titled "lead safety for remodeling, repair, & painting," excluding the appendices, dated June 2003 and hereby adopted by reference, or an equivalent KDHE-approved curriculum.

(q) "Living area" means any area or room equivalent, as defined in the HUD "guidelines for the

evaluation and control of lead-based paint hazards in housing," which is adopted by reference in K.A.R. 28-72-13. This term shall include any porch of a residential dwelling used by at least one child who is six years of age and under or by a woman of childbearing age.

(r) "Local government" means a county, city, town, district, association, or other public body, including an agency comprised of two or more of these entities, created under state law. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

28-72-1m. Definition. In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, the following term shall have the meaning assigned in this regulation:

"Multifamily dwelling" means a structure that contains more than one separate residential dwelling unit used or occupied, or intended to be used or occupied, in whole or in part as the residence of one or more persons. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

28-72-1n. Definition. In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, the following term shall have the meaning assigned in this regulation:

"Nonprofit" means an entity that has been determined by the IRS to be not-for-profit as evidenced by a "letter of determination" designating the tax code under which the entity operates. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

28-72-1o. Definitions. In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, each of the following terms shall have the meaning assigned in this regulation: (a) "Occupant protection plan" means a plan developed by a lead abatement supervisor or project designer before the commencement of lead abatement or lead hazard control in any structure designated by the act that describes the measures and management procedures to be taken during lead abatement or lead hazard control to protect the building occupants from exposure to any lead hazards.

(b) "Occupation" means one of the specific disciplines of lead-based paint activities identified in this article for which individuals can receive training from training providers. This term shall include renovator, lead abatement worker, lead abatement supervisor, lead inspector, risk assessor, and project designer, and any combination of these.

(c) “Oral exam” means a test that is equivalent in content to a corresponding written exam but is read to the student by the principal instructor. Each student taking an oral exam shall be required to provide the answers to the exam in writing. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

28-72-1p. Definitions. In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, each of the following terms shall have the meaning assigned in this regulation: (a) “Paint” means all types of surface coatings, including stain, varnish, epoxy, shellac, polyurethane, and sealants.

(b) “Passing score” means a grade of 80% or higher on the third-party examination and training course examination for a lead occupation certificate.

(c) “Permanently covered soil” means soil that has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, including pavement and concrete. Soil covered with grass, mulch, and other landscaping materials shall not be deemed permanently covered soil.

(d) “Principal instructor” means an individual who meets the following requirements:

(1) Is directly employed and monetarily compensated by a training provider;

(2) is certified to perform the lead occupation in which the individual will provide instruction or has obtained certification in an advanced lead occupation; and

(3) has the primary responsibility for organizing and teaching a training course.

(e) “Project design” means lead abatement project designs, lead hazard control project designs, occupant protection plans, and lead abatement reports. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

28-72-1r. Definitions. In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, each of the following terms shall have the meaning assigned in this regulation: (a) “Reaccreditation” means the renewal of accreditation of a training provider for a training course after the expiration of the initial accreditation.

(b) “Recognized laboratory” means a laboratory recognized by the EPA pursuant to section 405(b) of the toxic substances control act (TSCA) as being capable of performing analyses for lead compounds in paint chips, dust, and soil samples.

(c) “Reduction” means any measure designed and implemented to reduce or eliminate human exposure to lead-based paint hazards including interim controls and abatement.

(d) “Refresher course” means a training course taken by a certified lead professional to maintain certification in a particular discipline.

(e) “Renewal” means the reissuance of a lead occupation certificate, a lead activity firm license, or a training provider accreditation.

(f) “Risk assessment” means an on-site investigation to determine the existence, nature, severity, and location of lead hazards in a residential dwelling or child-occupied facility and the provision of a written report explaining the results of the investigation and options for reducing lead hazards.

(g) “Risk assessor” means an individual certified by the secretary who meets the requirements in K.A.R. 28-72-6. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

28-72-1s. Definitions. In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, each of the following terms shall have the meaning assigned in this regulation. (a) “State” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, or any other territory or possession of the United States.

(b) “Surface coatings” means paint as defined in K.A.R. 28-72-1p. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

28-72-1t. Definitions. In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, each of the following terms shall have the meaning assigned in this regulation: (a) “Target housing” means housing constructed before 1978, with the exception of housing for the elderly. If one or more children through the age of 72 months reside or are expected to reside in the housing built exclusively for the elderly, the housing shall be assumed to have been constructed before 1978 unless empirical data proves otherwise. This term shall include schools and any structure used for the care of children under six years of age.

(b) “Third-party examination” means a discipline-specific examination administered by the department to test the knowledge of a person who has completed the required training course and is applying for certification in a particular discipline.

(c) “Training course” means the approved course of instruction established by this article to prepare an individual for certification in a single discipline.

(d) “Training curriculum” means a set of course topics for instruction by a training provider for a particular occupation designed to provide specialized knowledge and skills.

(e) “Training hour” means at least 50 minutes of actual time used for learning, including time devoted to lectures, learning activities, small group activities, demonstrations, evaluations, and hands-on experience.

(f) “Training manager” means the individual who is a direct and monetarily compensated employee of a training provider, is subject to the employment standards of the fair labor standards act, and is responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

(g) “Training provider” means a person or entity who has met the requirements of K.A.R. 28-72-4 and provides training courses for the purpose of state certification or certification renewal in the occupations of lead-safe work practices, lead abatement worker, lead abatement supervisor, lead-based paint inspector, risk assessor, and project designer. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

28-72-1v. Definition. In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, the following term shall have the meaning assigned in this regulation:

“Visual inspection for clearance testing” means the visual examination of a residential dwelling, a child-occupied facility, or any other structure designated by the secretary following a lead abatement or lead hazard control to determine whether or not the lead abatement or lead hazard control has been successfully completed. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

28-72-1x. Definition. In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, the following term shall have the meaning assigned in this regulation:

“X-ray fluorescence analyzer (XRF)” means an instrument that determines lead concentration in milligrams per square centimeter (mg/cm²) using the principle of X-ray fluorescence. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

28-72-2. General requirements for accreditation, licensure, and certification; adoption by reference. (a) Waiver. Any applicant for certification and any certified individual

may authorize others, including the applicant’s or individual’s employer, to act on the applicant’s or individual’s behalf regarding the certification application. This authorization shall be indicated on the application form provided by KDHE. If at any time the applicant or certified individual decides to change this authorization, the applicant or certified individual shall notify KDHE in writing of the change.

(b) Change of address. Each certified individual shall notify KDHE in writing of a change of mailing address no later than 30 days following the change. Each lead activity firm shall notify KDHE in writing of a change in business mailing address no later than 30 days following the change. Until a change of address is received, all correspondence shall be mailed to the individual’s mailing address and the lead activity firm’s business address indicated on the most recent application form.

(c) Prior out-of-state certification. A lead occupation certificate may be issued by the secretary to any person if both of the following conditions are met:

(1) The person meets the following requirements:

(A) Has submitted a complete application;

(B) has taken the required third-party exam for the discipline applied for and received a passing score; and

(C) has provided proof of certification from another state, if KDHE has entered into an agreement with that state or if that state is a current EPA program state.

(2) All individual certification fees have been paid.

(d) Adoption by reference.

(1) 40 CFR 745.80 through 745.90, as in effect on July 1, 2008, are adopted by reference, except as specified in paragraph (d)(2). For the purpose of this regulation, each reference in the adopted CFRs to “EPA” shall mean “KDHE,” and each reference to “administrator” shall mean “secretary.”

(2) The following portions of 40 CFR 745.80 through 40 CFR 745.90 are not adopted:

(A) 40 CFR 745.81 and 40 CFR 745.82(c);

(B) in 40 CFR 745.83, the following terms and their definitions: child occupied facility, compo-

ment or building component, interim controls, recognized test kit, renovator, and training hour;

(C) 40 CFR 745.85(a)(3)(iii). The use of a heat gun to remove lead-based paint shall not be allowed;

(D) 40 CFR 745.86(b)(6) and (c);

(E) 40 CFR 745.87;

(F) 40 CFR 745.88;

(G) 40 CFR 745.89;

(H) 40 CFR 745.90(a), (b)(6), and (c);

(I) 40 CFR 745.91; and

(J) 40 CFR 745.225(c)(6)(vii). (Authorized by K.S.A. 65-1,202; implementing K.S.A. 65-1,202 and 65-1,203; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

28-72-3. Fees. The following fees shall apply:

(a) Training providers. A separate accreditation fee shall be required for each training course. If a training course is taught in more than one language, a separate accreditation fee shall be required for each of these versions of the training course.

(1) Accreditation fee.....	\$500
(2) Initial fee.	
(A) Lead abatement supervisor, lead abatement worker, and project designer courses...	\$1,000
(B) Risk assessor and lead inspector courses	\$1,000
(C) Lead-safe work practices	\$300
(3) Refresher course fee.	
(A) Lead abatement supervisor, lead abatement worker, and project designer courses...	\$500
(B) Risk assessor and lead inspector courses	\$500
(C) Lead-safe work practices	\$150
(4) Reaccreditation fee.....	\$500
(A)(i) Reaccreditation for lead abatement supervisor, lead abatement worker, and project designer courses	\$1,000
(ii) Reaccreditation for risk assessor and inspector courses	\$1,000
(B)(i) Refresher reaccreditation for lead abatement supervisor, lead abatement worker, and project designer courses	\$500
(ii) Refresher reaccreditation for risk assessor and lead inspector courses	\$500
(b) Lead inspector.	
(1) Individual certification	\$200
(2) Individual recertification	\$100
(c) Risk assessor.	
(1) Individual certification	\$300
(2) Individual recertification	\$150

(3) Local health department or clinic that has received a certificate from KDHE for elevated blood lead level investigation risk assessments

.....	\$0
(d) Lead abatement supervisor.	
(1) Individual certification	\$150
(2) Individual recertification	\$75
(e) Project designer.	
(1) Individual certification	\$150
(2) Individual recertification	\$75
(f) Lead abatement worker.	
(1) Individual certification	\$50
(2) Individual recertification	\$25
(g) Renovator.	
(1) Individual certification	\$0
(2) Individual recertification	\$0
(h) Third-party examination.....	\$50
(i) Lead activity firm.	
(1) License	\$500
(2) License renewal	\$250
(3) Lead abatement project fee	1% of each project or \$50, whichever is greater
(4) Abatement project reinspection fee	\$150
(j) Renovation firm.	
(1) License	\$200
(2) License renewal	\$100

(Authorized by and implementing K.S.A. 65-1,202; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

28-72-4. Training provider accreditation.

(a) Good standing. Each applicant wishing to provide and teach lead activity training in Kansas shall be accredited as a training provider and licensed by KDHE as a lead activity firm. Each applicant desiring accreditation of the training courses for lead inspector, risk assessor, lead abatement worker, lead abatement supervisor, project designer, or lead-safe work practices, or any combination, under this regulation, who is required to be registered and in good standing with the Kansas secretary of state's office, shall submit a copy of the applicant's certificate of good standing to KDHE.

(b) Application to become a training provider for a training course. Completed applications shall be submitted to KDHE. Each application shall include the following:

(1) A completed training provider course accreditation application on a form provided by KDHE, which shall include the following:

(A) The training provider's name, address, and telephone number;

- (B) the lead activity firm license number;
 - (C) the name and date of birth of the training manager;
 - (D) the name and date of birth of the principal instructor for each course;
 - (E) the name and date of birth for any guest instructor for each course;
 - (F) a list of locations at which training will take place;
 - (G) a list of courses for which the training provider is applying for accreditation; and
 - (H) a statement signed by the training manager certifying that the information in the application for accreditation, and any additional information included with the application, is true and accurate to the best of the training manager's knowledge and understanding, that the training provider will comply with K.A.R. 28-72-4 through K.A.R. 28-72-4c, and that the training provider will conduct lead training only in those occupations in which the training provider has received accreditation;
- (2) a copy of the student and instructor manuals;
 - (3) the course agenda;
 - (4) the course examination blueprint;
 - (5) a copy of the quality control plan as described in paragraph (d)(9) of this regulation;
 - (6) a copy of a sample course completion diploma as described in paragraph (d)(8) of this regulation;
 - (7) a description of the facilities and equipment to be used for lectures and hands-on training;
 - (8) a description of the activities and procedures that will be used for conducting the skills assessment for each course;
 - (9) a payment to KDHE for the applicable non-refundable accreditation fees specified in K.A.R. 28-72-3, unless the training provider is a state, federally recognized Indian tribe, local government, or nonprofit organization as evidenced by a letter of determination issued by the IRS, which shall accompany the application; and
 - (10) documentation supporting the training manager's, principal instructor's, and any guest instructor's qualifications.

(c) Procedure for issuance or denial of training provider accreditation for a training course. The applicant shall be informed by KDHE in writing that the application is approved, incomplete, or denied.

(1) If an application is incomplete, the notice shall include a list of additional information or documentation required to complete the application.

(A) Within 30 calendar days after the issuance date of the notice of incomplete application, the applicant shall submit to KDHE, in writing, the information requested in the written notice.

(B) Failure to submit the information requested in the written notice within 30 calendar days shall result in denial of the application for a training course accreditation.

(C) After the information in the written notice is received, the applicant shall be informed by KDHE in writing that the application is either approved or denied.

(2) If an application is approved, a two-year accreditation certificate shall be issued by KDHE.

(3) If an application for training course accreditation is denied, the specific reason or reasons for the denial shall be stated in the notice of denial to the applicant.

(A) Training course accreditation may be denied by the secretary pursuant to K.S.A. 65-1,207(c), and amendments thereto.

(B) If an application is denied, the applicant may reapply for accreditation at any time.

(C) If an applicant is aggrieved by a determination to deny accreditation, the applicant may request a hearing with the office of administrative hearings, in accordance with the Kansas administrative procedure act.

(d) Requirements for accreditation of a training provider for a training course. For a training provider to maintain accreditation from KDHE to offer a training course, the training provider shall meet the following requirements:

(1) Training manager. The training manager shall be a monetarily compensated direct employee of the training provider who meets the requirements in subsection (e). The training manager shall be responsible for ensuring that the training provider complies at all times with the requirements in these regulations. The training manager may designate guest instructors as needed to provide instruction specific to the lecture, hands-on activities, or work practice components of a course. The training manager shall ensure that each guest instructor meets the requirements in subsection (f).

(2) Principal instructor. The training provider, in coordination with the training manager, shall designate a qualified principal instructor who meets the requirements in subsection (f). The principal instructor shall be responsible for the organization of the course and oversight of the teaching of all course materials. The principal instructor shall be

present during all classes or presentations given by any guest instructor.

(3) Guest instructor. The training manager may designate a guest instructor on an as-needed basis. No guest instructor shall be allowed to teach an entire training course. Each guest instructor shall meet the requirements in subsection (f).

(4) Training provider. The training provider shall meet the curriculum requirements in K.A.R. 28-72-4a for each course contained in the application for accreditation of a training provider.

(5) Delivery of course. The training provider shall ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course exam, hands-on training, and assessment activities. This requirement shall include providing training equipment that reflects current work practice standards in K.A.R. 28-72-13 through K.A.R. 28-72-21 and maintaining or updating the course materials, equipment, and facilities as needed.

(6) Course exam. For each course offered, the training provider shall conduct a monitored, written course exam at the completion of each course. An oral exam may be administered in lieu of a written course exam for the lead abatement worker course only. If an oral examination is administered, the student shall be required to provide the answers to the exam in writing.

(A) The course exam shall evaluate each trainee's competency and proficiency.

(B) Each individual shall be required to achieve a passing score on the course exam in order to successfully complete any course and receive a course completion diploma.

(C) The training provider and the training manager shall be responsible for maintaining the validity and integrity of the course exam to ensure that the exam accurately evaluates each trainee's knowledge and retention of the course topics.

(7) Hands-on skills assessment. For each course offered, except for project designers, the training provider shall conduct a hands-on skills assessment. The training manager shall maintain the validity and integrity of the hands-on skills assessment to ensure that the assessment accurately evaluates each trainee's performance of the work practice procedures associated with the course topics.

(8) Course completion diploma. The training provider shall issue a unique course completion diploma to each individual who passes the training course. Each course completion diploma shall include the following:

(A) The name, a unique identification number, and the address of the individual;

(B) the name of the particular course that the individual completed;

(C) the dates of course attendance; and

(D) the name, address, and telephone number of the training provider.

(9) Quality control plan. The training manager shall develop and implement a quality control plan. The plan shall be used to maintain or progressively improve the quality of the accredited provider.

(A) This plan shall contain at least the following elements:

(i) Procedures for periodic revision of training materials and the course exam to reflect innovations in the field;

(ii) procedures for the training manager's annual review of the competency of the principal instructor; and

(iii) a review to ensure the adequacy of the facilities and equipment.

(B) An annual report discussing the results of the quality control plan shall be submitted to KDHE within one year following accreditation and at each subsequent renewal.

(10) Access by KDHE. The training provider shall allow KDHE to conduct audits as needed in order for KDHE to evaluate the training provider's compliance with KDHE accreditation requirements. During this audit, the training provider shall make available to KDHE all information necessary to complete the evaluation. At KDHE's request, the training provider shall also make documents available for photocopying.

(11) Recordkeeping. The training provider shall maintain at its principal place of business, for at least five years, the following records:

(A) All documents specified in paragraphs (e)(2) and (f)(2) that demonstrate the qualifications listed in paragraph (e)(1) for the training manager, and paragraph (f)(1) for the principal instructor and any guest instructor;

(B) curriculum or course materials, or both, and documents reflecting any changes made to these materials;

(C) the course examination and blueprint;

(D) information regarding how the hands-on skills assessment is conducted, including the following:

(i) The name of the person conducting the assessment;

(ii) the criteria for grading skills;

- (iii) the facilities used;
- (iv) the pass and fail rate; and
- (v) the quality control plan as described in paragraph (d)(9);

(E) results of the students' hands-on skills assessments and course exams, and a record of each student's course completion diploma; and

(F) any other material not listed in this paragraph (d)(11) that was submitted to KDHE as part of the training provider's application for accreditation.

(12) Course notification. The training provider shall notify KDHE in writing at least 14 calendar days before conducting an accredited training course.

(A) Each notification shall include the following information:

(i) The location of the course, if it will be conducted at a location other than the training provider's training facility;

(ii) the dates and times of the course;

(iii) the name of the course; and

(iv) the name of the principal instructor and any guest instructors conducting the course.

(B) If the scheduled training course has been changed or canceled, the training provider shall notify KDHE in writing at least 24 hours before the training course was scheduled to begin.

(13) Changes to a training course. Before any one of the following changes is made to a training course, that change shall be submitted in writing to KDHE for review and approval before the continuation of the training course:

(A) The course curriculum;

(B) the course examination;

(C) the course materials;

(D) the training manager, principal instructors, or guest instructors; or

(E) the course completion diploma.

Within 60 calendar days after receipt of a change to a training course, the provider shall be informed by KDHE in writing that the change is either approved or disapproved. If the change is approved, the training provider shall include the change in the training course. If the change is disapproved, the training provider shall not include the change in the training course.

(14) Change of ownership. If a training provider changes ownership, the new owner shall notify KDHE in writing at least 30 calendar days before the change of ownership becomes effective. The notification shall include a new training course provider accreditation application, the appropriate fee or fees, and the date that the change of

ownership will become effective. The new training course provider accreditation application shall be processed according to this regulation. The current training provider's accreditation shall expire on the effective date specified in the notification of the change of ownership.

(15) Change of address. The training provider shall submit to KDHE a written notice of the training provider's new address and telephone number, and a description of the new training facility. The training provider shall submit this information to KDHE not later than 30 days before relocating its business or transferring its records.

(e) Training, education, and experience requirements for the training manager.

(1) The education or experience requirements for the training manager shall include one year of experience in lead or asbestos abatement, painting, carpentry, renovation, remodeling, safety and health, or industrial hygiene, and at least one of the following:

(A) A minimum of two years of experience in teaching or training adults;

(B) a bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, business administration, or education; or

(C) a minimum of two years of experience in managing a training program specializing in environmental hazards.

(2) The following records of experience and education shall be recognized by KDHE as evidence that the individual meets or exceeds KDHE requirements for a training manager:

(A) Resumes, letters of reference from past employers, or documentation to evidence past experience that includes specific dates of employment, the employer's name, address, telephone number, and specific job duties, as evidence of meeting the experience requirements; and

(B) official academic transcripts or diplomas, as evidence of meeting the education requirements.

(f) Training, education, and experience requirements for the principal instructor and any guest instructor.

(1) The training, education, and experience requirements for the principal instructor and any guest instructor of a training course shall include the following:

(A) At least one year of experience in teaching or training adults; and

(B) at least one year of experience in lead or asbestos abatement, painting, carpentry, renovation,

remodeling, occupational safety and health, or industrial hygiene, or an associate degree or higher from a postsecondary educational institution in building construction technology, engineering, safety, public health, or industrial hygiene.

(2) The following records of experience and education shall be recognized by KDHE as evidence that the individual meets or exceeds KDHE requirements for a principal instructor:

(A) Course completion diplomas issued by the training provider as evidence of meeting the training requirements and a current copy of the KDHE certification for the disciplines that the principal instructor desires to teach;

(B) official academic transcripts or diplomas, as evidence of meeting the education requirements; and

(C) resumes, letters of reference from past employers, or documentation to evidence past experience that includes specific dates of employment, the employer's name, address, telephone number, and specific job duties, as evidence of meeting the experience requirements.

(g)(1) Training provider accreditation may be suspended or revoked by the secretary pursuant to K.S.A. 65-1,207(c), and amendments thereto.

(2) Before suspending or revoking a training provider's accreditation, a training provider shall be given written notice of the reasons for the suspension or revocation. The training provider may request a hearing with the office of administrative hearings, in accordance with the Kansas administrative procedure act.

(h) Renewal of accreditation.

(1) Unless revoked sooner, a training provider's accreditation shall expire two years after the date of issuance. If a training provider meets the requirements of this regulation and K.A.R. 28-72-4a, the training provider shall be reaccredited.

(2) Each training provider seeking reaccreditation shall submit an application to KDHE at least 60 calendar days before the provider's accreditation expires. If a training provider does not submit its application for reaccreditation by that date, the provider's reaccreditation before the end of the accreditation period shall not be guaranteed by KDHE.

(3) The training provider's application for reaccreditation shall contain the following:

(A) A completed training provider course accreditation application on a form provided by KDHE, which shall include the following:

(i) The training provider's name, address, and telephone number;

(ii) the name and date of birth of the training manager;

(iii) the name and date of birth of the principal instructor for each course;

(iv) a list of locations at which training will take place;

(v) a list of courses for which the training provider is applying for reaccreditation; and

(vi) a statement signed by the training manager certifying that the information provided in the application for reaccreditation, and any additional information included with the application, is true and accurate to the best of the training manager's knowledge and understanding, that the training provider will comply with K.A.R. 28-72-4 and K.A.R. 28-72-4a, and that the training provider will conduct lead training only in those occupations in which the training provider has received accreditation;

(B) a list of courses for which the training provider is applying for reaccreditation;

(C) a description of any changes to the training facility, equipment, or course materials since the training provider's last application was approved that adversely affects the students' ability to learn; and

(D) a payment to KDHE for the nonrefundable fees specified in K.A.R. 28-72-3, as applicable, unless the training provider is a state, federally recognized Indian tribe, local government, or nonprofit organization as evidenced by a letter of determination issued by the IRS, which shall accompany the application.

(i) If the training provider has allowed its accreditation to expire and the provider desires to be accredited, it shall reapply in the same manner as that required for an application for an original accreditation in accordance with this regulation. (Authorized by K.S.A. 65-1,202; implementing K.S.A. 65-1,202, 65-1,203, and 65-1,207; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

28-72-4a. Curriculum requirements for training providers.

(a)(1) Each training provider of a lead inspector training course shall ensure that the lead inspector training course curriculum includes, at a minimum, 16 hours of classroom training and eight hours of hands-on training.

(2) Each lead inspector training course shall include, at a minimum, the following course topics:

(A) The role and responsibilities of an inspector;

(B) background information on lead, including the history of lead use and sources of environmental lead contamination;

(C) the health effects of lead, including the following:

(i) The ways that lead enters and affects the body;

(ii) the levels of concern; and

(iii) symptoms, diagnosis, and treatments;

(D) the regulatory background and an overview of lead in applicable state and federal guidelines or regulations pertaining to lead-based paint, including the current version of each of the following:

(i) 40 CFR part 745;

(ii) U.S. HUD guidelines for the evaluation and control of lead-based paint hazards in housing as adopted in K.A.R. 28-72-13;

(iii) 29 CFR 1910.1200;

(iv) 29 CFR 1926.62; and

(v) title X: the residential lead-based paint hazard reduction act of 1992;

(E) the regulations in this article pertaining to lead licensure, the Kansas work practice standards for lead-based paint activities specific to lead inspection activities, K.A.R. 28-72-2, and K.A.R. 28-72-51 through 28-72-54;

(F) quality control and assurance procedures in testing analysis;

(G) legal liabilities and obligations; and

(H) recordkeeping.

(3) Each lead inspector training course shall also include, at a minimum, the following course topics, the presentation of which shall require hands-on training as an integral component of the course:

(A) Lead-based paint inspection methods, including the selection of rooms and components for sampling or testing;

(B) preinspection planning and review, including developing a schematic site plan and determining inspection criteria and locations to collect samples in single-family and multifamily housing;

(C) paint, dust, and soil sampling methodologies, including the following:

(i) Lead-based paint testing or X-ray fluorescence paint analyzer (XRF) use, including the types of XRF units, their basic operation, and interpretation of XRF results, including substrate correction;

(ii) soil sample collection, including soil sampling techniques, the number and location of soil samples, and interpretation of soil sampling results; and

(iii) dust sample collection techniques, including the number and location of wipe samples and the interpretation of test results;

(D) clearance standards and testing, including random sampling; and

(E) preparation of the final inspection report.

(b) Each training provider of a risk assessor training course shall ensure that the risk assessor training course curriculum includes, at a minimum, 12 hours of classroom training and four hours of hands-on training.

(1) Each risk assessor training course shall include, at a minimum, the following course topics:

(A) The role and responsibilities of the risk assessor;

(B) the collection of background information to perform a risk assessment, including information on the age and history of the housing and occupancy by children under six years of age and women of childbearing age;

(C) sources of environmental lead contamination, including paint, surface dust and soil, water, air, packaging, and food;

(D) the regulations in this article pertaining to lead certification, Kansas work practice standards for lead-based paint specific to risk assessment activities, K.A.R. 28-72-2, and K.A.R. 28-72-51 through 28-72-54;

(E) development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards; and

(F) legal liabilities and obligations specific to a risk assessor.

(2) Each risk assessor training course shall also include, at a minimum, the following course topics, the presentation of which shall require hands-on training as an integral component of the course:

(A) Visual inspection for the purposes of identifying potential sources of lead hazards;

(B) lead-hazard screen protocols;

(C) sampling for other sources of lead exposure, including drinking water;

(D) interpretation of lead-based paint and other lead sampling results related to the Kansas clearance standards; and

(E) preparation of a final risk assessment report.

(c) Each training provider of a lead abatement worker course shall ensure that the lead abatement worker training course curriculum includes, at a minimum, 16 hours of classroom training and eight hours of hands-on training.

(1) Each lead abatement worker training course shall include, at a minimum, the following course topics:

(A) The role and responsibilities of a lead abatement worker;

(B) background information on lead, including the history of lead use and sources of environmental lead contamination;

(C) the health effects of lead, including the following:

(i) The ways that lead enters and affects the body;

(ii) the levels of concern; and

(iii) symptoms, diagnosis, and treatments;

(D) the regulatory background and an overview of lead in applicable state and federal guidelines or regulations pertaining to lead-based paint, including the current version of each of the following:

(i) 40 CFR part 745;

(ii) U.S. HUD guidelines for the evaluation and control of lead-based paint hazards in housing;

(iii) 29 CFR 1910.1200;

(iv) 29 CFR 1926.62; and

(v) title X: the residential lead-based paint hazard reduction act of 1992;

(E) the regulations in this article pertaining to lead certification, the Kansas work practice standards for lead-based paint activities specific to lead abatement activities, K.A.R. 28-72-2, and K.A.R. 28-72-51 through 28-72-54; and

(F) waste disposal techniques.

(2) Each lead abatement training course shall also include, at a minimum, the following course topics, the presentation of which shall require hands-on training as an integral component of the course:

(A) Personal protective equipment information, including respiratory equipment selection, air-purifying respirators, care and cleaning of respirators, respiratory program, protective clothing and equipment, and hygienic practices;

(B) lead hazard recognition and control, including site characterization, exposure measurements, medical surveillance, and engineering controls;

(C) preabatement set-up procedures, including containment for residential and commercial buildings and for superstructures;

(D) lead abatement and lead-hazard reduction methods for residential and commercial buildings and for superstructures, including prohibited practices;

(E) interior dust abatement methods and clean-up techniques; and

(F) soil and exterior dust abatement methods.

(d) Each training provider of a lead abatement supervisor training course shall ensure that the lead abatement supervisor training course curriculum includes, at a minimum, 28 hours of classroom training and 12 hours of hands-on training.

(1) Each lead abatement supervisor training course shall include, at a minimum, the following course topics:

(A) The role and responsibilities of a supervisor;

(B) background information on lead, including the history of lead use and sources of environmental lead contamination;

(C) the health effects of lead, including the following:

(i) The ways that lead enters and affects the body;

(ii) the levels of concern; and

(iii) symptoms, diagnosis, and treatments;

(D) the regulatory background and an overview of lead in applicable state and federal guidelines or regulations pertaining to lead-based paint, including the current version of each of the following:

(i) 40 CFR part 745;

(ii) U.S. HUD guidelines for the evaluation and control of lead-based paint hazards in housing;

(iii) 29 CFR 1910.1200;

(iv) 29 CFR 1926.62; and

(v) title X: the residential lead-based paint hazard reduction act of 1992;

(E) liability and insurance issues relating to lead abatement;

(F) the community relations process;

(G) hazard recognition and control techniques, including site characterization, exposure measurements, material identification, safety and health planning, medical surveillance, and engineering controls;

(H) the regulations in this article pertaining to lead certification and to the Kansas work practice standards for lead-based paint activities specific to lead abatement activities;

(I) clearance standards and testing;

(J) cleanup and waste disposal; and

(K) recordkeeping.

(2) Each lead abatement supervisor training course shall also include, at a minimum, the following course topics, the presentation of which shall require hands-on training as an integral component of the course:

(A) Cost estimation;

(B) risk assessment and inspection report interpretation;

(C) the development and implementation of an occupant protection plan and pre-abatement work

plan, including containment for residential and commercial buildings and for superstructures;

(D) lead hazard recognition and control;

(E) personal protective equipment information, including respiratory equipment selection, air-purifying respirators, care and cleaning of respirators, respiratory program, protective clothing and equipment, and hygienic practices;

(F) lead abatement and lead-hazard reduction methods, including prohibited practices, for residential and commercial buildings and superstructures;

(G) project management, including supervisory techniques, contractor specifications, emergency response planning, and blueprint reading;

(H) interior dust abatement and cleanup techniques;

(I) soil and exterior dust abatement methods; and

(J) the preparation of an abatement report.

(e) Each training provider of a project designer training course shall ensure that the project designer training course curriculum includes, at a minimum, eight hours of classroom training. Each project designer training course shall include, at a minimum, the following course topics:

(1) The role and responsibilities of a project designer;

(2) the development and implementation of an occupant protection plan for large-scale abatement projects;

(3) lead abatement and lead-hazard reduction methods, including prohibited practices, for large-scale abatement projects;

(4) interior dust abatement or cleanup or lead-hazard control, and reduction methods for large-scale abatement projects;

(5) soil and exterior dust abatement methods for large-scale abatement projects;

(6) clearance standards and testing for large-scale abatement projects;

(7) integration of lead abatement methods with modernization and rehabilitation projects for large-scale abatement projects; and

(8) the Kansas administrative regulations pertaining to lead-hazard disclosure. (Authorized by and implementing K.S.A. 65-1,202; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

28-72-4b. (Authorized by K.S.A. 2001 Supp. 65-1,202; implementing K.S.A. 2001 Supp. 65-1,202, 65-1,203, and 65-1,207; effective, T-28-

9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; revoked April 9, 2010.)

28-72-4c. Training provider accreditation; refresher training course. (a) Application for accreditation of a training provider for a refresher training course. A training provider may seek accreditation to offer refresher training courses in any occupation. To obtain KDHE accreditation to offer refresher training courses, each training provider shall meet the following minimum requirements:

(1) Each refresher course shall review the curriculum topics of the full-length courses listed in K.A.R. 28-72-4a as appropriate. In addition, each training provider shall ensure that the refresher course of study includes, at a minimum, the following:

(A) An overview of current safety practices relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate occupation;

(B) current laws and regulations relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate occupation; and

(C) current technologies relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate occupation.

(2) Each refresher course, except for the project designer course and the lead-safe work practices course, shall last at least eight training hours. The project designer and lead-safe work practices refresher courses shall last at least four training hours.

(3) For each refresher training course offered, the training provider shall conduct a hands-on assessment, if applicable.

(4) For each refresher training course offered, the training provider shall conduct a course exam at the completion of the course.

(b) Any training provider may apply for accreditation of a refresher training course concurrently with its application for accreditation of the corresponding training course as described in K.A.R. 28-72-4. If the training provider submits both applications concurrently, the procedures and requirements specified in K.A.R. 28-72-4 shall be used by KDHE for accreditation of the refresher course and the corresponding training course.

(c) Each training provider seeking accreditation to offer only refresher training courses shall submit a written application to KDHE, which shall include the following:

(1) A completed training course accreditation application on a form provided by KDHE, which shall include the following:

(A) The training provider's name, address, and telephone number;

(B) the name and date of birth of the training manager;

(C) the name and date of birth of the principal instructor for each course;

(D) a list of locations at which training will take place;

(E) a list of courses for which the training provider is applying for accreditation; and

(F) a statement signed by the training manager certifying that the information provided in the application for accreditation, and any additional information included with the application, is true and accurate to the best of the training manager's knowledge and understanding, that the training provider will comply with K.A.R. 28-72-4 through K.A.R. 28-72-4c, and that the training provider will conduct lead training only in those occupations in which the training provider has received accreditation;

(2) a copy of the student and instructor manuals;

(3) the course agenda;

(4) the course examination blueprint;

(5) a copy of the quality control plan as described in K.A.R. 28-72-4(d)(9);

(6) a copy of a sample course completion diploma as described in K.A.R. 28-72-4(d)(8);

(7) a description of the facilities and equipment to be used for lecture and hands-on training; and

(8) a payment to KDHE for the applicable non-refundable reaccreditation fees, unless the training provider is a state, federally recognized Indian tribe, local government, or nonprofit organization as evidenced by a letter of determination issued by the IRS, which shall accompany the application.

(d) The following shall apply to each training provider applying for the accreditation of refresher training courses:

(1) The good standing requirements in K.A.R. 28-72-4(a);

(2) the procedures for training provider accreditation issuance or denial in K.A.R. 28-72-4(c);

(3) the requirements for accreditation of a training provider for a training course;

(4) the training, education, and the experience requirements for training managers and principal instructors in K.A.R. 28-72-4(e) and (f); and

(5) the provisions relating to suspension or revocation of accreditation in K.A.R. 28-72-4(g).

(e)(1) Unless revoked sooner, each training provider's accreditation, including refresher training courses, shall expire two years after the date of issuance. If a training provider meets the requirements of subsections (a), (c), and (d), the training provider shall be reaccredited.

(2) Each training provider seeking reaccreditation of one or more refresher training courses shall submit an application to KDHE at least 60 calendar days before the training provider's accreditation expires. If a training provider does not submit its application for reaccreditation by that date, the provider's reaccreditation before the end of the accreditation period shall not be guaranteed by KDHE.

(3) The training provider's application for reaccreditation shall contain the following:

(A) A completed training provider course accreditation application on a form provided by KDHE, which shall include the following:

(i) The training provider's name, address, and telephone number;

(ii) the name and date of birth of the training manager;

(iii) the name and date of birth of the principal instructor for each course;

(iv) a list of locations at which training will take place;

(v) a list of refresher training courses for which the training provider is applying for reaccreditation; and

(vi) a statement signed by the training manager certifying that the information provided in the application for reaccreditation, and any additional information included with the application, is true and accurate to the best of the training manager's knowledge and understanding, that the training provider will comply with K.A.R. 28-72-4, K.A.R. 28-72-4a, and K.A.R. 28-72-4c, and that the training provider will conduct lead training only in those occupations in which the training provider has received accreditation;

(B) a list of refresher training courses for which the training provider is applying for reaccreditation;

(C) a description of any changes to the training facility, equipment, or course materials since the training provider's last application was approved that adversely affect the students' ability to learn; and

(D) a payment to KDHE for the nonrefundable fees specified in K.A.R. 28-72-3, as applicable, unless the training provider is a state, federal-

ly recognized Indian tribe, local government, or nonprofit organization as evidenced by a letter of determination issued by the IRS, which shall accompany the application.

(4) If the training provider has allowed its accreditation to expire and the provider desires to be accredited, the training provider shall reapply in the same manner as that required for an application for an original accreditation in accordance with this regulation. (Authorized by and implementing K.S.A. 65-1,202 and 65-1,207; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

28-72-5. Application process and requirements for the certification of lead inspectors.

(a) Application for a lead inspector certificate.

(1) Each applicant for a lead inspector certificate shall submit a completed application to KDHE before consideration for certificate issuance. All applications for certification shall be received by KDHE at least 30 days before the date of the third-party examination, but the deadline for filing applications may be waived by KDHE as particular circumstances justify.

(2) Each application shall include the following:

(A) A completed lead occupation certificate application on a form provided by KDHE, which shall include the following:

(i) The applicant's full legal name, home address, and telephone number;

(ii) the name, address, and telephone number of the applicant's current employer;

(iii) the applicant's state-issued identification number or federal employment identification number;

(iv) the county or counties in which the applicant is employed;

(v) the address where the applicant would like to receive correspondence regarding the application or certification;

(vi) the occupation for which the applicant wishes to be certified;

(vii) proof of any certification for lead occupations in other states, including the names of the other states, type of certification, certification expiration date, certificate number, and copies of the other states' certificate or license;

(viii) proof of any certification by the EPA, including the EPA region number, type of certification, certification expiration date, certificate number, and a copy of the EPA certificate;

(ix) the type of training completed, including the name of the training provider, certificate identification number, and dates of course attendance;

(x) any employment history or education that meets the experience requirements in subsection (b); and

(xi) the signature of the applicant, which shall certify that all information in the application is complete and true to the best of the applicant's knowledge and that the applicant will comply with applicable state statutes and regulations;

(B) a copy of the lead inspector training course completion diploma or equivalent EPA training course diplomas, and any required refresher course completion diplomas;

(C) documentation pursuant to subsection (b) as evidence of meeting the education or experience requirements for lead inspectors; and

(D) a payment to KDHE for the nonrefundable fee specified in K.A.R. 28-72-3.

(3) Each applicant for a lead inspector certificate shall apply to KDHE within one year after the applicant's successful completion of the lead inspector training course, as indicated on the course completion diploma. Applicants failing to apply within one year after the date on the training course completion diploma shall, before making application for certification, be required to successfully complete the eight-hour lead inspector refresher training course accredited by KDHE.

(4) Each applicant who fails to apply within two years after the lead inspector training and who has not successfully completed refresher training shall be required to successfully complete the lead inspector training course before submitting an application for a lead inspector certificate.

(b) Training, education, and experience requirements for a lead inspector certificate.

(1) Each applicant for certification as a lead inspector shall complete a lead inspector training course or its equivalent and shall be required to achieve passing scores on the course examination and the third-party examination.

(2) Each applicant for certification as a lead inspector shall meet the minimum education or experience requirements for a certified lead inspector.

(A) The minimum education or experience requirements for a certified lead inspector shall include at least one of the following:

(i) A bachelor's degree;

(ii) an associate's degree and one year of experience in a related field, including housing repair

and inspection, and lead, asbestos, and environmental remediation work; or

(iii) either a high school diploma or a certificate of high school equivalency (GED), in addition to two years of experience in a related field, including housing repair and inspection, and lead, asbestos, and environmental remediation work.

(B) The following documents shall be recognized by KDHE as evidence of meeting the requirements listed in paragraph (b)(2)(A):

(i) Official academic transcripts or diplomas as evidence of meeting the education requirements;

(ii) resumes, letters of reference, or documentation of work experience, which at a minimum shall include specific dates of employment, each employer's name, address, and telephone number, and specific job duties, as evidence of meeting the work experience requirements;

(iii) course completion diplomas issued by the training provider as evidence of meeting the training requirements; and

(iv) appropriate documentation of certification or registration.

(c) Procedure for issuance or denial of a lead inspector certificate.

(1) The applicant shall be informed by the secretary in writing that the application is approved, incomplete, or denied.

(A) If an application is incomplete, the notice shall include a list of additional information or documentation required to complete the application.

(i) Within 30 calendar days after the issuance date of the notice of an incomplete application, the applicant shall submit, to the secretary in writing, the information requested in the written notice.

(ii) Failure to submit the information requested in the written notice within 30 calendar days shall result in the secretary's denial of the individual's application for certification.

(iii) After receipt of the information requested in the written notice, the applicant shall be informed by the secretary in writing that the application is either approved or denied.

(B) If an application for certification is denied, the written notice of denial to the applicant shall specify the reason or reasons for the denial. Certification may be denied by the secretary pursuant to K.S.A. 65-1,207(b), and amendments thereto.

(C) If an application is denied, the applicant may reapply to KDHE for a lead inspector certificate by submitting a complete lead occupation

application form with another nonrefundable certification fee, as specified in K.A.R. 28-72-3.

(D) If an applicant is aggrieved by a determination to deny certification, the applicant may request a hearing with the office of administrative hearings, in accordance with the Kansas administrative procedure act.

(2) Within 180 calendar days after application approval, the applicant shall be required to attain a passing score on the third-party examination for lead inspectors.

(A) An applicant shall not sit for the third-party examination for lead inspectors more than three times within 180 calendar days after the issuance date of the notice of an approved application.

(B) The applicant's failure to obtain a passing score on the third-party examination for lead inspectors within the 180-day period following the notice of an approved application for a certificate shall result in KDHE's denial of the individual's application for a certificate. The individual may reapply to KDHE pursuant to this regulation but only after retaking the lead inspector training course.

(3) After the applicant passes the third-party examination, a two-year lead inspector certificate shall be issued by KDHE.

(4) A certificate may be issued with specific restrictions pursuant to an agreement between the applicant and KDHE. (Authorized by K.S.A. 65-1,202; implementing K.S.A. 65-1,202, 65-1,203, and 65-1,207; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

28-72-6. Application process and requirements for the certification of risk assessors.

(a) Application for a risk assessor certificate.

(1) Each applicant for a risk assessor certificate shall submit a completed application to KDHE before consideration for certificate issuance. All applications for certification shall be received by KDHE at least 30 days before the date of the third-party examination, but the deadline for filing applications may be waived by KDHE as particular circumstances justify.

(2) Each application shall include the information specified in K.A.R. 28-72-5(a)(2)(A) and the following:

(A) A copy of the risk assessor and lead inspector training course completion diploma, and any required refresher course completion diplomas;

(B) documentation pursuant to subsection (b) as evidence of meeting the education or experience requirements for risk assessors; and

(C) a payment to KDHE for the nonrefundable fee specified in K.A.R. 28-72-3.

(3) Each applicant for a risk assessor certificate shall apply to KDHE within one year after the applicant's successful completion of the risk assessor training course, as indicated on the course completion diploma. Applicants failing to apply within one year after the date on the training course completion certificate shall, before making application for certification, be required to successfully complete the eight-hour risk assessor refresher training course accredited by KDHE.

(4) Each applicant who fails to apply within two years after the risk assessor training and who has not successfully completed the refresher training course shall be required to successfully complete the risk assessor training course before submitting an application for a risk assessor certificate.

(b) Training, education, and experience requirements for a risk assessor certificate.

(1) Each applicant for a certificate as a risk assessor shall complete a risk assessor training course and a lead inspector training course and shall be required to achieve passing scores on both the course examinations and the third-party examination for risk assessors.

(2) Each applicant for a certificate as a risk assessor shall meet the minimum education and experience requirements for a certified risk assessor.

(A) The minimum education and experience requirements for a certified risk assessor shall include at least one of the following:

(i) A bachelor's degree and at least one year of experience in a related field, including housing repair and inspection, and lead, asbestos, and environmental remediation work;

(ii) an associate's degree and two years of experience in a related field, including housing repair and inspection, and lead, asbestos, and environmental remediation work;

(iii) certification as an industrial hygienist, professional engineer, or registered architect, or certification in a related engineering, health, or environmental field, including a safety professional and environmental scientist; or

(iv) either a high school diploma or a certificate of high school equivalency (GED), in addition to three years of experience in a field, including housing repair and inspection, and lead, asbestos, and environmental remediation work.

(B) The following documents shall be recognized by KDHE as evidence of meeting the requirements listed in paragraph (b)(2)(A):

(i) Official academic transcripts or diplomas as evidence of meeting the education requirements;

(ii) resumes, letters of reference, or documentation of work experience, which at a minimum shall include specific dates of employment, each employer's name, address, and telephone number, and specific job duties, as evidence of meeting the work experience requirements;

(iii) course completion diplomas issued by the training provider as evidence of meeting the training requirements; and

(iv) appropriate documentation of certifications or registrations.

(c) Procedure for issuance or denial of a risk assessor certificate.

(1) Each applicant shall be informed by the secretary in writing that the application is approved, incomplete, or denied.

(A) If an application is incomplete, the notice shall include a list of additional information or documentation required to complete the application.

(i) Within 30 calendar days after the issuance date of the notice of an incomplete application, the applicant shall submit, to the secretary in writing, the information requested in the written notice.

(ii) Failure to submit the information requested in the written notice within 30 calendar days shall result in the secretary's denial of the individual's application for certification.

(iii) After receipt of the information requested in the written notice, the applicant shall be informed by the secretary in writing that the application is either approved or denied.

(B) If an application for certification is denied, the written notice of denial to the applicant shall specify the reason or reasons for the denial. Certification may be denied by the secretary pursuant to K.S.A. 65-1,207(b), and amendments thereto.

(C) If an application is denied, the applicant may reapply to KDHE for a risk assessor certificate by submitting a complete lead occupation application form with another nonrefundable certification fee, as specified in K.A.R. 28-72-3.

(D) If an applicant is aggrieved by a determination to deny certification, the applicant may request a hearing with the office of administrative hearings, in accordance with the Kansas administrative procedure act.

(2) Within 180 calendar days after application approval, the applicant shall be required to attain a passing score on the third-party examination for risk assessors.

(A) An applicant shall not sit for the third-party examination for risk assessors more than three times within 180 calendar days after the issuance date of the notice of an approved application.

(B) The applicant's failure to obtain a passing score on the third-party examination for risk assessors within the 180-day period following the notice of an approved application for a certificate shall result in KDHE's denial of the individual's application for a certificate. The individual may reapply to KDHE pursuant to this regulation but only after retaking the risk assessor training course.

(3) After the applicant passes the third-party examination, a two-year risk assessor certificate shall be issued by KDHE.

(4) A certificate may be issued with specific restrictions pursuant to an agreement between the applicant and KDHE. (Authorized by K.S.A. 65-1,202; implementing K.S.A. 65-1,202, 65-1,203, and 65-1,207; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

28-72-6a. Application process and requirements for the certification of an elevated blood lead level investigator. (a) Application for an elevated blood lead (EBL) level investigator certificate.

(1) Each applicant for an elevated blood lead level investigator certificate shall be selected by KDHE. Each selected applicant shall submit a completed application to KDHE before issuance of a certificate.

(2) Each application shall include the following:

(A) A completed lead occupation certificate application on a form provided by KDHE, which shall include the following:

(i) The applicant's full legal name, home address, and telephone number;

(ii) the name, address, and telephone number of the applicant's current employer;

(iii) the applicant's state-issued identification number or federal employment identification number;

(iv) the county or counties in which the applicant is employed;

(v) the address where the applicant would like to receive correspondence regarding the application or certification;

(vi) the occupation for which the applicant wishes to be certified;

(vii) proof of any certification for lead occupations in other states, including the names of the other states, type of certification, certification expiration date, certificate number, and copies of the other states' certificate or license;

(viii) proof of any certification by the EPA, including the EPA region number, type of certification, certification expiration date, certificate number, and a copy of the EPA certificate;

(ix) the type of training completed, including the name of the training provider, diploma identification number, and dates of course attendance;

(x) any employment history or education that meets the experience requirements in subsection (b);

(xi) any criminal history; and

(xii) the signature of the applicant, which shall certify that all information in the application is complete and true to the best of the applicant's knowledge and that the applicant will comply with applicable state statutes and regulations;

(B) a copy of the risk assessor and lead inspector training course completion diploma and any required refresher course completion diplomas; and

(C) documentation pursuant to subsection (b) as evidence of meeting the education or experience requirements for an elevated blood lead level investigator.

(b) Training, education, and experience requirements for an elevated blood lead level investigator certificate.

(1) Each applicant for a certificate as an elevated blood lead level investigator shall complete a risk assessor training course and a lead inspector training course and shall be required to attain passing scores on both course examinations.

(2) Each applicant for a certificate as an elevated blood level investigator shall complete a KDHE-sponsored EBL training course, shall meet the minimum education and experience requirements for a certified elevated blood lead level investigator, and shall be required to attain a passing score on the third-party elevated blood lead level investigator examination.

(3) (A) The minimum education and experience requirements for a certified elevated blood lead level investigator shall include at least one of the following:

(i) A bachelor's degree and experience in a related field, including nursing, public health, housing

repair and inspection, lead hazard investigation, or environmental remediation work; or

(ii) an associate's degree and experience in a related field, including nursing, public health, housing repair and inspection, lead hazard investigation, or environmental remediation work; or

(iii) certification as an industrial hygienist, or certification in public health or environmental health; or

(iv) a high school diploma or a certificate of high school equivalency (GED), in addition to experience in a related field, including nursing, public health, housing repair and inspection, lead hazard investigation, or environmental remediation work.

(B) The following documents shall be recognized by KDHE as evidence of meeting the requirements listed in paragraph (b)(3)(A):

(i) Official academic transcripts or diplomas as evidence of meeting the education requirements;

(ii) resumes, letters of reference, or documentation of work experience, which at a minimum shall include specific dates of employment, each employer's name, address, and telephone number, and specific job duties, as evidence of meeting the work experience requirements;

(iii) course completion diplomas issued by the training provider as evidence of meeting the training requirements; and

(iv) appropriate documentation of certifications or registrations.

(4) Upon receipt of a complete and qualifying application, an elevated blood lead level investigator certificate may be issued with specific restrictions pursuant to an agreement between the applicant, the applicant's employer or the applicant's controlling agency, and KDHE.

(c) Procedure for issuance or denial of an elevated blood lead level investigator certificate.

(1) Each applicant shall be informed in writing by the secretary that the application is approved, incomplete, or denied.

(A) If an application is incomplete, the notice shall include a list of additional information or documentation required to complete the application.

(i) Within 30 calendar days after the issuance date of the notice of an incomplete application, the applicant shall submit, to the secretary in writing, the information requested in the written notice.

(ii) Failure to submit the information requested in the written notice within 30 calendar days shall result in the retraction of KDHE's request to the applicant to become an elevated blood lead level

investigator and result in the denial of the individual's application for certification.

(iii) After receipt of the information requested in the written notice, the applicant shall be informed by the secretary that the application is either approved or denied.

(B) If an application for certification is denied, the written notice of denial to the applicant shall specify the reason or reasons for the denial. Certification may be denied by the secretary pursuant to K.S.A. 65-1,207(b), and amendments thereto.

(C) If an application is denied, the applicant may, at the request of KDHE, reapply to KDHE for an elevated blood lead level investigator certificate by submitting a complete lead occupation application form.

(D) If an applicant is aggrieved by a determination to deny certification, the applicant may request a hearing with the office of administrative hearings, in accordance with the Kansas administrative procedure act.

(2) Within 180 calendar days after application approval, the applicant shall be required to attain a passing score on the third-party examination for elevated blood lead level investigators.

(A) An applicant shall not sit for the third-party examination for elevated blood lead level investigators more than three times within 180 calendar days after the issuance date of the notice of an approved application.

(B) The applicant's failure to obtain a passing score on the third-party examination for elevated blood lead level investigators within the 180-day period following the notice of an approved application for a certificate shall result in KDHE's denial of the individual's application for a certificate. At the request of KDHE, the individual may reapply to KDHE pursuant to this regulation, but only after retaking the KDHE risk-assessor training course.

(3) After the applicant passes the third-party examination, a two-year elevated blood lead level investigator certificate shall be issued by KDHE.

(4) The certificate shall be issued with specific restrictions pursuant to an agreement between the applicant or the applicant's employer and KDHE. (Authorized by K.S.A. 65-1,202; implementing K.S.A. 65-1,202, 65-1,203 and 65-1,207; effective April 9, 2010.)

28-72-7. Application process and requirements for the certification of lead abatement workers. (a) Application for a lead abatement worker certificate.

(1) Each applicant for a lead abatement worker certificate shall submit a completed application to KDHE before consideration for certificate issuance. Each application for certification shall be received by KDHE within one year after successful completion of the lead abatement worker training course.

(2) Each application shall include the information specified in K.A.R. 28-72-5(a)(2)(A) and the following:

(A) A copy of the lead abatement worker training course completion diploma, and any required refresher course completion diplomas; and

(B) A payment to KDHE for the nonrefundable fee specified in K.A.R. 28-72-3.

(3) Each applicant for a lead abatement worker certificate shall apply to KDHE within one year after the applicant's successful completion of the lead abatement worker training course, as indicated on the certificate of completion. Applicants failing to apply within one year after the date on the training course completion diploma shall, before making application for certification, successfully complete the eight-hour lead abatement worker refresher training course.

(4) Each applicant who fails to apply within two years after the lead abatement worker training and who has not successfully completed refresher training shall be required to successfully complete the lead abatement worker training course before submitting an application for a lead abatement worker certificate.

(b) Training, education, and experience requirements for a lead abatement worker's certificate. Each applicant for a certificate as a lead abatement worker shall complete a lead abatement worker training course and shall be required to achieve a passing score on the course examination. The applicant shall submit a course completion diploma issued by the training provider as evidence of meeting this requirement.

(c) Procedure for issuance or denial of a lead abatement worker certificate.

(1) Each applicant shall be informed by the secretary in writing that the application is approved, incomplete, or denied.

(A) If an application is incomplete, the notice shall include a list of additional information or documentation required to complete the application.

(i) Within 30 calendar days after the issuance date of the notice of an incomplete application, the applicant shall submit, to the secretary in

writing, the information requested in the written notice.

(ii) Failure to submit the information requested in the written notice within 30 calendar days shall result in the secretary's denial of the individual's application for certification.

(iii) After receipt of the information requested in the written notice, the applicant shall be informed by KDHE in writing that the application is either approved or denied.

(B) If an application for certification is denied, the written notice of denial to the applicant shall specify the reason or reasons for the denial. Certification may be denied by the secretary pursuant to K.S.A. 65-1,207(b), and amendments thereto.

(C) If an application is denied, the applicant may reapply to KDHE for a lead abatement worker certificate by submitting a complete lead occupation application form with another nonrefundable certification fee, as specified in K.A.R. 28-72-3.

(D) If an applicant is aggrieved by a determination to deny certification, the applicant may request a hearing with the office of administrative hearings, in accordance with the Kansas administrative procedure act.

(2) If the application is approved, a two-year lead abatement worker certificate shall be issued by KDHE.

(3) A certificate may be issued with specific restrictions pursuant to an agreement between the applicant and KDHE. (Authorized by K.S.A. 65-1,202; implementing K.S.A. 65-1,202, 65-1,203, and 65-1,207; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

28-72-7a. Application process for renovators and requirements for certification in lead-safe work practices. (a) Application for renovator certification.

(1) Each applicant seeking certification shall submit a completed application to KDHE before consideration for the certificate issuance. Each application for certification shall be received by KDHE within one year after successful completion of the "lead-safe work practices in Kansas" training course.

(2) Each application shall include the following:

(A) A completed certificate application on a form provided by KDHE, which shall include the following:

(i) The applicant's full legal name, home address, and telephone number;

(ii) the name, address, and telephone number of the applicant's current employer;

(iii) the applicant's state-issued identification number or federal employment identification number;

(iv) the county or counties in which the applicant is employed;

(v) the address where the applicant would like to receive correspondence regarding the application or certification;

(vi) proof of any certification as a renovator in other states, including the names of the other states, type of certification, certification expiration date, certificate number, and copies of the other states' certificate or license;

(vii) proof of any certification by the EPA, including the EPA region number, type of certification, certification expiration date, certificate number, and a copy of the EPA certificate;

(viii) the type of training completed, including the name of the training provider, diploma identification number, and date of course attendance; and

(ix) the signature of the applicant, which shall certify that all information in the application is complete and true to the best of the applicant's knowledge and that the applicant will comply with applicable state statutes and regulations;

(B) a copy of the "lead-safe work practices in Kansas" training course completion diploma, and any required refresher course completion diploma; and

(C) a payment to KDHE for the nonrefundable fee specified in K.A.R. 28-72-3.

(3) Each applicant for a renovator certificate shall apply to KDHE within one year after the applicant's successful completion of the "lead-safe work practices in Kansas" training course, as indicated on the certificate of completion. Applicants failing to apply within one year after the date on the training course completion diploma shall, before making application for certification, be required to successfully complete the four-hour lead-safe work practices in Kansas refresher training course.

(b) Training, education, and experience requirements for a renovator certificate. Each applicant shall complete a "lead-safe work practices in Kansas" training course and shall be required to achieve a passing score on the course examination. The applicant shall submit a course completion certificate issued by the training provider as evidence of meeting this requirement.

(c) Procedure for issuance or denial of a renovator certificate.

(1) Each applicant shall be informed by the secretary in writing that the application is approved, incomplete, or denied.

(A) If an application is incomplete, the notice shall include a list of additional information or documentation required to complete the application.

(i) Within 30 calendar days after the issuance date of the notice of an incomplete application, the applicant shall submit, to the secretary in writing, the information requested in the written notice.

(ii) Failure to submit the information requested in the written notice within 30 calendar days shall result in the secretary's denial of the individual's application for certification.

(iii) After receipt of the information requested in the written notice, the application shall be approved by the secretary, or the applicant shall be informed in writing that the application is denied.

(B) If an application for certification is denied, the written notice of denial to the applicant shall specify the reason or reasons for the denial. Certification may be denied by the secretary pursuant to K.S.A. 65-1,207(b), and amendments thereto.

(C) If an application is denied, the applicant may reapply to KDHE for a renovator certificate by submitting a complete lead occupation application form with another nonrefundable certification fee, as specified in K.A.R. 28-72-3.

(D) If an applicant is aggrieved by a determination to deny certification, the applicant may request a hearing with the office of administrative hearings, in accordance with the Kansas administrative procedure act.

(2) If the application is approved, a five-year renovator certificate shall be issued by KDHE.

(3) A certificate may be issued with specific restrictions pursuant to an agreement between the applicant and KDHE. (Authorized by K.S.A. 65-1,202; implementing K.S.A. 65-1,202, 65-1,203, and 65-1,207; effective April 9, 2010.)

28-72-8. Application process and requirements for the certification of lead abatement supervisors. (a) Application for a lead abatement supervisor certificate.

(1) Each applicant for a lead abatement supervisor certificate shall submit a completed application to KDHE before consideration for certificate issuance. Each application for certification shall

be received by KDHE at least 30 days before the date of the third-party examination, but the deadline for filing applications may be waived by KDHE as particular circumstances justify.

(2) Each application shall include the information specified in K.A.R. 28-72-5(a)(2)(A) and the following:

(A) A copy of the lead abatement supervisor training course completion diploma, and any required refresher course completion diplomas;

(B) documentation pursuant to subsection (c) as evidence of meeting the education or experience requirements for lead abatement supervisors; and

(C) a payment to KDHE for the nonrefundable fee specified in K.A.R. 28-72-3.

(3) Each applicant for a lead abatement supervisor certificate shall apply to KDHE within one year after the applicant's successful completion of the lead abatement supervisor training course, as indicated on the course completion diploma. Each applicant failing to apply within one year after the date on the training course completion certificate shall, before making application for certification, be required to successfully complete the eight-hour lead abatement supervisor refresher training course.

(4) Each applicant who fails to apply within two years after the lead abatement supervisor training and who has not successfully completed refresher training shall be required to successfully complete the lead abatement supervisor training course before submitting an application for a lead abatement supervisor certificate.

(b) Training and experience requirements for a lead abatement supervisor certificate.

(1) Each applicant for a certificate as a lead abatement supervisor shall complete a lead abatement supervisor training course and shall be required to achieve passing scores on the course examination and the third-party examination.

(2) Each applicant for a certificate as a lead abatement supervisor shall meet the minimum experience requirements for a certified lead abatement supervisor.

(A) The minimum experience requirements for a lead abatement supervisor certificate shall include at least one of the following:

(i) At least one year of experience as a certified lead abatement worker certified by the secretary, the EPA, or an EPA-approved state;

(ii) at least two years of experience in asbestos abatement work as a construction manager or superintendent;

(iii) at least two years of experience as a manager for environmental hazard remediation projects; or

(iv) at least two years of experience as a supervisor in residential construction.

(B) The following documents shall be recognized by KDHE as evidence of meeting the requirements listed in paragraph (b)(2)(A):

(i) Resumes, letters of reference, or documentation of work experience, which shall include specific dates of employment, each employer's name, address, and telephone number, and specific job duties, as evidence of meeting the work experience requirements;

(ii) course completion diplomas issued by a training provider as evidence of meeting the training requirements; and

(iii) a copy of the lead abatement supervisor certificate or identification badge as evidence of having been a certified lead abatement supervisor.

(c) Procedure for issuance or denial of a lead abatement supervisor certificate.

(1) Each applicant shall be informed by the secretary in writing that the application is approved, incomplete, or denied.

(A) If an application is incomplete, the notice shall include a list of additional information or documentation required to complete the application.

(i) Within 30 calendar days after the issuance date of the notice of an incomplete application, the applicant shall submit, to the secretary in writing, the information requested in the written notice.

(ii) Failure to submit the information requested in the written notice within 30 calendar days shall result in the secretary's denial of the individual's application for certification.

(iii) After receipt of the information requested in the written notice, the applicant shall be informed by the secretary in writing that the application is either approved or denied.

(B) If an application for certification is denied, the written notice of denial to the applicant shall specify the reason or reasons for the denial. Certification may be denied by the secretary pursuant to K.S.A. 65-1,207(b), and amendments thereto.

(C) If an application is denied, the applicant may reapply to KDHE for a lead abatement supervisor certificate by submitting a complete lead occupation application form with another nonrefundable certification fee, as specified in K.A.R. 28-72-3.

(D) If an applicant is aggrieved by a determination to deny certification, the applicant may re-

quest a hearing with the office of administrative hearings, in accordance with the Kansas administrative procedure act.

(2) Within 180 calendar days after application approval, the applicant shall be required to attain a passing score on the third-party examination for lead abatement supervisors.

(A) An applicant shall not sit for the third-party examination for lead abatement supervisors more than three times within 180 calendar days after the issuance date of the notice of an approved application.

(B) The applicant's failure to obtain a passing score on the third-party examination for lead abatement supervisors within the 180-day period following the notice of an approved application for a certificate shall result in the secretary's denial of the individual's application for a certificate. The individual may reapply to KDHE pursuant to this regulation but only after retaking the lead abatement supervisor training course.

(3) After the applicant passes the third-party examination, a two-year lead abatement supervisor certificate shall be issued by KDHE.

(4) A certificate may be issued with specific restrictions pursuant to an agreement between the applicant and KDHE. (Authorized by K.S.A. 65-1,202; implementing K.S.A. 65-1,202, 65-1,203, and 65-1,207; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

28-72-9. Application for the certification of project designers. (a) Application for a project designer certificate.

(1) Each applicant for a project designer certificate shall submit a completed application to KDHE before consideration for certificate issuance. Each application for certification shall be received by KDHE within one year of successful completion of the project designer training course.

(2) Each application shall include the information specified in K.A.R. 28-72-5(a)(2)(A) and the following:

(A) A copy of the project designer training course completion diploma, and any required refresher course completion diplomas;

(B) documentation pursuant to subsection (b) as evidence of meeting the education or experience requirements for project designers; and

(C) a payment to KDHE for the nonrefundable fee specified in K.A.R. 28-72-3.

(3) Each applicant for a project designer certificate shall apply to KDHE within one year of the applicant's successful completion of the project designer training course, as indicated on the course completion diploma. Each applicant failing to apply within one year after the date on the training course completion diploma shall, before making application for certification, be required to successfully complete the four-hour project designer refresher training course.

(4) Each applicant who fails to apply within two years of the project designer training course and who has not successfully completed a refresher training course shall successfully complete the project designer training course before submitting an application for a project designer certificate.

(b) Training, education, and experience requirements for a project designer certificate.

(1) Each applicant for a certificate as a project designer shall complete a lead abatement supervisor training course and a project designer course and shall be required to achieve passing scores on both course examinations.

(2) Each applicant for a certificate as a project designer shall meet the minimum education and experience requirements for a certified project designer.

(A) The minimum education and experience requirements for a certified project designer shall include at least one of the following:

(i) A bachelor's degree in engineering, architecture, or a related profession, and one year of experience in building construction and one year of experience as a certified lead professional;

(ii) at least one year of experience as a certified lead hazard risk assessor, certified by the secretary, the EPA, or an EPA-approved state, and at least two years of experience in building construction and design; or

(iii) at least four years of experience as a lead abatement supervisor and four years of experience in building construction and design.

(B) The following documents shall be recognized by KDHE as evidence of meeting the requirements listed in paragraph (b)(2)(A):

(i) Official academic transcripts or diplomas, as evidence of meeting the education requirements;

(ii) resumes, letters of reference, or documentation of work experience, which shall include specific dates of employment, each employer's name, address, and telephone number, and specific job duties, as evidence of meeting the work experience requirements;

(iii) course completion diplomas issued by the training provider as evidence of meeting the training requirements; and

(iv) a copy of the project designer certificate or identification badge as evidence of having been a certified project designer.

(c) Procedure for issuance or denial of a project designer certificate.

(1) The applicant shall be informed by the secretary in writing that the application is approved, incomplete, or denied.

(A) If an application is incomplete, the notice shall include a list of additional information or documentation required to complete the application.

(i) Within 30 calendar days after the issuance date of the notice of an incomplete application, the applicant shall submit, to the secretary in writing, the information requested in the written notice.

(ii) Failure to submit the information requested in the written notice within 30 calendar days shall result in the secretary's denial of the individual's application for certification.

(iii) After receipt of the information requested in the written notice, the applicant shall be informed by the secretary in writing that the application is either approved or denied.

(B) If an application for certification is denied, the written notice of denial to the applicant shall specify the reason or reasons for the denial. Certification may be denied by the secretary pursuant to K.S.A. 65-1,207(b), and amendments thereto.

(C) If an application is denied, the applicant may reapply to KDHE for a project designer certificate by submitting a complete lead occupation application form with another nonrefundable certification fee, as specified in K.A.R. 28-72-3.

(D) If an applicant is aggrieved by a determination to deny certification, the applicant may request a hearing with the office of administrative hearings, in accordance with the Kansas administrative procedure act.

(2) If the application is approved, a two-year project designer certificate shall be issued by KDHE.

(3) A certificate may be issued with specific restrictions pursuant to an agreement between the applicant and KDHE. (Authorized by K.S.A. 65-1,202; implementing K.S.A. 65-1,202, 65-1,203, and 65-1,207; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

28-72-10. Application process and licensure renewal requirements for lead activity firms. (a) Application for a lead activity firm license.

(1) Each applicant for a lead activity firm license shall submit a completed application to KDHE for consideration for license issuance.

(2) The application shall include the following:

(A) A completed lead activity firm application on a form provided by KDHE, which shall include the following:

(i) The applicant's name, address, and telephone number;

(ii) if the applicant is a sole proprietorship, the applicant's social security number or, if the applicant is a corporation, the applicant's federal employee identification number;

(iii) the county or counties in which the applicant is located;

(iv) a description of any lead-based paint activities that the applicant will be conducting, including lead inspection, risk assessments, lead abatement projects, lead hazard control, and project design;

(v) a certification that the lead activity firm will directly employ only KDHE-certified individuals to conduct lead-based paint activities or any KDHE-approved lead hazard control; and

(vi) a certification that the lead activity firm and the firm's employees will follow the Kansas work practice standards for lead-based paint activities specified in K.A.R. 28-72-13 through K.A.R. 28-72-21;

(B) if the applicant is required to be registered and in good standing with the Kansas secretary of state's office, the applicant shall submit a copy of the applicant's certificate of good standing to KDHE; and

(C) payment to KDHE for the applicable nonrefundable fee specified in K.A.R. 28-72-3, unless the lead activity firm is a state, federally recognized Indian tribe, local government, or nonprofit organization as evidenced by a letter of determination issued by the IRS, which shall accompany the application.

(b) Procedure for issuance or denial of a lead activity firm license.

(1) Each applicant shall be informed by the secretary in writing that the application is approved, incomplete, or denied.

(A) If an application is incomplete, the notice shall include a list of additional information or documentation required to complete the application.

(i) Within 30 calendar days after the issuance date of the notice of an incomplete application, the applicant shall submit, to the secretary in writing, the information requested in the written notice.

(ii) Failure to submit the information requested in the written notice within 30 calendar days shall result in the secretary's denial of the lead activity firm's application for licensure.

(iii) After receipt of the information requested in the written notice, the applicant shall be informed by the secretary in writing that the application is either approved or denied.

(B) If an application is approved, a two-year lead activity firm license shall be issued by the secretary.

(C) If an application for licensure is denied, the written notice of denial to the applicant shall specify the reason or reasons for the denial. Licensure may be denied by the secretary pursuant to K.S.A. 65-1,207(b), and amendments thereto.

(D) If an application is denied, the applicant may reapply at any time to KDHE for a lead activity firm license by submitting a complete lead activity firm application form with another non-refundable license fee, as specified in K.A.R. 28-72-3.

(E) If an applicant is aggrieved by a determination to deny licensure, the applicant may request a hearing with the office of administrative hearings, in accordance with the Kansas administrative procedure act.

(F) A license may be issued with specified restrictions pursuant to an agreement between the applicant and the secretary.

(2) If a licensed lead activity firm changes ownership, the new owner shall notify KDHE in writing no later than 30 calendar days before the change of ownership becomes effective. The notification shall include the following information:

(A) A new lead activity firm license application;

(B) the applicable nonrefundable fee specified in K.A.R. 28-72-3; and

(C) the date that the change of ownership will become effective.

(3) The new lead activity firm application shall be processed in the same manner as that required for an initial license in accordance with this regulation.

(4) The current lead activity firm's license shall expire on the effective date specified in the notification of the change of ownership.

(5) A completed application for a lead activity firm license renewal shall be submitted to KDHE

at least 60 days before the expiration date on the license, accompanied by the applicable nonrefundable renewal fee specified in K.A.R. 28-72-3. However, each lead activity firm that is a state, federally recognized Indian tribe, local government, or nonprofit organization as evidenced by a letter of determination issued by the IRS and accompanying the application shall be exempt from payment of this fee. If the licensee fails to apply at least 60 days before the license expiration date, renewal of the license by the secretary before the end of the licensing period shall not be guaranteed by KDHE.

(6) If a licensed lead activity firm allows the firm's license to expire, the firm shall be required to submit an application in the same manner as that required for an application for an initial license, in accordance with this regulation. (Authorized by K.S.A. 65-1,202; implementing K.S.A. 65-1,202, 65-1,203, and 65-1,207; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

28-72-10a. Application process and licensure renewal requirements for renovation firms. (a) Application for a renovation firm license.

(1) Each applicant for a renovation firm license shall submit a completed application to KDHE for consideration for license issuance.

(2) The application shall include the following:

(A) A completed renovation firm application on a form provided by KDHE, which shall include the following:

(i) The applicant's name, address, and telephone number;

(ii) if the applicant is a sole proprietorship, the applicant's social security number or, if the applicant is a corporation, the applicant's federal employee identification number;

(iii) the county or counties in which the applicant is located;

(iv) a description of any renovation activities that the applicant will be conducting, including remodeling, room addition, window-door removal or replacement, general repair projects, weatherization projects, interior and exterior paint projects, exterior siding installation, or other renovation activity;

(v) a certification that the renovation firm will employ KDHE-certified individuals to conduct renovation activities; and

(vi) a certification that the renovation firm and the firm's employees will follow the Kansas work practice standards for renovation activities specified in K.A.R. 28-72-2 and K.A.R. 28-72-51 through K.A.R. 28-72-54;

(B) if the applicant is required to be registered and in good standing with the Kansas secretary of state's office, a copy of the applicant's certificate of good standing; and

(C) a payment to KDHE for the applicable non-refundable fee specified in K.A.R. 28-72-3.

(b) Procedure for issuance or denial of a renovation firm license.

(1) Each applicant shall be informed by the secretary in writing that the application is approved, incomplete, or denied.

(A) If an application is approved, a five-year renovation firm license shall be issued by the secretary.

(B) If an application is incomplete, the notice shall include a list of additional information or documentation required to complete the application.

(i) Within 30 calendar days after the issuance date of the notice of an incomplete application, the applicant shall submit, to the secretary in writing, the information requested in the written notice.

(ii) Failure to submit the information requested in the written notice within 30 calendar days shall result in the secretary's denial of the firm's application for licensure.

(iii) After receipt of the information requested in the written notice, the applicant shall be informed by the secretary in writing that the application is either approved or denied.

(C) If an application for licensure is denied, the written notice of denial to the applicant shall specify the reason or reasons for the denial. Licensure may be denied by the secretary pursuant to K.S.A. 65-1,207(a), and amendments thereto.

(D) If an application is denied, the applicant may reapply at any time to KDHE for a renovation firm license by submitting a complete renovation firm application form with another nonrefundable license fee, as specified in K.A.R. 28-72-3.

(E) If an applicant is aggrieved by a determination to deny licensure, the applicant may request a hearing with the office of administrative hearings, in accordance with the Kansas administrative procedure act.

(F) A license may be issued with specified restrictions pursuant to an agreement between the applicant and the secretary.

(2) If a licensed renovation firm changes ownership, the new owner shall notify KDHE in writing, no later than 30 calendar days before the change of ownership becomes effective. The notification shall include the following information:

(A) A new renovation firm license application;

(B) the applicable nonrefundable fee specified in K.A.R. 28-72-3; and

(C) the date that the change of ownership will become effective.

(3) The new renovation firm application shall be processed in the same manner as that required for an initial license in accordance with this regulation.

(4) The current renovation firm's license shall expire on the effective date specified in the notification of the change of ownership.

(5) A completed application for a renovation firm license renewal shall be submitted to KDHE at least 60 days before the expiration date on the license and shall be accompanied by the applicable nonrefundable renewal fee specified in K.A.R. 28-72-3. If the licensee fails to apply at least 60 days before the license expiration date, renewal of the license by the secretary before the end of the licensing period shall not be guaranteed.

(6) If a licensed renovation firm allows the firm's license to expire, the firm shall be required to submit an application in the same manner as that required for an application for an initial license, in accordance with this regulation. (Authorized by K.S.A. 65-1,202; implementing K.S.A. 65-1,202, 65-1,203, and 65-1,207; effective April 9, 2010.)

28-72-11. Renewal of lead occupation certificates. (a) Renewal application for lead inspector, risk assessor, elevated blood lead level investigator, lead abatement supervisor, lead abatement worker, renovator, and project designer.

(1) If a certified individual wishes to renew a lead occupation certificate, the individual shall submit a completed application for renewal of certificate, including the required supporting documentation, to KDHE at least 60 days before the certificate's expiration date as indicated on the certificate. Failure of the certified individual to submit an application at least 60 days before the certificate's expiration date may result in the certificate not being renewed before the current license expires.

(2) The certified individual applying for renewal shall complete the refresher training course for

the appropriate occupation within the 12-month period immediately preceding the certificate expiration date.

(3) Each renewal application shall include the following:

(A) A completed lead occupation certificate application on a form provided by KDHE, which shall include the following:

(i) The applicant's full legal name, home address, and telephone number;

(ii) the name, address, and telephone number of the applicant's current employer;

(iii) the certified individual's state-issued identification number or federal employment identification number;

(iv) the county or counties in which the certified individual is employed;

(v) the address where the certified individual would like to receive correspondence regarding the certification;

(vi) the lead occupation certificate that the applicant wishes to have renewed;

(vii) the type of refresher training course completed, including the name of the training provider, diploma identification number, and dates of course attendance; and

(viii) the signature of the applicant, which shall certify that all information in the application is complete and true to the best of the applicant's knowledge and that the applicant will comply with applicable state statutes and regulations;

(B) a copy of the refresher training course completion diploma for the appropriate occupation; and

(C) a payment to KDHE for the appropriate nonrefundable recertification fee, as specified in K.A.R. 28-72-3.

(b) Procedure for issuance or denial of a renewal lead occupation certificate.

(1) The applicant shall be informed by the secretary in writing that the application is approved, incomplete, or denied.

(A) If an application is incomplete, the notice shall include a list of additional information or documentation required to complete the renewal application.

(i) Within 30 calendar days after the issuance date of the notice of an incomplete application, the applicant shall submit, to the secretary in writing, the information requested in the written notice.

(ii) Failure to submit the information requested in the written notice within 30 calendar days

after the issuance of the notice shall result in the secretary's denial of the individual's application for recertification.

(iii) After receipt of the information requested in the written notice, the applicant shall be informed by the secretary in writing that the application is either approved or denied.

(B) If a renewal application for certification is denied, the written notice of denial to the applicant shall specify the reason or reasons for denial. Certification may be denied by the secretary pursuant to K.S.A. 65-1,207(b), and amendments thereto.

(C) If a renewal application is denied, the applicant may reapply to KDHE for a lead occupation certificate by submitting a complete lead occupation application form with the appropriate nonrefundable recertification fee, as specified in K.A.R. 28-72-3.

(2) If an applicant is aggrieved by a determination to deny certification, the applicant may request a hearing with the office of administrative hearings, in accordance with the Kansas administrative procedure act.

(3) If a renewal application is approved, a two-year certificate shall be issued by KDHE.

(4) A certificate may be issued with specific restrictions pursuant to an agreement between the certified individual and KDHE. (Authorized by K.S.A. 65-1,202; implementing K.S.A. 65-1,202, 65-1,203, and 65-1,207; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

28-72-12. Application process and requirements for reapplication after certificate expiration.

(a) Unless renewed or revoked sooner, each certificate shall expire two years after its effective date indicated on the current certificate. If a certified individual allows the certificate to expire before renewal but desires to be certified, the individual shall reapply to KDHE.

(b) Each application shall include the information specified in K.A.R. 28-72-5(a)(2)(A) and the following:

(1) Any employment history or education that meets the experience requirements in K.A.R. 28-72-5 through K.A.R. 28-72-9, as applicable;

(2) the signature of the applicant, which shall certify that all information in the application is complete and true to the best of the applicant's knowledge and that the applicant will comply with applicable state statutes and regulations;

(3) a copy of the lead occupation training course completion diploma for the appropriate occupation; and

(4) a payment to KDHE for the nonrefundable certification fee appropriate to the lead occupation, as specified in K.A.R. 28-72-3.

(c)(1) Each applicant who fails to reapply before the certificate expiration date and who has not successfully completed a refresher training course shall be required to successfully complete the appropriate refresher training course. The applicant may be required to complete the initial training course again.

(2) Each certified lead inspector, risk assessor, or lead abatement supervisor who allows the certification to expire before renewal shall retake the third-party examination for the appropriate occupation.

(d) The procedure for issuance or denial of a certificate after its expiration shall be that specified in K.A.R. 28-72-11(b). (Authorized by K.S.A. 65-1,202; implementing K.S.A. 65-1,202 and 65-1,203; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

28-72-13. Work practice standards; general standards. (a) Except as provided in K.S.A. 65-1,203 and amendments thereto, all lead-based paint activities, as defined in the act, shall be performed pursuant to the work practice standards in this article.

(b) Except as provided in K.S.A. 65-1,203 and amendments thereto, when performing any lead-based paint activity that involves an inspection, lead-hazard screen, risk assessment, or abatement, a certified individual shall perform that activity in compliance with the applicable requirements in this regulation.

(c) Certified lead inspectors and risk assessors conducting lead inspection activities shall avoid potential conflicts of interest by not being contracted, subcontracted, or employed by any lead activity firm performing lead abatement activities on the same lead abatement project.

(d)(1) Each certified individual shall comply with the following documented methodologies, which are hereby adopted by reference, when performing any lead-based paint activity:

(A) The U.S. department of housing and urban development (HUD) "guidelines for the evaluation and control of lead-based paint hazards in housing," dated June 1995, excluding chapters 1

and 2 and including appendices 7, 8, 11, 12, 13, and 14. Chapter 7 in the June 1995 edition is not adopted; instead, the 1997 revision of chapter 7 is adopted; and

(B) the EPA "residential sampling for lead: protocols for dust and soil sampling," EPA final report, MRI project no. 9803, published March 29, 1995.

(2) If a conflict exists between either of the methodologies listed in this subsection and any federal or state statute or regulation or any city or county ordinance, the most stringent of these shall be adhered to by the certified lead inspector or risk assessor. (Authorized by and implementing K.S.A. 65-1,202 and 65-1,203; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

28-72-14. Work practice standards; inspection. (a) Except as provided in K.S.A. 65-1,203 and amendments thereto, a lead inspection or any portion of a lead inspection shall be conducted only by a lead inspector or risk assessor, and all inspections shall be conducted according to the procedures specified in this regulation.

(b) When conducting an inspection, the lead inspector or risk assessor shall select the following locations according to the documented methodologies in K.A.R. 28-72-13 (d)(1) and shall test for the presence of lead-based paint:

(1) In a residential dwelling and child-occupied facility, each interior component with a distinct painting history and each exterior component with a distinct painting history shall be tested for lead-based paint, except those components that the lead inspector or risk assessor determines to have been replaced after 1978 or not to contain lead-based paint; and

(2) in a multifamily dwelling or child-occupied facility, each component with a distinct painting history in every common area, except those components that the lead inspector or risk assessor determines to have been replaced after 1978 or not to contain lead-based paint.

(c)(1) Paint shall be sampled according to both of the following requirements:

(A) The analysis of paint to determine the presence of lead shall be conducted using the documented methodologies in K.A.R. 28-72-13 (d)(1).

(B) All collected paint chip samples shall be analyzed according to K.A.R. 28-72-19 to determine if the samples contain detectable levels of lead that can be quantified numerically.

(2) The lead inspector or risk assessor shall prepare an inspection report, which shall include the following information:

- (A) The date of each inspection;
 - (B) the address of the building;
 - (C) the date of the construction;
 - (D) apartment numbers, if applicable;
 - (E) the name, address, and telephone number of the owner or owners of each residential dwelling;
 - (F) the name, signature, and certificate number of each certified lead inspector or risk assessor, or both, conducting testing;
 - (G) the name, address, and telephone number of the lead activity firm employing each lead inspector or risk assessor, or both, if applicable;
 - (H) each testing method and device or sampling procedure, or both, employed for paint analysis, including quality control data and, if used, the serial number of any x-ray fluorescence (XRF) device and a copy of the XRF device user's certificate of training provided by the equipment manufacturer;
 - (I) a summary of laboratory results, categorized as positive or negative, and the name of each recognized laboratory that conducted the analysis, along with the laboratory's certification number;
 - (J) floor plans or sketches of the units inspected, showing the appropriate test locations and any identifying number systems;
 - (K) a summary of the substrates tested, including the identification of component, component integrity, paint condition and color, and test identification numbers associated with the results; and
 - (L) the results of the inspection expressed in terms appropriate to the sampling method used.
- (d) Time frame for submission of reports. The inspection report shall be provided to the owner of the property within 20 business days after completion of the lead inspection. (Authorized by and implementing K.S.A. 65-1,202 and 65-1,203; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

28-72-15. Work practice standards; lead hazard screen. (a) Except as provided in K.S.A. 65-1,203 and amendments thereto, a lead hazard screen shall be conducted only by a risk assessor.

(b) If a lead hazard screen is conducted, the risk assessor shall conduct each lead hazard screen as follows:

(1) Background information regarding the physical characteristics of the residential dwelling or

child-occupied facility and occupant-use patterns that could cause lead-based paint exposure to one or more children through the age of 72 months shall be collected.

(2) An inspection of the residential dwelling or child-occupied facility shall be conducted to achieve the following:

(A) Determine if any deteriorated paint is present; and

(B) locate at least two dust sampling locations.

(3) If deteriorated paint is present, each surface with deteriorated paint that is determined, using one or more of the documented methodologies in K.A.R. 28-72-13 (d)(1), to be in poor condition and to have a distinct painting history shall be tested for the presence of lead.

(4) In residential dwellings, a dust sample shall be collected from the floor and from each window, and in rooms, hallways, or stairwells where one or more children through the age of 72 months are most likely to come in contact with dust.

(5) In multifamily dwellings and child-occupied facilities, in addition to the floor and window samples required in paragraph (b)(4), the risk assessor shall also collect dust samples from common areas where one or more children through the age of 72 months are most likely to come into contact with dust.

(c) Dust samples shall be collected and analyzed in the following manner:

(1) All dust samples shall be taken using one or more of the documented methodologies in K.A.R. 28-72-13 (d)(1).

(2) All collected dust samples shall be analyzed according to K.A.R. 28-72-19 to determine if the samples contain detectable levels of lead that can be quantified numerically.

(d) Paint shall be sampled according to both of the following requirements:

(1) The analysis of paint to determine the presence of lead shall be conducted using one or more of the documented methodologies in K.A.R. 28-72-13 (d)(1).

(2) All collected paint chip samples shall be analyzed according to K.A.R. 28-72-19 to determine if the samples contain detectable levels of lead that can be quantified numerically.

(e) The risk assessor shall prepare a lead hazard screen report, which shall include the following information:

(1) The date of the assessment;

(2) the address of each building;

(3) the date of construction of each building;

- (4) the apartment number, if applicable;
 - (5) the name, address, and telephone number of each owner of each building;
 - (6) the name, signature, and certificate number of the certified risk assessor conducting the assessment;
 - (7) the name, address, and telephone number of each recognized laboratory conducting analysis of collected samples, along with the laboratory's certificate number;
 - (8) the results of the visual inspection;
 - (9) the testing method and sampling procedure employed for the paint analysis;
 - (10) specific locations of each paint component tested for the presence of lead;
 - (11) all data collected from on-site testing, including quality control data and, if used, the serial number of any XRF device, and a copy of the XRF device user's certificate of training provided by the equipment manufacturer;
 - (12) all results of laboratory analysis on collected paint, soil, and dust samples;
 - (13) any other sampling results;
 - (14) any background information collected regarding the physical characteristics of the residential dwelling or multifamily dwelling and occupant-use patterns that could cause lead-based paint exposure to one or more children through the age of 72 months; and
 - (15) recommendations, if warranted, for a follow-up risk assessment and, as appropriate, any further actions.
- (f) Time frame for submission of reports. The lead hazard screen report shall be provided to the owner of the property within 20 business days after completion of the lead hazard screen. (Authorized by and implementing K.S.A. 65-1,202 and 65-1,203; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

28-72-16. Work practice standards; risk assessment. (a) Except as provided by K.S.A. 65-1,203 and amendments thereto, a risk assessment shall be conducted only by a person certified by KDHE, according to K.A.R. 28-72-2 and K.A.R. 28-72-6 through K.A.R. 28-72-12 as a risk assessor. If a risk assessment is conducted, the assessment shall be conducted according to the procedures specified in this regulation.

(b) An inspection of the residential dwelling or child-occupied facility shall be undertaken to locate the existence of deteriorated paint, assess the

extent and causes of the deterioration, and assess other potential lead-based paint hazards.

(c) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant-use patterns that could cause lead-based paint exposure to one or more children through the age of 72 months shall be collected.

(d) Each surface with deteriorated paint that is determined, using one or more of the documented methodologies in K.A.R. 28-72-13 (d)(1), to be in poor condition and to have a distinct painting history, shall be tested for the presence of lead. Each other surface determined, using one or more of the documented methodologies in K.A.R. 28-72-13 (d)(1), to be a potential lead-based paint hazard and to have a distinct painting history shall also be tested for the presence of lead.

(e) In residential dwellings, single-surface dust samples from at minimum one window and at minimum one floor area shall be collected in all living areas where one or more children through the age of 72 months are most likely to come into contact with dust.

(f) For multifamily dwellings and child-occupied facilities, the samples required in subsection (e) of this regulation shall be taken. In addition, window and floor dust samples shall be collected in the following locations:

(1) Common areas adjacent to the sampled residential dwelling or child-occupied facility; and

(2) other common areas in the building where the risk assessor determines that one or more children through the age of 72 months are likely to come into contact with dust.

(g) For child-occupied facilities, window and floor dust samples shall be collected in each room, hallway, or stairwell utilized by one or more children through the age of 72 months and in other common areas in the child-occupied facility where the risk assessor determines that one or more children through the age of 72 months are likely to come into contact with dust.

(h) Soil samples shall be collected and analyzed for lead concentrations in the following locations:

(1) Exterior play areas where bare soil is present; and

(2) dripline or foundation areas where bare soil is present.

(i) All paint, dust, or soil sampling or testing shall be conducted using one or more of the documented methodologies in K.A.R. 28-72-13(d)(1).

(j) All collected paint chip, dust, or soil samples shall be analyzed according to K.A.R. 28-72-19 to determine if the samples contain detectable levels of lead that can be quantified numerically.

(k) The risk assessor shall prepare a risk assessment report, which shall include the following information:

- (1) The date of the assessment;
- (2) the address of each building;
- (3) the date of construction of the buildings;
- (4) the apartment number, if applicable;
- (5) the name, address, and telephone number of each owner of each building;
- (6) the name, signature, and certificate number of the risk assessor conducting the assessment;
- (7) the name, address, and telephone number of each recognized laboratory conducting an analysis of collected samples, along with the laboratory's certificate number;
- (8) the results of the visual inspection;
- (9) the testing method and sampling procedure used for each paint analysis;
- (10) specific locations of each painted component tested for the presence of lead;
- (11) all data collected from on-site testing, including quality control data and, if used, the serial number of any XRF device and a copy of the XRF device user's certificate of training provided by the equipment manufacturer;
- (12) all results of laboratory analyses on collected paint, soil, and dust samples;
- (13) any other sampling results;
- (14) any background information collected pursuant to subsection (c);
- (15) to the extent that they are used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint-related hazards;
- (16) a description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards; and
- (17) a description of interim controls or abatement options, or both, for each identified lead-based paint hazard and the suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

(l) Time frame for submission of reports. The risk assessment report shall be provided to the owner of the property and to the person requesting the risk assessment within 20 business days

after completion of the lead-based paint hazard risk assessment. (Authorized by and implementing K.S.A. 65-1,202 and 65-1,203; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

28-72-17. Work practice standards; elevated blood lead level investigation risk assessments. (a) In order to perform an elevated blood lead (EBL) level investigation risk assessment, the EBL inspector shall have a certificate from KDHE.

(b) The EBL inspector shall have the parents or guardians of the EBL child complete an approved KDHE questionnaire before sampling. Environmental testing shall be linked to the EBL child's history and may include the testing of a prior residence or other areas frequented by the EBL child.

(c) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant-use patterns that could cause lead-based paint exposure to one or more children through the age of 72 months shall be collected.

(d) Each surface of the dwelling itself, furniture, or play structures frequented by the EBL child that has deteriorated surface coatings shall be tested for the presence of lead.

(e) Dust samples from areas frequented by the EBL child, including play areas, porches, kitchens, bedrooms, and living and dining rooms, shall be collected. Dust samples shall also be collected from automobiles, work shoes, and laundry rooms if occupational lead exposure is a possibility.

(f) Soil samples shall be collected from bare soil areas of play, areas near the foundation of the house, and areas from the yard. If the EBL child spends significant time at the park or other play area, samples shall be collected from these areas, unless the area has already been sampled and documented.

(g) If necessary, water samples of the first-drawn water from the tap most commonly used for drinking water, infant formula, or food preparation shall be collected. For the purpose of this regulation, the term "first-drawn water" shall mean water that is taken from the tap after an undisturbed period of at least six hours, during which time the water has been in contact with the pipes and fixtures allowing any available lead to dissolve into the water.

(h) All paint, dust, and soil collection and testing shall be conducted using the documented methodologies in K.A.R. 28-72-13 (d)(1).

(i) No later than 20 days following the completion of the environmental investigation, the EBL investigator shall issue a report to the secretary that details the findings of the investigation and includes all the empirical data gathered during the investigation.

(j) All environmental investigation reports shall be reviewed by KDHE to determine if the exposure to lead hazards found on the property are a contributing cause of the EBL in the child.

(k) If a determination is made by KDHE that lead hazards found on the property are a contributing cause of the EBL in the child, a lead hazard control notice shall be issued by the secretary to the owner and occupants of the property. The lead hazard control notice shall include the following:

(1) Detailed, specific actions that must be taken to make the property lead-safe and suitable for habitation by the EBL child or any other children through 72 months of age;

(2) detailed strategies for both abatement and interim control of the lead hazards found;

(3) the date by which the remediation activities will be concluded; and

(4) the method of proving that the remediation activities are successfully completed.

(l) The verified findings of the environmental investigation and the lead hazard control notice shall not be used to the detriment of occupants by the owner of the property. The failure of any person to comply with the lead hazard control notice shall be considered a violation of K.S.A. 65-1,210, and amendments thereto, and the person shall be subject to the penalties provided in that statute. (Authorized by K.S.A. 65-1,202; implementing K.S.A. 65-1,202, 65-1,208, and 65-1,210; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

28-72-18. Work practice standards; lead abatement. (a) Except as provided in K.S.A. 65-1,203 and amendments thereto, a lead abatement shall be conducted only by an individual certified by KDHE and shall be conducted according to the procedures specified in this article.

(b) A lead abatement supervisor shall be required for each lead abatement project and shall be on-site during all work-site preparation and during the postabatement cleanup of work areas.

(1) At all other times when lead abatement activities are being conducted, the lead abatement supervisor shall be on-site or available by telephone,

pager, or answering service and shall be able to be present at the work site in no more than one hour.

(2) The lead abatement supervisor shall report to the work site during each lead abatement work practice standards inspection performed by KDHE. The lead activity firm that employs the lead abatement supervisor shall be subject to an abatement project reinspection fee if the lead abatement supervisor fails to be present at the work site as specified in this regulation.

(c) The lead abatement supervisor and licensed lead activity firm employing that supervisor shall ensure that all lead abatement activities are conducted according to the requirements of the Kansas work practice standards in this article and all other federal, state, and local requirements.

(d) Notification of the commencement of lead-based paint activities in a residential dwelling or child-occupied facility or as the result of a federal, state, or local order shall be given to KDHE before the commencement of abatement activities. The procedure for this notification shall be as follows:

(1) Each person or lead activity firm conducting a lead abatement project in target housing or in any child-occupied facility shall submit a notification to KDHE at least 10 business days before the onset of the lead abatement project.

(2) The notification shall be submitted to KDHE with a payment to KDHE for the nonrefundable project fee specified in K.A.R. 28-72-3.

(3) The notification form provided to the department shall include the following:

(A) The street address, city, state, zip code, and county of each location where lead abatement will occur;

(B) the name, address, and telephone number of the property owner;

(C) an indication of the type of structure or structures being abated, including single-family or multifamily dwelling, child-occupied facility, or any combination of these types;

(D) the date of the onset of the lead abatement project;

(E) the estimated completion date of the lead abatement project;

(F) the work days and hours of operation during which the lead abatement project will be conducted;

(G) the name, address, telephone number, and license number of the lead activity firm;

(H) the name and certificate number of each lead abatement worker;

(I) the type or types of lead abatement strategy or strategies that will be utilized, including enclosure, encapsulation, replacement, removal, or any combination of these strategies, and the specific locations within the unit where these strategies will be utilized;

(J) the signature of each lead abatement supervisor, which shall certify that all information provided in the project notification is complete and true to the best of the supervisor's knowledge; and

(K) a written certification from the lead abatement supervisor, which shall include a copy of the clearance report, within 10 days after successfully achieving clearance, that clearly states that all abatement control options were conducted in accordance with all local, state, and federal regulations, as well as in accordance with the preabatement notification letter submitted to KDHE.

(e) Emergency notification. If the lead activity firm is unable to comply with the 10-day notification period due to an emergency situation, the lead activity firm shall perform the following:

(1) Notify KDHE by telephone, facsimile, or electronic mail within 24 hours after the onset of the lead abatement project; and

(2) submit written notification and payment of fees as described in subsection (d) no more than two business days after the onset of the lead abatement project.

(f) A written occupant protection plan, which shall be unique to each residential dwelling or child-occupied facility, shall be developed before the lead abatement begins. The occupant protection plan shall describe the measures and management procedures that will be taken during the lead abatement to protect the building occupants from exposure to any lead-based paint hazards.

(1) The certified lead abatement supervisor or project designer responsible for the project shall prepare the occupant protection plan.

(2) The occupant protection plan shall meet the following requirements:

(A) Describe the work practices and strategies that will be taken during the lead abatement project to protect the building occupants from exposure to any lead hazards;

(B) include the results of any lead inspections or risk assessments completed before the commencement of the lead abatement project;

(C) be provided to an adult occupant of each dwelling or dwelling unit being abated and to the property owner, or property owner's designated

representative, before the commencement of the lead abatement project; and

(D) be submitted to KDHE with the lead abatement project notification.

(g) The work practices listed below shall be restricted as follows:

(1) Open-flame burning or torching of lead-based paint shall be prohibited.

(2) Machine sanding or grinding, or abrasive blasting or sandblasting of lead-based paint shall be prohibited unless used with high efficiency particulate air (HEPA) exhaust control that removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency.

(3) Dry scraping of lead-based paint shall be permitted only within 12 inches of electrical outlets or when treating defective paint spots totaling no more than two square feet in any one room, hallway, or stairwell, or totaling no more than 20 square feet on exterior surfaces.

(4) Operating a heat gun on lead-based paint shall be prohibited.

(5) Hydro blasting or pressurized water washing of lead-based paint shall be prohibited.

(6) The use of methylene chloride-based chemical strippers shall be prohibited.

(7) Solvents that have flashpoints below 140 Fahrenheit shall be prohibited.

(8) Enclosure strategies shall be prohibited if the barrier is not warranted by the manufacturer to last at least 20 years under normal conditions or if the primary barrier is not a solid barrier.

(9) Encapsulation strategies shall be prohibited if the encapsulant is not warranted by the manufacturer to last at least 20 years under normal conditions or if the encapsulant has been improperly applied.

(h) Permissible lead abatement project strategies.

(1) The following strategies shall be permissible for lead abatement projects:

(A) Replacement;

(B) the use of an enclosure;

(C) encapsulation; and

(D) removal.

(2) Each lead abatement strategy not specified in this article shall be submitted to and approved by KDHE for evaluation before implementation. (Authorized by and implementing K.S.A. 65-1,202 and 65-1,203; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

28-72-18a. Work practice standards; lead abatement: replacement. When conducting a lead abatement project using the replacement strategy, the certified lead professional or licensed firm shall meet the following minimum requirements: (a) The site shall be prepared by first establishing a regulated area using fencing, barrier tape, or other appropriate barriers. The regulated area shall be marked to prevent uncertified personnel and restricting the general public from approaching closer than 20 feet to the abatement operation.

(b) Signs shall be posted at all entrances to the regulated area and shall include the words "WARNING: LEAD AREA. POISON. NO SMOKING OR EATING" in bold lettering not smaller than two inches tall, with additional language or symbols prohibiting entry to the regulated area by uncertified personnel and the general public. All signs shall be in a language that is easily recognizable by all certified lead professionals and by members of the general public where the lead abatement activities are taking place.

(c) Any heating and cooling system within the regulated area shall be shut down and the vents sealed with 6-mil polyethylene sheeting to prevent lead dust accumulation within the system.

(d) All items shall be cleaned within the regulated area by HEPA vacuuming or wet wiping with a cleaning solution, or both. Items shall then be either removed from the area or covered with 6-mil polyethylene sheeting and sealed with duct tape, to provide an airtight and watertight seal.

(e) At least two layers of 6-mil, or thicker, polyethylene sheeting shall be placed on the floor at the base of the component and extend at least 10 feet beyond the perimeter of the component to be replaced.

(f) The component and the area adjacent to the component shall be thoroughly wetted using a garden sprayer, airless mister, or other appropriate means to reduce airborne dust.

(g) After removal of the component, the surface behind the removed component shall be thoroughly wetted to reduce airborne dust.

(h) The component shall be wrapped or bagged completely in 6-mil polyethylene sheeting and sealed with duct tape to prevent loss of debris or dust.

(i) Before installing a new component, the area of replacement shall be cleaned by HEPA vacuuming the area again. Cleaning shall begin at the end of the work area farthest from the main en-

trance to the area and from the top to the bottom of the regulated area. (Authorized by and implementing K.S.A. 65-1,202; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended April 9, 2010.)

28-72-18b. Work practice standards; lead abatement: enclosure. When conducting a lead abatement project using the enclosure strategy, the certified lead professional shall meet the following minimum requirements: (a) The site shall be prepared by first establishing a regulated area using fencing, barrier tape, or other appropriate barriers. The regulated area shall be marked to prevent uncertified personnel and the general public from approaching closer than 20 feet to the abatement project.

(b) Signs shall be posted at all entrances to the regulated area and shall include the words "WARNING: LEAD AREA. POISON. NO SMOKING OR EATING" in bold lettering not smaller than two inches tall, with additional language or symbols prohibiting entry to the regulated area by uncertified personnel and the general public. All signs shall be in a language that is easily recognized by all certified lead professionals and by members of the general public where the lead abatement activities are taking place.

(c) Any heating and cooling systems within the regulated area shall be shut down and the vents sealed with 6-mil polyethylene sheeting to prevent lead dust accumulation within the system.

(d) All items shall be cleaned within the regulated area by HEPA vacuuming or wet wiping with a cleaning solution, or both. Items shall then be either removed from the area or covered with 6-mil polyethylene sheeting and sealed with duct tape.

(e) At least one layer of 6-mil, or thicker, polyethylene sheeting shall be placed on the floor at the base of the component and extend at least 10 feet beyond the perimeter of the component to be enclosed.

(f) The surface to be enclosed shall be permanently labeled behind the enclosure horizontally and vertically, approximately every two feet with this warning: "Danger: Lead-Based Paint." The lettering on the label shall be boldfaced, at least two inches tall, and in a contrasting color.

(g)(1) The enclosure shall be applied directly onto the painted surface, or a frame shall be constructed of wood or metal, using nails, staples, or screws. Glue may be used in conjunction with the aforementioned fasteners, but shall not be used

alone. All enclosure items shall be back-caulked at all edges, seams, and abutment edges.

(2) The material used for the enclosure barrier shall be solid and rigid enough to provide adequate protection. Wallpaper, contact paper, films, folding walls, drapes, and similar materials shall not meet this requirement.

(3) Enclosure systems and their adhesives shall be designed to last at least 20 years.

(4) The substrate or building structure to which the enclosure is fastened shall be structurally sufficient to support the enclosure barrier for at least 20 years. If there is deterioration of the substrate or building structure that may impair the enclosure from remaining dust-tight for a minimum of 20 years, the substrate or building structure shall be repaired before attaching the enclosure. This deterioration may include mildew, water damage, dry rot, termite damage, or any structural damage.

(h) Preformed steel, aluminum, vinyl, or other construction material may be used for window frames, exterior siding, trim casings, column enclosures, moldings, or other similar components if they can be sealed.

(i) A material equivalent to one-quarter inch rubber or vinyl may be used to enclose stairs.

(j) The seams, edges, and fastener holes shall be sealed with caulk or other sealant, providing a dust-tight system.

(k) All equipment used in the regulated area shall be thoroughly cleaned with a cleaning solution or vacuumed with a HEPA vacuum, or both, before removal from the regulated area.

(l) Before clearance, the installed enclosure and surrounding regulated area shall be cleaned by vacuuming with a HEPA vacuum, wiping down all surfaces with a cleaning solution, rinsing all surfaces, and then HEPA vacuuming the area again. Cleaning shall begin at the end of the work area farthest from the main entrance to the area and from the top to the bottom of the regulated area.

(m) All enclosure systems used shall meet the requirements of all applicable building codes and fire, health, safety, and environmental regulations. (Authorized by and implementing K.S.A. 65-1, 202; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended April 9, 2010.)

28-72-18c. Work practice standards; lead abatement: encapsulation. (a) The encapsulation strategy of lead abatement shall not be used on the following:

(1) Friction surfaces, including window sashes

and parting beads, door jambs and hinges, floors, and door thresholds;

(2) deteriorated components, including rotten wood, rusted metal, spalled or cracked plaster, and loose masonry;

(3) impact surfaces, including doorstops, window wells, and headers;

(4) deteriorated surface coatings if the adhesion or cohesion of the surface coating is uncertain or indeterminable; and

(5) incompatible coatings.

(b) When conducting a lead abatement project using the encapsulation strategy, the certified personnel shall comply with the following minimum requirements:

(1) The certified lead professional or licensed firm shall select an encapsulant that is a low volatile organic compound (V.O.C.), that is warranted by the manufacturer to last for at least 20 years, and that meets the requirements of all applicable building codes as well as fire, health, and environmental regulations.

(2) Each surface to be encapsulated shall have sound structural integrity and sound surface coating integrity and shall be prepared according to the manufacturer's recommendations.

(3) The site shall be prepared by first establishing a regulated area using fencing, barrier tape, or other appropriate barriers. The regulated area shall be marked to prevent uncertified personnel and the general public from approaching closer than 20 feet to the abatement project.

(4) Signs shall be posted at all entrances to the regulated area and shall include the words "WARNING: LEAD AREA. POISON. NO SMOKING OR EATING" in bold lettering at least two inches tall, with additional language or symbols prohibiting entry to the regulated area by uncertified personnel and the general public. All signs shall be in a language that is easily recognized by all certified lead professionals and by members of the general public where the lead abatement activities are taking place.

(5) Any heating and cooling systems within the regulated area shall be shut down and the vents sealed with 6-mil polyethylene sheeting to prevent lead dust accumulation within the system.

(6) All items shall be cleaned within the regulated area by HEPA vacuuming or wet wiping with a cleaning solution, or both. Items shall then be either removed from the area or covered with 6-mil polyethylene sheeting and sealed with duct tape.

(7) At least two layers of 6-mil, or thicker, polyethylene sheeting shall be placed on the ground at the base of the component and shall extend at least 10 feet beyond the perimeter of the component to be encapsulated.

(8) A patch test shall be conducted in accordance with the HUD guidelines adopted by reference in K.A.R. 28-72-13 (d)(1) before general application of the encapsulant to determine the adhesive and cohesive properties of the encapsulant on the surface to be encapsulated. The encapsulant shall be applied in accordance with the manufacturer's recommendations.

(9) After the manufacturer's recommended curing time, the entire encapsulated surface shall be inspected by a lead abatement supervisor or a project designer. Each unacceptable area shall be evaluated to determine if a complete failure of the system is indicated or if the system can be patched or repaired. Unacceptable areas shall be evidenced by delamination, wrinkling, blistering, cracking, cratering, and bubbling of the encapsulant.

(10) After the encapsulation is complete, the regulated area shall be cleaned by vacuuming with a HEPA vacuum, wiping down all surfaces with a cleaning solution, rinsing all surfaces, and then HEPA vacuuming the area again. Cleaning shall begin at the end of the work area farthest from the main entrance to the area and from the top to the bottom of the regulated area.

(11) All equipment used in the regulated area shall be thoroughly cleaned with a cleaning solution or vacuumed with a HEPA vacuum, or both, before removal from the regulated area. (Authorized by and implementing K.S.A. 65-1, 202; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended April 9, 2010.)

28-72-18d. Work practice standards; lead abatement: removal. (a) Removal strategies. Acceptable removal strategies shall include the following:

(1) Manual wet strategies. Manual wet scraping or manual wet sanding shall be acceptable for the removal of lead surface coatings.

(2) Mechanical removal strategies. Using power tools that are HEPA-shrouded or locally exhausted shall be acceptable removal strategies for lead surface coatings. HEPA-shrouded or exhausted mechanical abrasion devices, including sanders, saws, drills, roto-peens, vacuum blasters, and needle guns shall be acceptable.

(3) Chemical removal strategies. Chemical strippers shall be used in compliance with the manufacturer's recommendations.

(b) Soil abatement. When soil abatement is conducted, the lead-bearing soil shall be removed, tilled, or permanently covered in place as indicated in this subsection.

(1) Removed soil shall be replaced with fill material containing no more than 100 ppm of lead. Soil that is removed shall not be reused as topsoil.

(2) If tilling is selected, soil in a child-accessible area shall be tilled to a depth that results in less than 400 ppm lead of the homogenized soil, or other concentrations approved by the department. Soil in an area not accessible to children shall be tilled to a depth that results in less than 1,200 ppm lead of the homogenized soil.

(3) "Permanently covered soil" shall have the meaning specified in K.A.R. 28-72-1p(c).

(4) Soil abatement shall be conducted to prevent lead-contaminated soil from being blown from the site or from being carried away by water runoff or through percolation to groundwater.

(c) Interior removal. When conducting a lead abatement project using the removal strategy on interior surfaces, the certified lead professional or licensed firm shall meet the following minimum requirements:

(1) The site shall be prepared by first establishing a regulated area using fencing, barrier tape, or other appropriate barriers. The regulated area shall be marked to prevent uncertified personnel and the general public from approaching closer than 20 feet to the abatement project.

(2) Signs shall be posted at all entrances to the regulated area and shall include the words "WARNING: LEAD AREA. POISON. NO SMOKING OR EATING" in bold lettering at least two inches tall, with additional language or symbols prohibiting entrance to the regulated area by uncertified personnel and the general public. All signs shall be in a language that is easily recognized by all certified lead professionals and by members of the general public where the lead abatement activities are taking place.

(3) Each heating and cooling system within the regulated area shall be shut down and the vents shall be sealed with 6-mil polyethylene sheeting to prevent lead dust accumulation within the system.

(4) All items within the regulated area shall be cleaned by HEPA vacuuming or wet wiping with a cleaning solution, or both. Items shall then be either removed from the area or covered with

6-mil polyethylene sheeting and sealed with duct tape.

(5) All windows below and within the regulated area shall be closed.

(6) A critical barrier shall be constructed.

(7) At least two layers of 6-mil, or thicker, polyethylene sheeting shall be placed on the floor at the base of the component and shall extend at least 10 feet beyond the perimeter of the component being abated. If the chemical strategy is used, the certified lead professional or licensed firm shall follow the manufacturer's recommendations regarding a chemical-resistant floor cover.

(8) All equipment used in the regulated area shall be thoroughly cleaned with a cleaning solution or vacuumed with a HEPA vacuum, or both, before removal from the regulated area.

(9) At the end of each work shift, the top layer of 6-mil polyethylene sheeting shall be removed and used to wrap and contain the debris generated by the shift. The 6-mil polyethylene sheeting shall then be sealed with duct tape and kept in a secured area until final disposal. The second layer of 6-mil polyethylene sheeting shall be HEPA vacuumed, left in place, and used during the next shift. A single layer of 6-mil polyethylene sheeting shall be placed on this remaining polyethylene sheeting before lead abatement resumes.

(10) After the removal is complete, the regulated area shall be cleaned by vacuuming with a HEPA vacuum, wiping down all surfaces with a cleaning solution, rinsing all surfaces, and then HEPA vacuuming the area again. Cleaning shall begin at the end of the work area farthest from the entrance to the area and from the top to the bottom of the regulated area.

(d) Exterior removal. When conducting a lead abatement project using the removal strategy on exterior surfaces, these minimum requirements shall be met:

(1) The site shall be prepared by first establishing a regulated area using fencing, barrier tape, or other appropriate barriers. The regulated area shall be marked to prevent uncertified personnel and the general public from approaching closer than 20 feet to the abatement project.

(2) Signs shall be posted at all entrances to the regulated area and shall include the words "WARNING: LEAD AREA. POISON. NO SMOKING OR EATING" in bold lettering at least two inches tall, with additional language or symbols prohibiting entry to the regulated area by uncertified personnel. All signs shall be in a

language that is easily recognized by all certified lead professionals and by members of the general public where the abatement activities are taking place.

(3) All movable items shall be moved 20 feet from working surfaces. Items that cannot be readily moved 20 feet from working surfaces shall be covered with 6-mil polyethylene sheeting and sealed with duct tape.

(4) At least one layer of 6-mil, or thicker, polyethylene sheeting shall be placed on the ground and shall extend at least 10 feet from the abated surface, plus another five feet out for each additional 10 feet in surface height over 20 feet. In addition, the polyethylene sheeting shall meet the following criteria:

(A) Be securely attached to the side of the building, with cover provided to all ground plants and shrubs in the regulated area;

(B) be protected from tearing or perforating;

(C) contain any water, including rainfall, that may accumulate during the lead abatement; and

(D) be weighted down to prevent disruption by wind gusts.

(5) All windows in the regulated area and all windows below and within 20 feet of working surfaces shall be closed.

(6) Work shall cease if constant wind speeds are greater than 15 miles per hour.

(7) Work shall cease and cleanup shall occur if rain begins.

(8) All equipment used in the regulated area shall be thoroughly cleaned with a cleaning solution or vacuumed with a HEPA vacuum, or both, before removal from the regulated area.

(9) The regulated area shall be HEPA vacuumed and cleaned of lead-based paint chips, polyethylene sheeting, and other debris generated by the abatement project work at the end of each workday. Debris shall be kept in a secured area until final disposal. (Authorized by and implementing K.S.A. 65-1,202; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended April 9, 2010.)

28-72-18e. Work practice standards; postabatement clearance procedures. Except as provided in K.S.A. 65-1-203 and amendments thereto, the following postabatement or lead hazard control clearance procedures shall be performed only by a risk assessor: (a) Following lead abatement or required lead hazard control, a visual inspection shall be performed to determine

if deteriorated painted surfaces or visible amounts of dust, debris, or residue are still present. These conditions shall be eliminated before continuation of the clearance procedures.

(b) Following the visual inspection and any post-abatement or lead hazard control cleanup required by subsection (a), clearance sampling for lead-contaminated dust shall be conducted. Clearance sampling shall be conducted by employing single-surface sampling techniques.

(c)(1) Dust samples for clearance purposes shall be taken using one or more of the documented methodologies in K.A.R. 28-72-13(d)(1).

(2) Dust samples for clearance purposes shall be taken a minimum of one hour after completion of final postabatement or lead hazard control cleanup activities.

(d) The following postabatement or lead hazard control activities shall be conducted as appropriate, based upon the extent or manner of lead abatement activities conducted in or to the residential dwelling or child-occupied facility:

(1) After conducting a lead abatement or lead hazard control with containment between abated and unabated areas, one dust sample shall be taken from one window, if available, and at least one dust sample shall be taken from the floors of no fewer than four rooms, hallways, or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are fewer than four rooms, hallways, or stairwells within the containment area, then all rooms, hallways, or stairwells shall be sampled.

(2) After conducting a lead abatement or lead hazard control in which no containment was utilized, two dust samples shall be taken from no fewer than four rooms, hallways, or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one window, if available, and one dust sample shall be taken from the floor of each room, hallway, or stairwell selected. If there are fewer than four rooms, hallways, or stairwells within the residential dwelling or child-occupied facility, then all rooms, hallways, or stairwells shall be sampled.

(3) Following an exterior paint abatement or lead hazard control, a visual inspection shall be conducted. All horizontal surfaces in the outdoor living area closest to the abated surface shall be found to be free of visible dust and debris. In addition, a visual inspection shall be conducted to determine the presence of paint chips on the

dripline or next to the foundation below any exterior surface abated. If paint chips are present, they shall be removed from the site and properly disposed of, according to all applicable federal, state, and local requirements.

(e) The rooms, hallways, or stairwells selected for sampling shall be selected according to one or more of the documented methodologies in K.A.R. 28-72-13(d)(1).

(f) The risk assessor shall compare the residual lead level, as determined by the laboratory analysis, from each dust sample with applicable clearance levels for lead in dust on floors and windows as established below in this subsection. If the residual lead levels in a dust sample exceed the clearance levels, all the components represented by the failed sample shall be recleaned and retested until clearance levels are met. Following completion of a lead abatement activity, all dust, soil, and water samples shall comply with the following clearance levels:

(1) Dust samples:		
Media		Clearance Level
Floors		less than 40 µg/ft ²
Interior windowsills		less than 250 µg/ft ²
Window troughs and exterior walking surfaces		less than 400 µg/ft ²
(2) Soil samples:		
Media		Clearance Level
Bare soil (rest of yard)		less than 1,200 ppm or 1,200 mg/l
Bare soil (small, high-contact areas, including sand boxes and gardens)		less than 400 ppm
(3) Water		less than 15 ppb or 15µg/L

(g) In a multifamily dwelling with similarly constructed and maintained residential dwellings, random sampling for the purposes of clearance may be conducted if the following conditions are met:

(1) The certified individuals who abate, perform lead hazard control, or clean the residential dwelling do not know which residential dwelling will be selected for the random sample.

(2) A sufficient number of residential dwellings are selected for dust sampling to provide a 95 percent level of confidence that no more than five percent or 50 of the residential dwellings, whichever is smaller, in the randomly sampled population exceed the appropriate clearance levels.

(3) The randomly selected residential dwellings are sampled and evaluated for the clearance according to the procedures found in this regulation.

(h) A postabatement or post-lead hazard control clearance report shall be prepared by a lead abatement supervisor. The postabatement or post-lead hazard control clearance report shall include the following information:

(1) The start and completion dates of the lead abatement or lead hazard control;

(2) the name and address of each licensed lead activity firm conducting the lead abatement or lead hazard control and the name of each lead abatement supervisor assigned to the lead abatement or lead hazard control project;

(3) the name, address, and signature of each risk assessor conducting clearance sampling and the date of clearance testing;

(4) the results of clearance testing and soil analysis, if applicable, and the name of each recognized laboratory that conducted the analysis;

(5) a detailed written description of the abatement or lead hazard control, including the lead abatement or lead hazard control methods used, locations of rooms or components where abatement or lead hazard control occurred, reason for selecting particular abatement or lead hazard control methods for each component, and any suggested monitoring of encapsulants or enclosures; and

(6) a written certification from the firm stating that all lead abatement or lead hazard control has taken place in accordance with all applicable local, state, and federal laws and regulations.

(i) Time frame for submission of reports. The clearance report shall be provided to the owner of the property within 20 business days after completion of the clearance inspection. (Authorized by and implementing K.S.A. 65-1,202 and 65-1,203; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

28-72-19. Work practice standards; collection and laboratory analysis of samples. All paint chip, dust, and soil samples collected pursuant to the work practice standards contained in this article shall meet the following conditions:

(a) Be collected by a lead inspector, risk assessor, or elevated blood lead level investigator using adequate quality control; and

(b) be analyzed by a recognized laboratory. (Authorized by and implementing K.S.A. 65-1,202; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

28-72-20. Work practice standards; composite dust sampling prohibited. Composite dust sampling shall not be allowed. (Authorized by and implementing K.S.A. 65-1,202; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended April 9, 2010.)

28-72-21. Work practice standards; quarterly reports; recordkeeping. (a) All reports and plans required in this article shall be maintained for at least three years by the licensed lead activity firm or certified individual who prepared the report or plan.

(b) Each lead activity firm that employs or contracts with lead abatement professionals shall submit to KDHE a written report listing all lead abatement, lead hazard control, and lead abatement clearance projects occurring during each calendar quarter in the state of Kansas, on or before the following dates each year:

(1) January 10;

(2) April 10;

(3) July 10; and

(4) October 10.

(c) Each report shall include the following information:

(1) The name, address, and license number of the lead activity firm;

(2) the complete mailing address of the property where the lead activity work occurred, including the zip code;

(3) a description of the type of activity that occurred;

(4) the date the activity was completed;

(5) a listing of the names of all lead professionals who performed the work for the lead activity firm during the reporting period, including the complete names, certificate numbers, and certificate expiration dates; and

(6) the signature of the owner or authorized representative of the lead activity firm. (Authorized by and implementing K.S.A. 65-1,202; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

28-72-22. Enforcement. (a) A notice of noncompliance (NON) may be issued by the secretary for any violation of the act or this article. A NON shall be the recommended response for a first-time violator of this article. Compliance assistance information shall be included in the NON to ensure future compliance with KDHE regulations.

(b)(1) The NON shall require the violator to take corrective action in order to comply with this article. The corrective action shall depend upon the specific violations. The NON may require that proof of action be submitted to the secretary by a date specified in the NON.

(2) Mitigating factors in each case in which a NON has been issued shall be documented in the case file. (Authorized by K.S.A. 65-1,202; implementing K.S.A. 65-1,202 and 65-1,208; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended April 9, 2010.)

28-72-51. Definitions. For purposes of this article, the definitions in K.A.R. 28-72-1a through K.A.R. 28-72-1x, as well as the following definitions, shall apply:

(a) "Acknowledgment statement" means a form that is signed by the owner or occupant of housing confirming that the owner or occupant received a copy of the pamphlet and renovation notice before the renovation began.

(b) "Certificate of mailing" means a receipt from the postal service that provides evidence that the renovator mailed the pamphlet and a renovation notice to each owner or occupant. The pamphlet and renovation notice shall be mailed at least seven days before the start of renovation.

(c) "Compensation" means payment or goods received for services rendered. Payment may be in the form of money, goods, services, or bartering.

(d) "Emergency renovation operations" means unplanned renovation activities performed in response to a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard or threatens property with significant damage. Emergency renovation operations shall include renovations to repair damage from a tree that fell on a house and renovations to repair a water pipe break in an apartment complex.

(e) "EPA" is defined in K.A.R. 28-72-1e.

(f) "Housing for the elderly" means retirement or similar types of housing specifically reserved for households of one or more persons 62 years of age or older at the time the unit is first occupied.

(g) "Lead-based-paint-free housing" means target housing that has been determined by a certified inspector or certified risk assessor to be free of paint or other surface coatings that contain lead equal to or in excess of one milligram per square centimeter or 0.5 percent by weight.

(h) "Lessor" means any entity that offers target housing for lease, rent, or sublease, including the following:

- (1) Individuals;
- (2) partnerships;
- (3) corporations;
- (4) trusts;
- (5) government agencies;
- (6) housing agencies; and
- (7) nonprofit organizations.

(i) "Minor repair and maintenance" means activities including the following:

(1) Performing minor electrical work that disturbs six square feet or less of painted surface per component;

(2) drilling holes in the wall to run an electrical line; or

(3) replacing a light fixture.

(j) "Occupant" means any person or entity that enters into an agreement to lease, rent, or sublease target housing or any person that inhabits target housing, including the following:

- (1) Individuals;
- (2) partnerships;
- (3) corporations;
- (4) trusts;
- (5) government agencies;
- (6) housing agencies; and
- (7) nonprofit organizations.

(k) "Owner" means any person or entity that has legal title to housing, including the following:

- (1) Individuals;
- (2) partnerships;
- (3) corporations;
- (4) trusts;
- (5) government agencies;
- (6) housing agencies; and
- (7) nonprofit organizations.

(l) "Pamphlet" has the meaning specified in 40 CFR 745.83 as adopted in K.A.R. 28-72-2.

(m) "Record of notification" means a written statement documenting the steps taken to provide pamphlets and renovation notices to occupants and owners in residential dwellings.

(n) "Renovation" has the meaning specified in 40 CFR 745.83 as adopted in K.A.R. 28-72-2.

(o) "Renovation firm" means any individual, organization, or entity that has met the requirements for licensing by KDHE as specified in K.A.R. 28-72-10a.

(p) "Renovation notice" means a notice of renovation activities to occupants and owners of residential dwellings. The notice shall describe the

scope, location, and expected duration of the renovation activity.

(q) “Renovator” means a person who has received certification from the secretary, as specified in K.A.R. 28-72-7a, and is receiving compensation for a renovation.

(r) “Self-certification of delivery” means an alternative method of documenting the delivery of the pamphlet and renovation notice to the occupant. This method may be used whenever the occupant is unavailable or unwilling to sign a confirmation of receipt of pamphlet.

(s) “Supplemental renovation notice” means any additional notification that is required when the scope, location, or duration of a project changes.

(t) “Zero-bedroom dwelling” means any residential dwelling in which the living area is not separated from the sleeping area. This term shall include dormitory housing and military barracks. This term shall not include efficiency and studio apartments. (Authorized by and implementing K.S.A. 65-1,202; effective June 23, 2000; amended April 9, 2010.)

28-72-52. Applicability. (a) Except as provided in subsection (b) of this regulation, this article and the requirements of 40 CFR 745.80 through 745.91, as adopted in K.A.R. 28-72-2, shall apply to all renovation of target housing performed for compensation.

(b) This article shall not apply to renovation activities that are limited to any of the following:

(1) Minor repair and maintenance activities, including minor electrical work and plumbing, that disrupt six square feet or less of painted surface per component;

(2) emergency renovation operations; or

(3) if the renovator has obtained a copy of the determination, any renovation in target housing in which a written determination has been made by an inspector or risk assessor who has been certified in accordance with this article that the components affected by the renovation are free of paint and other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight. (Authorized by and implementing K.S.A. 65-1,202; effective June 23, 2000; amended April 9, 2010.)

28-72-53. Information distribution requirements. (a) Renovations in target housing. No more than 60 days before beginning renovation activities in any residential dwelling unit of

target housing, the renovator shall perform the following:

(1) Provide the owner of the unit with the pamphlet and renovation notice and comply with one of the following:

(A) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet and renovation notice; or

(B) obtain a certificate of mailing at least seven days before the renovation; and

(2) if the owner does not occupy the dwelling unit, provide an adult occupant of the unit with the pamphlet and renovation notice and comply with one of the following:

(A) Obtain from the adult occupant a written acknowledgment that the occupant has received the pamphlet and renovation notice, or certify in writing that the pamphlet and renovation notice have been delivered to the dwelling and that the renovator has been unsuccessful in obtaining a written acknowledgment from an adult occupant. This certification shall include the following:

(i) The address of the unit undergoing renovation;

(ii) the date and method of delivery of the pamphlet and renovation notice;

(iii) the names of persons delivering the pamphlet and renovation notice;

(iv) the reasons for lack of acknowledgment, including the occupant’s refusal to sign and unavailability of adult occupants;

(v) the signature of the renovator; and

(vi) the date of signature; or

(B) obtain a certificate of mailing at least seven days before the renovation.

(b) Renovations in common areas. No more than 60 days before beginning renovation activities in common areas of multifamily housing, the renovator shall perform the following:

(1) Provide the owner with the pamphlet and renovation notice and comply with one of the following:

(A) Obtain from the owner a written acknowledgment that the owner has received the pamphlet and renovation notice; or

(B) obtain a certificate of mailing at least seven days before the renovation;

(2) provide a pamphlet and a renovation notice to each unit of the multifamily housing before the start of renovation. This notification shall be accomplished by distributing written notice to each affected unit. The notice from the renovator shall describe the general nature and locations of the

planned renovation activities and the expected starting and ending dates; and

(3) if the scope, location, or expected starting and ending dates of planned renovation activities change after the initial notification, provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification shall be provided before the renovator initiates work beyond that which was described in the original notice.

(c) Written acknowledgment. Sample language for the written acknowledgments required in paragraphs (a)(1)(A), (a)(2)(A), and (b)(1)(A) shall be provided by the KDHE upon request from the renovator. These acknowledgments shall be written in the same language as that in the text of the contract agreement for the renovation or, in the case of non-owner-occupied target housing, in the same language as that in the lease or rental agreement or the pamphlet and shall include the following:

(1) A statement recording the owner or occupant's name and acknowledging receipt of the pamphlet and renovation notice before the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of the signature; and

(2) either a separate sheet or part of any written contract or service agreement for the renovation.

(d) Lead poisoning prevention poster.

(1) Each commercial establishment that offers paint or supplies intended for the removal or application of paint shall display, in a conspicuous location near the painting supplies, a poster containing a warning statement, with the following information at a minimum:

(A) The dry sanding and the dry scraping of paint in dwellings built before 1978 are dangerous.

(B) The improper removal of old paint is a significant source of lead dust and the primary cause of lead poisoning.

(C) Renovators are required by regulation to notify owners and occupants of the hazards associated with lead paint before doing work. The commercial establishment shall also include contact information so that consumers and renovators can obtain more information.

(2) Sample posters and materials that commercial establishments may use to comply with this subsection shall be available from KDHE.

(e) Compliance. A commercial establishment shall be deemed to be in compliance with this reg-

ulation if the commercial establishment displays the lead poisoning prevention poster as required in subsection (d) and makes the pamphlet available to its customers. (Authorized by and implementing K.S.A. 65-1,202; effective June 23, 2000; amended April 9, 2010.)

28-72-54. Recordkeeping requirements.

(a) Each renovator shall retain and, if requested, make available to KDHE all records necessary to demonstrate compliance with this article for a period of three years following completion of the renovation in target housing.

(b) Records shall be retained as specified in subsection (a) of this regulation, if applicable. These records shall include the following:

(1) Reports certifying that a determination had been made by an inspector who has been certified in accordance with this article that lead-based paint is not present in the area affected by the renovation as described in K.A.R. 28-72-52 (b)(3);

(2) signed and dated acknowledgments of receipt as described in K.A.R. 28-72-53 (a)(1)(A), (a)(2)(A), and (b)(1)(A);

(3) certifications of attempted delivery as described in K.A.R. 28-72-53 (a)(2)(A);

(4) certificates of mailing as described in K.A.R. 28-72-53, (a)(1)(B), (a)(2)(B), and (b)(1)(B); and

(5) records of renovation notices to tenants and owners of residential dwellings as described in K.A.R. 28-72-54. (Authorized by and implementing K.S.A. 1999 Supp. 65-1,202; effective June 23, 2000.)

Article 73.—ENVIRONMENTAL USE CONTROLS PROGRAM

28-73-1. Definitions. (a) "Act" means K.S.A. 65-1,221 et seq. and amendments thereto.

(b) "Applicant" means the owner, as defined in K.S.A. 65-1,222 (c) and amendments thereto, of an eligible property who submits to the secretary an application for approval of environmental use controls for the eligible property.

(c) "Eligible property" means real property that exhibits environmental contamination exceeding department standards for unrestricted use and that is being or has been investigated or remediated, or both, as a result of participating in a department-approved program.

(d) "Environmental contamination" means "pollution" or "contamination," as those terms are used in the following acts and statutes, as well as

any regulations adopted under the authority of those statutes, unless this act or any of the following acts specifically exclude or exempt certain forms of pollution or contamination from the provisions of this act:

(1) K.S.A. 65-3452a through K.S.A. 65-3457a, and amendments thereto, concerning hazardous substances;

(2) the voluntary cleanup and property redevelopment act, K.S.A. 65-34,161 through K.S.A. 65-34,174, and amendments thereto;

(3) the Kansas drycleaner environmental response act, K.S.A. 65-34,141 through K.S.A. 65-34,155, and amendments thereto;

(4) K.S.A. 65-3430 through K.S.A. 65-3447, and amendments thereto, concerning hazardous waste;

(5) K.S.A. 65-161 through K.S.A. 65-171y, and amendments thereto, concerning the waters of the state;

(6) the Kansas storage tank act, K.S.A. 65-34,100 through K.S.A. 65-34,130, and amendments thereto; and

(7) K.S.A. 65-3401 through K.S.A. 65-3427, and amendments thereto, concerning solid waste.

(e) "Environmental use control agreement" means a legal document specifically defining the environmental use controls and other related requirements for an eligible property according to K.A.R. 28-73-3. The agreement shall be issued by the secretary and shall be signed by the applicant. The signatures of the secretary and applicant shall be notarized, and as required by K.S.A. 65-1,225 and amendments thereto, the agreement shall be recorded by the register of deeds in the county where the eligible property is located.

(f) "Financial assurance" means any method of guaranteeing or ensuring adequate financial capability that is approved by the secretary as part of a long-term care agreement. One or more of the following methods of financial assurance may be required by the secretary as a part of a long-term care agreement:

- (1) An environmental insurance policy;
- (2) a financial guarantee;
- (3) a surety bond guaranteeing payment or performance or a similar performance bond;
- (4) an irrevocable letter of credit;
- (5) documentation of the applicant's qualification as self-insurer; and
- (6) other methods the secretary determines are adequate to ensure the protection of public health and safety and the environment.

Federal and state governmental entities that qualify as applicants under these regulations shall not be required to provide financial assurance.

(g) "Legal description" means identification of the land boundaries of an eligible property that is subject to an environmental use control agreement. The identification of land boundaries shall be provided by one or more of the following methods:

(1) A definite and unequivocal identification of lines and boundaries that contains dimensions to enable the description to be plotted and retraced and that describes the legal surveys by county and by at least one of the following additional identifiers:

- (A) Government lot;
- (B) aliquot parts; or
- (C) quarter section, section, township, and range;

(2) a metes and bounds legal survey commencing with a corner marked and established in the U.S. public land survey system; or

(3) the identifying number or other description of the subject lot, block, or subdivision if the land is located in a recorded subdivision or recorded addition to the subdivision.

(h) "Legal survey" means a boundary survey or land survey that is performed by a land surveyor licensed in the state of Kansas and that is conducted for both of the following purposes:

(1) Describing, documenting, and locating the boundary lines of an eligible property, a portion of an eligible property, or both; and

(2) plotting a parcel of land that includes the eligible property.

(i) "Long-term care agreement" means a legally binding document that is entered into as provided in K.A.R. 28-73-4 by an applicant and the secretary and that describes the responsibilities and financial obligations of the applicant to fund the department's inspection and maintenance activities at a category 3 property, as described in K.S.A. 65-1,226 and amendments thereto.

(j) "Residual contamination" means environmental contamination remaining at a property that prohibits the unrestricted use of that property.

(k) "Unrestricted use" means that there are no limits or conditions placed on the use of a property, including use for residential purposes. (Authorized by K.S.A. 2007 Supp. 65-1,232; implementing K.S.A. 2007 Supp. 65-1,224 and 65-1,228; effective April 7, 2006; amended Jan. 30, 2009.)

28-73-2. Application. (a) Each applicant shall submit an application to the secretary, as provided by the act and these regulations.

(b) If an application is determined by the secretary to be incomplete, written notification shall be provided to the applicant by the secretary identifying the documentation, data, or other information that is needed to complete the application, and the application shall be returned to the applicant. The applicant may then submit a revised application package, provide the additional information as required by the secretary, or withdraw the application.

(c) If the applicant is a person or entity that does not own the eligible property, but is the landowner's authorized representative, the applicant shall provide a notarized statement from the landowner or landowners specifically authorizing the applicant to act on the landowner's behalf or a judicial decree assigning this authority to the applicant.

(d) If the owner of the eligible property is a local, state, or federal governmental entity, the signature of an authorized governmental official shall be considered as a sufficient basis for executing and submitting the application. (Authorized by K.S.A. 2004 Supp. 65-1,232; implementing K.S.A. 2004 Supp. 65-1,221, 65-1,222, and 65-1,224; effective April 7, 2006.)

28-73-3. Environmental use control agreements. (a) If the secretary approves an application for environmental use controls, an environmental use control agreement for the eligible property shall be issued by the secretary in a standardized format that contains all of the following components, as applicable to that eligible property:

(1) A description of the control, restriction, prohibition, or limitation that constitutes each of the environmental use controls proposed by the applicant in the application package and approved by the secretary;

(2) a legal description of the eligible property;

(3) authorization for the department and the department's contractors to have access to the eligible property as required by the act;

(4) a statement of the funding requirements established by the secretary as specified in the act or, for category 3 property, a reference incorporating the long-term care agreement required by K.S.A. 65-1,226 and amendments thereto and K.A.R. 28-73-4;

(5) for category 3 property, a statement indicating whether financial assurance is required,

as specified in K.S.A. 65-1,224, and amendments thereto, K.A.R. 28-73-1, and K.A.R. 28-73-5;

(6) the length of time during which the environmental use control agreement is to be in effect;

(7) a description of any monitoring, inspection, or maintenance requirements;

(8) a description of the specific terms and conditions that are to be applied as part of the environmental use controls for the eligible property;

(9) a description of the enforcement provisions that are authorized by K.S.A. 65-1,229, and amendments thereto;

(10) a list of any local, state, or federal government restrictions, prohibitions, or zoning requirements that pertain to the eligible property;

(11) an acknowledgment of the environmental use control agreement that is to be endorsed with the seal of the register of deeds in and for the county where the eligible property is located, pursuant to K.S.A. 19-1206, and amendments thereto; and

(12) a description of any other requirements established for the eligible property by the secretary to ensure the protection of public health and safety and the environment.

(b) Upon approval of an application, the following documents shall be sent to the applicant by the secretary:

(1) A letter approving the application; and

(2) the environmental use control agreement with the notarized signature of the secretary.

(c) In order for the environmental use control agreement to be effective, upon receipt of the agreement the applicant shall return to the secretary the environmental use control agreement with the notarized signature of the applicant and the seal of the register of deeds indicating that the agreement has been recorded as required by K.S.A. 65-1,225, and amendments thereto. The applicant shall submit with the agreement any payment necessary to fulfill the funding requirements established by the environmental use control agreement.

(d) The recorded copy of the environmental use control agreement shall be tracked by the department as specified in K.S.A. 65-1,230, and amendments thereto. (Authorized by K.S.A. 2004 Supp. 65-1,232; implementing K.S.A. 2004 Supp. 65-1,224, 65-1,225, 65-1,226, and 65-1,228; effective April 7, 2006.)

28-73-4. Long-term care agreements for category 3 property. (a) As provided in K.S.A.

65-1,226, and amendments thereto, a long-term care agreement between the secretary and the applicant shall be required for each category 3 property.

(b) Each long-term care agreement for a category 3 property entered into by an applicant and the secretary as provided by K.S.A. 65-1,226, and amendments thereto, shall include a provision for a funding requirement in an amount that will reimburse the department for all direct and indirect costs incurred by the department in implementing and administering the environmental use control agreement and performing long-term care at the property, including costs for the following departmental activities conducted for the purpose of inspecting, monitoring, investigating, and evaluating environmental use controls and remedial progress at the property:

(1) Reviewing documents related to the site, including the following:

- (A) Inspection, monitoring, and progress reports;
- (B) operation and maintenance records;
- (C) reports related to spills of contaminants at the site;
- (D) reports related to permits issued for the eligible property; and
- (E) pertinent historical documents;

(2) monitoring and inspecting remediation activities and monitoring wells, protective structures, remedial systems, and any other features directly related to or associated with an environmental use control on the eligible property;

(3) searching and reviewing records and files related to the eligible property, including historical files, county tax records, county property records, and zoning records;

(4) collecting environmental samples, including quality assurance and quality control samples; and

(5) performing laboratory analyses on environmental samples collected to monitor and evaluate remedial progress at the eligible property.

(c) (1) If the applicant is required to provide financial assurance for a category 3 property, the long-term care agreement shall identify the initial amount of financial assurance required and one or more of the financial assurance methods established by the secretary in accordance with K.A.R. 28-73-5, which the applicant shall maintain for the period of time the long-term care agreement is in effect.

(2) The long-term care agreement shall state that, as the amount of the financial assurance or the financial assurance method is revised in sub-

sequent years as provided in K.A.R. 28-73-5, the most recent revised amount or method approved by the secretary shall be deemed to be incorporated into the long-term care agreement and shall supersede any prior amount or method.

(d) The long-term care agreement shall clearly define the requirements that apply to the secretary and the applicant and their respective responsibilities. (Authorized by K.S.A. 2004 Supp. 65-1,232; implementing K.S.A. 2004 Supp. 65-1,224, 65-1,226, and 65-1,230; effective April 7, 2006.)

28-73-5. Financial assurance. (a) Any applicant requesting approval of an environmental use control for a category 3 property may be required by the secretary to provide and maintain financial assurance in an amount equal to or greater than one or both of the following:

(1) The estimated amount of the funding requirement set out in the long-term care agreement as provided by K.A.R. 28-73-4; and

(2) the estimated amount of the funding necessary to implement contingent remedies that will be used to protect public health and safety and the environment if the proposed remedial activity fails.

(b) Each applicant required by the secretary to provide and maintain financial assurance shall submit a detailed written estimate to the secretary, in current dollars, of the estimated amount of financial assurance required as specified in subsection (a) and shall propose one or more methods of financial assurance. The written estimate and the proposed method or methods of financial assurance shall be reviewed by the secretary and either shall be approved or, if the secretary determines that either the written estimate or the proposed financial assurance method is inadequate, disapproved. If the secretary disapproves the written estimate or the proposed financial assurance method, or both, a written notice shall be provided by the secretary to the applicant explaining the basis for the disapproval. The applicant may correct the identified inadequacies and submit a revised written estimate and proposed financial assurance method to the secretary for further review.

(c) Once approved by the secretary, the initial amount and method of financial assurance shall be documented in the long-term care agreement for the eligible property.

(d) Each applicant required to provide and maintain financial assurance shall submit proof of the initial, approved financial assurance to the

secretary before the environmental use control agreement is issued.

(e) On or before March 31 of each calendar year, each owner, as defined by the act, who entered into a long-term care agreement that establishes a financial assurance requirement shall submit to the secretary a revised written estimate, in current dollars, of the amount of financial assurance required in subsection (a).

(f) The revised written estimate shall be reviewed by the secretary. Written notice that the revised written estimate has been approved or that additional adjustments are required to the revised written estimate or method of financial assurance shall be provided by the secretary. Adjustments to the amount of the required financial assurance or the financial assurance method, or both, may be required for any of the following reasons:

(1) Changes in the estimated costs of the funding requirement for the eligible property as specified in paragraph (a)(1);

(2) changes in the estimated costs of implementing contingent remedies that will be used to protect public health and safety and the environment if the proposed remedial activity fails as specified in paragraph (a)(2);

(3) changes in the risks to public health and safety and the environment posed by a potential release from the eligible property;

(4) documented changes in the financial viability of an owner or the provider of a financial assurance method; or

(5) changes in estimated costs based on inflation.

(g) Each owner required by the secretary to maintain financial assurance shall submit an updated proof of financial assurance within 45 days of receipt of the secretary's written notice in subsection (f). The proof shall be based on the approved amount and method of financial assurance described in the notice.

(h) Each applicant who enters into an environmental use control agreement for a category 3 property that includes a financial assurance requirement shall comply with the following conditions:

(1) Provide and continuously maintain financial assurance in an amount equal to or greater than the latest approved written cost estimate throughout the period the environmental use control agreement is in effect; and

(2) comply with the provisions of the document titled, "procedure for demonstrating financial

assurance at property with environmental use controls" as published by the department on August 31, 2005, and hereby adopted by reference. (Authorized by K.S.A. 2004 Supp. 65-1,232; implementing K.S.A. 2004 Supp. 65-1,224 and 65-1,226; effective April 7, 2006.)

28-73-6. Duration of environmental use controls. (a) Each environmental use control shall remain in effect in perpetuity, unless the secretary approves, in writing, the removal of an environmental use control or, by its own terms, the environmental use control agreement expires.

(b) Any applicant may submit with the application a written request for approval of a provision in the environmental use control agreement specifying the number of years the environmental use control is to remain in effect. The request shall be reviewed by the secretary, and the applicant shall be notified by the secretary of the secretary's approval or denial of the request.

(c) If an approved environmental use control agreement will expire after a stated term of years or the owner seeks to terminate an environmental use control agreement, the owner shall submit a detailed work plan to the secretary that outlines the proposed methods of sampling and evaluating the residual contaminant levels on the eligible property. The owner shall submit the work plan before the expiration or termination of the environmental use control agreement. After consideration and approval of the work plan by the secretary, all of the following shall occur:

(1) The owner shall execute the approved work plan.

(2) The owner shall document and submit the results of the sampling to the secretary in a report and include recommendations for future actions to protect public health and safety and the environment at the eligible property.

(3) Following the secretary's review of the report and recommendations for future actions, the report and recommendations shall be approved, approved with conditions, or disapproved by the secretary. (Authorized by K.S.A. 2004 Supp. 65-1,232; implementing K.S.A. 2004 Supp. 65-1,227; effective April 7, 2006.)

28-73-7. Restrictions, prohibitions, and zoning requirements. (a) Restrictions, prohibitions, and zoning requirements placed on an eligible property by a local, state, or federal government may be approved by the secretary in lieu of

or in addition to one or more environmental use controls if the restriction, prohibition, or zoning requirement meets the following conditions:

(1) Has been legally established;
 (2) is enforceable by a governmental entity; and
 (3) is determined by the secretary to be in effect and applicable to the environmental contamination for which a particular environmental use control is otherwise considered to be a necessary component of an environmental use control agreement for the eligible property.

(b) Use of these restrictions, prohibitions, or zoning requirements in lieu of or in addition to an environmental use control may be considered in either of the following cases:

(1) For contamination that is contained exclusively within the boundaries of an eligible property; or

(2) for contamination that is both contained within and extends beyond the boundaries of an eligible property if the local, state, or federal governmental restriction, prohibition, or zoning requirement is in effect and applies to all of the following areas:

(A) All of those contaminated areas that are beyond the boundary of the eligible property; and

(B) All of those areas surrounding or extending beyond the contaminated areas for a distance that is determined by the secretary to be necessary to ensure the protection of public health and safety and the environment.

(c) Each applicant submitting an application for an environmental use control agreement shall submit to the secretary a copy of any existing local, state, or federal governmental restrictions, prohibitions, or zoning requirements that are proposed for inclusion in the environmental use control agreement in lieu of or in addition to one or more of the proposed environmental use controls. Each applicant shall submit for the secretary's review documentation sufficient to demonstrate the applicant's compliance with each restriction, prohibition, or zoning requirement that is enforceable by a local, state, or federal governmental entity.

(d) If the secretary approves the inclusion of governmental restrictions, prohibitions, or zoning requirements in the environmental use control agreement, the agreement shall reference the appropriate local, state, or federal restriction, prohibition, or zoning requirement and shall identify the governmental unit establishing these requirements.

(e) Each owner who enters into an environmental use control agreement that incorporates

local, state, or federal governmental restrictions, prohibitions, or zoning requirements in lieu of or in addition to one or more environmental use controls shall remain subject to all other applicable requirements of the act and these regulations.

(f) An environmental use control agreement that incorporates local, state, or federal governmental restrictions, prohibitions, or zoning requirements shall be considered not to be effectively implemented and shall be subject to appropriate enforcement action in accordance with K.S.A. 65-1,229, and amendments thereto, if the secretary determines that both of the following conditions exist:

(1) The local, state, or federal governmental restrictions, prohibitions, or zoning requirements have been modified by the governmental entity after the environmental use control agreement was approved by the secretary.

(2) These modifications reduce the effectiveness of the environmental use control agreement to the extent that public health and safety and the environment are not protected adequately. (Authorized by K.S.A. 2005 Supp. 65-1,232; implementing K.S.A. 2005 Supp. 65-1,228; effective April 7, 2006.)

Article 74.—RISK MANAGEMENT PROGRAM

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

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

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

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

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

(2) a map identifying all parcels within the site

to which the risk management plan applies, including ownership of each parcel;

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

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

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

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

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

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

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

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

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

(E) imminent future exposure is not likely; and

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

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

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

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

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

(b) Upon review of each draft risk management plan, a notification shall be issued to the applicant, either approving the draft risk management plan or noting deficiencies in the draft risk manage-

ment plan and describing the modifications necessary to address the deficiencies. The applicant may then submit a revised draft risk management plan for the secretary's approval.

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

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

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

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

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

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

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

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

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

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

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

(d) Any participant may request a transfer of the obligations specified in the risk management plan

agreement to another person. The following requirements for each transfer shall be met:

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

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

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

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

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

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

Article 75.—HEALTH INFORMATION

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

