

# 2021 Supplement

to the

# Kansas

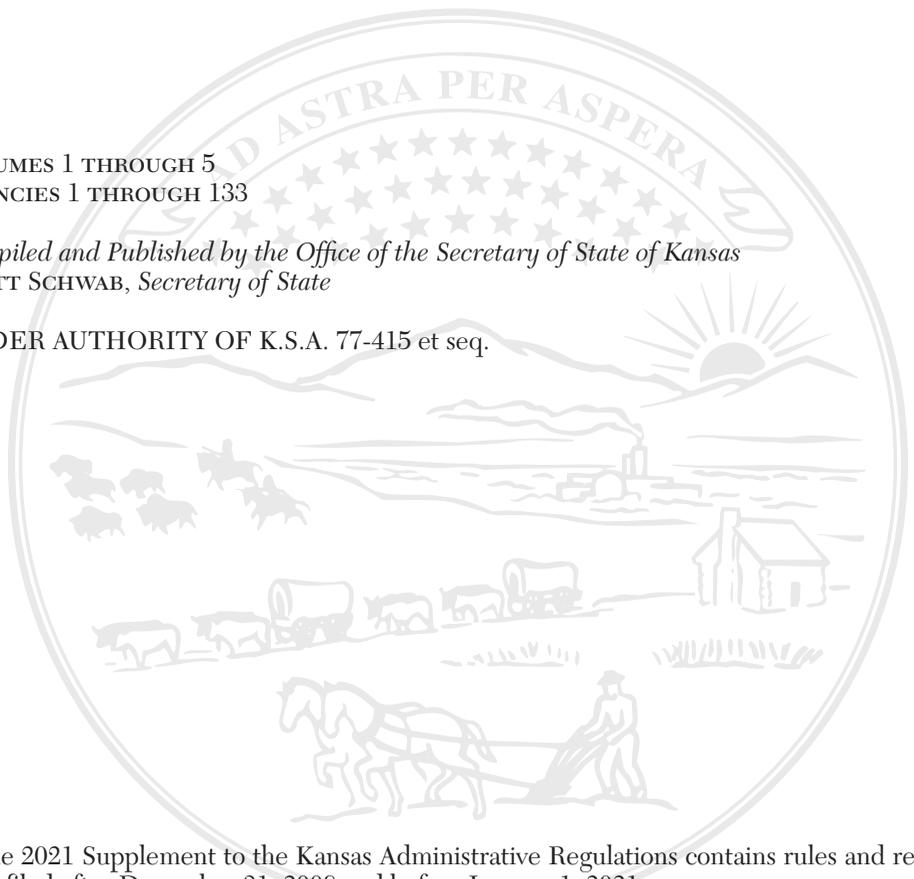
# Administrative

# Regulations

VOLUMES 1 THROUGH 5  
AGENCIES 1 THROUGH 133

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

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



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

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

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## AUTHENTICATION OF RULES AND REGULATIONS

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THIS IS TO CERTIFY That we, Derek Schmidt, Attorney General of and for the State of Kansas, and Scott Schwab, Secretary of State of and for the State of Kansas, pursuant to K.S.A. 77-429 have examined and compared this 2021 Supplement to the Kansas Administrative Regulations; and do hereby certify that this publication of rules and regulations contains all rules and regulations for agencies 1 through 133 approved for printing by the State Rules and Regulations Board subsequent to the publication of the corresponding bound volumes of the 2009 Kansas Administrative Regulations and otherwise complies with K.S.A. 77-415 et seq. and acts amendatory thereof.

Done at Topeka, Kansas, this 1st day of November, 2021.



DEREK SCHMIDT,  
*Attorney General*



SCOTT SCHWAB,  
*Secretary of State*

[SEAL]

## **EXPLANATORY PREFACE**

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

## **ARRANGEMENT OF RULES AND REGULATIONS**

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

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

## **SALES**

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

SCOTT SCHWAB, *Secretary of State*

## COMMENTARY

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

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

To find the most recent version of a regulation:

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

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

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

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

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

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

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

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

SCOTT SCHWAB, *Secretary of State*

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\**Editor's note.*



**2021 SUPPLEMENT**  
to the  
**KANSAS ADMINISTRATIVE REGULATIONS**  
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# Agency 1

## Department of Administration

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### Article 2.—DEFINITIONS

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

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

**1-2-74. Administrative leave.** “Administrative leave” shall mean leave with pay that is approved by the appointing authority for an employee pending the outcome of an investigation of that employee under K.A.R. 1-9-19 or for other situations in which the appointing authority determines that administrative leave is in the best interests of the state. (Authorized by K.S.A. 2014 Supp. 75-2949 and 75-3747; implementing K.S.A. 2014 Supp. 75-2949, K.S.A. 75-3707, and K.S.A. 75-3746; effective Oct. 1, 1999; amended June 5, 2005; amended Jan. 6, 2017.)

### Article 6.—RECRUITING AND STAFFING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Article 7.—PROBATIONARY PERIOD AND EMPLOYEE EVALUATION

### 1-7-3. Probationary period required. (a)

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

(b) Before the end of the probationary period, the appointing authority shall provide the director with results of a performance review for the employee. If the overall performance review rating given to a probationary employee before the end of the employee’s probationary period is unsatisfactory, the employee shall not be granted permanent status. The performance review ratings

required by this subsection shall not be required to occur within the time period established in K.A.R. 1-7-10 (a)(3).

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

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

(e) This regulation shall be effective on and after October 1, 2009. (Authorized by K.S.A. 75-3706 and K.S.A. 2008 Supp. 75-3747; implementing K.S.A. 75-2943, 75-2946, 75-3707, and 75-3746; effective May 1, 1983; amended May 1, 1984; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended Dec. 17, 1995; amended June 5, 2005; amended Oct. 1, 2009.)

### 1-7-4. Duration of probationary period. (a)

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

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

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

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

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

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

(g) If a probationary employee is transferred from one position in a class to another position in the same class or another class in the same pay grade, the transfer shall have no effect on the employee's probationary period. The probationary period may be extended by the appointing authority for not more than six additional months by giving written notice of the extension to the employee and director before the expiration of the original six-month probationary period.

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

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

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

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

**1-7-6. Notices relating to probationary periods and extensions.** (a) Before the expiration of each employee's probationary period, a performance review shall be completed and a rat-

ing shall be assigned, and the appointing authority shall notify the employee and the director in writing of one of the following:

(1) The employee has been dismissed or demoted.

(2) The probationary period is being extended, if extension is permissible under the provisions of K.A.R. 1-7-4.

(3) The employee is being given permanent status.

(b) If a probationary employee has not been notified in accordance with subsection (a) by the end of any probationary period, the employee shall be deemed to have been given permanent status. In case of dispute as to whether the employee was notified, a determination shall be made by the director. (Authorized by K.S.A. 75-3706 and K.S.A. 2008 Supp. 75-3747; implementing K.S.A. 75-2943, 75-2946, 75-3707, and 75-3746; effective May 1, 1983; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended May 1, 1987; amended Dec. 17, 1995; amended Sept. 25, 2009.)

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

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

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

and responsibilities of the employee's position and has significant knowledge of the job performance of the employee.

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

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

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

(5) The appointing authority may conduct a special performance review rating for any employee at any time, unless prohibited under K.A.R. 1-14-8 due to pending layoffs.

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

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

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

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

appointing authority. The final results of the performance review shall be reported to the director.

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

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

(e) This regulation shall be effective on and after October 1, 2009. (Authorized by K.S.A. 75-2943, K.S.A. 75-3706, and K.S.A. 2008 Supp. 75-3747; implementing K.S.A. 75-2943, 75-2949e, 75-3706, and 75-3746; effective May 1, 1983; amended May 1, 1984; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended, T-1-7-27-89, July 27, 1989; amended Nov. 20, 1989; amended Dec. 17, 1995; amended June 5, 2005; amended Oct. 1, 2009.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) Each objection taken pursuant to this subsection and each determination regarding each objection shall be included as part of the documentation of the appeal.

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

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

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

(c) This regulation shall be effective on and after October 1, 2009. (Authorized by K.S.A. 75-2943, K.S.A. 75-3706, and K.S.A. 2008 Supp. 75-3747; implementing K.S.A. 75-2943, 75-3707, and 75-

3746; effective May 1, 1983; amended, T-84-20, July 26, 1983; amended May 1, 1984; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended Dec. 17, 1995; amended June 5, 2005; amended Oct. 1, 2009.)

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The time periods specified in paragraph (f)(1) may be extended to no more than two years from the date of release from a period of service to accommodate a period of hospitalization or convalescence resulting from a service-connected injury or illness. To the extent practicable, the employee shall inform the appointing authority of any change in the date on which the employee

is anticipated to return to work. The appointing authority may request documentation from the employee's commanding officer or the employee's licensed health or mental health care provider of the date on which the employee is released from a period of service and of the reasons the employee will not be able to return to work following the employee's release from a period of service.

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

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

**1-9-22. Job injury leave.** (a) Each classified or unclassified employee who sustains a qualifying job injury, as determined by the employee's appointing authority, shall be eligible for job injury leave in accordance with this regulation.

(b) "Qualifying job injury" shall mean an injury that meets the following conditions:

(1) Renders the employee unable to perform the employee's regular job duties;

(2) arose out of and in the course of employment with the state; and

(3)(A) Was sustained as a result of a shooting, stabbing, or aggravated battery as defined in K.S.A. 21-5413 and amendments thereto, by another against the employee;

(B) was sustained as a result of a confrontation with a patient or client in a facility or ward for mental health, intellectual disability, or developmental disability in which the patient or client inflicts great bodily harm, causes disfigurement, or causes bodily harm with a deadly weapon or in any manner by which great bodily harm, disfigurement, dismemberment, or death can be inflicted; or

(C) was sustained in any other situation in which the appointing authority determines that job injury leave is in the best interest of the state.

(c) Job injury leave shall not exceed six total months away from work. While an employee is

on approved job injury leave, the employing state agency shall continue to pay the employee's regular compensation. If the employee is awarded worker's compensation, the state agency shall pay the employee compensation in an amount that, together with worker's compensation pay, equals the regular pay of the employee. The employee shall not be required to use accrued sick leave or vacation leave. The employee shall continue to accrue sick and vacation leave as long as the employee remains in pay status. Nothing in this regulation shall be construed as providing voluntary or gratuitous compensation payments in addition to temporary total disability compensation payments pursuant to the worker's compensation laws.

(d) The appointing authority may require an employee on approved job injury leave to return to full or limited duty if the employee is physically able to perform the duty as determined by a physician selected by the appointing authority or selected by a representative of the state self-insurance fund. However, limited duty allowed shall not, in combination with time away from work on job injury leave, exceed the total six months allowed for job injury leave. If the employee remains unable to return to full duty, the appointing authority shall take any action deemed to be in the best interest of the state.

(e) While an employee is on approved job injury leave, the appointing authority may require the employee to be examined by a physician selected by the appointing authority to determine the capability of the employee to return to full or limited duty.

(f) Each employee on approved job injury leave shall be prohibited from being gainfully employed by any other employer.

(g) The requirements of this regulation may be waived or modified by the director upon written request of the appointing authority. Any waiver or modification may be granted only upon a finding by the director that both of the following conditions are met:

(1) Granting the requested waiver or modification would not be in conflict with any statutes pertaining to leave.

(2) Failure to grant the requested waiver or modification would create a manifest injustice or undue hardship on the employee requesting the job injury leave. (Authorized by K.S.A. 75-3706, K.S.A. 2013 Supp. 75-3747; implementing K.S.A. 75-3707 and 75-3746; effective, T-86-17,

June 17, 1985; effective May 1, 1986; amended Nov. 21, 1994; amended Dec. 17, 1995; amended Sept. 12, 2014.)

**1-9-23. Shared leave.** (a)(1) Any employee in a classified, regular position or in an unclassified position that is eligible for benefits may be eligible to receive or donate shared leave as provided in this regulation.

(2) Except as provided in paragraph (d)(1)(D), shared leave may be granted to an employee if all of the following conditions are met and if the employee meets the criteria specified in paragraph (b)(1):

(A) The employee or a family member of the employee, as defined in K.A.R. 1-9-5 (e)(2), is experiencing a serious, extreme, or life-threatening illness, injury, impairment, or physical or mental condition.

(B) The illness, injury, impairment, or condition of the employee or the family member has caused or is likely to cause the employee to take leave without pay or terminate employment.

(C) The illness, injury, impairment, or condition of the employee or the family member keeps the employee from performing regular work duties.

(b)(1) Each employee who meets the requirements of paragraph (a)(2) shall be eligible to receive shared leave if both of these conditions are met:

(A) The employee has exhausted all paid leave available for use, including vacation leave, sick leave, compensatory time, holiday compensatory time, and the employee's discretionary holiday.

(B) The employee has at least six continuous months of service, pursuant to K.A.R. 1-2-46.

(2)(A) An employee shall be eligible to donate vacation leave or sick leave to another employee if these conditions are met:

(i) The donation of vacation leave does not cause the accumulated vacation leave balance of the donating employee to be less than 80 hours, unless the employee donates vacation leave at the time of separation from state service.

(ii) The donation of sick leave does not cause the accumulated sick leave balance of the donating employee to be less than 480 hours, unless the employee donates sick leave at the time of separation from state service.

(B) If the employee is retiring from state service and receiving compensation for sick leave upon retirement, the donated sick leave consists only of the accumulated sick leave in excess of the ap-

plicable minimum accumulation amount required for eligibility for a sick leave payout pursuant to K.S.A. 75-5517, and amendments thereto.

(c)(1)(A) When requesting shared leave, an employee shall be required to provide a statement from a licensed health care provider or other medical evidence necessary to adequately establish that the illness, injury, impairment, or physical or mental condition of the employee or family member is serious, extreme, or life-threatening and keeps the employee from performing regular work duties. If the employee fails to provide the required evidence, the use of shared leave shall be denied.

(B) At any time during the use of shared leave, the appointing authority may require the employee to provide a statement from a licensed health care provider or other medical evidence necessary to establish that the illness, injury, impairment, or physical or mental condition of the employee or family member continues to be serious, extreme, or life-threatening or to establish when the employee will be able to return to work. If the employee fails to provide the required evidence, the use of shared leave may be terminated by the appointing authority.

(2)(A) The appointing authority shall determine whether an employee meets the initial eligibility requirements in paragraph (b)(1) and, if applicable, whether the employee would be caring for an individual who meets the definition of a family member.

(B) Shared leave may be denied if the appointing authority determines that the requesting employee has a history of leave abuse.

(C) An employee who currently is receiving workers compensation for the illness, injury, impairment, or physical or mental condition that is the basis of the shared leave request or has submitted an application to the division of workers compensation for this illness, injury, impairment, or condition shall not be eligible to receive shared leave.

(d)(1)(A) A shared leave committee shall be established and coordinated by the director. The shared leave committee shall consist of three current employees in the executive branch who, in the director's judgment, have experience in making determinations regarding leave and who will be fair and impartial in discharging their responsibilities.

(B) Except as provided by paragraph (d)(2), once the appointing authority determines that an

employee meets the eligibility requirements specified in paragraph (c)(2), the shared leave committee shall determine whether the illness, injury, impairment, or physical or mental condition of the employee or the employee's family member meets the conditions established in paragraph (a)(2).

(C) If the shared leave committee determines that the illness, injury, impairment, or physical or mental condition meets the requirements of paragraph (a)(2), the appointing authority shall grant all or a portion of the time requested.

(D) An appointing authority may approve an employee's request for shared leave regardless of the determination of the shared leave committee if the appointing authority determines that such a decision would be in the best interests of the state. Before approving the request, the appointing authority shall consult with the director about the factors that the appointing authority is relying upon in making the determination that approval of the shared leave is in the best interests of the state.

(2) If the appointing authority is an elected official, the appointing authority may determine whether the illness, injury, impairment, or physical or mental condition of the employee or the employee's family member meets the conditions established in paragraph (a)(2) or may submit the shared leave request to the shared leave committee for determination as provided in paragraph (d)(1).

(e) Employees shall not be notified of the need for shared leave donations until the request for shared leave has been approved as provided in subsection (d). No employee shall be coerced, threatened, or intimidated into donating leave or financially induced to donate leave for purposes of the shared leave program.

(f) The records of all shared leave donations shall remain confidential.

(g)(1) Shared leave may be used only for the duration of the serious, extreme, or life-threatening illness, injury, impairment, or physical or mental condition for which the shared leave donation was collected. The maximum number of hours of shared leave that may be used by an employee shall be the total number of hours that the employee would regularly be scheduled to work during a six-month period.

(2) No employee shall be eligible to use shared leave after meeting the eligibility requirements for disability benefits under the Kansas public employees retirement system.

(3) Employees shall use shared leave in accordance with their regular work schedules.

(4) Exempt employees shall use shared leave only in half-day or full-day increments.

(h)(1) Shared leave may be applied retroactively for a maximum of two pay periods preceding the date the employee signed the shared leave request form.

(2) The employee shall no longer be eligible to receive shared leave for a particular occurrence if any of these conditions is met:

(A) The illness, injury, impairment, or condition of the employee or the employee's family member improves so that it is no longer serious, extreme, or life-threatening, and the employee is no longer prevented from performing regular work duties.

(B) The employee terminates or retires.

(C) The employee returns to work and works the employee's regular work schedule for at least 20 continuous working days.

(3) Any unused portion of the shared leave shall be prorated among all donating employees based on the original amount and type of donated leave and returned to those employees within two pay periods of the date on which it is determined that the employee receiving the donated leave is no longer eligible for shared leave. Shared leave shall not be returned to donating employees in increments of less than one full hour or to any person who has left state service.

(i)(1) Shared leave shall be paid according to the receiving employee's regular rate of pay by the receiving employee's agency. The rate of pay of the donating employee shall not be used in figuring the amount of shared leave that the requesting employee receives.

(2) Shared leave shall be donated in full-hour increments.

(j) Each decision to approve or deny a request for shared leave and any other determination regarding the extension or termination of shared leave shall be final and shall not be subject to appeal to the civil service board. (Authorized by K.S.A. 75-3706, K.S.A. 2016 Supp. 75-3747, and K.S.A. 75-5549; implementing K.S.A. 75-3707, 75-3746, and 75-5549; effective, T-1-7-23-92, July 23, 1992; effective Sept. 14, 1992; amended July 26, 1993; amended, T-1-9-19-94, Sept. 19, 1994; amended Nov. 21, 1994; amended Dec. 17, 1995; amended May 31, 1996; amended Sept. 18, 1998; amended, T-1-2-17-00, Feb. 17, 2000; amended June 16, 2000; amended June 5, 2005; amended Jan. 6, 2017.)

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

### 1-14-8. Computation of layoff scores. (a)

A layoff score shall be computed by the appointing authority for each employee in the agency who has permanent status and who either is in a class of positions identified for layoff or could be affected by the exercise of bumping rights.

(b) Layoff scores shall be computed according to the formula  $A \times L$ , where A and L have the following values:

(1) A = the average performance review rating of the employee, as described in subsection (d); and

(2) L = the length of service, as defined in K.A.R. 1-2-46 (a), expressed in years, with three months of service equivalent to .25.

Length of service for a retired employee who has returned to work shall be calculated in accordance with K.A.R. 1-2-46 (g). The layoff scores shall be prepared in accordance with a uniform score sheet prescribed by the director.

(c) Layoff scores computed by the appointing authority shall be made available for inspection by each employee upon request at the time the agency gives written notice of a proposed layoff to the director and the secretary pursuant to K.A.R. 1-14-7. Upon request of any employee, the appointing authority shall review the manner in which the employee's score was calculated. Each dispute as to the proper calculation of a layoff score of any employee shall be resolved by the director.

(d) Except as otherwise authorized by this subsection, the performance review ratings used in computing the layoff score of an employee shall be the employee's five most recent ratings if the employee has as many as five ratings. However, a rating resulting from a special performance review that is given for a rating period ending within 90 calendar days of any notice of the layoff to the director shall not be counted. Performance reviews completed for rating periods ending on or after the date the appointing authority notifies the director in writing that a layoff is to occur shall not be considered in computing layoff scores; however, the appointing authority may designate a uniform earlier cutoff date to identify which performance review ratings are to be used in computing layoff scores.

(1) For the purposes of calculating layoff scores in accordance with the formula established in sub-

section (b), a rating of "exceptional" shall have a value of seven, a rating of "exceeds expectations" shall have a value of five, a rating of "meets expectations" shall have a value of three, a rating of "needs improvement" shall have a value of one, and a rating of "unsatisfactory" shall have a value of zero.

(2) If an employee does not have a total of five performance review ratings for use in computation of a layoff score, the layoff score shall be an average of the ratings that the employee has actually received.

(3) If an employee has no performance review ratings that may be used to compute a layoff score, the employee shall be deemed to have been given a single performance review rating of "meets expectations," and the value of that rating shall be used to compute a layoff score. New hires and rehires employed on a basis other than reinstatement who are serving a probationary period and employees in training classes shall be subject to subsections (e), (f), and (g).

(4) If any layoff scores are identical and some, but not all, of the persons with the same score must be laid off, preference among these persons shall be given to any veteran, as defined in K.S.A. 73-201 and amendments thereto, and any orphan, as defined in this paragraph, in that order. For the purpose of this regulation, "orphan" shall mean a minor who is the child of a veteran who died while, and as a result of, serving in the armed forces.

If further ties remain, a method of breaking the ties that is consistent with agency affirmative action goals and timetables for addressing underutilization of persons in protected groups shall be established by the secretary. If further ties remain, preference in retention shall be given to the person with the higher average performance review rating as used in calculating layoff scores in accordance with subsection (b). If a tie still exists, the next preference shall be given to the person with the greatest length of service, as defined in K.A.R. 1-2-46, within that agency. If a tie still exists, the appointing authority shall determine an equitable tie-breaking system.

(e) New hires and rehires with probationary status shall not be granted permanent status on or after the date the appointing authority has notified the director of a proposed layoff. However, any new hire or rehire with probationary status in a position for which no employee subject to layoff meets the required selection criteria may be

given permanent status. New hires and rehires with probationary status shall have their probationary period extended until it is certain that no employee with permanent status whose position is to be vacated by layoff or who otherwise would be laid off through the exercise of bumping rights is claiming the position held by the employee with probationary status.

(f) Each employee serving a probationary period as a result of one of the following shall be considered to have permanent status for layoff purposes:

(1) Promotion of an employee who has permanent status;

(2) reallocation of a position if the incumbent has permanent status; or

(3) promotion from a classified position with at least six months of continuous classified service.

(g) Each employee who is in training status in a governor's trainee position, or in any identified training position, and who has at least six months of continuous service shall be considered to have permanent status for layoff purposes only.

(h) The layoff list shall be based on the order of the layoff scores. The person with the lowest layoff score shall be laid off first. If more than one person is to be laid off, the persons to be laid off shall be selected on the basis of the lowest layoff scores. (Authorized by K.S.A. 75-2943, K.S.A. 75-3706, and K.S.A. 2014 Supp. 75-3747; implementing K.S.A. 75-2943, 75-2948, 75-3707, and 75-3746; effective May 1, 1984; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended Dec. 27, 1993; amended Dec. 17, 1995; amended June 5, 2005; amended Oct. 1, 2009; amended Jan. 6, 2017.)

**I-14-10. Procedures for bumping and layoff conferences.** (a) Bumping shall occur within the layoff group identified in the agency's layoff notice, or agencywide if the agency has not designated a layoff group. If the requirements in paragraphs (a)(1) and (2) have been met, any employee with permanent status, or any employee considered permanent for layoff purposes only, who is scheduled for layoff shall bump only into a lower class in which the employee previously had permanent status, unless the employee's position is in a class that is part of a class series designated by the appointing authority in the agency's layoff notice. If such a class series is designated in the agency's layoff notice, then the employee shall be permitted to bump into a lower class in the class

series. Except as authorized by subsection (b), in order for an employee with permanent status to exercise bumping rights, the following requirements shall be met:

(1) The employee to be bumped shall have a lower layoff score than the person exercising the bumping right.

(2) The employee to be bumped shall have the lowest layoff score in that employee's job class of anyone in a position not scheduled for layoff.

(b) No employee with permanent status shall be laid off if all of the following conditions are met:

(1) There is a position filled by a probationary employee anywhere in the agency.

(2) The employee with permanent status scheduled to be laid off is interested in the position.

(3) The employee with permanent status is eligible for transfer or demotion to the position pursuant to K.A.R. 1-6-24 and 1-6-27.

(c) If an agency's layoff notice permits bumping only into lower classes in which an employee had previous permanent status and the class or classes in which the employee had previous permanent status have been abolished, the employee shall be afforded bumping rights to a similar job class in a lower pay grade if a similar job class exists as determined by the director.

(d) Regardless of subsections (a), (b), and (c), subject to the approval of the director, any appointing authority may prevent any classified employee from being laid off if the appointing authority finds that the loss of the employee, due to the employee's particular knowledge, skills, abilities, certification, licensure, or combination thereof, would substantially impair the agency's ability to perform its essential operations.

(e)(1) Bumping procedures shall begin as soon as possible after layoff notices have been given pursuant to K.A.R. 1-14-9. The appointing authority or designee shall develop a schedule for an individual conference with each affected employee, starting with the employee having the highest layoff score. The schedule of conferences shall continue in this order until each affected employee has had such a conference.

(2) During the layoff conference, the employee shall be informed of the bumping options available to the employee and of the opportunity to select one such option. The employee may defer the selection no longer than one full working day, unless a longer period of time is authorized by the appointing authority. If an employee is unavailable on the day the employee is scheduled for a

layoff conference, the appointing authority shall reschedule the layoff conference. If the employee fails to appear at the rescheduled conference, the appointing agency shall not be required to hold a layoff conference with the employee and the employee shall forfeit bumping rights.

(3) In extenuating circumstances and when deemed to be in the best interest of the state service, group layoff conference sessions may be authorized by the appointing authority.

(f) At the layoff conference, each employee shall be informed of the employee's right to seek reemployment opportunities with the state, including placement assistance provided by the division. Placement assistance shall be available to the affected employee for up to three years after the effective date of the layoff, unless the affected employee requests in writing that the employee does not want placement assistance.

(g) Any employee who is not scheduled for layoff, but whose position will be vacated during the layoff and bumping process, and who refuses to accept a transfer or demotion to another position may request to be laid off voluntarily. Any employee who has been granted a voluntary layoff shall have reemployment rights.

(h) All disputes resulting from the forfeiture of bumping rights shall be resolved by the director. (Authorized by K.S.A. 2014 Supp. 75-3747; implementing K.S.A. 75-2948; effective May 1, 1984; amended Jan. 18, 1994; amended Dec. 17, 1995; amended May 31, 1996; amended Jan. 6, 2017.)

**1-14-11. Furlough.** (a) For purposes of this regulation, "furlough" shall mean mandatory leave without pay for a preset number of hours during each pay period covered by the furlough. There are two types of furloughs.

(1) An administrative furlough is a planned action by an agency that is designed to address budget reductions necessitated by reasons other than a lapse in appropriations. A furlough plan shall be required for each administrative furlough.

(2) An emergency furlough occurs if there is an immediate or imminent lack of funding to continue agency operations or any emergency that results in an unanticipated interruption of funding to the agency. In an emergency furlough, an affected agency could have to cease activities that are not excepted by law, typically with very little lead time. A furlough plan shall not be required for any emergency furlough.

(b) In accordance with this regulation, if an

appointing authority deems it necessary, the appointing authority may implement an administrative furlough or an emergency furlough for all employees in the classified or unclassified service in designated classes, positions, organizational units, geographical areas, or any combination of those groups unless specific funding sources necessitate exceptions. An employee's social security and retirement contributions shall be affected under a furlough, but all other benefits, including the accrual of vacation and sick leave, shall continue, despite any other regulations to the contrary. A furlough shall not affect the employee's continuous service, length of service, pay increase anniversary date, or eligibility for authorized holiday leave or pay.

(c)(1) For each administrative furlough, at least 30 calendar days before the date the administrative furlough is to be implemented, the appointing authority shall prepare a furlough plan specifying the following information:

(A) The cause of the funding shortage;

(B) the effective date of the furlough and the date on which the furlough is to end;

(C) the methods for notifying the affected employees;

(D) the amount of advance notice that will be given to affected employees, which shall not be less than 10 calendar days;

(E) the estimated cost savings;

(F) each class, organizational unit, or geographical area to be affected;

(G) the criteria used to select each class, position, organizational unit, or geographical area to be included in the furlough;

(H) any exceptions to the furlough plan based on funding sources; and

(I) the number of hours by which the workweek will be reduced, including separate categories detailing the proposed reduction in hours by standardized increments for exempt and nonexempt employees.

(2) A copy of each furlough plan prepared in accordance with this subsection shall be submitted to the director at least 30 days before the date the administrative furlough is to be implemented.

(d) For each emergency furlough, the affected employees and the director shall be notified by the appointing authority as soon as it is practical to do so.

(e) This regulation shall not be used as a disciplinary action against any employee. (Authorized by K.S.A. 75-3706, K.S.A. 2013 Supp. 75-3747,

and K.S.A. 75-5514; implementing K.S.A. 75-3707, 75-3746, and 75-5505; effective, T-88-5, Feb. 11, 1987; effective, T-89-1, May 1, 1988; effective Oct. 1, 1988; amended May 31, 1996; amended June 5, 2005; amended Sept. 12, 2014.)

#### **Article 16.—TRAVEL REIMBURSEMENT**

**1-16-4. Date and hour of departure and return.** If an employee is granted leave of absence while on official travel, including Saturdays, Sundays, and holidays, the employee's subsistence allowance claim shall be adjusted accordingly for the date and hour of departure from, and the return to, the field duty station or to the official station. (Authorized by and implementing K.S.A. 2015 Supp. 75-3207; effective Jan. 1, 1966; amended Feb. 5, 2016.)

#### **1-16-8. Use of privately owned or operated conveyance, limitations; reimbursement for transportation and subsistence expenses.**

(a) In-state travel. If the use of a privately owned or operated conveyance on official state business is authorized by the agency head or the agency head's designee, reimbursement shall be on a mileage basis at the rate specified and under the limitations prescribed by K.A.R. 1-18-1a. Mileage shall be calculated in accordance with K.A.R. 1-17-11, except that storage or parking charges for a privately owned conveyance at any commercial transportation terminal, while the traveler is on an extended trip, and turnpike tolls, may be allowed in addition to this mileage allowance.

(b) Out-of-state travel.

(1) If the use of a privately owned or operated conveyance on official state business, instead of common carrier, is authorized by the agency head or the agency head's designee, the traveler shall be allowed private conveyance mileage as prescribed by K.A.R. 1-18-1a to the destination, turnpike tolls, and parking charges, or an amount equal to economy class air fare to the air terminal nearest the destination, whichever is lesser. Out-of-state subsistence allowance shall be allowed only for the number of quarter days that would have been necessary had the traveler used the fastest public transportation available to the destination instead of a private conveyance. No taxi or air terminal expenses shall be allowed at the destination. Air terminal shall mean the principal air terminal in that general geographic area.

(2) If two or more travelers on official business travel in one privately owned conveyance instead

of common carrier, the use of one conveyance may be authorized on a mileage basis. In such cases, the subsistence allowed shall be for the number of days the trip would take by car using the usually traveled route to the point of destination as provided in K.A.R. 1-17-11.

(3) Upon written, prior approval of the agency head, exceptions to this subsection may be granted in unusual circumstances if deemed to be in the best interest of the state.

(c) Exception. Nothing in this regulation shall apply to any person to whom K.S.A. 75-3212 and K.S.A. 75-3216, and amendments thereto, apply. (Authorized by and implementing K.S.A. 2015 Supp. 75-3207; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979; amended May 1, 1981; amended April 30, 1990; amended July 1, 2010; amended Feb. 5, 2016.)

**1-16-15. Reduced allowances.** (a) Except as provided in K.A.R. 1-16-18, the agency head, or the agency head's designee, may approve paying a reduced meals allowance or lodging expense. However, the following shall apply:

(1) If the cost of meals is included within the cost of a registration fee or other fees and charges paid by the agency, the agency shall pay the applicable reduced subsistence allowance specified in K.A.R. 1-16-18.

(2) If both meals and lodging will be provided at no cost to an agency's traveling employee, the agency shall be authorized to not pay any subsistence for this travel.

(b) The approval of reduced subsistence allowances by the agency head or the agency head's designee shall be based on reducing quarter-day meals allowances and lodging expenses, and this reduced subsistence shall in all other respects be paid in accordance with applicable regulations and accounting procedures. (Authorized by and implementing K.S.A. 2015 Supp. 75-3207; effective Jan. 1, 1966; amended, E-69-18, Aug. 14, 1969; amended Jan. 1, 1970; amended May 1, 1979; amended May 1, 1982; amended, T-84-20, July 26, 1983; amended May 1, 1984; amended, T-87-26, Oct. 1, 1986; amended May 1, 1987; amended, T-89-1, Jan. 7, 1988; amended Oct. 1, 1988; amended July 1, 2010; amended Feb. 5, 2016.)

**1-16-18. Subsistence allowance.** (a) General provisions. Except as otherwise specifically provided by law, subsistence allowances for in-state and out-of-state travel shall be paid on the

basis of a meals allowance and the actual cost of lodging expenses incurred, within the limits specified in this regulation.

Meals allowance rates and lodging reimbursement limitation rates established pursuant to K.S.A. 75-3207a, and amendments thereto, shall be issued through informational circulars of the department of administration. Rates shall be established for the following geographic areas or categories of travel:

- (1) Travel to in-state destinations;
- (2) travel to out-of-state destinations;
- (3) international travel. As used in this regulation, "international travel" shall mean travel outside the 50 states, the District of Columbia, and U.S. territories and possessions;
- (4) travel involving conference lodging that qualifies under K.A.R. 1-16-18a; and
- (5) other categories as the secretary of administration deems appropriate.

(b) Meals allowance; general provisions. Except as provided in subsection (c), the meals allowance shall be paid in an amount not to exceed rates established pursuant to K.S.A. 75-3207a, and amendments thereto.

(c) Meals allowance; exceptions.

(1) If the cost of meals is included within the cost of registration fees or other fees and charges paid by the agency or is supplied without cost by another party, the meal allowance shall be reduced by the appropriate per-meal allowance established pursuant to K.S.A. 75-3207a, and amendments thereto.

(2)(A) Except as prohibited by paragraph (c)(2)(B), the agency head or the agency head's designee may authorize any employee who does not incur lodging expenses to be reimbursed for one meal on any day on which either of the following circumstances occurs:

(i) The employee is required to travel on official state business, and the employee's workday, including travel time, is extended three hours or more beyond the employee's regularly scheduled workday.

(ii) The employee is required to attend a conference or a meeting as an official guest or participant, and a meal is served during the required attendance time.

(B) No meals shall be reimbursed if the location at which the official business is conducted is within 30 miles of the employee's official station or if a meal is provided at no cost to the employee.

(C) Each request for reimbursement of a meal under paragraph (c)(2) shall identify the date,

purpose, destination, and time of the travel, conference, or meeting, and the meal requested for reimbursement.

(D) Each employee who receives reimbursement for a meal under paragraph (c)(2) shall be paid at the applicable per-meal allowance rate established pursuant to K.S.A. 75-3207a, and amendments thereto.

(d) Lodging expense limitations; general provisions.

(1) Reimbursement for lodging, or direct payment of lodging expenses to the lodging establishment, shall be made on the basis of actual, single-rate lodging expenses incurred and shall be supported by the original official receipt of the lodging place or other suitable documentation. Subject to applicable lodging expense limitations established pursuant to K.S.A. 75-3207a and amendments thereto, reimbursement for lodging expenses, or direct payment of lodging expenses to the lodging establishment, shall be limited to the lodging establishment's lowest available rate for normal single occupancy on the day or days the lodging expense was incurred.

(2) Taxes associated with lodging expenses shall not be included in the applicable lodging expense limitation rates established pursuant to K.S.A. 75-3207a, and amendments thereto, and shall be paid as an additional reimbursement.

(e) Lodging expense limitations; exception. Specific exceptions to the applicable dollar limitation on lodging expenses may be made pursuant to K.S.A. 75-3207a, and amendments thereto. (Authorized by and implementing K.S.A. 2015 Supp. 75-3207 and 75-3207a; effective, E-80-10, July 11, 1979; effective May 1, 1980; amended, E-81-14, June 12, 1980; amended May 1, 1981; amended, E-82-14, July 1, 1981; amended May 1, 1982; amended, T-84-20, July 26, 1983; amended May 1, 1984; amended May 1, 1985; amended, T-87-26, Oct. 1, 1986; amended May 1, 1987; amended, T-89-1, Jan. 7, 1988; amended Oct. 1, 1988; amended July 1, 1990; amended, T-1-8-14-90, May 1, 1990; amended Oct. 8, 1990; amended, T-1-9-26-91, Oct. 1, 1991; amended Nov. 18, 1991; amended, T-1-1-1-93, Jan. 1, 1993; amended Feb. 22, 1993; amended, T-1-6-28-95, July 1, 1995; amended Oct. 27, 1995; amended, T-1-7-1-97, July 1, 1997; amended Aug. 8, 1997; amended July 1, 1998; amended July 1, 1999; amended Feb. 15, 2002; amended July 1, 2010; amended Feb. 5, 2016.)

**1-16-18a. Designated high-cost geographic areas; exceptions; conference lodging.**

(a) For official travel to and from, or within, any designated high-cost geographic area in which the traveler is required to sleep away from home, the applicable subsistence allowance rate for that designated high-cost geographic area may be paid. However, reimbursement on this basis shall not be allowable if the area is only an intermediate stopover at which no official duty is performed or if the subsistence expenses incurred relate to relocation, to travel to seek residence quarters, or to travel to report to a new permanent duty station or to temporary quarters.

(b) Reimbursement for travel in designated high-cost geographic areas shall be at the prescribed designated high-cost geographic area rate, unless the agency establishes a reduced rate as provided in K.A.R. 1-16-15. If an out-of-state trip is to two or more destination cities with different subsistence allowance rates, the subsistence allowance rate shall change subject to and on application of the appropriate meals allowance as determined by the time of arrival at the second destination city.

(c)(1) If an employee is required or authorized to attend a conference, the agency head or the agency head's designee may approve reimbursement or direct payment of actual lodging expenses. Before the date of travel, the employee shall submit to the agency head or the agency head's designee conference materials indicating that the conference will be held at or in connection with a lodging establishment with rates exceeding both the applicable lodging expense limitation established under K.A.R. 1-16-18 and the exception provided in K.S.A. 75-3207a, and amendments thereto.

(2) The reimbursement or direct payment of actual lodging expenses shall be effective for the approved conference and for official state business related to the conference and shall be applicable only to the state employee attending the conference.

(3) For purposes of this regulation, the term "conference" shall mean any seminar, association meeting, clinic, colloquium, convention, symposium, or similar gathering that is attended by a state employee in pursuit of a goal, obligation, function, or duty imposed upon a state agency or performed on behalf of a state agency. (Authorized by and implementing K.S.A. 2015 Supp. 75-3207a; effective, E-80-10, July 11,

1979; effective May 1, 1980; amended May 1, 1981; amended, E-82-14, July 1, 1981; amended May 1, 1982; amended, T-84-20, July 26, 1983; amended May 1, 1984; amended May 1, 1985; amended, T-87-26, Oct. 1, 1986; amended May 1, 1987; amended, T-89-1, Jan. 7, 1988; amended Oct. 1, 1988; amended July 1, 1990; amended, T-1-1-1-93, Jan. 1, 1993; amended Feb. 22, 1993; amended April 1, 1996; amended July 1, 1998; amended July 1, 1999; amended July 1, 2010; amended Feb. 5, 2016.)

**1-16-20. Miscellaneous expense definition.** Miscellaneous expense shall mean any expense deemed necessary in the conduct of the official business of the state that is not included in the categories of subsistence allowance, mileage, or fares in lieu of mileage and state-owned vehicle operation. All miscellaneous expenses shall be claimed as "miscellaneous nonsubsistence expense" on the travel reimbursement form as prescribed by the director of accounts and reports and shall include items listed under subsections (b) through (g).

(a) Receipts. A receipt evidencing a payment shall be obtained for each transaction involving miscellaneous expenditures, except taxi fares, telephone calls, telegrams, and intracity streetcar, bus fares, and limousine service.

(b) Baggage. Charges for baggage in excess of the weight or size carried free by transportation companies shall be allowed if the excess baggage is used for official business. Charges for the storage of baggage may also be allowed if it is shown that the storage was due to official business. Specific justification shall be submitted with the travel reimbursement form, as prescribed by the director of accounts and reports.

(c) Telephone and facsimile messages. Expenses for official telephone and facsimile messages that must be paid for by the traveler shall be allowed. Toll and local calls and facsimiles shall be supported by documentation submitted with the travel reimbursement form as prescribed by the director of accounts and reports, showing the date, the city or town called or faxed, the name of the person or firm called or the place to which the fax was sent, and the cost of each call or fax.

(d) Stenographic services. Charges for official stenographic services shall be allowed while on official travel.

(e) Purchase of supplies. The purchase of stationery and all other similar supplies shall be allowed

in emergencies warranting the use for handling official business while on official travel.

(f) Transportation by common carrier or special conveyance. The cost of common or special conveyance transportation tickets shall be considered a miscellaneous expense.

(g) Taxicabs. Taxicab charges shall be claimed for reimbursement as miscellaneous expenses. Both points of origin and destination for each such fare shall be shown on a travel reimbursement form, as prescribed by the director of accounts and reports.

This regulation shall be effective on and after July 1, 2010. (Authorized by and implementing K.S.A. 2008 Supp. 75-3207; effective Jan. 1, 1966; amended, E-69-18, Aug. 14, 1969; amended Jan. 1, 1970; amended July 1, 2010.)

#### **Article 39.—OFFICE OF ADMINISTRATIVE HEARINGS**

**1-39-1, 1-39-2, 1-39-3, and 1-39-4.** (Authorized by and implementing K.S.A. 75-37,121; effective Nov. 20, 1998; revoked Jan. 20, 2017.)

#### **Article 45.—MOTOR VEHICLE PARKING ON CERTAIN STATE-OWNED OR -OPERATED PROPERTY IN SHAWNEE COUNTY**

**1-45-22. Parking fees for state parking garage.** (a) “State parking garage” shall mean the parking garage located on Jackson avenue between 10th and 11th streets that is owned by the Topeka public building commission and operated by the state of Kansas.

(b)(1) Despite the provisions of K.A.R. 1-45-21, parking fees for the state parking garage shall be established on an annual contract basis for state employees and state agencies.

(2) Parking permit fees shall be paid in advance. Each state employee who enters into a parking contract for the state parking garage shall pay the parking fee by biweekly payroll deduction, except for any fee periods or portion of a fee period before the payroll deduction application is processed.

(c) If space in the state parking garage is made available to members of the public either for parking permits or for short-term parking, the following parking fees shall apply to members of the public:

(1) Members of the public with a parking permit shall pay a monthly rate established by the secretary.

(2) Members of the public without a parking permit shall be charged parking fees at the rate of \$1.00 per hour or \$10.00 per day.

(d) The parking fee shall not be prorated, and no refunds shall be made for any unused portions of a month or fee period. The payment of parking fees shall be a continuing obligation until terminated in writing by either party.

This regulation shall be effective on and after January 1, 2016. (Authorized by K.S.A. 75-3706, K.S.A. 2014 Supp. 75-4506 and K.S.A. 75-4507; implementing K.S.A. 2014 Supp. 75-4506; effective Feb. 28, 2003; amended Jan. 1, 2016.)

#### **Article 64.—ADMINISTRATION OF WIRELESS AND VoIP ENHANCED 911 SERVICES**

**1-64-1.** (Authorized by K.S.A. 2006 Supp. 12-5325 and 12-5354; implementing K.S.A. 2006 Supp. 12-5325, 12-5331, 12-5354, and 12-5357; effective Sept. 21, 2007; revoked Feb. 17, 2012.)

#### **Article 65.—ENERGY STAR PRODUCTS AND EQUIPMENT**

**1-65-1. Purchase of energy star products and equipment.** (a) Subject to the provisions of K.S.A. 75-3737a through K.S.A. 75-3744, K.S.A. 75-37,102, and K.S.A. 75-4713 and amendments thereto, each state agency shall acquire products and equipment that bear the energy star label pursuant to K.S.A. 75-37,127, and amendments thereto.

(b) In order to determine the projected cost savings for the useful life of an energy star product, each state agency shall utilize the United States environmental protection agency’s energy savings calculator for the energy star product.

(c) If the United States environmental protection agency has not produced an energy savings calculator for a specific energy star product, then the projected cost savings for the useful life of the energy star product shall be based on a comparison of the following:

(1) The initial cost of the energy star product plus the estimated lifetime operating cost of the energy star product; and

(2) the initial cost of a functionally equivalent product plus the estimated lifetime operating cost of the functionally equivalent product.

(d) This regulation shall apply only to the purchase of new, unused energy star products and equipment. (Authorized by and implementing K.S.A. 2009 Supp. 75-37,127; effective Feb. 4, 2011.)

**Article 66.—ENERGY AUDITS  
FOR REAL PROPERTY**

**1-66-1. Definitions.** For purposes of this article, each of the following terms shall have the meaning specified in this regulation:

(a) “Agency head” means an individual or body of individuals in which the ultimate legal authority of a state agency is vested by any provision of law.

(b) “Division” means the division of facilities management within the Kansas department of administration.

(c) “Energy audit” means the utilization of a building energy-use benchmarking system, including the energy star portfolio manager, that generates a written report that details the conversion of a building’s energy consumption data into energy-intensity metrics for the purpose of comparing the energy use of a building to the national average energy use of similar buildings.

(d) “Energy consumption data” means the monthly amount of energy consumed in the preceding 12-month period as recorded by a utility distributing and selling energy or water services for a particular building.

(e) “Energy-intensity metrics” means the measurement of weather variations and changes in the physical and operating characteristics of each building.

(f) “Energy star portfolio manager” means an online energy management tool created by the United States environmental protection agency that uses an algorithmic formula for tracking and assessing energy and water consumption across a portfolio of buildings. The energy star portfolio manager can be accessed through the division’s web site.

(g)(1) “Excessive amount of energy,” when applied to a building subject to an energy audit, shall be determined by comparing the building’s site and source energy-intensity metrics, annualized to a 12-month period, to the national average site and source energy-intensity metrics of similar buildings.

(2) If the site and source energy-intensity metrics of the building subject to an energy audit are greater than the national average site and source

energy-intensity metrics, then the building shall be deemed to use an excessive amount of energy.

(h) “Secretary” means the secretary of the Kansas department of administration.

(i) “State agency” has the meaning specified in K.S.A. 75-3701, and amendments thereto. (Authorized by and implementing K.S.A. 2009 Supp. 75-37,128; effective Feb. 4, 2011.)

**1-66-2. Energy audit required for each state-owned building.** (a) If a state agency owns real property, the agency head, or that person’s designee, shall conduct an energy audit of each building on that real property and submit the written report to the division.

(b) An energy audit shall be conducted every five years for each building specified in subsection (a).

(c) If a state agency owns four buildings or less, the written reports for the first energy audits for all of the buildings shall be submitted no later than July 1, 2011.

(d) If a state agency owns five or more buildings, an energy audit for at least one-fifth of all of those buildings shall be conducted each year. The written reports for the first energy audits shall be submitted no later than July 1, 2011.

(e) Each state agency conducting an energy audit shall identify each state-owned building in which an excessive amount of energy is being used, pursuant to K.S.A. 75-37,128 and amendments thereto. (Authorized by and implementing K.S.A. 2009 Supp. 75-37,128; effective Feb. 4, 2011.)

**1-66-3. Energy audit required for new lease, or lease renewal or extension, of non-state-owned real property.** (a) Each new lease, or lease renewal or extension, for non-state-owned real property submitted by an agency head to the division for approval shall include the written report for an energy audit conducted by the owner or lessor of each building on that real property that is the subject of the new lease, or lease renewal or extension.

(b) Subject to the provisions of K.S.A. 75-3739 and amendments thereto, a new lease, or lease renewal or extension, may be approved if either of the following conditions is met:

(1) The written report for the energy audit indicates that the leased space does not use an excessive amount of energy.

(2) The written report for the energy audit indicates that the leased space uses an excessive

amount of energy, and the new lease, or lease renewal or extension, requires the owner or lessor to implement cost-effective energy conservation measures that are approved by the secretary to reduce or eliminate the excessive amount of energy. (Authorized by and implementing K.S.A. 2009 Supp. 75-37,128; effective Feb. 4, 2011.)

**Article 67.—ENERGY EFFICIENCY PERFORMANCE STANDARDS FOR STATE-OWNED BUILDINGS**

**1-67-1. Definitions.** For purposes of this article, each of the following terms shall have the meaning specified in this regulation:

(a) “Agency architect” has the meaning specified in K.S.A. 75-1254(a)(3), and amendments thereto.

(b) “Agency engineer” has the meaning specified in K.S.A. 75-1254(a)(3), and amendments thereto.

(c) “ASHRAE” has the meaning specified in K.S.A. 75-37,126, and amendments thereto.

(d) “Design development” means drawings and other documents that describe the size and character of a project’s architectural, structural, mechanical, and electrical systems.

(e) “IECC” has the meaning specified in K.S.A. 75-37,126, and amendments thereto.

(f) “New construction” has the meaning specified in K.S.A. 75-37,126, and amendments thereto.

(g) “Project architect” has the meaning specified in K.S.A. 75-1251, and amendments thereto.

(h) “Project engineer” has the meaning specified in K.S.A. 75-1251, and amendments thereto. (Authorized by and implementing K.S.A. 2009 Supp. 75-37,129a; effective Feb. 4, 2011.)

**1-67-2. Energy efficiency performance standards for new construction.** (a) Subject to the provisions of K.S.A. 75-1250 through K.S.A. 75-1267 and K.S.A. 75-3784 and amendments thereto, each agency architect, agency engineer, project architect, or project engineer shall comply with ASHRAE or IECC at the time of submission of the design development for new construction.

(b) If an agency architect, agency engineer, project architect, or project engineer seeks to comply with a functionally equivalent standard other than ASHRAE or IECC at the time of submission of the design development for new construction, the agency architect, agency engineer, project architect, or project engineer shall submit a report ver-

ifying life-cycle cost-effective compliance for the new construction. The report shall be submitted to the department of administration, division of facilities management. (Authorized by and implementing K.S.A. 2009 Supp. 75-37,129a; effective Feb. 4, 2011.)

**1-67-3. Energy efficiency performance standards for renovated, retrofitted, or repaired buildings.** (a) Subject to the provisions of K.S.A. 75-1250 through K.S.A. 75-1267 and K.S.A. 75-3784 and amendments thereto, each agency architect, agency engineer, project architect, or project engineer shall, to the extent possible, comply with ASHRAE or IECC at the time of submission of the design development for the renovation, retrofit, or repair of each state-owned building.

(b) If an agency architect, agency engineer, project architect, or project engineer seeks to comply with a functionally equivalent standard other than ASHRAE or IECC at the time of submission of the design development for the renovation, retrofit, or repair of each state-owned building, the agency architect, agency engineer, project architect, or project engineer shall submit a report verifying life-cycle cost-effective compliance for the renovation, retrofit, or repair of each state-owned building. The report shall be submitted to the department of administration, division of facilities management. (Authorized by and implementing K.S.A. 2009 Supp. 75-37,129a; effective Feb. 4, 2011.)

**Article 68.—AVERAGE FUEL ECONOMY STANDARDS FOR STATE-OWNED MOTOR VEHICLES**

**1-68-1. Definitions.** For purposes of this article, each of the following terms shall have the meaning specified in this regulation:

(a) “Average fuel economy” shall have the meaning assigned to that term in 40 C.F.R. 600.002-85(a)(14), as in effect on July 1, 2007, which is hereby adopted by reference.

(b)(1) “Life-cycle cost-effective,” when used to describe a motor vehicle that is being compared to another motor vehicle, shall mean the motor vehicle with a lower life-cycle cost, as determined according to this subsection.

(2) To determine the life-cycle cost of each motor vehicle, the following formula shall be used: (Average annual fuel cost of the motor vehicle x

6.67) + purchase price of the motor vehicle. The multiplier 6.67 reflects 100,000 miles divided by 15,000 miles per year.

(3) If the motor vehicles being compared have identical life-cycle costs as computed in accordance with this subsection, then these motor vehicles shall be deemed to be equally life-cycle cost-effective.

(c) "Motor vehicle" shall have the meaning assigned to "automobile" in 40 C.F.R. 600.002-85(a)(4), as in effect on July 1, 2007, which is hereby adopted by reference. As used in that federal regulation, "secretary" shall mean the U.S. secretary of transportation or that person's authorized representative.

(d) "State agency" has the meaning specified in K.S.A. 75-3701, and amendments thereto. (Authorized by and implementing K.S.A. 2009 Supp. 75-4618; effective Feb. 4, 2011.)

**1-68-2. Purchase of a new motor vehicle during fiscal year 2011.** (a) Each state agency that seeks to purchase a new motor vehicle during

fiscal year 2011 shall be subject to the provisions of K.S.A. 75-3739 through K.S.A. 75-3740a, K.S.A. 75-37,102, and K.S.A. 75-4618 and amendments thereto.

(b) Each state agency that seeks to purchase a new motor vehicle without complying with subsection (a) shall meet the following requirements before the purchase of the new motor vehicle:

(1) Submit a written motor vehicle purchase request to the department of administration, division of budget, on a form authorized by the division of budget; and

(2) obtain approval to purchase the new motor vehicle from the department of administration, division of budget.

(c) The director of the division of purchases in the department of administration shall obtain the average fuel economy for each motor vehicle on contract and ensure that each motor vehicle purchased as specified in subsection (a) is life-cycle cost-effective. (Authorized by and implementing K.S.A. 2009 Supp. 75-4618; effective Feb. 4, 2011.)

## Agency 3

# State Treasurer

### Articles

3-3. LINKED DEPOSIT LOAN PROGRAMS.

3-4. LOW-INCOME FAMILY POSTSECONDARY SAVINGS ACCOUNTS INCENTIVE PROGRAM.

### Article 3.—LINKED DEPOSIT LOAN PROGRAMS

**3-3-2. Kansas housing loans.** (a) The proceeds of all housing loans authorized by K.S.A. 75-4276 et seq., and amendments thereto, may be used for building newly constructed residential structures or rehabilitating existing residential structures.

(1) A “residential structure” shall mean an improvement to real property that is intended to be used or occupied as a single-family residential dwelling or a multifamily residential dwelling of four attached living units or less.

(2) A “newly constructed residential structure” shall mean a residential structure that has never been occupied for any purpose and initially sells or is appraised by an independent certified real estate appraiser or an independent licensed real estate appraiser for less than \$287,434 for a single-family residence, \$367,975 for a two-family residence, \$444,751 for a three-family residence, and \$552,757 for a four-family residence. The value of the property shall include the value of the land upon which the improvement is located only if the cost of the land is included in the housing loan.

(3) Each loan for rehabilitating a residential structure shall be at least \$15,000, and the value of the property upon completion of the project shall be estimated to be less than the amounts listed in paragraph (a)(2) using either an appraisal by an independent certified real estate appraiser or an independent licensed real estate appraiser or the most recent county appraisal of the property plus the cost of the rehabilitation project.

(b) Loans to savings banks and savings and loan associations statewide may be made by the treasurer. (Authorized by K.S.A. 2009 Supp. 75-4278; implementing K.S.A. 2009 Supp. 75-4277(e), as amended by L. 2010, ch. 113, sec. 1(e), and K.S.A. 2009 Supp. 75-4279(g), as amended by L. 2010, ch. 113, sec. 2(g); effective, T-3-6-25-08, July 1,

2008; effective Oct. 24, 2008; amended, T-3-5-12-10, May 12, 2010; amended Jan. 21, 2011.)

### Article 4.—LOW-INCOME FAMILY POSTSECONDARY SAVINGS ACCOUNTS INCENTIVE PROGRAM

**3-4-1. Definitions.** In addition to the terms and definitions in K.S.A. 75-643 and K.S.A. 75-650 and amendments thereto, the following terms shall have the meanings specified in this regulation:

(a) “Account owner” means the account owner or joint account owners of a participant account.

(b) “Contribution” means any deposit made by an account owner to that account owner’s participant account during a calendar year, except any deposit that is one of the following:

(1) A rollover from another account in the Kansas postsecondary education savings program;

(2) a rollover from another state’s qualified tuition program as defined in internal revenue code section 529;

(3) a transfer from a Coverdell education savings account as defined in internal revenue code section 530; or

(4) a transfer of proceeds from a qualified U.S. savings bond as described in internal revenue code section 135(c)(2)(C).

(c) “Household” means a group of individuals who are related by birth, marriage, or adoption and who share a residence.

(d) “Participant” has the meaning specified in K.S.A. 75-650, and amendments thereto. Each participant shall be a beneficiary of a Kansas postsecondary education savings program account, as defined in K.S.A. 75-643 and amendments thereto.

(e) “Participant account” means the Kansas postsecondary education savings program account established by an account owner for the benefit of a participant who is enrolled in the matching grant program.

This regulation shall be effective on and after January 1, 2010. (Authorized by and implementing K.S.A. 2008 Supp. 75-650, as amended by L. 2009, ch. 113, sec. 1; effective, T-3-6-29-06, June 29, 2006; effective Oct. 27, 2006; amended July 6, 2007; amended Jan. 1, 2010.)

**3-4-2. Eligibility requirements.** Each account owner shall meet the following requirements:

- (a) Be a resident of the state of Kansas;
- (b) reside in a household with a combined federal adjusted gross income for all individuals residing in the household that is not more than 200 percent of the current federal poverty level; and
- (c) not be claimed as a dependent on someone else's income tax return.

This regulation shall be effective on and after January 1, 2010. (Authorized by and implementing K.S.A. 2008 Supp. 75-650, as amended by 2009 SB 225, sec. 1; effective, T-3-6-29-06, June 29, 2006; effective Oct. 27, 2006; amended July 6, 2007; amended Jan. 1, 2010.)

**3-4-4. Eligibility period.** Each participant shall be entitled to a matching grant equal to the amount of the account owner's contributions to the participant account for the program year in which the account owner's application is approved. The program year shall coincide with the period designated for contributions that are eligible for the deduction pursuant to K.S.A. 79-32,117(c)(xv) and amendments thereto. Each account owner shall reapply each program year to remain eligible for the program. A participant shall not be eligible during a program year in which a qualified or nonqualified withdrawal is taken from the participant account.

This regulation shall be effective on and after January 1, 2010. (Authorized by and implementing K.S.A. 2008 Supp. 75-650, as amended by L. 2009, ch. 113, sec. 1; effective, T-3-6-29-06, June 29, 2006; effective Oct. 27, 2006; amended July 6, 2007; amended Jan. 1, 2010.)

**3-4-5. Matching grant accounts.** The matching grant funds for each participant shall be deposited in a separate account in the account owner's name for the benefit of the participant, with the following restrictions:

- (a) No change in ownership of the participant account or the corresponding matching grant account shall be allowed, except upon approval by the treasurer. A change in account ownership to

another account owner who meets the eligibility requirements in K.A.R. 3-4-2 may be approved by the treasurer. A change in account ownership to any individual may be approved by the treasurer upon the account owner's death, divorce, or incapacity.

- (b) For participant accounts that are not used to participate in the matching grant program after January 1, 2010, any change in the designated beneficiary for a participant account by the account owner shall cause the beneficiary for the corresponding matching grant account to be changed to the same new beneficiary.

- (c) The investment portfolio for the corresponding matching grant account shall always be the same as the investment portfolio selected for each participant account.

- (d) Each request for a withdrawal from the matching grant account shall be submitted to the treasurer's office for approval. If the treasurer determines that the request is for qualified higher education expenses, then the request shall be approved. Each approved withdrawal from the matching grant account shall be paid either directly to the educational institution or to the account owner or the designated beneficiary, upon presentation of documentation acceptable to the treasurer that the account owner or designated beneficiary has paid qualified higher education expenses at least equal to the amount of the requested withdrawal. Each approved withdrawal shall be equally funded from the participant account and the corresponding matching grant account.

This regulation shall be effective on and after January 1, 2010. (Authorized by and implementing K.S.A. 2008 Supp. 75-650, as amended by 2009 SB 225, sec. 1; effective, T-3-6-29-06, June 29, 2006; effective Oct. 27, 2006; amended July 6, 2007; amended Jan. 1, 2010.)

**3-4-6.** This regulation shall be revoked on January 1, 2010. (Authorized by and implementing K.S.A. 2006 Supp. 75-650; effective, T-3-6-29-06, June 29, 2006; effective Oct. 27, 2006; amended July 6, 2007; revoked Jan. 1, 2010.)

**3-4-7. Forfeit of matching grant funds.**

- (a)(1) Except as specified in paragraphs (a)(2) and (a)(3), funds in a matching grant account shall be forfeited in an amount equal to either of the following:

- (A) Any nonqualified withdrawal from the corresponding participant account; or

(B) any rollover distribution to another qualified tuition plan from the corresponding participant account.

(2) If any nonqualified withdrawal or rollover distribution closes a participant account, the corresponding matching grant account shall be closed and its entire balance shall be forfeited.

(3) Any account owner who contributes more than the maximum matching grant amount may make a nonqualified withdrawal or rollover distribution of the excess contribution without forfeiting funds from the matching grant account.

(b) If the treasurer determines that the account owner has made a material misrepresentation on the application, all matching grant funds resulting from the application shall be forfeited.

(c) If a participant account ever becomes reportable as unclaimed property under K.S.A. 58-3934 et seq. and amendments thereto or the

unclaimed property laws of any other state, the remaining balance in the corresponding matching grant account shall be forfeited.

(d) For participants who are enrolled in the matching grant program on or after January 1, 2010, if the account owner changes the beneficiary of the participant account, all funds in the corresponding matching grant account shall be forfeited regardless of when the matching grant was provided by the state.

(e) All forfeited funds shall be returned to the Kansas postsecondary education savings trust fund.

This regulation shall be effective on and after January 1, 2010. (Authorized by and implementing K.S.A. 2008 Supp. 75-650, as amended by 2009 SB 225, sec. 1; effective, T-3-6-29-06, June 29, 2006; effective Oct. 27, 2006; amended Jan. 1, 2010.)



# Agency 4

## Kansas Department of Agriculture

### Articles

- 4-1. AGRICULTURAL CHEMICALS.
- 4-2. AGRICULTURAL SEED.
- 4-3. COMMERCIAL FEEDING STUFFS.
- 4-5. AGRICULTURAL LIMING MATERIALS.
- 4-6. CERTIFICATE OF FREE SALE.
- 4-7. MILK AND DAIRY PRODUCTS.
- 4-10. ANHYDROUS AMMONIA.
- 4-13. PESTICIDES.
- 4-15. PLANTS AND PLANT PRODUCTS.
- 4-16. MEAT AND MEAT PRODUCTS INSPECTION.
- 4-17. POULTRY AND POULTRY PRODUCTS INSPECTION.
- 4-27. LODGING ESTABLISHMENTS.
- 4-28. FOOD SAFETY.
- 4-34. INDUSTRIAL HEMP.

### Article 1.—AGRICULTURAL CHEMICALS

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

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

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

(d) “Pesticide” shall include insecticides, fungicides, rodenticides, herbicides, nematocides, defoliant, desiccants, and antimicrobials.

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

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

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

(h) “Valuable constituent” means any active ingredient or inert ingredient. (Authorized by

K.S.A. 2009 Supp. 2-2205; implementing K.S.A. 2009 Supp. 2-2202; effective Jan. 1, 1966; amended May 1, 1982; amended June 10, 2011.)

**4-1-5. Label.** The label of each product shall show clearly and prominently the following items:

(a) The complete name of the product under which the product is registered under the act;

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

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

(d) the net contents;

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

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

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

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

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

(f) a first aid statement; and

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

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

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

**4-1-9. Registration.** (a) Pursuant to K.S.A. 2-2204 and amendments thereto, a product may be

registered by one of the following: any manufacturer, authorized agent of the manufacturer, packer, seller, distributor, or shipper of that product.

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

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

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

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

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

(3) verbal and written communication.

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

(f) Each registration shall be valid through the last day of the calendar year in which the product was registered, unless the registration has been canceled or suspended before that day. (Authorized by K.S.A. 2010 Supp. 2-2205; implementing K.S.A. 2010 Supp. 2-2204; effective Jan. 1, 1966; amended May 1, 1982; amended June 10, 2011.)

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

- (1) A statement explaining why a special local need registration is necessary;
- (2) efficacy and residue data;
- (3) a letter from a subject matter expert, as recognized by the secretary or designee, detailing support for the special local need registration;
- (4) EPA form 8570-25, "application for/notification of state registration of a pesticide to meet a special local need"; and
- (5) a proposed label for the product.

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

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

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

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

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

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

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

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

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

**4-1-9b. Emergency situation exemptions.**

(a) Any person may submit a request for a registra-

tion exemption under section 18 of FIFRA to the secretary or designee if an emergency situation exists.

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

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

(1) No effective registered products are available.

(2) No feasible alternative control practices are available.

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

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

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

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

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

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

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

**4-1-13. Enforcement; product sampling.**

Collection of samples of products for analysis shall be performed by the secretary or designee. A sample may be taken as either an unopened original package or a portion from the unopened original package. (Authorized by K.S.A. 2009 Supp. 2-2205; implementing K.S.A. 2009 Supp. 2-2206, as amended by L. 2010, ch. 17, §10; effective Jan. 1, 1966; amended May 1, 1982; amended June 10, 2011.)

**4-1-14. Experimental use.** (a) A product, including a plant or seed modified genetically to

include a plant-incorporated protectant, may be distributed for experimental use without registration under K.S.A. 2-2204, and amendments thereto, if either of the following conditions is met:

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

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

(A) Laboratory or greenhouse tests; or

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

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

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

(1) The name and address of the applicant;

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

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

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

(5) the applicant's signature;

(6) documentation of EPA approval;

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

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

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

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

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

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

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

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

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

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

## Article 2.—AGRICULTURAL SEED

**4-2-3. Sampling procedure.** (a) Each of the following terms, as used in this regulation, shall have the meaning specified in this subsection:

(1) "Free-flowing seed" means any agricultural seed that readily sheds the husks, hulls, awns, bran, and other plant parts while being conditioned, allowing the seeds to move freely and independently of each other.

(2) "Non-free-flowing seed" means any agricultural seed that, because of attached husks, hulls, awns, bran, and other plant parts that do not readily separate from the seed while being conditioned, tends to bind together, preventing the seeds from moving independently of each other.

(3) "Seed" means agricultural seed as defined in K.S.A. 2-1415, and amendments thereto.

(b) To obtain a representative sample, equal portions shall be taken from evenly distributed

parts of the lot to be sampled based on the type of seed and number of containers, unless the seed is stored or piled in a manner that makes taking a representative sample impossible or impractical.

(c) For free-flowing seed in bags or bulk, a probe or trier long enough to sample all portions of the bag shall be used.

(d) All non-free-flowing seed, including uncleaned agricultural seed and chaffy range grasses that are difficult to sample with a probe or trier, shall be sampled by thrusting the hand into the bulk and withdrawing representative portions.

(e) The portions collected from a single lot shall be combined into one or more composite samples.

(f) As the seed is sampled, each portion shall be examined. If a lack of uniformity appears to exist, additional samples shall be taken to determine whether a lack of uniformity exists. (Authorized by K.S.A. 2016 Supp. 2-1427; implementing K.S.A. 2-1416 and K.S.A. 2016 Supp. 2-1423; effective Jan. 1, 1966; amended Oct. 6, 2017.)

**4-2-8. Methods of analyses.** (a) Subject to the provisions of subsections (f), (g), and (h) of this regulation, the methods of analysis shall be those published by the association of official seed analysts in the following sections of volume 1 of the “AOSA rules for testing seeds,” titled “principles and procedures,” including all tables and charts, dated October 1, 2016 and hereby adopted by reference:

(1) Section 2, preparation of working samples, except page 2-60;

(2) section 3, the purity analysis, except page 3-30;

(3) section 4, uniform classification of weed and crop seeds;

(4) section 5, examinations;

(5) section 6, germination tests;

(6) section 8, tetrazolium testing;

(7) section 12, mechanical seed counts; and

(8) section 14, tolerances, except subsection 14.10.

(b) Volume 2 of the association of official seed analysts’ “AOSA rules for testing seeds,” titled “uniform blowing procedure,” revised 2015, is hereby adopted by reference, except page ii, section 1, and section 8.

(c) Volume 3 of the association of official seed analysts’ “AOSA rules for testing seeds,” titled “uniform classification of weed and crop seeds,” revised 2016, is hereby adopted by reference, except pages i-iii and viii-xiv.

(d) Volume 4 of the association of official seed analysts’ “AOSA rules for testing seeds,” titled “seedling evaluation,” including illustrations, dated 2016, is hereby adopted by reference, except pages i-vi; page 18; the “references” sections on pages 22, 41, 46, 58, 62, 67, 98, 109, and 115; and pages 135-139.

(e) The “AOSA/SCST tetrazolium testing handbook,” prepared by the tetrazolium subcommittee of the association of official seed analysts and the society of commercial seed technologists, including tables and illustrations, 2010 edition, is hereby adopted by reference, except pages i-viii; in part 1, subsections 1, 3, 7, and 15.2; part 4; and part 5.

(f) For the purpose of this regulation, the term “noxious-weed seed” used in the material adopted by reference in this regulation shall mean “restricted weed seed” as defined in K.S.A. 2-1415 and amendments thereto.

(g) For the purpose of this regulation, the term “purity tolerances” used in the material adopted by reference in this regulation shall mean “the greatest non-significant difference between two values, which may be two estimates or a specification and an estimate.”

All other terms used in the material adopted by reference in this regulation shall have the meanings specified in the adopted portions of the “AOSA rules for testing seeds,” unless a term is defined by K.S.A. 2-1415 and amendments thereto, in which case the term shall have the meaning specified in that statute.

(h) The following restrictions shall apply in addition to tolerances for the testing of seed in section 14 adopted by reference in paragraph (a)(8) of this regulation:

(1) Restricted weed seed tolerances shall not exceed the limitations specified in K.S.A. 2-1415 and amendments thereto.

(2) No tolerance shall be applied to any seed component that is guaranteed as “none” on the label. (Authorized by K.S.A. 2016 Supp. 2-1427; implementing K.S.A. 2016 Supp. 2-1423; effective Jan. 1, 1966; amended May 1, 1983; amended Jan. 1, 1989; amended Dec. 12, 1994; amended Jan. 18, 2008; amended Oct. 6, 2017.)

**4-2-17a.** (Authorized by K.S.A. 2-1427; implementing K.S.A. 2-1425 as amended by 1989 HB 2133; effective, T-4-7-5-89, July 5, 1989; effective Aug. 14, 1989; revoked Oct. 6, 2017.)

**4-2-21. Registration fees for wholesalers and retailers.** (a) Each wholesaler shall pay a registration fee of \$250 for each location at which the wholesaler is doing business.

(b) Each retailer shall pay a registration fee of \$30 for each location at which the retailer is doing business.

(c) Each person registering as both a wholesaler and a retailer at the same location shall pay a registration fee of \$280 for each location at which the person is doing business. (Authorized by K.S.A. 2016 Supp. 2-1421a and 2-1427; implementing K.S.A. 2016 Supp. 2-1421a; effective Oct. 6, 2017.)

### Article 3.—COMMERCIAL FEEDING STUFFS

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

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

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

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

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

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

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

(b) Copies of the material adopted by reference in this regulation may be obtained from the office of the agricultural commodity assurance program, Kansas department of agriculture, Topeka, Kansas. (Authorized by K.S.A. 2-1011 and K.S.A. 2009 Supp. 2-1013; implementing K.S.A. 2009 Supp. 2-1002 and K.S.A. 2009 Supp. 2-1013; effective May 1, 1981; amended May 1, 1982; amended May 1, 1984; amended May 1, 1988; amended

Oct. 21, 1991; amended Dec. 12, 1994; amended June 15, 2001; amended Jan. 18, 2008; amended, T-4-1-5-11, Jan. 5, 2011; amended April 29, 2011.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Article 5.—AGRICULTURAL LIMING MATERIALS

**4-5-1.** (Authorized by K.S.A. 1981 Supp. 2-2910; implementing K.S.A. 1981 Supp. 2-2902; effective May 1, 1982; revoked April 15, 2016.)

**4-5-2.** (Authorized by K.S.A. 1981 Supp. 2-2910; implementing K.S.A. 1981 Supp. 2-2903; effective May 1, 1982; revoked April 15, 2016.)

**4-5-4. Agricultural liming material testing.** The process for determining the effective calcium carbonate equivalent of agricultural liming materials shall be in accordance with Kansas state university’s document titled “Kansas state university soil testing lab agricultural liming material testing procedure,” dated October 15, 2015, which is hereby adopted by reference. (Authorized by K.S.A. 2-2910; implementing K.S.A. 2015 Supp. 2-2903 and 2-2907; effective April 15, 2016.)

**Article 6.—CERTIFICATE OF FREE SALE****4-6-1. Certificate of free sale; definitions.**

(a)(1) “Certificate of free sale” and “certificate” shall mean a written document in English that states that the product described in the document was manufactured in Kansas by a business whose owner or operator meets the following requirements:

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) the number of certificates requested;

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

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

**4-6-3. Certificate of free sale; fees.**

(a) Each person requesting a certificate of free sale shall pay a \$25.00 fee for processing and a \$3.00 fee for each duplicate certificate.

(b) No additional fee shall be charged if the certificate of free sale is sent by first-class U.S. mail to an address in the continental United States. The person requesting the certificate of free sale shall pay the actual costs for delivery of the certificate in any other manner or to any other address.

(c) Except as specified in subsection (d), all fees and costs shall be due upon issuance of the certificate of free sale.

(d) Issuance of a certificate of free sale may be refused by the secretary until payment of all fees and costs is received. (Authorized by and implementing K.S.A. 2017 Supp. 74-5,100; effective Jan. 1, 2009; amended June 15, 2018.)

**Article 7.—MILK AND DAIRY PRODUCTS**

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

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

(c) subpart D, section D9; and

(d) subpart F.

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

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

(1) Except for sections 1 (JJ), 2, 9, 15, 16, 17, and 18, the “grade ‘A’ pasteurized milk ordi-

nance,” 2009 revision, including appendices, as published by the U.S. department of health and human services, public health service, and food and drug administration;

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

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

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

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

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

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

## Article 10.—ANHYDROUS AMMONIA

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

(b) “ASME” means American society of mechanical engineers.

(c) “ASME schedule 80” and “ASME schedule 40” mean pipe specifications contained in the 2007 edition of the ASME boiler and pressure vessel code, section II, part A, SA-53/SA-53M, titled “specification for pipe, steel, black and hot-

dipped, zinc-coated, welded and seamless,” and the appendices, which are hereby adopted by reference.

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

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

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

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

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

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

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

(k) “Designed pressure” means maximum allowable working pressure.

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

shutoff valve shall work properly from a remote location or when activated at the valve.

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

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

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

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

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

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

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

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

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

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

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

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

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

(z) “Reactor unit” means equipment that utilizes anhydrous ammonia to manufacture liquid fertilizer.

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

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

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

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

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

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

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

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

(f) transfer, or permit the transfer of, anhydrous

ammonia into a permanent storage container unless the permanent storage container has a current KDA-issued proof-of-inspection seal attached to the respective system;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (A) Corrosion;
- (B) any indentation or abrasion that meets any of the following conditions:
  - (i) Is over one-half inch deep and includes a weld;
  - (ii) is deeper than 1/10th of the greatest length of the dent but does not include a weld; or
  - (iii) is deeper than one inch;
- (C) stretching;
- (D) cracking;
- (E) faulty welds;

(F) non-code welding;

(G) faulty couplings; or

(H) any other similar condition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The owner’s name;

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

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

(4) an alphabetical or numerical identification symbol; and

(5) a decal containing the following information:

(A) “CAUTION ANHYDROUS AMMONIA (UNDER PRESSURE) READ CAREFULLY”;

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

(C) “Stand upwind when working around equipment”;

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

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

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

(G) “Slowly bleed hoses after transferring product”;

(H) “Close valves firmly but do not wrench”;

(I) “Do not permit children near this equipment”;

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

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

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

**4-10-4c. Permanent storage facility design and permanent storage container location.** (a) Before installing or relocating a permanent storage container or permanent storage

facility, the owner may submit to the secretary a detailed diagram of the permanent storage facility for review or request a preliminary site survey to ensure that the proposed site meets the requirements in subsections (c), (d), (e), and (f).

(b) The name of the permanent storage facility and the telephone number to be contacted in case of an emergency shall be posted and be legible from each facility entrance using letters at least two inches high.

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

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

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

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

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

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

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

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

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

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

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

(B) either reinforced concrete footings and foundations or structural steel supports mounted on reinforced concrete foundations. The reinforced concrete foundations or footings shall extend below the established frost line and shall

be constructed to support the total weight of the containers and their contents. If the container is equipped with bottom withdrawal, the container's foundation shall maintain the lowest point of the container at not less than 18 inches above ground level.

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

(3) Each container shall be securely anchored.

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

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

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

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

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

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

(1) Fails to meet applicable requirements;

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

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

(f) The discharge from each pressure-relief valve shall be vented according to one of the following:

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

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

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

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

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

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

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

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

(1) The phrase "Anhydrous Ammonia";

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

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

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

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

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

- (1) Illegibility of any of the markings required in subsection (a);
- (2) cuts exposing reinforcing fabric;
- (3) soft spots or bulges in the hose;
- (4) a blistering or loose outer covering;
- (5) kinking or flattening;
- (6) stretch marks;
- (7) slippage at any coupling; or
- (8) any other damage that could compromise the integrity of the safe use of the hose. (Authorized by and implementing K.S.A. 2-1212; effective March 12, 2010.)

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

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

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

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

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

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

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

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

(b) When an implement of husbandry is being loaded, at least 100 gallons of water shall be pres-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) Weight;
- (2) a liquid-level gauging device; or
- (3) a flowmeter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) a pair of chemical-splash goggles.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) a backflow check valve installed in the rigid

pipng leading to the reactor unit at the point of connection for the transfer hose.

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

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

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

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

### Article 13.—PESTICIDES

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

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

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

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

(e) the name, home address, birth date, and driver's license number of each non-certified employee who applies pesticides for the applicant. If the applicant's uncertified commercial applicator does not have a driver's license, then the number assigned to any federal or state government-issued identification card shall be provided for that employee;

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

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

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

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

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

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

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

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

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

applicators in other categories and subcategories that include pesticide application to cut stumps.

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

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

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

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

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

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

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

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

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

(A) This category shall include the types of commercial pesticide application specified in subcategory 7C.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) qualified laboratory personnel using restricted-use pesticides while engaged in pesticide research in areas where environmental factors beyond the control of laboratory personnel, including wind, rain, and similar factors, can affect the safe use of the pesticide or can cause the pesticide to have an adverse impact on the environment.

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

(b) Each pesticide business shall be licensed in all categories in which the pesticide business makes commercial pesticide applications and shall

employ one or more persons who maintain commercial certification in each subcategory in which the pesticide business makes commercial pesticide applications.

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

**4-13-9. Report of address, name, or personnel change by business.**

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

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

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

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

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

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

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

(e) The \$15.00 fee shall revert to \$10.00 on and after July 1, 2015, unless this date is modified by statute. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2008 Supp. 2-2440, as amended by L. 2009, Ch. 128, §11; effective, E-78-26, Sept.

7, 1977; effective May 1, 1978; amended, T-88-46, Nov. 10, 1987; amended May 1, 1988; amended, T-4-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended Feb. 29, 2008; amended Feb. 5, 2010.)

**4-13-14. Private applicator examination.**

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

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

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

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

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

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

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

(f) understand federal and state supervisory requirements, including labeling, that must be met by a certified private applicator in supervising the non-certified application of restricted pesticides. These supervisory requirements shall include verifiable instruction of the applicator, availability during application, and any added restrictions that may be imposed for specific pesticides through labeling. These restrictions may include the required physical presence of the

supervising applicator during the application. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2008 Supp. 2-2445a, as amended by L. 2009, Ch. 128, §18; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended May 1, 1988; amended Feb. 5, 2010.)

**4-13-16. Supervision of uncertified applicators.**

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

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

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

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

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

**4-13-17. Report of address change by certified applicators.**

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

**4-13-18. Disposal of pesticides and containers.**

Any amount of unused pesticide and each empty pesticide container shall be stored in the same manner as the pesticide involved until the unused pesticide or empty container is disposed of in a manner consistent with technology current at the time of disposal. Questions regard-

ing the latest technology shall be submitted to any of the following: (a) The Kansas department of agriculture;

(b) Kansas state university extension service;

(c) Kansas department of health and environment; or

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

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

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

**4-13-21. Government agency registration and renewal fees.** The application fee for a government agency registration shall be \$50.00. This regulation shall apply to all government agency registrations, or renewals of these registrations, effective through June 30, 2015, regardless of when the agency receives the application. The \$50.00 government agency registration fee shall revert to \$35.00 on and after July 1, 2015, unless this date is modified by statute. (Authorized by K.S.A. 2008 Supp. 2-2440, as amended by L. 2009, Ch. 128, §11, and K.S.A. 2-2467a; implementing K.S.A. 2008 Supp. 2-2440, as amended by L. 2009, Ch.

128, §11; effective, T-83-36, Nov. 10, 1982; effective May 1, 1983; amended, T-4-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended Feb. 29, 2008; amended Feb. 5, 2010.)

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

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

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

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

(a) "Appurtenance" means any valve, pump, fitting, pipe, hose, auger, metering device, and dispensing device connected to a storage container.

“Dispensing device” shall include any device that is used to transfer bulk pesticides into or out of a container.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(s) “Sump” means a recessed reservoir or catch basin designed to be a receptacle for the collection of liquids in the floor of secondary containment or in the part of the secondary containment

that constitutes the loading pad. (Authorized by and implementing K.S.A. 2-2467a; effective May 1, 1985; amended Dec. 27, 2002; amended Sept. 3, 2010.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Using a permanent cover; and

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

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

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

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

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

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

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

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

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

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

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

(f) No outlet, drain, or other means of penetration shall be located through the floor, bottom, or walls of the secondary containment.

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

(h) A synthetic liner used to line the secondary containment shall be installed and maintained according to the liner manufacturer's specifications, directions, and recommendations. The specifications, directions, and recommendations about liners from the manufacturers of the pesticides stored in the facility shall also be followed. All seams shall be tested, maintained, and repaired according to the manufacturer's specifications, directions, and recommendations. The liner shall be replaced if it cannot be repaired to meet the liner manufacturer's requirements. In no event shall a liner that is incapable of containing bulk pesticides independent of the support of another con-

tainer be used in lieu of secondary containment. (Authorized by and implementing K.S.A. 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

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

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

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

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

- (1) Filling pesticide containers;
- (2) washing application equipment;
- (3) rinsing pesticide containers or application equipment;
- (4) mixing operations; and
- (5) loading application equipment. (Authorized by and implementing K.S.A. 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

**4-13-25f. Requirements for bulk pesticide containers and appurtenances.** Each owner or operator shall meet the following requirements: (a) Each bulk pesticide container shall be designed to handle all operating stresses, including static pressure, pressure buildup from pumps and compressors, and any other mechanical stresses to which the storage container could be subject

during operations. Each bulk pesticide container shall be chemically compatible with the pesticide it holds and shall meet all specifications, directions, and recommendations of the manufacturers of the pesticide and bulk pesticide container.

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

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

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

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

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

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

(h) Each bulk pesticide container used for storage shall be marked clearly to identify the pesticide stored in the container. (Authorized by and implementing K.S.A. 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

**4-13-25g. Discharge, recovery, and reporting requirements.**

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

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

**4-13-25h. Submission of diagrams, plans, and specifications.**

(a) The owner or operator of each bulk pesticide storage facility shall maintain

diagrams, plans, and specifications of the facility on site and with the secretary. The copy maintained at the facility shall be made available to a representative of the secretary upon request.

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

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

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

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

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

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

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

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

from the plumbing and access to the private and public water supplies;

- (5) the drainage pattern of the facility;
- (6) certification that the facility is not located on any abandoned or active oil, gas, or water well;
- (7) certification that the facility is not located on a utility easement;
- (8) the size and location of the proposed walls and flooring to be located within the facility;
- (9) the location and size of each bulk pesticide storage container;
- (10) the location and size of each loading and mixing pad;
- (11) the location of each appurtenance used in the storage or transfer of bulk pesticide within the facility;
- (12) the location of electrical equipment, wiring, and static grounding wires;
- (13) the location and size of dry bulk pesticide storage; and
- (14) any other relevant information required by the secretary.

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

(f) Additional time to comply with any deadline in this regulation may be granted by the secretary upon receipt of a written request and upon a showing of good cause for the additional time requested. Each request shall state the reason for the additional time requested and the amount of additional time needed.

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

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

**4-13-25j. Bulk pesticide storage facility inspection and maintenance requirements.**

(a) Each owner or operator shall inspect the bulk pesticide storage facility and secondary containment, including all appurtenances, at least monthly for any defects, including the following:

- (1) Corrosion;
- (2) leaks;
- (3) cracks;
- (4) spills;
- (5) gaps;
- (6) tears;
- (7) unsealed joints;
- (8) cross-contamination of pesticides;
- (9) structural defects;
- (10) equipment defects; and
- (11) any other defect in the facility or potential violation of K.A.R. 4-13-25 through K.A.R. 4-13-25k.

The owner or operator shall promptly correct any defect.

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

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

- (1) Each inspection performed pursuant to subsection (a);
  - (2) each discharge within the facility in excess of 55 gallons; and
  - (3) more than one discharge within the facility in a 24-hour period totaling or exceeding 55 gallons.
- (d) Each record made pursuant to subsection (c) shall include the following:
- (1) The name of the person making the record;
  - (2) the date the record was made;
  - (3) if any inspection is performed, the following:
    - (A) The date of the inspection;
    - (B) a description of any defect found; and
    - (C) a description of any repairs made to remedy the defect;
  - (4) if a discharge occurred, the following:
    - (A) The date of the discharge;
    - (B) the amount of the discharge;
    - (C) the cause of the discharge;
    - (D) a description of any repairs made; and
    - (E) the date and time the secretary was notified pursuant to K.A.R. 5-13-25g;

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

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

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

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

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

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

(2) All bulk pesticide containers, appurtenances, mixing and loading pads, and sumps have been thoroughly cleaned according to each pesticide manufacturer's requirements, instructions, directions, or recommendations or, if none exist, according to standard industry practice. (Authorized by and implementing K.S.A. 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

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

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

(c) Enforcement of K.A.R. 4-13-25 through K.A.R. 4-13-25k shall be conducted in accor-

dance with the provisions of the Kansas administrative procedures act, K.S.A. 77-501 et seq. and amendments thereto. (Authorized by K.S.A. 2009 Supp. 2-2449 and K.S.A. 2-2467a; implementing K.S.A. 2-2440e, K.S.A. 2009 Supp. 2-2449, K.S.A. 2-2453, 2-2454, and 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

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

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

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

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

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

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

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

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

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

(2) the address of either the residence or principal place of business of each person to whom the

restricted-use pesticide product has been sold or conveyed;

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

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

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

(6) the expiration date of the certificate;

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

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

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

(10) the date of the transaction.

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

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

(2) the address of either the residence or principal place of business of the uncertified person to whom the restricted-use pesticide product has been made available;

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

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

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

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

(2) the quantity of the restricted-use pesticide product sold or otherwise conveyed. (Authorized

by and implementing K.S.A. 2-2467a; effective, T-86-27, Aug. 19, 1985; effective May 1, 1986; amended May 1, 1987; amended Feb. 5, 2010.)

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

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

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

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

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

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

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

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

#### Article 15.—PLANTS AND PLANT PRODUCTS

##### 4-15-4. Live plant definition: exclusions.

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

(b) seeds of any kind;

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

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

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

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

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

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

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

##### 4-15-8. Fees for the inspection of live plants, plant products, bees, beekeeping equipment, and regulated articles.

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

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

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

travel time shall be reduced by a percentage equal to the percentage of reduction in the number of miles actually travelled.

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

(1) The inspector's official station;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) An adequate inspection cannot be conducted.

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

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

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

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

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

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

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

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

(1) For insects and arachnids that bore into live plants, scarab beetles, scale insects, and weevils, the number of infested plants shall be zero percent of the total number of plants in the lot, cultivar, or group of a single species of plant.

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

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

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

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

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

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

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

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

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

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

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

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

#### **Article 16.—MEAT AND MEAT PRODUCTS INSPECTION**

**4-16-1a. Definitions.** (a) Each of the following terms, as used in the act and in the portions of the code of federal regulations adopted by ref-

erence in K.A.R. 4-16-1c, shall have the meaning specified in this subsection:

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

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

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

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

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

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

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

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

(5) “Commerce” shall mean intrastate commerce.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) part 302, except section 302.2;

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

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

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

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

(6)(A) Sections 307.1 through 307.3;

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

(C) section 307.7;

(7) part 309;

(8) part 310;

(9) part 311;

(10) part 312, except section 312.8;

(11) parts 313 through 316;

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

(13) part 318, except section 318.8;

(14) part 319;

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

(16) part 325, except section 325.3;

(17) part 329;

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

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

(B) section 354.2;

(C) sections 354.10 through 354.14;

(D) sections 354.23 through 354.24;

(E) sections 354.26 through 354.30;

(F) sections 354.46 through 354.49;

(G) sections 354.53 through 354.92;

(H) sections 354.120 through 354.133; and

(I) sections 354.160 through 354.247;

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

(B) sections 381.3 through 381.7, except 381.5;

(C) sections 381.10 through 381.21;

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

(E) sections 381.23 through 381.36;

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

(G) sections 381.65 through 381.103, except 381.96;

(H) sections 381.108 through 381.182;

(I) sections 381.189 through 381.194;

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

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

(21) part 416;

(22)(A) Sections 417.1 through 417.3;

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

(C) sections 417.5 through 417.8;

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

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

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

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

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

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

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

(2) For slaughter with the mark of inspection, the hourly fee shall be assessed for the amount of time

needed to conduct the inspection. The inspection shall include the inspector's drive time to and from the establishment. If the establishment processes with the mark of inspection that day, then the amount of time to inspect the processing operations shall be included in the total inspection time.

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

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

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

(2) If the request is made after the inspector has left the establishment, the hourly fee shall be assessed, including the two-hour minimum charge. The inspector's drive time shall not be charged.

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

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

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

(1) Inspection services on holidays;

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

(3) voluntary inspection services.

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

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

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

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

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

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

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

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

**4-16-306. Retail exemption; establishments selling food other than meat and poultry.**

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

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

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

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

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

(b) If an establishment at which inspection under the Kansas meat and poultry inspection act

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

#### **Article 17.—POULTRY AND POULTRY PRODUCTS INSPECTION**

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

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

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

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

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

#### **Article 27.—LODGING ESTABLISHMENTS**

**4-27-1. Lodging establishment application fees.** The application fee for each lodging establishment doing business in Kansas shall be

based on the number of rooms as follows: (a) 1 room through 29 rooms: \$100; and

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

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

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

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

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

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

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

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

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

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

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

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

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

- (A) Electrical;
- (B) plumbing;
- (C) heating, ventilation, and air-conditioning;

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

(3) replacement, demolition, or installation of interior walls and partitions, whether fixed or moveable.

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

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

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

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

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

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

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

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

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

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

(1) The construction of a lodging establishment;

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

(3) the major renovation of a lodging establishment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) maintain and provide to the secretary, upon request, records that demonstrate that the variance is being followed. (Authorized by K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; implementing K.S.A. 2011 Supp. 36-502, as amended by L. 2012, ch. 145, sec. 4; effective June 4, 2010; amended Feb. 8, 2013.)

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

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

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

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

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

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

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

(4) replace any existing items, including equipment, furnishings, fixtures, or items of décor, with

items that meet the requirements of these regulations, under any of the following conditions:

(A) The items constitute a public health hazard;

(B) the items affect guest safety; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) The floor in each toilet room shall be constructed of smooth, nonabsorbent, easily clean-

able materials and maintained in good repair. Carpeting shall be prohibited as a floor covering in toilet rooms.

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

**4-27-7. Personnel; health, cleanliness, and clothing.** Each licensee shall ensure that all of the following requirements are met: (a) Health of employees. Each employee with any of the following health problems shall be excluded from a lodging establishment:

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

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

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

(b) Cleanliness of employees.

(1) Each employee shall wash that employee's hands in accordance with paragraph (b)(2) before handling clean utensils or dishware, ice, beverages, food, or clean laundry.

(2) Each employee shall wash that employee's hands and any exposed portions of that employee's arms with soap and water in a designated sink by vigorously rubbing together the surfaces of the lathered hands and arms for 15 seconds to 20 seconds and thoroughly rinsing with clean water.

(c) Clothing. Each employee providing services directly to guests or performing housekeeping functions shall wear clean outer clothing that is in good repair. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010.)

**4-27-8. Guest and public safety.** (a) If the secretary has reason to believe that defects could be present with regard to the integrity of the structure or electrical system of the lodging establishment, the licensee may be required by the secretary to retain the services of a professional engineer or local building code officer to certify the lodging establishment for building safety. Disasters after which the structural integrity may need to be evaluated shall include a heavy snow or

ice storm, flood, tornado, straight-line winds, fire, hurricane, and earthquake.

(b) Each licensee shall ensure that all repairs, construction, renovations, and maintenance are conducted in a manner that provides safe conditions for the guests and the public.

(c) The licensee of each lodging establishment using fuel-fired equipment or appliances that pose a potential carbon monoxide risk, including lodging establishments with attached parking garages or wood-burning fireplaces, shall install one or more carbon monoxide detectors according to the manufacturer's specifications.

(1) A carbon monoxide detector shall be required in each non-guest room adjoining or sharing a common ventilation system with an attached parking garage.

(2) Each carbon monoxide detector shall be in working condition.

(A) Each carbon monoxide detector shall be tested at least every six months to ensure that the detector is operating properly. The batteries shall be changed, as needed.

(B) A 12-month history of all test results shall be logged and maintained at the lodging establishment and made available to the secretary upon request.

(C) If a battery-operated detector is not operational for two consecutive tests, the licensee shall install a detector that is hardwired with a battery backup.

(3) A carbon monoxide detector shall not be required to be installed in an attached parking garage area.

(d) The operation and maintenance requirements for each lodging establishment shall include all of the following:

(1) Each lodging establishment shall meet the requirements of all applicable building codes, fire codes, and ordinances.

(2) No freshly cut Christmas trees or boughs shall be used unless the freshly cut trees or boughs are treated with a flame-resistant material. The documentation of the treatment shall be kept on file at the lodging establishment for at least one year.

(3) Textile materials having a napped, tufted, looped, woven, nonwoven, or similar surface shall not be applied to walls or ceilings, unless the textile materials are treated with a flame-resistant material. The documentation of the treatment shall be kept on file at the lodging establishment for as long as the materials are used on the walls or ceilings.

This documentation shall be made available to the secretary upon request. Carpeting used as coving that covers the junction between the floor and walls shall be exempt from this requirement.

(4) Foam or plastic materials or other highly flammable or toxic material shall not be used as an interior wall, ceiling, or floor finish unless approved by the secretary.

(5) The doors in any public areas that lead outside the lodging establishment shall not be locked or blocked, preventing egress when the building is occupied. No exit doors shall be concealed or obscured by hangings, draperies, or any other objects.

(6)(A) Portable fire extinguishers shall be required and located in the hallways, mechanical rooms, laundry areas, and all other hazardous areas and within 75 feet of each guest room door. All portable fire extinguishers shall be easily accessible to the guests and employees.

(B) Each fire extinguisher shall meet the following requirements:

(i) Be maintained in a fully charged and operable condition;

(ii) be rated at least 2A-10BC;

(iii) contain at least five pounds of fire suppressant; and

(iv) be inspected annually by a fire extinguisher company, a fire department representative, or another entity approved by the secretary. The licensee shall retain a record of these inspections at the lodging establishment for at least one year.

(7) Emergency lighting shall be provided where guest room doors open to an interior corridor and where guest room doors open to the outside but not directly at ground level.

(8) A smoke detector shall be installed in each guest sleeping room, cooking area and kitchen, interior stairwell, hallway, laundry area, mechanical room, and any other fire hazard area. Any heat-sensing device designed to detect fire may be installed in a cooking area in lieu of a smoke detector.

(A) All smoke detectors and heat-sensing devices shall be maintained in operating condition.

(B) Each smoke detector and each heat-sensing device shall be tested at least every six months to ensure that the detector or device is operating properly. The batteries shall be replaced as needed.

(C) A 12-month history of test results shall be logged and maintained at the lodging establishment and made available to the secretary upon request.

(D) If a battery-operated detector is not operational for two consecutive tests, the licensee shall

install a detector that is hardwired with a battery backup.

(E) Smoke detectors for hearing-impaired individuals shall be available as specified in K.S.A. 36-517, and amendments thereto.

(9) If hardwired, interconnected smoke detectors are used, these detectors shall be tested and approved annually by a fire sprinkler company, fire alarm company, fire department representative, or any other entity approved by the secretary. A 12-month history of test results shall be maintained at the lodging establishment and made available to the secretary upon request.

(10) If fire alarm systems and fire sprinkler systems are used, the systems shall be tested and approved annually by a fire alarm company, fire sprinkler company, fire department representative, or any other entity approved by the secretary. A 12-month history of test results shall be maintained at the lodging establishment and made available to the secretary upon request.

(11)(A) All exit signs shall be clean and legible. At least one exit sign shall be visible from each of the following locations:

(i) The doorway of each guest room that opens to an interior corridor; and

(ii) the doorway of each guest room that opens to the outdoors but not directly at ground level.

(B) Each newly constructed lodging establishment shall have supplemental directional signs indicating the direction and path of egress.

(C) Boarding houses and rooming houses shall not be required to have exit signs if the requirements in paragraphs (d)(5) and (12) are met.

(12) An evacuation route diagram shall be posted in a conspicuous location in each guest room. The diagram shall include the location of the guest room, the layout of the floor, and the location of the nearest available exits. If the door of a guest room opens directly to the outdoors at ground level, the diagram shall not be required to be posted.

(13) A copy of an emergency management plan and employee instructions shall be kept on file in the lodging establishment, made accessible to all employees, and made available to the secretary upon request. A record that each employee has received training on the emergency management plan shall be maintained at the lodging establishment in each employee's file. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

**4-27-9. Guest rooms.** Each licensee shall ensure that each guest room is kept clean, is in good repair, and is maintained with regard to the health and safety of each guest, in accordance with all of the following requirements: (a) The walls, floors, ceilings, doors, and windows shall be constructed of materials intended for that purpose, maintained in good repair, and cleaned, painted, or replaced as necessary.

(1) All junctures between floors and walls shall be constructed, covered, or finished with a baseboard and readily cleanable.

(2) All floors and floor coverings shall be cleaned as needed. The methods for cleaning shall be suitable to the finish and material.

(3) All floor maintenance, repair, or replacement shall be done in a manner that prevents slipping or tripping hazards to any guest.

(4) A guest room that has visible mold on the floors, walls, ceiling, or windows shall not be rented until mold cleanup is completed.

(b) All furnishings, including draperies, beds, appliances, furniture, lamps, and decorative items, shall be kept clean and in good repair. The methods for cleaning shall be suitable to the material and finish.

(c) Each guest room shall have a connecting toilet room and bathing facilities, including a bathtub or shower, except for the following:

(1) If the lodging establishment is listed on the state historical register and documentation is provided to the secretary, at least one toilet room with bathing facilities located on the same floor shall be provided for every two guest rooms, unless otherwise specified by the secretary.

(2) If the lodging establishment is a boarding house, including a bed and breakfast home, or a rooming house, at least one toilet room with bathing facilities located on the same floor shall be provided for every two guest rooms.

(3) If the lodging establishment is a lodge with dormitory sleeping areas, at least one toilet and at least one bathtub or one shower shall be provided for every six guests and shall be located within the same building as the dormitory sleeping area or adjacent to the dormitory sleeping area.

(d) Each handwashing sink shall meet the requirements specified in K.A.R. 4-27-6.

(e) Each rented guest room shall be serviced daily in the following manner except as otherwise specified in this subsection:

(1) Clean bathroom linens, including towels

and washcloths, shall be provided. If bathmats are provided, the bathmats shall be clean.

(2) Clean bed linens shall be provided, and the bed shall be made.

(3) All floors shall be swept or vacuumed, if visibly soiled. All hard-surface floors shall be wet-cleaned if visibly soiled.

(4) Each toilet, sink, bathtub, and shower area shall be cleaned if visibly soiled.

(5) Each trash container shall be emptied and shall be cleaned if visibly soiled. A trash container liner may be reused during the same guest's stay if the liner is not visibly soiled.

(6) All soap and prepackaged guest toiletry items shall be replenished, as necessary.

(7) All toilet paper shall be replenished, as necessary.

(8) Clean ice bucket liners shall be provided and replaced, as necessary and upon request of the guest.

(9) All glassware and cups, if provided, shall be replaced with clean and sanitized dishware. Single-service cups, if provided, shall be replenished.

(10) If a coffeemaker is present in the guest room, the coffeepot shall be rinsed. If the coffeepot is visibly soiled or contaminated, it shall be washed, rinsed, and sanitized. A fresh supply of coffee, condiments, and any single-service articles shall be replenished, if provided.

(f) Each guest room shall be serviced daily during the guest's stay if the stay is less than five days, unless the guest requests that all or part of the room not be serviced.

(g) If the same guest continuously occupies the same room for five or more days, the room shall be serviced and cleaned at least every five days. For each extended-stay establishment, the guest room shall be serviced and cleaned at least every five days.

(h) Each guest room that is available for rent shall be serviced and cleaned before each new guest. In addition to the required service activities in subsection (e), each guest room cleaning shall include the following:

(1) All floors shall be swept or vacuumed, and all hard-surface floors shall be wet-cleaned.

(2) All furniture, fixtures, and any items of decoration shall be cleaned in a manner that is appropriate to the finish.

(3) The interior of all drawers shall be cleaned.

(4) All toilets, sinks, bathtubs, and shower areas shall be cleaned and sanitized in a manner that is appropriate to the finish.

(5) All sinks, bathtubs, and shower areas shall be kept free of hair, mold, and mildew.

(6) Bed linens and bath linens shall not be used for cleaning or dusting.

(7) All trash containers shall be emptied and cleaned, and new liners shall be provided.

(8) All ice bucket liners shall be replaced with new liners.

(9) All used guest toiletries and soap shall be replenished.

(10) The guest room shall be visually inspected for any evidence of insects, rodents, and other pests.

(i)(1) All bedspreads, top-covering linens, blankets, mattress pads, mattresses, and box springs shall be cleaned and maintained in good repair according to all of the following requirements:

(A) All linens with tears or holes shall be repaired or replaced, and all soiled and stained linen shall be cleaned.

(B) All bedspreads and top-covering linens shall be cleaned at least monthly.

(C) All blankets and mattress pads shall be cleaned at least monthly. All blankets and mattress pads that are visibly soiled or stained shall be removed and replaced with clean linen.

(D) All mattresses and box springs shall be kept clean. Each damaged or soiled mattress and box spring shall be repaired or cleaned.

(E) Each mattress that is not kept in sanitary condition shall be replaced.

(2) The interior and surface of each enclosed mattress platform shall be cleaned if visibly soiled and either maintained in good repair or replaced.

(j) If a coffeepot is not located within a toilet room, the coffeepot shall be rinsed before each new guest. If a coffeepot is located within a toilet room, the coffeepot shall be washed, rinsed, and sanitized before each new guest as specified in K.A.R. 4-27-10.

(k) All single-service drinking glasses and utensils shall be prepackaged.

(l) All food and condiments provided in each guest room shall be individually prepackaged.

(m) If a refrigerator unit is provided in a guest room, the unit shall be cleaned before each new guest.

(n) Each appliance provided for guest use, including microwaves, stoves, dishwashing machines, coffeemakers, hair dryers, clothing irons, radios, televisions, remote controls, and video equipment, shall be operational and in good repair. All cooking appliances, including microwaves

and stoves, shall be cleaned before each new guest. All appliances shall be listed with or certified by underwriters' laboratories (UL) and shall bear the UL designation.

(o) Except as specified in this subsection, the use of portable electrical or open-flame cooking devices shall be prohibited in a guest room. These devices shall include hot plates, electric skillets and grills, propane and charcoal grills, camping stoves, and any similar cooking devices. These devices shall not include slow cookers. Microwaves and toasters that are provided in a guest room by the licensee shall be permitted.

(p) Each guest room shall be free of any evidence of insects, rodents, and other pests.

(1) If a guest room has been vacant for at least 30 days, the licensee shall visually inspect that room for any evidence of insects, rodents, and other pests within 24 hours of occupancy by the next guest.

(2) No guest room that is infested by insects, rodents, or other pests shall be rented until the infestation is eliminated.

(3) The presence of bed bugs, which is indicated by observation of a living or dead bed bug, bed bug carapace, eggs or egg casings, or the typical brownish or blood spotting on linens, mattresses, or furniture, shall be considered an infestation.

(4) The presence of bed bugs shall be reported to the secretary within one business day upon discovery or upon receipt of a guest complaint.

(5) All infestations shall be treated by a licensed pest control operator.

(6) All pest control measures, both mechanical and chemical, shall be used in accordance with the manufacturer's recommendations.

(7) No rodenticides, pesticides, or insecticides shall be stored in a guest room or in any area that could contaminate guest supplies, food, condiments, dishware, or utensils.

(q)(1) The licensee of each lodging establishment that allows pets into any guest room shall advise consumers that the establishment is "pet-friendly" by posting a sign in a conspicuous place at the front desk to alert guests that pets are allowed.

(2) The licensee of each lodging establishment where pets or service animals have been in a guest room shall meet one of the following requirements:

(A) The guest room shall be deep cleaned before the next guest. Deep cleaning shall include servicing and cleaning the guest room as specified in subsections (e) and (h), as well as vacuuming

and shampooing the carpet and upholstered furnishings and vacuuming the mattress. All bed linens, including sheets, mattress pads, blankets, bedspreads or top coverings, and pillows, shall be replaced with clean bed linens.

(B) If the room is not deep cleaned, the licensee shall not offer that room to any guest without giving notification to that guest that a pet or service animal was in the room previous to the new guest.

(3) If the previous guest has smoked in a room, the licensee of any lodging establishment shall not offer that room as a non-smoking room until one of the following requirements is met:

(A) The guest room is deep cleaned as specified in paragraph (q)(2)(A).

(B) If the room is not deep cleaned, the licensee shall give notification to the new guest that the previous guest smoked in the room.

(r) Each guest room shall be provided with a means for locking each entrance both from the inside and from the outside, according to all of the following requirements:

(1) The key furnished to each guest shall not unlock the door to any other guest room.

(2) At least one secondary lock, including a dead bolt lock, thumb bolt, chain lock, or a similar device, shall be provided in addition to the primary key lock and shall be installed in accordance with the manufacturer's specifications.

(3) All locks shall be in good repair and fully operational.

(s) Each pair of connecting guest rooms shall have two doors in the connecting doorway. Each connecting door shall be equipped with a lock on only the guest room side of that door.

(t) If cribs are provided upon request, the cribs shall be easily cleanable, safe, and in good repair. Each crib rail, pad, and mattress shall be cleaned and sanitized after each guest. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

**4-27-10. Dishware and utensils.** Each licensee shall ensure that all of the following requirements are met: (a) General.

(1) All dishware and utensils that are designed for repeat use shall be made of safe, durable, and nonabsorbent material and shall be kept in good repair. No cracked or chipped dishware or utensils shall be provided for use by guests or employees.

(2) All single-service articles shall be constructed of safe, durable, and nonabsorbent materials.

(3) All single-service drinking glasses and utensils shall be prepackaged or protected in a dispenser.

(4) No single-service articles may be reused.

(b) Storage.

(1) All clean dishware and utensils and all single-service articles shall be protected from dirt, dust, liquids, insects, vermin, and any other sources of contamination at all times.

(2) Each licensee shall provide storage facilities for dishware and utensils in a clean, dry location at least six inches above the floor.

(3) No dishware and utensils shall be stored under an exposed sewer line or a dripping water line.

(4) No dishware, utensils, single-service articles, ice buckets, and food containers shall be stored within a toilet room.

(c) Cleaning and sanitization. Each licensee shall use either manual cleaning and sanitizing equipment or mechanical cleaning and sanitizing equipment.

(1) All dirty or used glasses, dishware, and utensils that are in areas other than a guest room kitchenette shall be removed from each guest room during the servicing or cleaning of the room and upon vacancy of that room. All items shall be washed, rinsed, and sanitized using one of the approved methods in this regulation.

(2) If the licensee provides repeat service dishware or utensils to the lodging establishment's guests or to the public, the licensee shall install in the lodging establishment, or in a food service area operated in conjunction with the lodging establishment, manual or mechanical cleaning equipment for dishware and utensils that meets the requirement of this regulation.

(3) The manual cleaning and sanitizing of dishware, utensils, and food equipment shall meet all of the following requirements:

(A)(i) A sink with at least three compartments or three adjacent sinks shall be used and shall be large enough to permit the immersion of the largest item of dishware, utensil, or food equipment articles to be cleaned.

(ii) All sinks and dishware drying surfaces shall be cleaned before use.

(B) Each compartment of the sink shall be supplied with hot and cold potable running water.

(C) The wash, rinse, and sanitizing water shall be kept clean.

(D) The steps for manual cleaning and sanitizing shall consist of all of the following:

(i) All dishware, utensils, and food equipment

shall be thoroughly washed in the first compartment with a hot detergent solution.

(ii) All dishware, utensils, and food equipment shall be rinsed free of detergent and abrasives with clean hot water in the second compartment.

(iii) All dishware, utensils, and food equipment shall be sanitized in the third compartment according to one of the methods in paragraph (c)(3)(E).

(E) The food contact surfaces of all dishware, utensils, and food equipment shall be sanitized during manual ware washing by one of the following methods:

(i) Immersion for at least 10 seconds in a clean solution containing 50 to 200 parts per million of available chlorine, with a water temperature of at least 75 degrees Fahrenheit;

(ii) immersion for at least 30 seconds in clean hot water with a temperature of at least 171 degrees Fahrenheit;

(iii) immersion in a clean solution containing a quaternary ammonium compound with a minimum water temperature of 75 degrees Fahrenheit and with the concentration indicated by the manufacturer's directions on the label; or

(iv) immersion in a clean solution containing a sanitization chemical other than those specified in this subsection that meets the applicable requirements specified in K.A.R. 4-28-11.

(F) A chemical test kit, thermometer, or other device that accurately measures the concentration of sanitizing chemicals, in parts per million, and the temperature of the water shall be available and used daily.

(4) The mechanical cleaning and sanitizing of dishware, utensils, and food equipment may be done by spray-type or immersion commercial dishwashing machines. Another type of dishwashing machine or device may be used if the machine or device meets the requirements of this regulation.

(A) Each dishwashing machine and device shall be properly installed and maintained in good repair and shall be operated in accordance with the manufacturer's instructions.

(B) If an automatic detergent dispenser, rinsing agents dispenser, or liquid sanitizer dispenser is used, the dispenser shall be properly installed and maintained.

(C) Each dishwashing machine using hot water to sanitize shall be installed and operated according to the manufacturer's specifications and shall achieve a minimum dishware and utensil surface temperature of 160 degrees Fahrenheit as mea-

sured by a dishwasher-safe thermometer. For each dishwashing machine using hot water to sanitize that does not cause the surface temperature of the dishware and utensils to reach a temperature of 160 degrees Fahrenheit, one of the following requirements shall be met:

(i) The licensee shall install a heat booster.

(ii) The licensee shall provide the secretary with documentation of a time and temperature relationship that results in the sanitization of the dishware and utensils.

(D) The final rinse temperature of each dishwashing machine using hot water to sanitize shall be monitored by a dishwasher-safe thermometer.

(E) All dishware, utensils, and food equipment shall be exposed to all dishwashing and drying cycles.

(F) Each dishwashing machine using chemicals for sanitization shall be used as follows:

(i) The temperature of the wash water shall be at least 120 degrees Fahrenheit, and the chemical sanitizing rinse water shall be at least 75 degrees Fahrenheit unless specified differently by the machine's manufacturer.

(ii) The wash water shall be kept clean.

(iii) The chemicals added for sanitization purposes shall be automatically dispensed.

(iv) All dishware, utensils, and food equipment shall be exposed to the final chemical sanitizing rinse in accordance with the manufacturer's specifications for time and concentration.

(v) All chemical sanitizers shall meet the applicable requirements of K.A.R. 4-28-11.

(G) A chemical test kit, thermometer, or other device that accurately measures the concentration of sanitizing chemicals, in parts per million, and the temperature of the water shall be available and used daily.

(H) Each dishwashing machine or device shall be cleaned as often as necessary to be maintained in operating condition according to the manufacturer's specifications.

(d) All dishware, utensils, and food equipment shall be air-dried.

(e) Each licensee that provides dishware, utensils, and food equipment in the guest room shall clean and sanitize the dishware, utensils, and food equipment provided by one of the following methods:

(1) Provide manual dishwashing and sanitizing as specified in paragraph (c)(3);

(2) provide a mechanical dishwashing machine as specified in paragraph (c)(4); or

(3) provide a complete set of clean and sanitized dishware, utensils, and food equipment before each new guest arrives. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

**4-27-11. Housekeeping and laundry facilities; maintenance supplies and equipment.** Each licensee shall ensure that all housekeeping and laundry facilities and equipment are clean and maintained in good repair. Each licensee shall ensure that all of the following requirements are met:

(a)(1) Each housekeeping cart shall be maintained and operated to prevent the contamination of clean linens by dirty linens.

(2) Each housekeeping cart shall be designed, maintained, and operated to protect clean glasses, utensils, dishware, single-service articles, food, coffee, and condiments from dirty linens and other sources of contamination, including dirty glasses and dishware, cleaning and sanitizing agents, and poisonous or toxic materials.

(3) Each service or utility cart shall be maintained and operated to prevent the contamination of clean linens by dirty linens or other sources of contamination, according to one of the following methods:

(A) Cleaning and sanitizing the service cart before transporting clean linens;

(B) lining the service cart with a clean liner before transporting clean linens;

(C) placing the clean linens in a clean container before transporting the linens in the service cart; or

(D) using another method as approved by the secretary.

(4) All laundry bags used for dirty linen shall be laundered before being used for clean linen.

(5) Each housekeeping cart and each service cart shall be kept clean and in good repair.

(b)(1) Each licensee shall provide laundry facilities, unless a commercial laundry service is used.

(2) All clean laundry shall be handled in a manner that prevents contact with dirty linen.

(3) Each laundry area shall be designed and arranged in a manner that provides for the functional separation of clean and dirty laundry. A space large enough for sorting and storing soiled linens and for sorting and storing clean linens shall be provided.

(4) The laundry facilities shall be located in ar-

reas that are not used by guests or the public and are not used as corridors or passageways.

(5) The laundry area shall be kept clean and free from accumulated lint and dust.

(6) The laundry facilities and areas shall be used for their intended purpose and shall not be used for storage of equipment or supplies not related to the laundering process.

(7) All laundry equipment shall be functional and in good repair. Any laundry equipment that is no longer in use shall be removed from the laundry area.

(8) Each lodging establishment that is newly constructed, undergoes a major renovation, or is licensed under a new ownership shall be required to have a hand sink in the laundry area. Each hand sink shall meet the requirements specified in K.A.R. 4-27-6.

(9) All housekeeping and cleaning supplies and equipment shall be stored in a designated area. The storage area may be in the laundry area if the supplies and equipment are physically separated from the laundry, laundry equipment, and laundry supplies.

(c) All laundry that is cleaned commercially off the premises shall have a segregated storage space for clean and dirty laundry and shall be located and equipped for convenient pick-up and delivery.

(d) Separate laundry facilities may be provided for use by guests if these facilities are located in a room or area of the lodging establishment designated only for guest laundry. The area and equipment shall be kept clean and in good repair.

(e) Single-use gloves shall be available for housekeeping and laundry staff and made available in the laundry and housekeeping areas.

(f) A specific location or area shall be provided for the storage of maintenance supplies and equipment. No other items shall be stored in this location or area. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

**4-27-12. Poisonous or toxic materials.**

Each licensee shall ensure that all of the following requirements are met: (a) Only those poisonous or toxic materials that are required for the operation and maintenance of the lodging establishment shall be allowed on the premises, including the following:

(1) Detergents, sanitizers, cleaning or drying agents, caustics, acids, polishes, and similar chemicals;

- (2) insecticides and rodenticides;
- (3) building maintenance materials, including paint, varnish, stain, glue, and caulking; and
- (4) landscaping materials, including herbicides, lubricants, and fuel for equipment.

(b) The storage of poisonous or toxic materials shall meet all of the following requirements:

(1) The substances listed in each of the four categories specified in subsection (a) shall be stored on separate shelves or in separate cabinets. These shelves and cabinets shall be used for no other purpose.

(2) To prevent the possibility of contamination, poisonous or toxic materials shall not be stored above food, ice or ice-making equipment, linens, towels, utensils, single-service articles, or guest toiletry items. This requirement shall not prohibit the availability of cleaning or sanitizing agents in dishwashing or laundry work areas.

(c) Each bulk or original container of a poisonous or toxic material shall bear a legible manufacturer's label. All poisonous or toxic materials taken from a bulk container or an original container and put into another container shall be clearly identified with the common name of the material.

(d) Each poisonous or toxic material shall be used according to the manufacturer's directions. Additional safety requirements regarding the safe use of poisonous or toxic materials may be established by the secretary upon discovery of the unsafe use of these materials.

(e) Each restricted-use pesticide shall be applied only by a certified applicator or a person under the direct supervision of a certified applicator and in accordance with all applicable statutes and regulations. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

**4-27-13. Public indoor areas.** Each licensee shall ensure that all of the following requirements are met: (a) All indoor public areas shall be kept clean and free of debris.

(b)(1) All equipment, appliances, and fixtures shall be maintained in good repair. All equipment, appliances, and fixtures that require repair or maintenance either shall be removed for repair or maintenance or shall be designated as damaged or under repair by using signs, placards, cones, hazard tape, or other visual means to alert guests of any possible hazard.

(2) All unused or damaged equipment, appliances, and fixtures shall be removed.

(c)(1) All floors and floor coverings in public areas, service areas, hallways, walkways, and stairs shall be kept clean by effective means suitable to the finish.

(2) All floor coverings shall be maintained in good repair. All floor maintenance, repair, and replacement shall be done in a manner that prevents slipping or tripping hazards to guests.

(d) All furniture and items of décor shall be in good repair and kept clean by effective means suitable to the material and finish.

(e) All stairs, landings, hallways, and other walkways shall be kept free of debris and in good repair and shall meet the following requirements:

(1) The storage of items shall be prohibited.

(2) A minimum illumination of 10 foot-candles shall be required.

(f) Each fitness room, bathhouse, and spa shall meet the following requirements:

(1) Each area shall be cleaned and sanitized daily or more frequently, if necessary to maintain cleanliness.

(2) All floors shall be maintained in good repair and have a slip-resistant finish or covering that prevents slipping when wet.

(3) All equipment and fixtures that come into contact with guests, including benches, tables, stools, chairs, tanning beds, and fitness equipment, shall be constructed with a covering of a nonabsorbent material suitable for the use of the equipment or fixture. The following requirements shall be met:

(A) All surfaces that come into contact with guests shall be cleaned and sanitized daily or more frequently, if necessary to maintain cleanliness.

(B) Cleaning or sanitizing solutions shall be made available for guest use and shall be kept in clearly labeled bottles.

(C) All showers shall be cleaned and sanitized daily or more frequently, if necessary to maintain cleanliness.

(4)(A) Towels, including bath towels, hand towels, and paper towels, shall be provided in the area and made available upon guest request.

(B) Each cloth towel shall be laundered before being provided to a guest.

(C) A receptacle for wet or soiled towels shall be provided for guest use in the area. The receptacle shall be emptied at least once daily.

(5) All equipment, fixtures, and recreational items provided for guest use shall be maintained in good repair.

(6) Protective eye equipment shall be provided if tanning equipment is provided for guest use. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010.)

**4-27-14. Ice and ice dispensing.** Each licensee shall ensure that all of the following requirements are met: (a)(1) If ice is provided in a public area to guests or the general public, the ice shall be provided only through automatic, self-service dispensing machines that are constructed to prevent the direct access to bulk ice storage compartments by guests or the general public.

(2) Ice machines other than the type specified in paragraph (a)(1), including bin-type ice machines that allow direct access to the bulk ice storage compartments, shall not be accessible to guests or the general public. Any lodging employee may provide containers of ice to guests or the general public from this type of ice machine, from an icemaker, or from prepackaged ice.

(b)(1) Only ice that has been made from potable water and handled in a sanitary manner shall be provided by a lodging establishment. All ice shall be free of visible contaminants.

(2) All ice that is not made on the premises of the lodging establishment shall be obtained from a commercial source and shall be protected from contamination during transportation and storage.

(c) Each ice machine shall meet the following requirements:

(1) Be constructed of sanitary, durable, corrosion-resistant material and be easily cleanable;

(2) be constructed, located, installed, and operated to prevent contamination of the ice;

(3) be kept clean, free of any mold, rust, debris, or other contaminants, and maintained in good repair; and

(4) be drained through an air gap.

(d)(1) Each ice container or ice bucket shall meet the following requirements:

(A) Be made of smooth, nonabsorbent, impervious, food-grade materials and be easily cleaned;

(B) be kept clean and stored in a sanitary manner;

(C) be cleaned and sanitized before each new guest; and

(D) be provided with a sanitary, single-service use, food-grade liner that is changed daily.

(2) All canvas or wax-coated buckets or containers shall be prohibited.

(3) No ice container or ice bucket shall be located within the room housing the toilet.

(e) Each icemaker located in a guest room shall be kept clean and sanitary.

(1) No individual ice cube trays shall be used.

(2) All ice shall be removed from the icemaker's storage bin before each new guest. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010.)

**4-27-15. Exterior premises.** Each licensee shall ensure that all of the following requirements are met: (a) Exterior areas and surfaces.

(1) All exterior areas and surfaces, including alleys and driveways, shall be kept clean, free of debris, and in good repair.

(2) Each walking, driving, and parking surface shall be graded or maintained to prevent the pooling of water.

(3) All lawns and landscaping shall be mowed or pruned as needed to promote guest safety.

(4) All parking areas and walkways shall be illuminated for guest safety and shall be kept free of debris.

(5) All unused or discarded equipment and materials shall be removed from the premises, except when placed in a designated storage area.

(6)(A) All exterior balconies, landings, porches, decks, stairways, and ramps shall be kept in good repair and free of debris and shall be illuminated for guest safety.

(B) Storage on stairs, landings, and ramps shall be prohibited.

(C) All guards and railings shall be attached securely and shall be kept in good repair.

(D) All ramps shall have a slip-resistant surface.

(E) All exterior stairways, ramps, landings, and walkways shall be kept free of ice and snow.

(b) Outside playgrounds and recreational areas.

(1) All equipment shall be kept clean and in good repair at all times. All protruding bolts, screws, and nails and all sharp edges shall be removed or covered.

(2) The ground cover under children's play equipment shall be a soft surface, including turf, rubber chips, bark mulch, clean sand, or any other surface approved by the secretary.

(3) Unused equipment shall be stored in a designated area.

(4) If the area is open for nighttime use, lighting shall be provided for guest safety.

(5) The area shall be kept clean and free of debris.

(6) If fencing is provided, the fencing shall be kept in good repair.

(c) Refuse containers.

(1) The area where refuse containers are located shall be kept free of debris and cleaned as necessary to prevent the attraction and harborage of insects, rodents, and other pests and to minimize odors.

(2) Containers of adequate capacity or number shall be available to store all refuse that accumulates between refuse pickups. All refuse containers shall be emptied at least once each week or more frequently, if necessary to meet the requirements of these regulations. All rotten waste shall be removed daily.

(3) All refuse container lids shall be closed. All refuse containers shall be kept on a solid surface. Solid surfaces shall include concrete, asphalt, and any other hard surface approved by the secretary.

(d) Outdoor vector control.

(1) The premises shall be free of any harborage conditions that can lead to or encourage infestations of rodents, insects, and any other pests.

(2) Control measures shall be taken to protect against the entrance of rodents, insects, and any other pests into the lodging establishment. All buildings shall be verminproofed and kept in a verminproof condition.

All doors leading outside shall be tightfitting to eliminate entrance points for rodents, insects, and any other pests. All windows and doors that can be opened for ventilation shall have screening material that is at least 16 mesh to the inch and shall be tightfitting and kept in good repair.

(3) Identified infestation problems shall be treated by a licensed pest control operator.

(4) All control measures, both mechanical and chemical, shall be used in accordance with each manufacturer's recommendations.

(e) Exterior storage.

(1) A storage area shall be provided for maintenance and recreational equipment, machinery, and any other maintenance items.

(2) Only those items necessary for the operation and maintenance of the lodging establishment shall be kept in a storage area.

(3) All poisonous and toxic materials shall be stored as specified in K.A.R. 4-27-12.

(4) Each storage area shall be kept free of debris, filth, and any harborage conditions.

(5) All articles in need of repair may be stored on a short-term basis, which shall not exceed six months. All articles that are not repaired within six months shall be discarded or moved to an off-site storage facility.

(f) Outdoor space for pets. All pets shall be kept on a leash or controlled in a manner that prevents the pets from running freely about the premises. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

**4-27-16. Swimming pools, recreational water facilities, and hot tubs.** (a) General requirements. Each licensee shall ensure that all swimming pools, recreational water facilities, and hot tubs are kept sanitary and in good repair.

(1) Each swimming pool, RWF, and hot tub shall meet the requirements in these regulations, unless local ordinances pertaining to planning and design, lifesaving and safety equipment, water quality, and sanitation exist and these ordinances are as restrictive or more restrictive than these regulations.

(2) Each licensee shall maintain records of each inspection conducted by a local regulatory agency for at least one year. The inspection records shall be made available for review by the secretary, upon request.

(b) Design and safeguards.

(1) Each plan for a new swimming pool or RWF and for a swimming pool or RWF undergoing major renovation, including installation of a diving board, slide, or other similar recreational devices, shall be designed by a licensed engineer, architect, or other qualified professional and shall be submitted to the secretary before the start of construction. Submission of documentation of plan approval by the local regulatory agency shall meet the requirements of this paragraph.

(2) Each grate over a main drain in each swimming pool or RWF shall be intact, firmly affixed at all times, and designed to prevent swimmer entanglement, entrapment, or injury. Other methods to prevent swimmer entanglement, entrapment, or injury may include multiple main drains, antivortex drain covers, or any similar device approved by the secretary.

(3) The depth of water in each swimming pool or RWF shall be plainly marked with at least four-inch high numbers of a color that contrasts with the color of the pool decking or vertical pool wall.

(A) Water depth markings for an in ground swimming pool shall be clearly marked on the edge of the deck and visible at all times. In addition, water depth markings may be placed above the water surface on the vertical pool walls and shall be visible at all times.

(B) Water depth markings for each aboveground swimming pool or RWF shall be on the edge of the deck and shall be visible to persons entering the swimming pool. If water depth markings cannot be placed on the edge of the deck, another means shall be used so that the water depth is visible to persons entering the swimming pool.

(C) The water depth markings in each swimming pool or RWF shall be located in the following areas:

(i) At the maximum and minimum depths. Intermediate increments of depth may be used in addition to the required maximum and minimum depths; and

(ii) the transition point between the shallow end, which shall be five feet or less, and the deep end, which shall be more than five feet. This transition point shall be marked by a line on the floor and the walls of the swimming pool or RWF or by a safety rope equipped with buoys.

(4) Each lighting and electrical system for a swimming pool, RWF, or hot tub shall be kept in good repair at all times. The following requirements shall be met:

(A) Artificial lighting shall be provided at each swimming pool, RWF, or hot tub if used at night and for each indoor swimming pool, RWF, or hot tub. The lighting shall illuminate all portions of each swimming pool, RWF, or hot tub.

(B) All artificial lighting located in the water shall be designed and maintained to prevent electrical shock hazards to guests.

(5) Each outdoor swimming pool and RWF shall be protected by a fence, wall, building, or other enclosure that is at least four feet in height.

(A) Each enclosure shall be made of durable material and kept in good repair.

(B) Each gate shall have self-closing and self-latching mechanisms. The self-latching mechanism shall be installed at least four feet from the bottom of the gate.

(C) A hedge shall not be an acceptable protective enclosure.

(6) Each door leading into an indoor or enclosed swimming pool or RWF area shall have self-closing and self-latching mechanisms. The self-closing mechanism shall be at least four feet from the bottom of the door.

(c) Lifesaving and safety equipment.

(1) Each swimming pool or RWF shall have lifesaving equipment, consisting of at least one U.S. coast guard-approved flotation device that can be thrown into the water and at least one reaching device.

(A) The flotation device shall be attached to a rope that is at least as long as one and one-half times the maximum width of the swimming pool or RWF. If a lifeguard is on duty, life-saving rescue equipment, including rescue tubes, may also be used.

(B) The reaching device shall be a life pole or a shepherd's crook-type of pole, with a minimum length of 12 feet.

(C) Each lifesaving device shall be located in a conspicuous place and shall be accessible. The lifeguard personnel shall keep their rescue equipment close for immediate use.

(D) Each lifesaving device shall be kept in good repair.

(2) A first-aid kit shall be accessible to the lodging employees.

(3) No glass containers shall be permitted in the swimming pool, RWF, or hot tub area.

(4) Each swimming pool, RWF, and hot tub and each deck shall be kept clean of sediment, floating debris, visible dirt, mold and algae and shall be maintained free of cracks, peeling paint, and tripping hazards.

(5) Each swimming pool, RWF, and hot tub shall be refinished or relined if the bottom or wall surfaces cannot be maintained in a safe and sanitary condition.

(6) If handrails are not present, all steps leading into the swimming pool or RWF shall be marked in a color contrasting with the color of the interior of the swimming pool and RWF so that the steps are visible from the swimming pool or RWF deck.

(7) All steps, ladders, and stairs shall be easily cleanable, in good repair, and equipped with nonslip treads. Handrails and ladders, if present, shall be provided with a handhold and securely attached.

(8) The rules of operation and safety signs for each swimming pool, RWF, and hot tub shall be posted in a conspicuous place at the swimming pool, RWF, or hot tub. Each swimming pool and RWF without a lifeguard shall have posted the following sign: "Warning — No Lifeguard On Duty." The sign shall be legible, with letters at least four inches in height.

(9) If chlorinating equipment is located indoors, the chlorinating equipment shall be housed in a separate room, which shall be vented to the outside or to another room that is vented to the outside. If chlorinating equipment is located outdoors and within an enclosed structure, the structure shall be vented to the outside.

(d) Water quality and sanitation. Each licensee shall ensure that all of the following requirements are met:

(1) Each swimming pool, RWF, and hot tub shall be maintained to provide for continuous disinfection of the water with a chemical process. This process shall use a disinfectant that leaves a measurable residual in the water.

(A) If chlorine or bromine is used to disinfect the water of any swimming pool or RWF, the water shall have a disinfectant residual level of at least 1.0 part per million (ppm) and not more than 5.0 ppm.

(B) If chlorine or bromine is used to disinfect the water of any hot tub, the water shall have a disinfectant residual level of at least 2.0 ppm and not more than 5.0 ppm.

(C) Each means of disinfection other than those specified in paragraphs (d)(1)(A) and (B) shall be used only if the licensee has demonstrated that the alternate means provides a level of disinfection equivalent to that resulting from the residual level specified in paragraph (d)(1)(A) or (B).

(2) The pH of the water in each swimming pool, RWF, and hot tub shall be maintained at not less than 7.0 and not more than 8.0.

(3) Each licensee shall use a chemical test kit or a testing device approved by the secretary. Each testing kit or device shall be appropriate for the disinfecting chemical used and capable of accurately measuring disinfectant residual levels of 0.5 ppm to 20.0 ppm. In addition, a chemical test kit or testing device for measuring the pH of the water shall be used and capable of accurately measuring the pH of water in 0.2 increments.

(4) The water in each swimming pool, RWF, and hot tub shall have sufficient clarity at all times so that one of the following conditions is met:

(A) A black disc with a diameter of six inches is clearly visible in the deepest portion of the swimming pool or RWF.

(B) The bottom drain at the deepest point of the swimming pool or RWF is clearly visible, and the bottom of the hot tub is clearly visible.

(5) The water in each swimming pool, RWF, and hot tub shall be free of scum and floating debris. The bottom and walls shall be free of dirt, algae, and any other foreign material.

(6) No chemical shall be added manually and directly to the water of any swimming pool, RWF, or hot tub while any individual is present in the water.

(7) The temperature of the water in each hot tub shall not exceed 104 degrees Fahrenheit.

(A) Each hot tub shall be operated in accordance with the manufacturer's specifications.

(B) Each hot tub shall have a thermometer or other device to accurately record the water temperature within plus or minus two degrees.

(e) Fecal accident in a swimming pool and RWF. If a fecal accident occurs in a swimming pool or RWF, the following requirements shall be met:

(1) In response to any accident involving formed feces, the following requirements shall be met:

(A) Direct the guests to leave the swimming pool or the RWF, and do not allow any individuals to reenter until the decontamination process has been completed. The closure times can vary since the decontamination process takes from 30 to 60 minutes;

(B) remove as much fecal material as possible using a net or scoop, and dispose of the material in a sanitary manner. Sanitize the net or scoop;

(C) raise the disinfectant level to 2.0 ppm and ensure that the water pH is between 7.2 and 7.8; and

(D) return the disinfectant level to the operating range specified in paragraph (d)(1)(A) before the swimming pool or RWF is reopened to guests.

(2) In response to any accident involving diarrhea, the following requirements shall be met:

(A) Direct guests to leave the swimming pool or the RWF, and do not allow any individuals to reenter until the decontamination process has been completed;

(B) remove as much fecal material as possible using a scoop, and dispose of the material in a sanitary manner. Sanitize the scoop. Vacuuming the fecal material shall be prohibited;

(C) raise the disinfectant level to 20.0 ppm and maintain a water pH of at least 7.2 but not more than 7.8. This level of concentration shall be maintained at least eight hours to ensure inactivation of *Cryptosporidium*. A lower disinfectant level and a longer inactivation time may be used according to the following table:

*Cryptosporidium* inactivation for  
diarrheal accident

Disinfectant levels (ppm)	Disinfection time
1.0	6.5 days
10.0	16 hours
20.0	8 hours

(D) ensure that the filtration system is operating and maintaining the required disinfectant

levels during the disinfection process. Backwash the filter. Do not return the backwashed water through the filter. Replace the filter medium, if necessary; and

(E) return the disinfectant level to the operating range specified in paragraph (d)(1)(A) before the swimming pool or RWF is reopened to guests.

(f) Vomiting accident in a swimming pool or RWF. If a vomiting accident occurs in a swimming pool or RWF, the procedures in paragraph (e)(1) shall be followed.

(g) Body fluid spills at a swimming pool or RWF. All body fluid spills that occur on swimming pool or RWF equipment or hard surfaces, including decking, shall be cleaned and chemically sanitized. Disposable gloves shall be available for employees' use during cleanup. The following cleanup method shall be used:

(1) Wipe up the spill using absorbent, disposable material. Paper towels may be used;

(2) use a bleach solution by combining one part bleach and 10 parts water. Pour the bleach solution onto the contaminated surface, leave the solution on the surface for at least 10 minutes, and rinse the surface with clean water;

(3) disinfect all nondisposable cleaning materials, including mops and scrub brushes, and allow to air-dry; and

(4) require each employee assisting with the cleanup to wash that employee's hands with warm water and soap after the cleanup is completed.

(h) Fecal or vomiting accident in a hot tub. If a fecal accident or vomiting occurs in a hot tub, all of the following requirements shall be met:

(1) All guests shall be required to leave the hot tub, and the water shall be completely drained.

(2) The hot tub shall be disinfected according to the manufacturer's specifications.

(3) The filtering system shall be disinfected or the filter medium shall be replaced with a clean filter medium before refilling the hot tub with clean water.

(i) Operation and maintenance of a swimming pool, RWF, or hot tub. Each licensee shall ensure that all of the following requirements for each swimming pool, RWF, and hot tub are met:

(1) Daily operational logs shall be maintained for at least one year at the lodging establishment and made available to the secretary, upon request. These logs shall include the date and time the information was collected and the name or initials of the person who collected the information. These logs shall also record the following information:

(A) The disinfectant residuals shall be recorded at least once daily when the swimming pool, RWF, or hot tub is available for guest use or more often, if necessary to maintain the water quality as specified in subsection (d).

(B) The pH test shall be recorded at least once daily when the swimming pool, RWF, or hot tub is available for guest use or more often, if necessary to maintain the water quality as specified in subsection (d).

(C) The temperature reading of each hot tub shall be recorded at least once daily when the hot tub is available for guest use.

(2) Each fecal and vomiting accident log shall include the time and date of the accident and the disinfection measures taken.

(3) Each indoor swimming pool area and chemical storage room shall be either vented directly to the exterior or vented to a room that is vented directly to the exterior.

(4) All chemicals applied to a swimming pool, RWF, or hot tub shall be used, handled, stored, and labeled in accordance with the manufacturer's specifications.

(5) All recreational equipment shall be kept sanitary. Recreational equipment shall include slides, diving boards, play equipment, water sports equipment, and accessory items available to guests, including floats, tubes, air mattresses, and pads for water slides.

(6) A cleaning system shall be used to remove dirt, algae, and any other foreign material from the bottom of the swimming pool or RWF.

(7) All surface skimmers, strainer baskets, and perimeter overflow systems shall be kept clean and in good repair.

(8) The water in each swimming pool and each RWF shall be maintained at the manufacturer's recommended level so that the water will flow into each skimmer and strainer.

(9) The recirculation system serving each swimming pool, RWF, and hot tub shall operate continuously or in accordance with the manufacturer's specifications. The filtration and recirculation systems shall be maintained in accordance with the manufacturer's specifications. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

**4-27-17. Water supply systems.** Each licensee shall ensure that all of the following requirements are met: (a) Sufficient potable water

to meet the needs of the lodging establishment shall be provided from a source constructed and operated pursuant to K.S.A. 65-161 et seq., and amendments thereto.

(b) No water supply system deemed unsafe by the secretary shall be used as a potable water supply.

(c)(1) Each nonpublic water supply system shall be constructed, maintained, and operated as specified in K.S.A. 65-161 et seq., and amendments thereto.

(2) All water from a nonpublic water supply system shall meet the state drinking water quality standards specified in K.S.A. 65-161 et seq., and amendments thereto. The most recent sample report for the nonpublic water supply system used by the lodging establishment shall be retained for at least 12 months at the lodging establishment and shall be made available to the secretary upon request.

(d) During any period when a boil-water order is in effect, including a precautionary boil-water notice or advisory issued by the secretary of the Kansas department of health and environment on a public or nonpublic water supply, the licensee shall meet the following requirements until the problem has been corrected:

(1) Notify each guest, verbally upon check-in and by written notice placed in each rented guest room, that the plumbed water is not potable and only potable water should be used for drinking and for brushing teeth;

(2) discard any ice that could have been made from or exposed to contaminated water; and

(3) obtain a temporary, alternate supply of potable water by using one of the following:

(A) A supply of commercially bottled drinking water;

(B) one or more closed, portable, bulk water containers;

(C) an enclosed vehicular water tank;

(D) an on-premises water storage tank; or

(E) any other alternative water source if approved by the secretary. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

**4-27-18. Sewage systems.** Each licensee shall ensure that all of the following requirements are met: (a) All sewage shall be disposed of through an approved facility, including one of the following:

(1) A public sewage treatment plant; or

(2) an individual sewage disposal system that is constructed, maintained, and operated according to K.S.A. 65-161 et seq., and amendments thereto, and meets all applicable sanitation requirements.

(b) A temporary sewage disposal facility shall be allowed only as approved by the secretary in response to a disaster.

(c) All condensate drainage, rainwater, and other nonsewage liquids shall be drained from the point of discharge to disposal pursuant to K.S.A. 65-161 et seq., and amendments thereto. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

**4-27-19. Electrical systems.** (a) Each licensee shall ensure that the electrical wiring is installed and maintained in accordance with all applicable local electrical codes. In the absence of local electrical codes, the electrical wiring shall be installed and maintained by a licensed electrician. Each licensee shall ensure that all of the following requirements are met:

(1)(A) Each newly constructed lodging establishment shall have a ground-fault circuit interrupter in each electrical outlet located within five feet of any water source, including a swimming pool and hot tub.

(B) Each existing lodging establishment in which major renovation or rewiring has occurred shall be required to have a ground-fault circuit interrupter in each electrical outlet located within five feet of any water source, including a swimming pool and hot tub.

(C) Each licensee shall ensure that the lodging establishment has a ground-fault circuit interrupter in each electrical outlet located within five feet of any water source, including a swimming pool and hot tub.

(2) Each electrical switch and each outlet shall be covered by a faceplate. Each junction box shall have a junction box cover.

(3) All circuit breaker boxes, fuse boxes, and electrical panels shall be protected from physical damage and kept in good condition. All fuses and circuits shall be labeled to identify the circuit location.

The storage of any item that obstructs access to any circuit box shall be prohibited.

(4) All wire splices shall be located in covered junction boxes.

(5) Bare or frayed wiring shall be prohibited.

(6) All three-prong outlets shall be grounded. Each appliance shall be grounded in accordance with the manufacturer's specifications.

(b) All emergency lighting shall be kept in working condition.

(c) The permanent use of extension cords in guest rooms shall be prohibited.

Individual branch circuits, including multiple-plug outlet strips that contain fuse breakers and multiple-plug outlet adapters that do not exceed the amperage for which the outlets are rated, shall be permitted.

(d) The temporary use of extension cords shall be allowed for housekeeping and maintenance purposes if the extension cords are rated for industrial use.

(e) The wattage of light bulbs shall not exceed the wattage rating of the corresponding light fixtures.

Empty light sockets shall be prohibited. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010.)

**4-27-20. Plumbing systems.** (a) Each licensee shall ensure that all plumbing is installed and maintained in accordance with all applicable local plumbing codes. In the absence of local plumbing codes, all plumbing shall be installed and maintained by a licensed plumber.

(b) Each licensee shall ensure that all of the following requirements are met:

(1) Potable water under pressure shall be available at all times at each fixture designed to provide water. Hot water shall be provided to each fixture designed to use hot water.

(2) Each toilet room, bathing facility, and laundry area shall be provided with ventilation to minimize condensation and to prevent mold, algae, and odors.

Each newly constructed lodging establishment and each lodging establishment undergoing major renovation shall be required to have mechanical ventilation in each toilet room, bathing facility, and laundry area.

(3) Each fixture drain shall be plumbed with a P-trap.

(4) All openings for the passage of plumbing shall be verminproof.

(5) No fitting, connection, device, or method of installation of plumbing shall obstruct or retard the flow of water, wastes, sewage, or air in the drainage or venting system.

(c) All backflow devices shall meet the design specifications for their intended use. All potable

water supplies shall be protected from sources of potential contamination. Each licensee shall ensure that all of the following requirements are met:

(1) If provided, each boiler unit, fire sprinkler system with chemical additives, lawn sprinkler with a means for injection of pesticides, herbicides, or other chemicals, and pumped or repressurized cooling or heating system shall be protected by a reduced-pressure-principle backflow prevention assembly.

(A) The backflow prevention assembly shall be tested at least annually.

(B) Documentation of each test shall be maintained at the lodging establishment for at least one year and shall be made available to the secretary upon request.

(2) If provided, each fire sprinkler system not using chemical additives and lawn sprinkler system without a means for injection of pesticides, herbicides, or other chemicals shall be protected by a double-check valve assembly.

(A) The double-check valve assembly shall be tested at least annually.

(B) Documentation of each test shall be maintained at the lodging establishment for at least one year and shall be made available to the secretary upon request.

(3) If provided, each threaded faucet to which a hose is connected, flush valve, and any similar device shall be protected by a vacuum breaker. Each commercial dishwasher and each commercial laundry machine shall be protected by either a vacuum breaker or an air gap.

(4) If provided, each relief valve discharge line from a water heater, water-holding tank, cooling tower, or water softener, each discharge line from a commercial laundry machine, and each condensation line shall be protected by an air gap.

(5) Each swimming pool water supply line shall be protected by either an air gap or a double-check valve assembly.

(6) Fire sprinklers plumbed into a waterline over gas water heaters or furnaces, or both, shall not be required to have a backflow device unless required by local ordinance. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

**4-27-21. Heating, ventilation, and air conditioning (HVAC) systems.** (a) Each licensee shall ensure that each guest room has heating, ventilation, and related heating and ventilation equipment.

(1) All equipment shall be installed according to the manufacturer's directions and shall be kept in operating condition.

(2) A means to control the temperature in the guest room shall be provided in each guest room that is furnished with a separate heating or air conditioning unit.

(3) If the guest room has air-conditioning, the air-conditioning system shall meet the requirements specified in paragraphs (a)(1) and (2).

(b) Unvented fuel-fired heaters, unvented fireplaces, and similar devices and portable electrical space heaters shall be prohibited from use in all areas of the lodging establishment, unless designed by the manufacturer for commercial use and approved by the secretary. The following conditions shall be met:

(1) The unvented fuel-fired heater, unvented fireplace, or similar device or the portable electrical space heater is not the primary source of heat.

(2) The unvented fuel-fired heater, unvented fireplace, or similar device or the portable electric space heater is not used in a guest room.

(c) All gas and electric heating equipment shall be equipped with thermostatic controls.

(d) All gas water heaters, gas furnaces, and other gas heating appliances shall be vented to the outside.

(e) A gas shutoff valve shall be located next to each gas appliance, gas furnace, and gas water heater.

(f) Each furnace and each air-conditioning unit shall be equipped with an electrical fuse breaker to protect the unit from electrical overload.

(g) Each furnace room or room containing a gas water heater or any other fuel-fired appliance shall be provided with adequate air for circulation.

(h) Each filter shall be changed according to the manufacturer's specifications. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

**4-27-22. Lodging establishment inspections by qualified individuals, private entities, or public entities.** (a) "Supplemental inspection" shall mean an inspection of a lodging establishment conducted by a qualified person employed by a lodging business, lodging trade organization, or local governmental entity and not employed by the Kansas department of agriculture.

(b) Each person who wishes to conduct a supplemental inspection of a lodging establishment shall complete the following requirements:

(1) Submit to the secretary, or the secretary's designee, a written letter of application and statement describing the applicant's knowledge of lodging standards established pursuant to K.S.A. 36-506, and amendments thereto, acquired by education, training, and experience; and

(2) answer at least 80% of the questions correctly to pass a written examination administered by the secretary, or secretary's designee. The written examination shall test the applicant's knowledge of lodging standards established pursuant to K.S.A. 36-506, and amendments thereto.

(c) A supplemental inspection report on a lodging establishment shall be accepted by the secretary if all of the following conditions are met:

(1) The person conducting the supplemental inspection meets the requirements in subsection (b).

(2) The supplemental inspection is conducted to determine if the lodging establishment meets lodging standards established pursuant to K.S.A. 36-506, and amendments thereto.

(3) The supplemental inspection report is submitted to the secretary no later than 10 calendar days from the date the inspection occurred. If an "imminent health hazard," as defined in K.A.R. 4-27-5, is discovered during the inspection, the person shall notify the secretary, or the secretary's designee, within 12 hours of the discovery, as required in K.A.R. 4-27-5.

(4) The supplemental inspection report thoroughly describes conditions in the lodging establishment at the time of the inspection. Each violation of a lodging establishment standard shall be described in detail and photographed. The supplemental inspection report shall describe any actions taken by the licensee to correct each violation.

(d) An inspection of the lodging establishment may be conducted by department lodging inspectors to determine the accuracy of a supplemental report. The inspection shall be conducted within five days after receipt of a supplemental inspection report.

(e) The secretary's acceptance of a supplemental inspection report shall not preclude the department from conducting an inspection to assess the lodging establishment's compliance with lodging establishment standards or determine the accuracy of the supplemental inspection report. The supplemental inspection report, if accepted, may be considered by the secretary when determining the inspection frequency of a lodging establish-

ment. (Authorized by K.S.A. 2009 Supp. 36-506; implementing K.S.A. 2009 Supp. 36-519; effective June 4, 2010.)

## Article 28.—FOOD SAFETY

**4-28-1. Definition; specialized processing.** “Specialized processing” shall mean any food preparation method having an increased risk of foodborne illness associated with improper implementation, including the following:

(a) Smoking food as a method of food preservation rather than as a method of flavor enhancement;

(b) curing food;

(c) canning food, except for fruit jams, jellies, and preserves;

(d) using food additives or adding components, which may include vinegar, for either of the following:

(1) A method of food preservation rather than flavor enhancement; or

(2) a method to render a food so that the food does not require time and temperature control for food safety;

(e) packaging food using a reduced-oxygen packaging method;

(f) sprouting seeds or beans;

(g) drying food, other than herbs, whole fruits, or whole vegetables;

(h) keeping molluscan shellfish in a life-support tank;

(i) custom-processing animals in a facility for personal use;

(j) processing and packaging juice;

(k) fermenting foods;

(l) producing cultured dairy products, including cheese, yogurt, and buttermilk; and

(m) using a noncontinuous cooking process. (Authorized by K.S.A. 2011 Supp. 65-688, as amended by L. 2012, ch. 145, sec. 23; implementing K.S.A. 2011 Supp. 65-689, as amended by L. 2012, ch. 145, sec. 24; effective, T-4-11-5-04, Nov. 5, 2004; effective Feb. 18, 2005; amended June 4, 2010; amended Feb. 8, 2013.)

**4-28-2. Adoption by reference.** (a) The following federal regulations are hereby adopted by reference, except as otherwise indicated in this subsection:

(1) 9 C.F.R. Parts 317, excluding 9 C.F.R. 317.2(a), 319, 381, and 424, as revised on January 1, 2011;

(2) 21 C.F.R. Parts 100 through 186, excluding 21 C.F.R. 100.1 and 100.2, as revised on April 1, 2011;

(3) 21 C.F.R. 1030.10, as revised on April 1, 2011; and

(4) 40 C.F.R. Part 180, as revised on July 1, 2011.

(b) Copies of the adopted material shall be available from the division of food safety and lodging of the Kansas department of agriculture, Topeka, Kansas. (Authorized by K.S.A. 2011 Supp. 65-688, as amended by L. 2012, ch. 145, sec. 23; implementing K.S.A. 2011 Supp. 65-688, as amended by L. 2012, ch. 145, sec. 23, and K.S.A. 2011 Supp. 74-581; effective, T-4-11-5-04, Nov. 5, 2004; effective Feb. 18, 2005; amended June 4, 2010; amended April 26, 2013.)

**4-28-3.** (Authorized by K.S.A. 2003 Supp. 36-503; implementing K.S.A. 2003 Supp. 36-503 and L. 2004, Ch. 192, Sec. 2; effective Feb. 18, 2005; revoked Oct. 26, 2012.)

**4-28-4.** (Authorized by K.S.A. 36-504; implementing K.S.A. 36-504 and L. 2004, Ch. 192, Sec. 2; effective Feb. 18, 2005; revoked Oct. 26, 2012.)

**4-28-5. Fees; food processing plant.** Each food processing plant shall be licensed by the secretary.

(a) Each person operating or intending to operate a food processing plant shall submit an application on a form supplied by the department with one of the following pairs of application fees and license fees based on the size and type of the plant, as applicable:

(1) For each food processing plant that only stores food, one of the following fees:

(A) Less than 1,000 square feet: \$150 application fee and \$160 license fee;

(B) 1,000 square feet through 5,000 square feet: \$200 application fee and \$175 license fee;

(C) 5,001 square feet through 10,000 square feet: \$250 application fee and \$250 license fee;

(D) 10,001 square feet through 50,000 square feet: \$300 application fee and \$300 license fee; or

(E) more than 50,000 square feet: \$350 application fee and \$350 license fee; and

(2) for each food processing plant not specified in paragraph (a)(1), one of the following fees:

(A) Less than 1,000 square feet: \$150 application fee and \$175 license fee;

(B) 1,000 square feet through 5,000 square feet: \$200 application fee and \$200 license fee;

(C) 5,001 square feet through 10,000 square feet: \$250 application fee and \$275 license fee;

(D) 10,001 square feet through 50,000 square feet: \$300 application fee and \$325 license fee; or

(E) more than 50,000 square feet: \$350 application fee and \$400 license fee.

(b) For the purpose of this regulation, a facility that only stores food shall include any premises, establishment, building, room, area, facility, or place where food is stored, kept, or held for distribution, whether or not the food is temperature-controlled.

(c) For the purpose of this regulation, “food processing plant” shall not include either of the following:

(1) A facility in which fresh fruits and vegetables are harvested and washed, if the fruits and vegetables are not otherwise processed at the facility; or

(2) a storage facility used solely for the storage of grain or other raw agricultural commodities.

(d) Each license issued shall expire on March 31 each year.

(e) Each license shall require annual renewal by the licensee’s submission of an online application for renewal available on the department’s web site and the payment of the applicable license fee specified in subsection (a). (Authorized by and implementing K.S.A. 2017 Supp. 65-688; effective Feb. 18, 2005; amended Dec. 5, 2008; amended Feb. 8, 2013; amended June 15, 2018.)

**4-28-6. Fees; risk levels; food establishment.** (a) Each food establishment required to be licensed shall be assessed by the secretary for classification by risk level according to this regulation. The following classifications shall be used to determine licensing fees and inspection frequency at food establishments:

(1) A “category I facility” shall mean a food establishment that presents a high relative risk of causing food-borne illness based upon the usage of food-handling processes associated with food-borne illness outbreaks. Factors considered in classifying a food establishment as a category I facility shall include whether the food establishment meets any of the following conditions:

(A) Cooks, cools, or reheats food that requires time and temperature control for safety;

(B) uses freezing as a means to achieve parasite destruction;

(C) handles raw, in-shell molluscan shellfish ingredients;

(D) uses specialized processing;

(E) has a required hazard analysis critical control point plan; or

(F) offers for consumption without further preparation any food containing raw or undercooked eggs, meat, poultry, fish, or shellfish.

(2) A “category II facility” shall mean a food establishment that presents a moderate relative risk of causing food-borne illness based upon the usage of a limited number of food-handling processes associated with food-borne illness outbreaks. Factors considered in classifying a food establishment as a category II facility shall include whether the food establishment meets any of the following conditions:

(A) Prepares baked products;

(B) repackages foods from a licensed food processor in smaller quantities for distribution;

(C) heats only foods from a licensed food processor; or

(D) handles, cuts, grinds, or slices only raw animal foods or ready-to-eat meats and cheeses.

(3) A “category III facility” shall mean a food establishment that presents a low relative risk of causing food-borne illness based upon the usage of few or no food-handling processes associated with food-borne illness outbreaks. Factors considered in classifying a food establishment as a category III facility shall include whether the food establishment meets any of the following conditions:

(A) Offers self-service beverages;

(B) offers prepackaged food and beverages, including those prepackaged foods and beverages that are required to be held at a temperature of 41°F or below for food safety; or

(C) offers unpackaged food that does not require time and temperature control for safety, including mixed drinks.

(4) A “category IV facility” shall mean a food establishment that presents a very low relative risk of causing food-borne illness based upon the usage of few or no food-handling processes associated with food-borne illness outbreaks. The food establishment shall have systematic controls in place to further reduce the risk of a food-borne illness outbreak. Factors considered in classifying a food establishment as a category IV facility shall include whether the food establishment meets the following conditions:

(A)(i) Offers prepackaged food and beverages, including those prepackaged foods and beverages that are required to be held at a temperature of 41°F or below for food safety;

(ii) offers unpackaged food that does not require time and temperature control for safety; or

(iii) offers prepackaged food and beverages, including those prepackaged foods and beverages that are required to be held at a temperature

of 41°F or below for food safety, and unpackaged food that does not require time and temperature control for safety; and

(B) has the following controls in place in a structure that has limited or controlled access, including an office building with keyed entrances or security guards:

(i) Continuous electronic monitoring of all food items that require temperature control for safety;

(ii) a means to prevent lawful purchase of a food that has been held outside of the time and temperature combinations specified in the Kansas food code by physical lockout, transaction lockout, or other equivalent method; and

(iii) remote monitoring and recording of video surveillance covering all areas of the food establishment.

(b) Each food establishment with operations in multiple categories shall be placed in the highest risk-level category. A history of a food establishment's noncompliance with applicable statutes and regulations may be considered and may warrant placement of the food establishment in a higher risk-level category. The risk level assigned to a food establishment may be changed if the secretary determines that the change is warranted based upon the degree of risk of a health hazard and protection of the public health and safety.

(c) Each person operating or intending to operate a food establishment shall submit an application on a form prescribed by the secretary with the following fees, as applicable:

(1) Category I facilities.

(A) Application fee. Each person shall submit a onetime application fee based on the size of the food establishment as follows:

(i) Less than 5,000 square feet: \$300;

(ii) 5,000 through 10,000 square feet: \$325;

(iii) 10,001 through 50,000 square feet: \$350; and

(iv) more than 50,000 square feet: \$350.

(B) License fee. Each person shall submit a license fee based on the size of the food establishment as follows:

(i) Less than 5,000 square feet: \$250;

(ii) 5,000 through 10,000 square feet: \$300;

(iii) 10,001 through 50,000 square feet: \$500; and

(iv) more than 50,000 square feet: \$750.

(2) Category II facilities.

(A) Application fee. Each person shall submit a onetime application fee of \$325.

(B) License fee. Each person shall submit a license fee of \$220.

(3) Category III facilities.

(A) Application fee. Each person shall submit a onetime application fee of \$275.

(B) License fee. Each person shall submit a license fee of \$190.

(4) Category IV facilities.

(A) Application fee. Each person shall submit a onetime application fee of \$100.

(B) License fee. Each person shall submit a license fee of \$75.

(d)(1) Each category I facility shall be inspected at least once every 12 months.

(2) Each category II facility shall be inspected at least once every 15 months.

(3) Each category III facility shall be inspected at least once every 18 months.

(4) Each category IV facility shall be inspected at least once every 36 months.

(e) Each license shall expire on the first March 31 following the date of issuance.

(f) Each license shall require annual renewal by the licensee's submission of an online application for renewal available on the department's web site and payment of the applicable license fee specified in subsection (c).

(g) For the purpose of this regulation, "mixed drink" shall mean any beverage combining two or more liquids, including any combination of alcoholic or nonalcoholic liquids. (Authorized by and implementing K.S.A. 2017 Supp. 65-688; effective Feb. 18, 2005; amended, T-4-6-28-12, July 1, 2012; amended Oct. 26, 2012; amended May 31, 2013; amended June 15, 2018.)

**4-28-7.** (Authorized by K.S.A. 2010 Supp. 36-503; implementing K.S.A. 2010 Supp. 36-503 and K.S.A. 2010 Supp. 74-582; effective Feb. 18, 2005; amended, T-4-6-30-11, July 1, 2011; amended Oct. 28, 2011; revoked Oct. 26, 2012.)

**4-28-8. Adoption of Kansas food code.** The document titled "Kansas food code," dated July 1, 2012 and published by the division of food safety and lodging of the Kansas department of agriculture, is hereby adopted by reference. (Authorized by and implementing K.S.A. 2011 Supp. 65-688, as amended by L. 2012, ch. 145, sec. 23, and K.S.A. 2011 Supp. 74-581; effective Feb. 29, 2008; amended June 4, 2010; amended April 26, 2013.)

**4-28-9 and 4-28-10.** (Authorized by and implementing K.S.A. 36-507, K.S.A. 65-626, and K.S.A. 2007 Supp. 74-582; effective Feb. 29, 2008; revoked April 26, 2013.)

**4-28-11 and 4-28-12.** (Authorized by and implementing K.S.A. 2008 Supp. 36-507, K.S.A. 65-626, and K.S.A. 2008 Supp. 74-581; effective Feb. 29, 2008; amended June 4, 2010; revoked April 26, 2013.)

**4-28-13 and 4-28-14.** (Authorized by and implementing K.S.A. 36-507, K.S.A. 65-626, and K.S.A. 2007 Supp. 74-582; effective Feb. 29, 2008; revoked April 26, 2013.)

**4-28-15.** (Authorized by K.S.A. 36-507 and 65-626 and K.S.A. 2007 Supp. 65-673 and 74-582; implementing K.S.A. 36-503, 36-507, 65-626, and 65-662 and K.S.A. 2007 Supp. 65-673; effective Feb. 29, 2008; revoked April 26, 2013.)

**4-28-16.** (Authorized by K.S.A. 36-507 and 65-626; implementing K.S.A. 36-507 and 65-626 and K.S.A. 2006 Supp. 74-581; effective Feb. 29, 2008; revoked April 26, 2013.)

**4-28-18.** (Authorized by K.S.A. 65-673 and K.S.A. 2008 Supp. 74-581; implementing K.S.A. 65-659; effective June 4, 2010; revoked Feb. 8, 2013.)

**4-28-19 through 4-28-22.** (Authorized by K.S.A. 65-663, K.S.A. 2008 Supp. 65-673, and K.S.A. 2008 Supp. 74-581; implementing K.S.A. 65-663; effective June 4, 2010; revoked Feb. 8, 2013.)

**4-28-23. Sidewalk or street display of food products; prohibitions.** (a) The sidewalk or street display or sale of fresh meat and meat products, fresh seafood and fish, fresh poultry, and any other foods that require time and temperature control for safety shall be prohibited.

(b) Any food product, other than those products listed in subsection (a), that ordinarily is washed, peeled, pared, or cooked in the course of preparation for consumption may be displayed in street and sidewalk displays if the product is in containers that are at least six inches above the surface of the sidewalk or street.

(c) The street or sidewalk display of all food products not specified in this regulation shall be prohibited unless the products are enclosed to protect the products from flying insects, dust, and other contamination. (Authorized by K.S.A. 2011 Supp. 65-688, as amended by L. 2012, ch. 145, sec. 23, and K.S.A. 2011 Supp. 74-581; implementing K.S.A. 2011 Supp. 65-688, as amended by L. 2012, ch. 145, sec. 23; effective June 4, 2010; amended Feb. 8, 2013.)

**4-28-24 through 4-28-30.** (Authorized by K.S.A. 65-626, K.S.A. 2008 Supp. 74-581; implementing K.S.A. 65-625 and 65-626; effective June 4, 2010; revoked Feb. 8, 2013.)

**4-28-31. Fees; education facility with a school lunch program or satellite school lunch program.** Each education facility with a school lunch program or satellite school lunch program subject to the national school lunch act, 42 U.S.C. §1751 et seq., shall be licensed by the secretary.

(a) Each of the following terms, as used in this regulation, shall have the meaning specified in this subsection:

(1) "Education facility with a school lunch program" means any school, institution, or other organization providing meals to children through the national school lunch program of the division of food and nutrition services, United States department of agriculture.

(2) "Satellite school lunch program" means any program offered through an education facility with a school lunch program that is operated at a different location as designated by the education facility. A satellite school lunch program does not have on-site food preparation, except portioning food for service.

(b) Each person operating or wanting to operate an education facility with a school lunch program or satellite school lunch program shall submit an application on forms provided by the department with the following fees, as applicable:

(1) Application fee: \$200; and

(2)(A) License fee for an education facility with a school lunch program: \$415; or

(B) license fee for an education facility with a satellite school lunch program: \$340.

(c) Each license shall expire on the first March 31 following the date of issuance.

(d) Any licensee may renew a license before the expiration date of the license by submitting an application for renewal on a form supplied by the department and the applicable license fee specified in paragraph (b)(2).

(e)(1) Each license renewal application received within 30 days after the license expiration date shall require annual renewal by the licensee's submission of an application for renewal on a form supplied by the department, the applicable license fee specified in paragraph (b)(2), and a late fee of \$25, pursuant to 2012 Sen. Sub. for HB 2730, sec. 1 and amendments thereto.

(2) License renewal applications received by the department on or after May 1 shall not be approved before the licensee submits the fees prescribed in paragraphs (b)(1) and (b)(2) and the licensee's food establishment is inspected pursuant to K.S.A. 65-689, and amendments thereto.

(f) For an education facility with a school lunch program or satellite school lunch program licensed before July 1, 2012, the difference between the original license fee paid and the current license fee shall be paid for the license year ending March 31, 2013. In subsequent years, the full license fee shall be paid. (Authorized by and implementing K.S.A. 2011 Supp. 65-688, as amended by 2012 Sen. Sub. for HB 2730, sec. 23; effective, T-4-6-28-12, July 1, 2012; effective Oct. 26, 2012.)

#### **4-28-32. Vehicles used in transportation.**

Each vehicle used in the transportation of food shall be kept in a condition by which food cannot become adulterated. During transport, the food shall be protected from physical, chemical, and microbial contamination and degradation by the use of the following:

(a) Clean and sanitary transportation vehicles and containers; and

(b) temperature-control measures meeting the department's requirements. (Authorized by K.S.A. 2011 Supp. 65-688, as amended by L. 2012, ch. 145, sec. 23; implementing K.S.A. 2011 Supp. 65-688, as amended by L. 2012, ch. 145, sec. 23, and K.S.A. 2011 Supp. 74-581; effective Feb. 8, 2013.)

**4-28-33. Sanitation and hygiene requirements for exempt food establishments.** Each food establishment exempted from licensure in K.S.A. 65-689, and amendments thereto, shall meet the following requirements: (a) Food preparation areas shall be protected from environmental contamination, including rain, dust, and pests.

(b) Food contact surfaces, including cutting boards, utensils, and dishes, shall be cleaned, rinsed, and sanitized before food-handling activities begin and also as necessary. Hot, potable water and a dishwashing detergent shall be used for cleaning operations. Clean, hot, potable water shall be used for rinsing. Sanitizing shall be accomplished by immersing each item in a chlorine bleach solution of 50 to 100 parts per million for 10 seconds and allowing the item to air-dry. A sanitizer labeled for use on food contact surfaces may be used instead of chlorine bleach. Warewashing activities shall be conducted in easily cleanable

sinks or food-grade tubs large enough to accommodate immersion of the largest items.

(c) Animals shall not be permitted in food preparation areas.

(d) Food and utensils shall be protected from contamination.

(e) A potable water supply shall be provided. Commercially bottled water or water from a private system may be used.

(1) If water is supplied from a private system, including a well or spring, the private system shall meet the local water system test requirements. If local requirements do not exist, the water shall meet the following standards, with testing obtained by the operator of the food establishment at least annually:

(A) Nitrates shall be less than 20 milligrams per kilogram.

(B) Total coliforms shall be zero colony-forming units.

(C) Fecal coliforms shall be zero colony-forming units.

The current copy of the testing shall be made available upon request.

(2) Each mobile or portable establishment shall ensure that the water is maintained in a potable state by use of appropriate containers, hoses, or other water-handling systems.

(f) Adequate sewage disposal shall be provided. Each septic system shall be approved by the Kansas department of health and environment or the county sanitarian. The current copy of the approval shall be made available upon request. Each mobile or portable establishment shall have adequate on-site sewage storage and shall dispose of sewage in a sanitary sewer or septic system.

(g) Bare-hand contact shall not be permitted with ready-to-eat foods.

(h) Each person working with food shall wash that person's hands before working with food or food contact surfaces and after the hands are contaminated, or could have become contaminated, including after handling raw eggs, raw meat, or raw poultry or after touching the face or hair. The following procedure shall be used:

(1) Wet hands using warm, running potable water;

(2) apply soap and rub hands together vigorously for at least 10 seconds;

(3) rinse hands; and

(4) dry hands with a clean paper towel.

(i) No person with any of the following symptoms or conditions shall work with food:

(1) Vomiting;  
 (2) diarrhea;  
 (3) jaundice;  
 (4) sore throat with fever;  
 (5) any lesion, boil, or infected wound that contains pus, is open or draining, and is located on any of the following:

(A) The hands or wrists, unless an impermeable cover that may include a finger cot or stall protects the affected site and a single-use glove is worn over the impermeable cover;

(B) exposed portions of the arms, unless the affected site is protected by an impermeable cover; or

(C) other parts of the body, unless the affected site is covered by a dry, durable, tight-fitting bandage; or

(6) an illness due to any of the following:

(A) Norovirus;

(B) hepatitis A virus;

(C) shigella;

(D) enterohemorrhagic or shiga toxin-producing *Escherichia coli*; or

(E) salmonella typhi. (Authorized by K.S.A. 2012 Supp. 65-688; implementing K.S.A. 2012 Supp. 65-688 and 65-689; effective May 31, 2013.)

**4-28-34. Exemption from licensure; definitions.** (a) Each person who is exempt under K.S.A. 65-689(d)(7), and amendments thereto, from licensure for operating a food establishment shall post at the point of sale a placard or sign that states, in letters at least one-quarter inch high and in contrasting color to the background, that the food establishment is not subject to routine inspection by the Kansas department of agriculture.

(b) As used in K.S.A. 65-689(d)(7) and amendments thereto, each of the following terms shall have the meaning specified in this subsection:

(1) "Community or humanitarian purposes" shall mean purposes for the common good, including building or refurbishing playgrounds or parks, preserving historic public buildings, religious organization fundraising, promoting human welfare including disaster relief, providing food to the food-insecure, providing shelter for humans, and similar activities.

(2) "Educational or youth activities" shall mean activities associated with an early childhood, elementary, secondary, or postsecondary school or activities for persons less than 21 years of age that engage these persons in recreational, educational, or social activities, including sports teams, sum-

mer camps, music programs, arts programs, and similar activities.

(c) Funds raised in food establishments exempt from licensure under K.S.A. 65-689(d)(7), and amendments thereto, shall not be used for wages or other compensation of volunteers or employees, except for providing complimentary food to volunteer staff.

(d) Nothing in this regulation shall prohibit a person who is exempt from licensure for operating a food establishment from applying for a food establishment license from the secretary. Upon the secretary's review of the application, a license may be issued by the secretary pursuant to K.S.A. 65-689(b), and amendments thereto. (Authorized by K.S.A. 2012 Supp. 65-688; implementing K.S.A. 2012 Supp. 65-688 and 65-689; effective May 31, 2013.)

#### Article 34.—INDUSTRIAL HEMP

**4-34-1. Definitions.** Each of the following terms, as used in this article of the department's regulations, shall have the meaning specified in this regulation:

(a) "Act" means the alternative crop research act, K.S.A. 2018 Supp. 2-3901 et seq. and amendments thereto.

(b) "Administrative license" means a license issued to any of the following:

(1) An individual appointed as a member of the state advisory board;

(2) an individual employed by the designated certifying agency who requires licensure as a result of the individual's assigned employment duties and is involved in the administration of the designated certifying agency's responsibilities pursuant to the pilot program; or

(3) an individual employed by the department who is involved in the administration, regulation, or oversight of the pilot program or an individual employed by the department who requires licensure as a result of the individual's assigned employment duties.

(c) "Approved variety of industrial hemp" means a variety or strain of industrial hemp authorized for use in the pilot program.

(d) "Certifying agency" has the meaning specified in K.S.A. 2-1415, and amendments thereto.

(e) "Condition," as used in this article of the department's regulations, means to clean or to clean and blend seed within a licensed research section, in order to meet the requirements of agricultural

seed for the purpose of being planted or seeded. Seed that has undergone this process is known as “conditioned.”

(f) “Destroy” means to make incapable of being harvested or processed by means of being incinerated, tilled under the soil, or made into compost or by using another manner approved by the secretary. This process is known as “destruction.”

(g) “Devitalize” means to render incapable of germinating.

(h) “Grain,” as used in this article of the department’s regulations, means an industrial hemp plant’s unit of sexual reproduction intended to be consumed or processed into hemp products.

(i) “Handle” means to cause any movement of industrial hemp on or within a licensed research section.

(j) “Harvest” means to remove industrial hemp plants, plant parts, grain, or seeds from the research area where the industrial hemp plants, plant parts, grain, or seeds were cultivated, planted, or grown.

(k) “Harvest certificate” means a document issued by the department to the primary licensee, after the industrial hemp plants, plant parts, grain, or seeds are harvested, that includes information to assist in identifying the industrial hemp plants, plant parts, grain, or seeds that were harvested.

(l) “Individual” means a natural person.

(m) “Licensed research distributor” means an individual licensed by the department to handle, condition, store, distribute, or transport raw, harvested industrial hemp plants, plant parts, grain, or seeds in Kansas.

(n) “Licensed research grower” means an individual licensed by the department to cultivate, plant, grow, handle, harvest, condition, store, distribute, or transport industrial hemp plants, plant parts, grain, or seeds in Kansas.

(o) “Licensed research processor” means an individual licensed by the department to handle, store, or process industrial hemp plants, plant parts, or grain and take part in any aspect of turning raw, harvested industrial hemp into a hemp product in Kansas.

(p) “Licensed research section” means a section legally designated by the public land survey system that is identified in the license issued by the department establishing where a licensee may cultivate, plant, grow, handle, harvest, condition, store, distribute, transport, or process industrial hemp plants, plant parts, grain, or seeds. A

licensed research section may include land, structures, and buildings that are not used to cultivate, plant, grow, handle, harvest, condition, store, distribute, transport, or process industrial hemp plants, plant parts, grain, or seeds.

(q) “Licensee” means any individual who possesses a valid license issued by the department pursuant to the act.

(r) “Pilot program” means the industrial hemp research program administered by the department pursuant to the act.

(s) “Plant part” means any portion of an industrial hemp plant, including any of the following:

(1) Whole or partial unprocessed plants, including stalk, leaf, seed, floral, and root materials;

(2) raw roots;

(3) fresh, unprocessed, dried, or ground leaves or floral material; or

(4) rooted plants, cuttings, propagules, or clones.

(t) “Primary licensee” means an individual at least 18 years of age who was issued a research license by the department and who shall be responsible for ensuring that all licensees listed on the research license application submitted by that individual comply with the requirements of the act and the implementing regulations.

(u) “Research area” means a location within a licensed research section used for the cultivation, planting, growth, handling, harvesting, conditioning, storage, distribution, transporting, or processing of industrial hemp plants, plant parts, grain, or seeds.

(v) “Secretary” means secretary of the Kansas department of agriculture or the secretary’s designated representative.

(w) “Seed,” as used in this article of the department’s regulations, means an industrial hemp plant’s unit of sexual reproduction intended to be planted for germination.

(x) “Variety” means a subdivision of a species that meets the following conditions:

(1) Is uniform, in the sense that the variations in essential and distinctive characteristics are describable;

(2) is stable, in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity if reproduced or reconstituted as required by the different categories of varieties; and

(3) is distinct, in that the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all other publicly known varieties.

(y) “Volunteer plant” means any plant of the genus *cannabis* that grows of its own accord from seeds or roots and is not intentionally planted. (Authorized by and implementing K.S.A. 2018 Supp. 2-3902; effective Feb. 8, 2019.)

**4-34-2. Certified seed.** (a) All certified seed shall be considered “agricultural seed” subject to the Kansas agricultural seed act, K.S.A. 2-1415 et seq. and amendments thereto, and the implementing regulations.

(b) No certification of seed shall be made unless by or on the authority of the designated certifying agency. (Authorized by and implementing K.S.A. 2018 Supp. 2-3902; effective Feb. 8, 2019.)

**4-34-3. License approval process.** (a) Each individual wanting to conduct research pursuant to the pilot program shall submit or be listed on a completed, accurate, and legible research license application. Each research license application shall be submitted on a form provided by the department and shall designate the individual wanting to be the primary licensee and all proposed licensees. Each research license application shall include a research proposal and all required state and national criminal history record check and application fees, except that an individual wanting to be a primary licensee on a state educational institution license shall not be required to submit an application fee.

(b) Each individual issued an administrative license, each individual wanting to be a primary licensee, and each individual listed on a research license application shall meet the following requirements:

(1) Be fingerprinted and submit to a state and national criminal history record check, which shall be performed by the Kansas bureau of investigation;

(2) submit payment for the fingerprint-based criminal history record check to the Kansas bureau of investigation; and

(3) submit payment for the costs of fingerprinting to the law enforcement agency that provided the fingerprinting services.

(c) Each individual wanting to be a primary licensee and each individual listed on a research license application shall submit that individual’s fingerprints and a state and national criminal history record check no more than 30 days before submitting the research license application to the department.

(d) Following the department’s receipt of the completed research license application, verification that all individuals passed the state and national criminal history record check, and the application fees, the research license application shall be reviewed by the state advisory board and either rejected or recommended for approval and forwarded to the secretary.

(e) Following the secretary’s review, each research license application shall be denied or conditionally approved. The individual wanting to be the primary licensee shall be notified by the department of the denial or conditional approval in writing. Each research license application for a state educational institution license shall be reviewed solely by the secretary and shall be denied or approved. If approved, each state educational institution license shall be issued by the department and the licensee may begin the approved research.

(f) Upon conditional approval of a research license application, the individual wanting to be the primary licensee shall remit the applicable license fees for each approved license category within 15 days of receipt of the department’s written notice of conditional approval. Once the department receives the applicable license fees, the research license application shall be officially approved and each appropriate license shall be issued by the department. Upon receipt of the research license, the licensee may begin the approved research. (Authorized by and implementing K.S.A. 2018 Supp. 2-3902; effective Feb. 8, 2019.)

**4-34-4. Research license applications.** (a) Each individual wanting to be a primary licensee shall identify the following on the research license application:

(1) Each owner of all land, structures, and buildings where any proposed research will be conducted;

(2) each owner of all motor vehicles that will be used to distribute or transport industrial hemp plants, plant parts, grain, or seeds;

(3) each individual that will own 10 percent or more of the industrial hemp plants, plant parts, grain, or seeds being cultivated, planted, or grown; and

(4) each individual that will otherwise be involved in the research proposal, including those individuals that will be engaged in the purchasing, researching, cultivating, planting, growing, handling, harvesting, conditioning, storing, distribut-

ing, transporting, processing, studying, analyzing, or selling of industrial hemp plants, plant parts, grain, or seeds.

(b) Each research license application shall include the following:

(1) A research proposal submitted on a form provided by the department that includes the following, at a minimum:

(A) A statement of the type of research to be conducted;

(B) the purpose of the research;

(C) the data that will be collected;

(D) the location where the research will occur;

(E) the number of acres or square feet that will be used to conduct the research;

(F) the methods to be used in conducting the research;

(G) the intended duration of the research;

(H) the anticipated results of the research; and

(I) any other relevant information that the secretary requests;

(2) legal descriptions and maps depicting each location where industrial hemp plants, plant parts, grain, or seeds will be cultivated, planted, grown, handled, harvested, conditioned, stored, distributed, transported, or processed, including appropriate designations for field identifications and boundaries and the global positioning system coordinates;

(3) a description of each vehicle that will be used for transporting or distributing industrial hemp plants, plant parts, grain, or seeds, including the make, model, license plate number, and color; and

(4) a list of each individual who will transport any industrial hemp plants, plant parts, grain, or seeds, along with a copy of the individual's current driver's license.

(c) Each research license application shall be submitted to the department on an annual basis, on a form provided by the department. Each research license application shall be submitted to the department no later than March 1 for the 2019 growing season and no later than November 30 for each subsequent growing season.

(d) Incomplete or illegible research license applications shall not be accepted, and the application fees shall not be refunded.

(1) Any individual wanting to be a primary licensee may complete or resubmit a previously incomplete or illegible research license application no later than November 30.

(2) For the 2019 growing season, any individual wanting to be a primary licensee may complete or

resubmit a previously incomplete or illegible research license application no later than March 1.

(e) Any individual may apply for multiple licenses in a single license category or multiple license categories. Each individual shall provide the department with all required information for each license being sought along with payment of separate application fees and license fees.

(f) A research license application may be denied and the application fees shall not be refunded if at least one of the following conditions is met:

(1) The research license application is not submitted by the established deadline.

(2) The research license application does not include the application fees.

(3) Any individual identified on the research license application fails to submit to the state and national criminal history record check as required.

(4) Any criminal history records check reveals that an individual identified on the license application has been convicted of any crime specified in K.S.A. 2018 Supp. 2-3902, and amendments thereto, or a violation of any law of another jurisdiction that is in substantial conformity with the offenses listed in that statute.

(5) The research license application does not include a research proposal.

(6) The research license application includes a home or residence as a location to cultivate, plant, grow, handle, harvest, condition, store, distribute, transport, or process industrial hemp plants, plant parts, grain, or seeds. (Authorized by and implementing K.S.A. 2018 Supp. 2-3902; effective Feb. 8, 2019.)

#### **4-34-5. Licenses issued by the department; general requirements for licensees.**

(a) Each license issued by the department shall establish the requirements governing each licensee's participation in the pilot program. Any violation of the terms and conditions specified in a license may result in the revocation of any license held by the licensee and denial of future applications. Each licensee shall comply with all instructions from representatives of the department and local, state, and federal law enforcement agencies pertaining to the licensee's involvement in the pilot program.

(b) Before cultivating, planting, growing, handling, harvesting, conditioning, storing, distributing, transporting, processing, researching, overseeing, studying, or analyzing industrial hemp plants, plant parts, grain, or seeds for research

purposes at any location in Kansas, each individual shall obtain a license issued by the department.

(c) Before a license is issued by the department, license fees shall be paid as required by K.A.R. 4-34-12. Failure by the individual wanting to be the primary licensee to pay the license fees within 15 days of receipt of notice of conditional approval shall terminate the approval process of the research license application, and the requested licenses shall not be issued by the department.

(d) Except in the case of the death of the primary licensee, a license issued by the department shall not be sold or transferred. If the primary licensee dies, any individual listed on the research license application that has also been issued a license may request that the department modify the license as required by K.A.R. 4-34-13.

(e)(1) Each licensee shall use or allow to be used as part of the pilot program only industrial hemp plants, plant parts, grain, or seeds from varieties currently designated by the department as approved varieties of industrial hemp. The department's document titled "approved varieties of industrial hemp for planting," dated October 15, 2018, is hereby adopted by reference.

(2) Upon request of the individual wanting to be the primary licensee, any licensees listed on that individual's research license application may be authorized by the secretary to cultivate, plant, grow, handle, harvest, condition, store, distribute, transport, or process varieties of industrial hemp other than those varieties identified under paragraph (e)(1), if doing so is appropriate and consistent with the individual's research proposal.

(f) At all times while a licensee is engaged in cultivating, planting, growing, handling, harvesting, conditioning, storing, distributing, transporting, processing, researching, overseeing, studying, or analyzing industrial hemp plants, plant parts, grain or seeds pursuant to the pilot program, the licensee shall have that individual's current license authorizing the activity in possession.

(g) Each license issued by the department shall be valid from the date of issuance until the expiration date unless the license is revoked by the department. Each license shall expire on January 31, following the date of issuance. An individual may apply for a license in successive years by completing a research license application, state and national criminal history records check, fingerprinting, and paying the application and license fees. Issuance of a license in one year shall not guarantee issuance of a license in any subsequent year.

(h) A license shall not be issued by the department to an individual if the individual's research license application includes a location approved by the department as a research area in a license previously issued by the department in the same license year. Any individual may request that the department approve multiple licensed research sections. However, each request shall require a separate research license application, application fees, and license fees.

(i) Any primary licensee may be approved by the department to cultivate, plant, or grow industrial hemp plants, plant parts, grain, or seeds on an acreage or square footage that is equal to or less than the acreage or square footage stated in the research license application. Industrial hemp plants, plant parts, grain, or seeds may be cultivated, planted, or grown on an acreage or square footage that is equal to or less than the approved acreage or square footage. Completion of a modification request form shall not be required if a primary licensee elects to cultivate, plant, or grow industrial hemp plants, plant parts, grain, or seeds on an acreage or square footage that is less than the acreage or square footage authorized in the license.

(j) Licensees shall use only approved varieties of industrial hemp when engaged in cultivating, planting, growing, handling, harvesting, conditioning, storing, distributing, transporting, or processing industrial hemp plants, plant parts, grain, or seeds, except that any primary licensee may request that the secretary approve varieties of industrial hemp pursuant to paragraph (e)(2).

(k) Each licensee growing seed for seed certification shall meet the requirements specified in the Kansas agricultural seed act, K.S.A. 2-1415 et seq. amendments thereto, and the implementing regulations.

(l)(1) Each licensee shall consent to the department's providing information to law enforcement, fire, and rescue agencies and the public regarding each research area. Additionally, each licensee shall consent to the department's providing information about any licensed research section or research area, including global positioning system coordinates, to representatives of the Kansas bureau of investigation, United States drug enforcement agency, and other law enforcement agencies if representatives of any of these agencies request the information.

(2) Each licensee shall consent to the department's providing appropriate law enforcement agencies in each county with copies of the licensee's license.

(m) Each research area shall be subject to inspection by the department. Each representative of the department shall have complete, unrestricted, and immediate access to all industrial hemp plants, plant parts, grain, and seeds, whether growing or not, including access to all land, buildings, facilities, motor vehicles, and other structures listed on the license issued by the department. Access shall be granted whether the licensee is present or not, at reasonable times, without interference or obstruction, with or without cause, and with or without advance notice. The right of access shall include the unrestricted right to inspect or take samples of any industrial hemp plants, plant parts, grain, or seeds present at the location being accessed, as well as the right to inspect any reports or records pertaining to the licensee's research.

(n) Each licensee shall permit the department to perform any inspections and to collect any samples of any industrial hemp plants, plant parts, grain, or seeds at any time.

(o) Each licensee shall submit all reports required by the department on or before the specified deadlines.

(p) Each primary licensee shall retain, for at least five years, all records created as a result of the primary licensee's participation in the pilot program unless otherwise ordered by the secretary. The records shall be made available for inspection by the department, the Kansas bureau of investigation, and any other law enforcement agencies upon request.

(q) Each licensee shall ensure that any individual applying pesticides to industrial hemp plants or plant parts complies with the Kansas pesticide act, K.S.A. 2-2438a et seq. amendments thereto, and the implementing regulations.

(r) Each licensee shall be solely responsible for that licensee's risk of financial or other loss as a result of participating in the pilot program.

(s) A licensee shall not allow industrial hemp plants, plant parts, grain, or seeds to be cultivated, planted, grown, handled, harvested, conditioned, stored, distributed, transported, or processed at any location other than the locations included on the license issued by the department.

(t)(1) Each licensee shall immediately notify the department of any interaction with law enforcement related to the licensee's participation in the pilot program, as well as any contact with law enforcement related to criminal charges or a criminal investigation involving any crime specified in K.S.A. 2018 Supp. 2-3902, and amendments

thereto, or a violation of any law of another jurisdiction that is in substantial conformity with the offenses listed in that statute. The licensee shall provide a written follow-up summarizing the interaction and its outcome to the department within three calendar days of the interaction.

(2) Each primary licensee shall notify the department and appropriate law enforcement agencies of the theft of any industrial hemp plants, plant parts, grain, or seeds within three calendar days of the theft.

(u) A primary licensee shall not permit any individual to participate in the pilot program pursuant to the primary licensee's research license application if that individual's license was revoked by the department or that individual was denied admission to participate in the pilot program. Except when conducting educational activities, a licensee shall not allow access to any research area listed on the license, industrial hemp plants, plant parts, grain, or seeds by an individual whose license was revoked by the department or who was denied admission to participate in the pilot program.

(v) A primary licensee shall not rent or lease land, buildings, facilities, motor vehicles, or other structures that will be used to conduct research as part of the pilot program from any individual whose license was revoked by the department or who was denied admission to participate in the pilot program.

(w) Any licensee may host or engage in educational activities as authorized by the license issued by the department. Any licensee hosting or engaging in educational activities may allow members of the public access to each research area for the sole purpose of participating in educational activities. Any licensee may set up a public display booth showcasing the individual's research relating to industrial hemp plants, plant parts, grain, or seeds at trade shows, county fairs, or other similar events. Licensees shall not allow any members of the public to have physical contact with or possess any industrial hemp plants, plant parts, grain, or seeds and shall not transfer, distribute, trade, sell, give away, barter, or exchange for value any industrial hemp plants, plant parts, grain, or seeds to any member of the public.

(x) A licensee shall not conduct activities that involve industrial hemp plants, plant parts, grain, or seeds that are unrelated to the licensee's approved research proposal, license, or educational activities at any location listed on the license, including industrial hemp-related activities involving an industrial hemp maze.

(y) A licensee shall not distribute industrial hemp plants, plant parts, grain, or seeds at any location that is not identified on the license, including trade shows, county fairs, educational or other events, and any other address not listed on the license. (Authorized by and implementing K.S.A. 2018 Supp. 2-3902; effective Feb. 8, 2019.)

**4-34-6. Research grower license.** (a) In addition to the requirements of K.A.R. 4-34-5, each individual who is issued a research grower license by the department shall meet the following requirements:

(1) Obtain industrial hemp plants or certified seeds from a licensed research distributor or from legally imported sources of industrial hemp;

(2) obtain and retain a copy of each seed label for all certified seed planted, cultivated, or grown;

(3) obtain and retain a copy of the following documents, if applicable:

(A) The research grower license of the primary licensee that cultivated, planted, grew, handled, harvested, conditioned, stored, distributed, or transported the industrial hemp plants or seeds being received;

(B) the research distributor license of the primary licensee that handled, conditioned, stored, distributed, or transported the industrial hemp plants or seeds being received; and

(C) the harvest certificate pertaining to the industrial hemp plants or seeds being received by the licensee or a bill of lading or other documentation identifying the source of the industrial hemp plants or seeds being received;

(4) ensure that industrial hemp plants, plant parts, grain, or seeds are not interplanted with any other crop in any research area;

(5) ensure that a copy of the harvest certificate pertaining to the industrial hemp plants, plant parts, grain, or seeds that were harvested or a bill of lading or other documentation identifying the source of the industrial hemp plants, plant parts, grain, or seeds accompanies the industrial hemp plants, plant parts, grain, or seeds being transported;

(6) ensure that industrial hemp plants, plant parts, grain, or seeds are not commingled with any other commodity or other items being transported; and

(7) survey and monitor any unlicensed growing areas, whether inactive or previously licensed as part of any research area, or never been licensed, including any ditches, fence lines, and other unmanaged land areas adjacent to the research ar-

reas, for volunteer plants and destroy any volunteer plants during the current license year and for at least three years after the last date of planting reported to the department.

(b) The primary licensee on each research grower license shall have a primary residence in Kansas.

(c) Any licensed research grower may cultivate, plant, grow, handle, harvest, condition, store, distribute, or transport industrial hemp plants, plant parts, grain, or seeds pursuant to the license issued by the department.

(d) A licensed research grower shall not handle, harvest, condition, store, distribute, transport, or process industrial hemp plants, plant parts, grain, or seeds cultivated, planted, or grown by another licensee without first obtaining any required license issued by the department.

(e) A licensed research grower shall not cultivate, plant, grow, handle, or harvest more than 80 acres in a licensed research section under one license in calendar year 2019 and shall not cultivate, plant, grow, handle, or harvest more than 320 acres in a licensed research section under one license in calendar year 2020. Each primary licensee on a research grower license who wants to cultivate, plant, grow, handle, or harvest more than the authorized acres in a licensed research section in any calendar year shall obtain an additional research grower license and pay all required application fees and license fees for the additional acreage.

(f) Each licensed research grower that cultivates, plants, grows, handles, harvests, conditions, stores, or transports industrial hemp plants or seeds that were obtained from outside Kansas shall maintain a bill of lading or other documentation that identifies the source of the industrial hemp plants or seeds to demonstrate that the industrial hemp plants or seeds were legally imported into Kansas. (Authorized by and implementing K.S.A. 2018 Supp. 2-3902; effective Feb. 8, 2019.)

**4-34-7. Research distributor license.** (a) In addition to the requirements of K.A.R. 4-34-5, each individual who is issued a research distributor license by the department shall meet the following requirements:

(1) Obtain industrial hemp plants, plant parts, grain, or seeds from a licensed research grower, licensed research distributor, or licensed research processor or from legally imported sources of industrial hemp;

(2) obtain and retain a copy of the following documents, if applicable:

(A) The research grower license of the primary licensee that cultivated, planted, grew, handled, harvested, conditioned, stored, distributed, or transported the industrial hemp plants, plant parts, grain, or seeds being received;

(B) the research distributor license of the primary licensee that handled, conditioned, stored, distributed, or transported the industrial hemp plants, plant parts, grain, or seeds being received;

(C) the research processor license of the primary licensee that handled or stored the industrial hemp plants, plant parts, or grain being received; and

(D) the harvest certificate pertaining to the industrial hemp plants, plant parts, grain, or seeds being received by the licensee or a bill of lading or other documentation identifying the source of the industrial hemp plants, plant parts, grain, or seed being received by the licensee;

(3) ensure that a copy of the harvest certificate pertaining to the industrial hemp plants, plant parts, grain, or seeds that were harvested or a bill of lading or other documentation identifying the source of the industrial hemp plants, plant parts, grain, or seeds accompanies the industrial hemp plants, plant parts, grain, or seeds being distributed or transported; and

(4) ensure that industrial hemp plants, plant parts, grain, or seeds are not commingled with any other commodity or other items being distributed or transported.

(b) The primary licensee on a research distributor license shall have a primary residence in Kansas.

(c) Any licensed research distributor may handle, condition, store, distribute, or transport industrial hemp plants, plant parts, grain, or seeds pursuant to the license issued by the department.

(d) A licensed research distributor shall not harvest or process industrial hemp plants, plant parts, grain, or seeds cultivated or grown by another licensee without first obtaining any required license issued by the department.

(e) Each individual exchanging, distributing, selling, or reselling certified seed in Kansas shall be licensed pursuant to the Kansas agricultural seed act, K.S.A. 2-1415 et seq. amendments thereto, and the implementing regulations.

(f) A licensed research distributor that handles, conditions, stores, distributes, or transports industrial hemp plants, plant parts, grain, or seeds that were obtained from outside Kansas shall maintain

a bill of lading or other documentation that identifies the source of the industrial hemp plants, plant parts, grain, or seeds to demonstrate that the industrial hemp plants, plant parts, grain, or seeds were legally imported into Kansas. (Authorized by and implementing K.S.A. 2018 Supp. 2-3902; effective Feb. 8, 2019.)

**4-34-8. Research processor license.** (a) In addition to the requirements of K.A.R. 4-34-5, each individual who is issued a research processor license by the department shall meet the following requirements:

(1) Obtain industrial hemp plants, plant parts, or grain from a licensed research grower or licensed research distributor or from legally imported sources of industrial hemp;

(2) devitalize any industrial hemp grain within 10 days of receipt and take appropriate security measures to ensure that the industrial hemp grain cannot be stolen before it is devitalized;

(3) obtain and retain a copy of the following documents, if applicable:

(A) The research grower license of the primary licensee that cultivated, planted, grew, handled, harvested, conditioned, stored, distributed, or transported the industrial hemp plants, plant parts, or grain being received;

(B) the research distributor license of the primary licensee that handled, conditioned, stored, distributed, or transported the industrial hemp plants, plant parts, or grain being received; and

(C) the harvest certificate pertaining to the industrial hemp plants, plant parts, or grain being received by the licensee or a bill of lading or other documentation identifying the source of the industrial hemp plants, plant parts, or grain being received; and

(4) ensure that a copy of the harvest certificate pertaining to the industrial hemp plants, plant parts, or grain that was harvested or a bill of lading or other documentation identifying the source of the industrial hemp plants, plant parts, or grain accompanies the industrial hemp plants, plant parts, or grain being processed.

(b) Any licensed research processor may handle, store, or process industrial hemp plants, plant parts, or grain pursuant to the license issued by the department. A licensed research processor shall not handle, store, or process seeds.

(c)(1) The primary licensee on a research processor license who processes industrial hemp plants, plant parts, or grain into hemp products in

a mobile processing facility shall meet the following requirements:

(A) Notify the department of the mobile processing facility's planned processing locations no more than five days in advance of the first day of processing in each location. The primary licensee shall immediately notify the department of any changes to a submitted schedule; and

(B) at all times, operate in compliance with all state, county, and local laws, regulations, and ordinances.

(2) The primary licensee shall be present at each mobile processing facility's planned processing locations at all times while each mobile processing facility is operating.

(d) A licensed research processor shall not cultivate, plant, grow, harvest, condition, distribute, or transport industrial hemp plants, plant parts, grain, or seeds cultivated, planted, or grown by another licensee without first obtaining any required license issued by the department.

(e) A licensed research processor that processes industrial hemp plants, plant parts, or grain that were obtained from outside Kansas shall maintain a bill of lading or other documentation demonstrating that the industrial hemp plants, plant parts, or grain was legally imported into Kansas.

(f) Possession of a current research processor license shall not guarantee a licensee access to the premises of any private landowner. Permission for a licensee to enter the premises of any landowner shall be established contractually or otherwise by agreement of the licensee and the landowner. (Authorized by and implementing K.S.A. 2018 Supp. 2-3902; effective Feb. 8, 2019.)

**4-34-9. State educational institution research license.** (a) Each state educational institution wanting to allow individuals to conduct research pursuant to the pilot program shall authorize this participation and shall be directly responsible for any volunteer, student, employee, or research and extension employee conducting the research.

(b) Each volunteer, student, employee, or research and extension employee of a state educational institution that wants to conduct research pursuant to the pilot program shall submit a completed, accurate, and legible research license application for a state educational institution research license. Each research license application shall designate the individual wanting to be a primary licensee and list all proposed licensees. Each research license application shall include a

research proposal and the required state and national criminal history record check.

No application fees or license fees shall be assessed to any individuals wanting a state educational institution research license. However, the costs associated with fingerprinting and the state and national criminal history record check shall be the responsibility of any individual wanting a state educational institution research license.

(c) Volunteers, students, employees, and research and extension employees of a state educational institution shall not apply for a license or conduct research without first obtaining written approval from the head of any applicable department stating that the individual wanting to be a primary licensee and the proposed licensees are part of a sanctioned state educational institution research proposal, which shall be submitted with the research license application. Each individual wanting to be the primary licensee on a state educational institution research license shall apply for and obtain that license before conducting research or having industrial hemp plants, plant parts, grain, or seeds at any location in Kansas.

(d) Each individual wanting to be the primary licensee on a state educational institution research license shall identify the following on the research license application:

(1) Each owner of all land, structures, and buildings where any proposed research will be conducted;

(2) each owner of any motor vehicle that will be used to distribute or transport industrial hemp plants, plant parts, grain, or seeds;

(3) each individual that will own 10 percent or more of the industrial hemp plants, plant parts, grain, or seeds being cultivated, planted, or grown;

(4) each individual that will otherwise be involved in the research proposal, including volunteers, students, employees, research and extension employees, and any other individuals that will be engaged in the purchasing, researching, cultivating, planting, growing, handling, harvesting, conditioning, storing, distributing, transporting, processing, studying, analyzing, or selling of industrial hemp plants, plant parts, grain, or seeds; and

(5) all individuals that will have access to any proposed research area.

(e) Any state educational institution licensee may cultivate, plant, grow, handle, harvest, condition, store, distribute, transport, or process industrial hemp plants, plant parts, grain, or seeds pursuant to the license.

(f)(1) The requirements for research license applications specified in K.A.R. 4-34-4 (b) through (f) and the requirements for the state and national criminal history record check specified in K.A.R. 4-34-3 shall apply to state educational institution licensees. Each state educational institution licensee shall comply with the requirements of K.A.R. 4-34-5, the requirements for a research grower license pursuant to K.A.R. 4-34-6, the requirements for a research distributor license pursuant to K.A.R. 4-34-7, and the requirements for a research processor license pursuant to K.A.R. 4-34-8, except that a state educational institution licensee shall not be required to pay any application fees, license fees, modification fees, sampling fees, or testing fees.

(2) Any individual wanting to be primary licensee on a state educational institution license may include a location on the individual's research license application that has previously been approved by the department as a research area in the same license year.

(3) A state educational institutional licensee shall be prohibited from the following:

(A) Storing or distributing industrial hemp plants, plant parts, grain, or seeds cultivated or grown under another's license, except with the secretary's written permission; and

(B) operating a mobile processing facility.

(g) A state educational institution licensee shall not conduct research as part of the pilot program on any research area not owned by the state educational institution. A state educational institution licensee shall not enter into any agreement or otherwise subcontract with an individual or business entity to permit the licensee to conduct research on any land, structures, or buildings not owned by the state educational institution.

(h) A primary licensee on a state educational institution license shall not permit any individual to participate in the pilot program pursuant to the primary licensee's research license application or otherwise have access to the licensee's research area, industrial hemp plants, plant parts, grain, or seeds if that individual's license was revoked by the department or that individual was denied admission to participate in the pilot program.

(i) Any individual wanting to be a primary licensee on a state educational institution license may request that the department authorize the licensee to interplant industrial hemp plants, plant parts, grain, or seeds with other crops in a research area.

(j) Each state educational institution licensee that is no longer affiliated with the state educational institution shall notify the department and withdraw from the pilot program pursuant to K.A.R. 4-34-16. (Authorized by K.S.A. 2018 Supp. 2-3902; implementing K.S.A. 2018 Supp. 2-3902 and 2-3903; effective Feb. 8, 2019.)

**4-34-10. Administrative license.** (a) An administrative license may be issued to any individual specified in K.A.R. 4-34-1(b).

(b) Before being issued an administrative license, each individual shall be required to undergo and pass the state and national criminal history record check as specified in K.A.R. 4-34-3.

(c) Each administrative license shall identify the activities that the licensee is authorized to undertake, including handling, inspecting, sampling, testing, and transporting industrial hemp plants, plant parts, grain, or seeds.

(d) No application fee or license fee shall be assessed for any administrative license issued pursuant to this regulation. (Authorized by K.S.A. 2018 Supp. 2-3902; implementing K.S.A. 2018 Supp. 2-3902 and 2-3903; effective Feb. 8, 2019.)

**4-34-11. State advisory board.** (a) The board established by the secretary pursuant to K.S.A. 2018 Supp. 2-3902, and amendments thereto, shall be recognized as the state advisory board. Members shall be appointed by the secretary. The state advisory board shall consist of at least five and no more than nine members. Membership shall reflect the different geographic areas of the state equally, to the greatest extent possible. Members of the state advisory board shall receive no compensation for serving on the board, but may be paid subsistence allowances, mileage, and other expenses as provided in K.S.A. 75-3223, and amendments thereto. Each member appointed to the state advisory board shall be recognized for knowledge and leadership in at least one of the following sectors: crop research, industrial hemp production or processing, law enforcement, seed certification, or any other sector deemed relevant by the secretary. The secretary shall appoint one member from the Kansas legislature to the state advisory board.

(b) Of the members first appointed to the state advisory board, four members whose terms shall expire on June 30, 2021 shall be designated by the secretary. The remaining members' terms shall expire on June 30, 2023. After the expiration of the initial terms, each member shall be appointed

by the secretary to serve for a term of four years until a successor is appointed. Each member shall be limited to serving a total of two full terms and shall hold office until the expiration of the term for which the member is appointed or until a successor has been qualified and appointed. A member may be appointed by the secretary to fill an unexpired term of any member due to a vacancy on the state advisory board.

(c) Before being qualified and appointed as a member of the state advisory board, each individual shall undergo and be required to pass the state and national criminal history record check as specified in K.A.R. 4-34-3. Upon determination that an individual is qualified, that individual may be appointed by the secretary as a member of the state advisory board and shall be issued an administrative license by the department. No application or license fees shall be assessed for an administrative license issued to a member of the state advisory board pursuant to this regulation.

(d) A quorum of the state advisory board shall be a majority of the members appointed to the state advisory board. A quorum of the state advisory board shall organize by election of a chairperson, vice-chairperson, and other officers as the state advisory board deems appropriate.

(e) In addition to the duties specified in K.S.A. 2018 Supp. 2-3902 and amendments thereto, the state advisory board shall perform other duties, which may include the review of regulations and recommendation of potential changes. The state advisory board shall make recommendations to the secretary only if the recommendations are approved by a majority vote of the state advisory board members.

(f) Any member of the state advisory board may be removed by the secretary for misconduct, incompetence, or neglect of duty. (Authorized by K.S.A. 2018 Supp. 2-3902; implementing K.S.A. 2018 Supp. 2-3902 and 2-3903; effective Feb. 8, 2019.)

**4-34-12. Fees.** (a) The application fee shall be \$200 for each license sought, with the exception of state educational institution licenses and administrative licenses, for which no application fee shall be charged.

(b) Upon conditional approval of a research grower license, each individual wanting to be the primary licensee shall pay a license fee of \$1,000.

(c) Upon conditional approval of a research distributor license, each individual wanting to be the primary licensee shall pay a license fee of \$2,000

for each licensed research section approved by the department.

(d)(1) Upon conditional approval of a research processor license for processing fiber or grain, each individual wanting to be the primary licensee shall pay a license fee of \$3,000 for each processing facility in a licensed research section and for each mobile processing facility.

(2) Upon conditional approval of a research processor license for processing floral material, each individual wanting to be the primary licensee shall pay a license fee of \$6,000 for each processing facility in a licensed research section and for each mobile processing facility.

(e) Each license fee shall include the cost for the department's initial sample collection and initial laboratory test. Each primary licensee shall pay a subsequent sampling fee of \$45 per hour, plus transportation time and mileage for representatives of the department, for each of the following:

(1) The department collects a subsequent sample.

(2) The primary licensee requests that the department collect a subsequent pre-harvest sample.

(3) The primary licensee requests that the department collect a subsequent post-harvest sample.

(4) More than one harvest occurs in the same research area in a license year.

(f) Each primary licensee shall pay a testing fee of \$250 for every laboratory test determining the delta-9 tetrahydrocannabinol concentration for each of the following:

(1) The department collects a subsequent sample.

(2) The primary licensee requests that the department collect a subsequent pre-harvest sample.

(3) The primary licensee requests that the department collect a subsequent post-harvest sample.

(4) The department collects more than one sample because more than one harvest occurs in the same research area in a license year.

(g) Each primary licensee shall pay a modification fee of \$750 for each requested change to a license that was previously issued by the department. (Authorized by K.S.A. 2018 Supp. 2-3902; implementing K.S.A. 2018 Supp. 2-3902 and 2-3903; effective Feb. 8, 2019.)

**4-34-13. Modification of license.** (a) Each primary licensee who wants to modify that individual's license or the license of any individual listed on the research license application shall submit a modification request form and the required fee, except as specified in paragraph (d) (2), to the department.

(b) Each licensee shall comply with the requirements of the original license, unless the department modifies the license in writing.

(c) Any primary licensee may request multiple license modifications by submitting one modification request form, but separate fees shall be required for each requested change.

(d)(1) If a primary licensee dies, any licensee who was listed on the research license application and was issued a license may request that the department modify the license to name the requesting individual as the primary licensee. This request may be granted by the department if the requesting individual performs the following:

(A) Notifies the department of the primary licensee's death within 15 business days;

(B) submits a license modification request form to the department within 45 days of the primary licensee's death;

(C) submits a copy of the primary licensee's death certificate to the department within 45 days of that individual's death; and

(D) meets the requirements in K.A.R. 4-34-5 and, if applicable, the requirements of K.A.R. 4-34-6, K.A.R. 4-34-7, K.A.R. 4-34-8, and K.A.R. 4-34-9.

(2) A modification fee to name the requesting individual as the new primary licensee shall not be charged by the department, except for modification requests received more than 45 days after the death of the primary licensee, which shall require a modification request form and modification fee unless the department extends the 45-day time period in writing.

If any other modification request is included, that modification request shall be subject to the modification fee specified in K.A.R. 4-34-12.

(e) A license modification shall be approved by the secretary if the request is appropriate and consistent with the licensee's approved research proposal and meets the requirements of this regulation. If the secretary denies the requested modification, no refund of the modification fee shall be provided, and the licensee shall comply with the terms and conditions of the existing license. (Authorized by K.S.A. 2018 Supp. 2-3902; implementing K.S.A. 2018 Supp. 2-3902 and 2-3903; effective Feb. 8, 2019.)

**4-34-14. Land-use restrictions.** (a) A licensee shall not cultivate, plant, grow, handle, harvest, condition, store, distribute, transport, or process any plants, plant parts, grain, or seeds of the genus *cannabis* that are not industrial hemp.

(b) A licensee shall not cultivate, plant, grow, handle, harvest, condition, store, distribute, or process industrial hemp plants, plant parts, grain, or seeds at any location not included on the licensee's license.

(c)(1) A licensee shall not cultivate, plant, grow, handle, harvest, condition, store, distribute, or process industrial hemp plants, plant parts, grain, or seeds as follows, except with the secretary's written permission:

(A) In or within 50 feet of a residential structure; or

(B) within one-quarter mile of any public or private K-12 school or public recreational area.

(2) For licensed research sections consisting of any outdoor locations, one-quarter mile shall be calculated from any field boundary of any research area, and for licensed research sections consisting of any indoor locations or a greenhouse, one-quarter mile shall be calculated from any exterior wall.

(d) A licensee shall not interplant, cultivate, plant, or grow any crop other than industrial hemp plants, plant parts, grain, or seeds in any research area, except that any state educational institution licensee may do so upon authorization by the secretary. A licensee shall not cultivate, plant, grow, harvest, or condition more than one approved variety of industrial hemp in a research area without the secretary's written approval.

(e) A licensee shall not cultivate, plant, grow, handle, harvest, condition, store, distribute, transport, or process industrial hemp plants, plant parts, grain, or seeds on property owned by any individual whose license was revoked by the department or who was denied admission to participate in the pilot program.

(f) Each primary licensee shall post and maintain at least one sign at each research area listed on the license. A sign shall be posted along each research area boundary adjacent to a public road, except that if the research area is adjacent to an intersection of two or more public roads, a sign shall be posted at the intersection. If a research area is not adjacent to any public road, a sign shall be posted at the point of access to the research area. Each sign shall measure at least 36 inches per side, shall be clearly visible and legible from the adjacent public road, intersection of public roads or access point, and shall include the following information:

(1) The following text: "Kansas Department of Agriculture Industrial Hemp Research Program";

(2) the primary licensee's name;

- (3) the primary licensee's license number; and
- (4) the department's telephone number.

(g) Each licensee shall allow the department to inspect unlicensed growing areas for volunteer plants. The primary licensee or a licensee listed on the primary licensee's research license application shall destroy any volunteer plants for at least three years after the last reported date of planting. (Authorized by and implementing K.S.A. 2018 Supp. 2-3902; effective Feb. 8, 2019.)

**4-34-15. Movement of industrial hemp; restrictions on sale or transfer of industrial hemp; compliance with applicable law.** (a) The movement of all industrial hemp plants, plant parts, grain, or seeds into, out of, or within Kansas shall be at the licensee's expense and risk.

(b) A licensee shall not sell or transfer industrial hemp plants, plant parts, grain, or seeds to any individual or business entity outside Kansas who is not authorized by an institution of higher education or a state department of agriculture under 7 U.S.C. 5940, as amended, and the laws of that state. A licensee shall not purchase or receive industrial hemp plants, plant parts, grain, or seeds from an individual or business entity or permit any transfer of industrial hemp plants, plant parts, grain, or seeds to or from any individual or business entity outside Kansas who is not authorized by an institution of higher education or a state department of agriculture under 7 U.S.C. 5940, as amended, and the laws of that state. Each licensee shall ensure that any sale or transfer of industrial hemp plants, plant parts, grain, or seeds is lawful in the state in which the transaction is undertaken.

(c) Each licensee shall comply with all local, state, and federal laws and regulations related to industrial hemp and with the act and the implementing regulations.

(d) Each licensee shall be responsible for any loss or obligation that the licensee incurs as a result of the licensee's involvement in the pilot program. (Authorized by and implementing K.S.A. 2018 Supp. 2-3902; effective Feb. 8, 2019.)

**4-34-16. Voluntary withdrawal; voluntary partial destruction.** (a) Any licensee may voluntarily withdraw from the pilot program after providing the department with written notice of the intent to do so. Notice shall be provided at least 30 days before the intended withdrawal date, except with prior written approval from the department. If a licensee listed on a primary licensee's research

license application withdraws from the pilot program, the primary licensee shall modify each license as specified in K.A.R. 4-34-13.

(b) If a primary licensee voluntarily withdraws from the pilot program, all industrial hemp plants, plant parts, grain, or seeds being cultivated, planted, grown, handled, harvested, conditioned, stored, distributed, transported, or processed pursuant to the licensee's license shall be destroyed and all licenses issued pursuant to the research license application shall be surrendered. Each primary licensee who voluntarily withdraws from the pilot program shall provide the department at least 15 days' notice of the date and time the primary licensee intends to destroy the industrial hemp plants, plant parts, grain, or seeds pursuant to that individual's license and shall notify the department of any change in the destruction date or time.

(c) If a primary licensee notifies the department of the intent to withdraw from the pilot program but fails to destroy all industrial hemp plants, plant parts, grain, or seeds being cultivated, planted, grown, handled, harvested, conditioned, stored, distributed, transported, or processed pursuant to that individual's license within 15 days of the intended destruction date, the license of the primary licensee and each license issued pursuant to the research license application may be revoked and all industrial hemp plants, plant parts, grain, or seeds being cultivated, planted, grown, handled, harvested, conditioned, stored, distributed, transported, or processed as part of the primary licensee's research shall be destroyed at the primary licensee's expense.

(d) Any primary licensee conducting research pursuant to a research grower license may voluntarily destroy any industrial hemp plants being cultivated, planted, or grown in a portion of any research area without withdrawing from the pilot program. Each primary licensee conducting research pursuant to a research grower license who intends to destroy the industrial hemp plants being cultivated, planted, or grown in any research area listed on that individual's license shall provide the department at least 15 days' notice of the date and time of destruction and shall notify the department of any change in the destruction date or time.

(e) Each primary licensee that has been issued a failing report of analysis shall comply with the destruction requirements in K.A.R. 4-34-18 and K.A.R. 4-34-19, as applicable.

(f) Representatives of the department or law enforcement may be present during any destruction of industrial hemp plants, plant parts, grain, or seeds, or proof of the destruction may be required by the department.

(g) Each primary licensee who destroys any industrial hemp plants being cultivated, planted, grown, handled, harvested, conditioned, stored, distributed, transported, or processed pursuant to that individual's license shall, within 15 days after the destruction, notify the department in writing of the number of acres of industrial hemp plants, plant parts, grain, or seeds that were planted in each research area and the number of acres destroyed in each research area.

(h) Upon destruction of any industrial hemp plants, plant parts, grain, or seeds, all volunteer plants shall also be destroyed during the current license year and for at least three years after the last date of planting reported to the department.

(i) Voluntary destruction of industrial hemp plants, plant parts, grain, or seeds shall be performed by a licensee listed on the research license application of the primary licensee and shall be at the primary licensee's expense. If the destruction of industrial hemp plants, plant parts, grain, or seeds occurs, the licensee shall not be eligible for a refund of any fees paid by a primary licensee. (Authorized by and implementing K.S.A. 2018 Supp. 2-3902; effective Feb. 8, 2019.)

**4-34-17. Pre-harvest and harvest requirements; harvest certificates.** (a) Each primary licensee shall notify the department of every intended harvest date in a pre-harvest report at least 30 days before each intended harvest date. Each primary licensee shall immediately notify the department regarding a change to any date previously reported to the department if the change to the harvest date is five or more days. Additional sampling and testing may be required by the department as a result of any change to the harvest date of five or more days.

(b) If two or more harvests will be conducted from the same research area within a license year, the primary licensee shall notify the department of each intended harvest date at least 30 days before each intended harvest date. The primary licensee shall pay a subsequent sampling fee and testing fee for each harvest conducted after the initial harvest of a research area.

(c) No more than 15 days before any industrial hemp plants, plant parts, grain, or seeds are cut,

picked, collected, or otherwise harvested, each licensee shall allow a sample to be collected by the department for testing as specified in K.A.R. 4-34-18. The initial pre-harvest sample shall not require an additional sampling fee or testing fee.

(d) Before harvesting any industrial hemp plants, plant parts, grain, or seeds, the licensee shall be required to receive a passing report of analysis from the department. After issuance of a passing report of analysis from the department, the licensee shall have 10 days to fully harvest the industrial hemp plants, plant parts, grain, or seeds, unless otherwise authorized in writing by the secretary.

(e) If a licensee fails to fully harvest the industrial hemp plants, plant parts, grain, or seeds within 10 days after issuance of the passing report of analysis, the primary licensee shall perform one of the following:

(1) Notify the department within seven days after the expiration of the 10-day harvest period of the intended second harvest date, request that the department collect a subsequent pre-harvest sample, and pay the required sampling and testing fees; or

(2) notify the department within seven days after the expiration of the 10-day harvest period of the intended date by which the licensee shall destroy the industrial hemp plants, plant parts, grain, or seeds. The primary licensee shall notify the department of any change in the destruction date.

Destruction of industrial hemp plants, plant parts, grain, or seeds shall occur by an individual listed on the primary licensee's research license application and at the primary licensee's expense. All volunteer plants shall be destroyed during the current license year and for at least three years after the last reported date of planting. If destruction of industrial hemp plants, plant parts, grain, or seeds occurs, no refund shall be issued for any fees paid by a primary licensee.

(f) No more than five days after the harvest of industrial hemp plants, plant parts, grain, or seeds is completed, the primary licensee shall notify the department that the harvest has been completed and request issuance of a harvest certificate. A harvest certificate shall not be issued by the department until the following information is provided for inclusion in the harvest certificate:

(1) The official name of the industrial hemp variety that was cultivated, planted, or grown;

(2) each date on which the licensee harvested the industrial hemp plants, plant parts, grain, or seeds;

(3) the global positioning system coordinates for each research area where the industrial hemp plants, plant parts, grain, or seeds were harvested; and

(4) a statement of intended end-use for all industrial hemp plants, plant parts, grain, or seeds that were harvested. (Authorized by and implementing K.S.A. 2018 Supp. 2-3902; effective Feb. 8, 2019.)

**4-34-18. Pre-harvest inspection; sample collection; testing and post-testing actions.**

(a) A licensee, whether present or not, shall permit representatives of the department complete, unrestricted, and immediate access to all industrial hemp plants, plant parts, grain, and seeds and all locations, buildings, and motor vehicles listed on the license. Access shall be granted at reasonable times, without interference or obstruction, with or without cause, and with or without advance notice.

(b) Any primary licensee may request collection of a sample from each research area listed on the license. Each sample collected shall be subject to the sampling and testing fees required by K.A.R. 4-34-12.

(c) Based on the results of the testing, one of the following shall apply:

(1) A sample containing a delta-9 tetrahydrocannabinol concentration of 0.3 percent or less on a dry-weight basis shall result in the issuance of a passing report of analysis and shall list each research area from which the sample was taken.

(2) A sample containing a delta-9 tetrahydrocannabinol concentration of higher than 0.3 percent on a dry-weight basis shall result in the issuance of a failing report of analysis and shall list each research area from which the sample was taken.

(A) Within seven days of issuance of a failing report of analysis, the primary licensee may request that the department either collect a subsequent pre-harvest sample or destroy all plants, plant parts, grain, or seeds located in each research area sampled and identified on the failing report of analysis.

(B) A subsequent pre-harvest sample requested by the primary licensee and found to contain a delta-9 tetrahydrocannabinol concentration of higher than 0.3 percent on a dry-weight basis shall result in the issuance of a failing report of analysis. Within seven days of issuance of the failing report of analysis, a licensee listed on the primary licensee's research license application shall destroy all

plants, plant parts, grain, or seeds that are located in each research area that was sampled and identified in the failing report of analysis.

(C) If any sample is found to contain a delta-9 tetrahydrocannabinol concentration of higher than 0.3 percent on a dry-weight basis, the testing results and the location of each sampled research area may be referred to the Kansas bureau of investigation and other appropriate law enforcement agencies for further investigation.

(D) If any sample is found to contain a delta-9 tetrahydrocannabinol concentration of 2.0 percent or higher on a dry-weight basis, the testing results and the location of each sampled research area shall be referred to the Kansas bureau of investigation and other appropriate law enforcement agencies for further investigation.

(d) Destruction of industrial hemp plants, plant parts, grain, or seeds shall occur by a licensee listed on the primary licensee's research license application and at the primary licensee's expense. All volunteer plants shall be destroyed during the current license year and for at least three years after the last reported date of planting. Each licensee shall allow representatives of the department or law enforcement to be present during the destruction of industrial hemp plants, plant parts, grain, or seeds, or proof of destruction may be required by the department. If the destruction of industrial hemp plants, plant parts, grain, or seeds is required, the primary licensee shall not be eligible for a refund of any fees paid.

(e) All samples collected by the department shall become the property of the department, and no compensation shall be owed to the licensee. (Authorized by and implementing K.S.A. 2018 Supp. 2-3902; effective Feb. 8, 2019.)

**4-34-19. Post-harvest inspection; sample collection; testing and post-testing actions.**

(a) Each licensee shall allow the department to inspect and sample industrial hemp plants, plant parts, grain, or seeds any time after the industrial hemp plants, plant parts, grain, or seeds have been harvested. The initial post-harvest sample shall not require an additional sampling fee or testing fee.

(b) A licensee, whether present or not, shall permit representatives of the department complete, unrestricted, and immediate access to all industrial hemp plants, plant parts, grain, and seeds and all locations, buildings, and motor vehicles listed on the license. Access shall be granted at reasonable times, without interference or ob-

struction, with or without cause, and with or without advance notice.

(c) Any primary licensee may request collection of a sample from each research area listed on the license. Each sample collected shall be subject to the sampling and testing fees required by K.A.R. 4-34-12.

(d) Based on the results of the testing, one of the following shall apply:

(1) A sample containing a delta-9 tetrahydrocannabinol concentration of 0.3 percent or less on a dry-weight basis shall result in the issuance of a passing report of analysis and shall list each research area from which the sample was taken. Each passing report of analysis shall identify the harvest certificate or bill of lading that accompanied the industrial hemp plants, plant parts, grain, or seeds sampled.

(2) A sample containing a delta-9 tetrahydrocannabinol concentration of higher than 0.3 percent on a dry-weight basis shall result in the issuance of a failing report of analysis and shall list each research area from which the sample was taken.

(A) Within seven days of issuance of a failing report of analysis, the primary licensee may request that the department either collect a subsequent post-harvest sample or destroy all plants, plant parts, grain, or seeds located in each research area that was sampled and identified on the failing report of analysis.

(B) A subsequent post-harvest sample requested by the primary licensee and found to contain a delta-9 tetrahydrocannabinol concentration of higher than 0.3 percent on a dry-weight basis shall result in the issuance of a failing report of analysis. Within seven days of issuance of the failing report of analysis, a licensee listed on the primary licensee's research license application shall destroy all plants, plant parts, grain, or seeds that are located in each research area that was sampled and identified in the failing report of analysis.

(C) If any sample is found to contain a delta-9 tetrahydrocannabinol concentration of higher than 0.3 percent on a dry-weight basis, the testing results and the location of each sampled research area may be referred to the Kansas bureau of investigation and other appropriate law enforcement agencies for further investigation.

(D) If any sample is found to contain a delta-9 tetrahydrocannabinol concentration of 2.0 percent or higher on a dry-weight basis, the testing results and the location of each sampled research area shall be referred to the Kansas bureau of

investigation and other appropriate law enforcement agencies for further investigation.

(e) After the collection of a sample, no licensee shall handle, condition, distribute, transport, or process the sampled industrial hemp plants, plant parts, grain, or seeds until the primary licensee is issued a passing report of analysis. The sampled industrial hemp plants, plant parts, grain, or seeds shall not be processed, exchanged for value, or otherwise allowed to come into the possession of anyone other than a licensee listed on the primary licensee's research license application until a passing report of analysis is issued.

(f) Destruction of industrial hemp plants, plant parts, grain, or seeds shall occur by a licensee listed on the primary licensee's research license application at the primary licensee's expense. All volunteer plants shall be destroyed during the current license year and for at least three years after the last reported date of planting. Each licensee shall allow representatives of the department or law enforcement to be present during the destruction of industrial hemp plants, plant parts, grain, or seeds, or proof of the destruction may be required by the department. If the destruction of industrial hemp plants, plant parts, grain, or seeds occurs, the primary licensee shall not be eligible for a refund of any fees paid.

(g) All samples collected by the department shall become the property of the department, and no compensation shall be owed to the licensee. (Authorized by and implementing K.S.A. 2018 Supp. 2-3902; effective Feb. 8, 2019.)

**4-34-20. Reports.** (a) Each report required by the department shall be submitted on a form provided by the department. Each licensee shall submit the complete, accurate, and legible reports on or before the date required.

(b) A primary licensee on a research grower license shall submit a field planting report to the department within 15 days after every planting, including replanting seeds or propagules or establishing plants. Each field planting report shall identify the following for each research area:

(1) The official name of the industrial hemp variety that was cultivated, planted, or grown;

(2) the global positioning system coordinates for each research area where industrial hemp plants, plant parts, grain, or seeds are being cultivated, planted, or grown; and

(3) a statement of intended end-use for all industrial hemp plants, plant parts, grain, or seeds

being cultivated, planted, or grown in each research area.

(c) Each primary licensee on a research grower license shall submit a voluntary withdrawal report if either of the following conditions is met:

(1) Industrial hemp plants, plant parts, grain, or seeds are not cultivated, planted, or grown in a research area. The report shall be due no later than June 1.

(2) Industrial hemp plants being grown in a portion of any research area are voluntarily destroyed as specified in K.A.R. 4-34-16. The report shall be due no later than 15 days after the industrial hemp plants are destroyed.

(d) Each primary licensee on a research grower license shall submit a pre-harvest report to the department at least 30 days before every intended harvest date, for each licensed research section. The pre-harvest report shall include the following:

(1) The number of acres planted in each research area;

(2) the intended harvest date for each research area; and

(3) a statement of intended end-use for all industrial hemp plants, plant parts, grain, or seeds that will be harvested from each research area.

(e) Each primary licensee on a research grower license shall submit a production report to the department within 30 days after the last harvest date for every harvest. Each production report shall include the following, at a minimum:

(1) The amount of industrial hemp plants, plant parts, grain, or seeds harvested from each research area, which shall be provided as follows:

(A) If the industrial hemp crop was cultivated, planted, or grown for the production of fiber, the number of bales and the size and shape of the bales;

(B) if the industrial hemp crop was cultivated, planted, or grown for the production of grain or seed, the quantity by weight;

(C) if the industrial hemp crop was cultivated, planted, or grown for the production of floral material, the quantity by weight; and

(D) if the industrial hemp crop was cultivated, planted, or grown for the production of more than one end-use, the information for each end-use as required by this regulation;

(2) the name, address, and, if applicable, the license number of the primary licensee on the research distributor license or an out-of-state individual or business entity that is authorized by an institution of higher education or a state de-

partment of agriculture under 7 U.S.C. 5940, as amended, and the laws of the state that transported any industrial hemp plants, plant parts, grain, or seeds that were harvested; and

(3) the name, address, and, if applicable, the license number of the primary licensee on the research processor license or an out-of-state individual or business entity that is authorized by an institution of higher education or a state department of agriculture under 7 U.S.C. 5940, as amended, and the laws of the state that received the industrial hemp plants, plant parts, or grain for processing.

(f) Each primary licensee on a research distributor license shall annually submit a completed distribution report to the department no later than November 30. Each distribution report shall include the following, at a minimum:

(1) The amount of industrial hemp plants, plant parts, grain, or seeds distributed in each load, which shall be provided as follows:

(A) If the industrial hemp crop was cultivated, planted, or grown for the production of fiber and was distributed, the number of bales and the size and shape of the bales;

(B) if the industrial hemp crop was cultivated, planted, or grown for the production of grain or seed and was distributed, the quantity by weight;

(C) if the industrial hemp crop was cultivated, planted, or grown for the production of floral material and was distributed, the quantity by weight; and

(D) if the industrial hemp crop was cultivated, planted, or grown for the production of more than one end-use and was distributed, the information for each end-use as required by this regulation;

(2) the name, address, and, if applicable, the license number of the primary licensee on the research grower license or an out-of-state individual or business entity that is authorized by an institution of higher education or a state department of agriculture under 7 U.S.C. 5940, as amended, and the laws of the state that cultivated, planted, grew, handled, harvested, conditioned, stored, distributed, or transported any industrial hemp plants, plant parts, grain, or seeds that the licensee distributed or transported;

(3) the name, address, and, if applicable, the license number of the primary licensee on the research processor license or an out-of-state individual or business entity that is authorized by an institution of higher education or a state department of agriculture under 7 U.S.C. 5940, as amended, and the laws of the state that pro-

cessed each load of industrial hemp plants, plant parts, or grain that the licensee distributed or transported; and

(4) the amount of industrial hemp plants, plant parts, grain, or seeds that was sold during the current license year.

(g) Each primary licensee on a research processor license shall annually submit a completed processing report no later than November 30. Each processing report shall include the following, at a minimum:

(1) The amount of industrial hemp plants, plant parts, or grain processed by the licensee, which shall be provided as follows:

(A) If the industrial hemp crop was cultivated, planted, or grown for the production of fiber and was processed, the number of bales and the size and shape of the bales;

(B) if the industrial hemp crop was cultivated, planted, or grown for the production of grain or seed and was processed, the quantity by weight;

(C) if the industrial hemp crop was cultivated, planted, or grown for the production of floral material and was processed, the quantity by weight; and

(D) if the industrial hemp crop was cultivated, planted, or grown for the production of more than one end-use and was processed, the information for each end-use as required by this regulation;

(2) the name, address, and, if applicable, the license number of the primary licensee on the research grower license or an out-of-state individual or business entity that is authorized by an institution of higher education or a state department of agriculture under 7 U.S.C. 5940, as amended, and the laws of the state that cultivated, planted, grew, handled, harvested, conditioned, stored, distributed, or transported any industrial hemp plants, plant parts, or grain that the licensee processed; and

(3) the name, address, and, if applicable, the license number of the primary licensee on the research distributor license or an out-of-state individual or business entity that is authorized by an institution of higher education or a state department of agriculture under 7 U.S.C. 5940, as amended, and the laws of the state that distributed or transported any of industrial hemp plants, plant parts, or grain that the licensee processed.

(h) On and after January 1, 2019, each primary licensee shall prepare and submit a research report to the department no later than November 30 each year. Each research report shall include the following, at a minimum:

(1) A summary of the research conducted;

(2) a description of the methods and materials used in conducting the research;

(3) the results of the research; and

(4) an analysis of the results.

(i) All research conducted and all reports submitted to the department as part of the pilot program shall become the property of the department, and no compensation shall be due from the department to any licensee. (Authorized by and implementing K.S.A. 2018 Supp. 2-3902; effective Feb. 8, 2019.)

**4-34-21. Violations; disciplinary sanctions.** (a) Each of the following acts and omissions shall constitute a violation for which disciplinary sanctions, including revocation of any license and denial of future applications, may be imposed by the department:

(1) Failure to cooperate with the department and law enforcement agencies in administration and enforcement of the act, and amendments thereto, and the implementing regulations;

(2) failure to provide any information relating to the administration of the pilot program that the department requests;

(3) providing false, misleading, or incorrect information relating to the licensee's participation in the pilot program to the department;

(4) failure to submit any forms or reports as required;

(5) cultivating, planting, growing, or otherwise possessing plants of the genus cannabis with a delta-9 tetrahydrocannabinol concentration greater than 0.3 percent on a dry-weight basis;

(6) failure to pay any fees assessed by the department;

(7) submitting a pre-harvest report or destruction report and harvesting or destroying industrial hemp plants, plant parts, grain, or seeds before sampling by the department;

(8) harvesting any industrial hemp plants, plant parts, grain, seeds without being issued a passing report of analysis;

(9) failure to destroy any industrial hemp plants, plant parts, grain, seeds, volunteer plants, or plants of the genus cannabis with a delta-9 tetrahydrocannabinol concentration greater than 0.3 percent on a dry-weight basis as required by this article of the department's regulations;

(10) harvesting any industrial hemp plants, plant parts, grain, or seeds after being issued a failing report of analysis; and

(11) any other violation of the act, and amendments thereto, or the implementing regulations.

(b) If a licensee cultivates, plants, grows, handles, harvests, conditions, stores, distributes, transports, or processes any industrial hemp plants, plant parts, grain, or seeds as part of the pilot program at any location not listed on the license, the industrial hemp plants, plant parts, grain, or seeds at that location shall be destroyed by any licensee that received a license issued pursuant to the primary licensee's research license application. The destruction shall be at the primary licensee's expense, and any license may be revoked.

(c)(1) Each licensee whose license is revoked shall destroy any industrial hemp plants, plant parts, grain, or seeds in that individual's possession at that individual's own expense, no more than 15 business days after the department directs the individual to do so. The licensee shall not be eligible to reapply or otherwise participate in the pilot program for at least five years from the date of revocation. If a primary licensee's research license is revoked, all industrial hemp plants, plant parts, grain, or seeds that are subject to the primary licensee's license shall be destroyed by a licensee listed on the research license application and at the primary licensee's expense.

(2) Each licensee that will destroy industrial hemp plants, plant parts, grain, or seeds pursuant to paragraph (c)(1) shall notify the department of the date and time of destruction within five days of issuance of the notification that destruction is required. Each licensee shall notify the department of any change in the destruction date or time. Additional sampling and testing may be required by the department for a change of five or more days. Representatives of the department or law enforcement may be present during the destruction, or proof of the destruction may be required by the department.

(3) All volunteer plants shall be destroyed during the current license year and for at least three years after the last reported date of planting.

(4) No refund shall be issued for any fees paid by the primary licensee.

(d) If a licensee violates any provision of the act, and amendments thereto, or the implementing regulations, any license may be revoked, in whole or in part, by the secretary, as deemed appropriate.

(e) Any prior violations of the act, and amendments thereto, the implementing regulations or previous revocations of a license may be consid-

ered when reviewing new research license applications. (Authorized by and implementing K.S.A. 2018 Supp. 2-3902; effective Feb. 8, 2019.)

**4-34-22. License required to cultivate or produce industrial hemp for commercial purposes.** (a) K.A.R. 4-34-22 through 4-34-30 shall apply only to the commercial production of industrial hemp pursuant to K.S.A. 2-3901 et seq., and amendments thereto, and, unless otherwise stated, shall not apply to research conducted as part of the pilot program pursuant to K.S.A. 2-3902, and amendments thereto, and regulated by K.A.R. 4-34-2 through 4-34-21.

(b) No individual may cultivate or produce industrial hemp for commercial purposes without a license issued by the secretary. A license shall not be required for employees, agents, contractors, or volunteers of a licensee.

(c) Only individuals shall be eligible to apply for licenses to cultivate or produce industrial hemp.

(d) Each individual who applies for a license to cultivate or produce industrial hemp shall be required to submit to a fingerprint-based state and national criminal history record check to verify that the individual has not been convicted of a felony violation of K.S.A. 2019 Supp. 21-5701 et seq., and amendments thereto, or a substantially similar offense in another jurisdiction, within the 10 years immediately preceding submission of that individual's application.

(e)(1) Each individual submitting a license application shall submit the application on a form provided by the secretary, which shall include the following:

(A) The individual's full legal name and date of birth;

(B) the individual's current mailing address, telephone number, and electronic-mail address;

(C) the legal description and global positioning system coordinates of the entrance to the proposed licensed growing area and the entrance to each lot that will be used to cultivate or produce industrial hemp and a map of the proposed licensed growing area and each lot;

(D) the total number of acres or square feet that will be used to cultivate or produce industrial hemp;

(E) the number of acres or square feet that will be used to cultivate or produce industrial hemp in each lot;

(F) the variety of industrial hemp to be cultivated or produced in each lot;

(G) a completed fingerprint card for submission to the Kansas bureau of investigation; and

(H) any other relevant information requested by the secretary.

(2) Each individual submitting a license application shall include with the application a \$100 application fee and the fee established by the Kansas bureau of investigation for performing a state and national criminal history record check. A single criminal history record check conducted in accordance with the act may be used to satisfy the act's criminal history record check requirement for multiple licenses in a single license year.

(f) All license applications shall be submitted no later than March 15 of each year in which an applicant intends to grow industrial hemp. Any individual who submits a license application after March 15, 2020 may be granted a license if good cause is shown and the secretary determines that granting the license is necessary to assist with the transition from the pilot program to the commercial industrial hemp program during 2020.

(g) Each license shall allow the cultivation and production of industrial hemp within one licensed growing area.

(h) Upon approval of a license application by the secretary, the applicant shall submit a license fee of \$1,200 to the secretary within 15 days of notice of the approval.

(i) All licenses shall expire annually on December 31.

(j) In addition to providing the department with the information required by this regulation, each individual who is issued a license shall report the following directly to the United States department of agriculture farm service agency for each license:

(1) The street address and, to the extent practicable, the global positioning system coordinates for each growing area and for each lot or greenhouse where industrial hemp will be produced;

(2) the number of acres that will be used to cultivate or produce industrial hemp;

(3) the assigned license number; and

(4) any other information required by the United States department of agriculture.

(k) Acceptance of a license shall constitute a grant of authority by each licensee allowing the secretary to supply information to the United States department of agriculture and post information on the department's web site, including the industrial hemp producer license number, the full legal name of the licensee, the licensee's con-

tact information, descriptions of all locations identified for cultivating or producing industrial hemp, and any information related to modifications to ensure that the information remains accurate.

(l) Each licensee shall be held responsible for any plant cultivated or produced in violation of the act and for the actions of all employees, agents, contractors, and volunteers engaged in the cultivation or production of industrial hemp under the supervision or direction of, or otherwise in conjunction with, the licensee. Each licensee shall be subject to the same disciplinary actions for a violation of the act committed by any employee, agent, contractor, or volunteer of that licensee as if the licensee had committed the violation.

(m) Each licensee requesting a license modification after issuance of a license shall submit the modification request to the secretary on a form provided by the secretary. Each modification request form shall be accompanied by a \$50 fee. Upon the secretary's review and approval of the modification request, a modified license shall be issued and may include any additional terms and conditions that the secretary deems necessary to implement the requested modification and to protect the public health, safety, and welfare. If the secretary denies the modification request, the licensee shall remain subject to the terms of the original license.

(n) Each license shall be nontransferable, unless the secretary determines that a transfer is necessary because the licensee dies or becomes disabled or because an individual who is an employee or agent of a bank, financial institution, or other creditor that has a legal right to take possession of industrial hemp for the purposes of settling a debt is required to obtain a license to do so. A license that is transferable may be transferred to the individual requesting the transfer upon that individual's submission of a modification request, a \$50 modification fee, the fee established by the Kansas bureau of investigation for performing a state and national criminal history record check, and satisfactory completion of a fingerprint-based state and national criminal history record check. A modification request shall be submitted within 60 days of the licensee's death or within 60 days of the date that the right of the bank, financial institution, or other creditor to take possession of the industrial hemp arises. If a modification request is not submitted within the time frame required by this regulation, all industrial hemp being cultivated or produced pursuant to the license shall be

subject to an order to be destroyed. The individual applying for the transfer shall assume the full liability for all of the previous licensee's actions related to the cultivation or production of hemp.

(o) Each individual who materially falsifies any information in a license application or modification request shall be ineligible to receive a license to cultivate or produce industrial hemp pursuant to the act. (Authorized by K.S.A. 2019 Supp. 2-3906; implementing K.S.A. 2019 Supp. 2-3903 and 2-3906; effective Jan. 8, 2021.)

**4-34-23. Planting and pre-harvest requirements.** (a) All industrial hemp cultivated or produced shall have originated from authorized seed or clone plants.

(b) Each licensee shall maintain written certification for all authorized seed or clone plants cultivated or produced, which shall consist of either of the following:

(1) A certificate of analysis, or a similar document, stating that the source of the authorized seed or clone plants was cultivated or produced with a delta-9 tetrahydrocannabinol concentration less than 0.3 percent on a dry-weight basis during the most recent growing season; or

(2) documentation that the authorized seed or clone plants are certified pursuant to K.S.A. 2-1415 et seq., and amendments thereto.

(c) All industrial hemp seed shall be considered agricultural seed. Before selling agricultural seed in Kansas, each individual shall obtain a license pursuant to K.S.A. 2-1415 et seq., and amendments thereto.

(d) Each licensee shall submit a planting report to the department within 15 days after each planting, including replanting seeds or propagules or establishing plants. Each planting report shall identify the following:

(1) The official name of the industrial hemp variety that was cultivated or produced in each lot;

(2) the global positioning system coordinates for the licensed growing area and each lot where industrial hemp plants, plant parts, grain, or seeds are being cultivated or produced;

(3) the total number of acres planted in the licensed growing area;

(4) the number of acres planted in each lot; and

(5) a statement of the intended end-use for all industrial hemp plants, plant parts, grain, or seeds being cultivated or produced.

(e) Before harvesting industrial hemp, each licensee shall provide the secretary at least 30

days' notice of the intended harvest date on a form provided by the secretary and, if the harvest does not begin on that date, shall provide an updated notice of the anticipated harvest date before harvesting any industrial hemp. Failure to provide notice of the harvest may result in the revocation of an existing hemp producer license and the denial of future hemp producer licenses. Each pre-harvest report shall identify the following:

(1) The global positioning system coordinates of the entrance to the licensed growing area and each lot where industrial hemp plants are intended for harvest;

(2) the total number of acres planted in the licensed growing area subject to harvest;

(3) the number of acres planted in each lot subject to harvest;

(4) the planting date for each lot;

(5) the total number of acres intended for harvest in the licensed growing area, if different from the number of acres intended for harvest in the lot;

(6) the number of acres intended for harvest in each lot;

(7) the intended harvest date for each lot;

(8) the official name of the industrial hemp variety that is intended for harvest from each lot; and

(9) a statement of the intended end-use for all industrial hemp plants, plant parts, grain, or seeds that will be harvested from each lot.

(f) If two or more harvests will be conducted within a licensed growing area or lot within a license year, the licensee shall notify the department of each intended harvest date at least 30 days before the intended harvest date. The primary licensee shall pay the subsequent sampling fees and testing fees for each harvest conducted after the initial harvest of a lot.

(g) Each licensee shall maintain records regarding the source of all industrial hemp cultivated or produced and records regarding the disposition of all industrial hemp cultivated or produced for three years and shall present those records to the secretary upon request. (Authorized by and implementing K.S.A. 2019 Supp. 2-3906; effective Jan. 8, 2021.)

**4-34-24. Sampling, testing, and harvest requirements.** (a) No more than 15 days before any industrial hemp cultivated or produced pursuant to the act is harvested, each licensee shall allow a sample to be collected by the secretary for testing, using post-decarboxylation or any other similarly reliable method, to determine the

delta-9 tetrahydrocannabinol concentration of industrial hemp cultivated or produced. A licensee shall not harvest any industrial hemp before receiving notice that testing of the samples has shown a delta-9 tetrahydrocannabinol concentration of less than 0.3 percent on a dry-weight basis and that the licensee may harvest the industrial hemp.

(b) Each licensee shall complete each harvest of industrial hemp plants, plant parts, grain, or seeds within the time frame established by the passing report of analysis.

(c) If a licensee fails to harvest all of the industrial hemp plants, plant parts, grain, or seeds within the allotted time frame as indicated in subsection (b), the licensee shall perform one of the following:

(1) Notify the department within seven days after the expiration of the time frame, request that the department collect a subsequent pre-harvest sample, and pay the required sampling and testing fees; or

(2) notify the department within seven days after the expiration of the time frame by which the licensee shall voluntarily effectively dispose of the industrial hemp plants, plant parts, grain, or seeds. The licensee shall notify the department of any change in the effective disposal date. Effective disposal of industrial hemp plants, plant parts, grain, or seeds shall occur by the licensee and at the licensee's expense. All volunteer plants shall be effectively disposed of during the current license year and for at least three years after the last reported date of planting. If effective disposal of industrial hemp plants, plant parts, grain, or seeds occurs, no refund shall be issued for any fees paid by a licensee, the cost of effective disposal, or the value of the crop.

(d) Each licensee shall submit a harvest report to the department no more than 15 days after each harvest of industrial hemp plants, plant parts, grain, or seeds is completed for each lot. Each harvest report shall identify the following:

(1) The global positioning system coordinates of the entrance to the licensed growing area and each lot where industrial hemp plants were harvested;

(2) the total number of acres planted in the licensed growing area;

(3) the number of acres planted in each lot;

(4) the planting date for each lot;

(5) the total number of acres harvested from the licensed growing area;

(6) the number of acres harvested from each lot;

(7) the harvest date for each lot;

(8) the official name of the industrial hemp variety harvested from each lot; and

(9) a statement of intended end-use for all industrial hemp plants, plant parts, grain, or seeds harvested from each lot.

(e) Industrial hemp shall be subject to post-harvest sampling and testing by the secretary. Each licensee shall agree to provide the secretary access to any harvested industrial hemp or to provide the secretary with a copy of the bill of lading and, if available, a certificate of analysis or similar document provided for any industrial hemp already sold or transferred to another person. All samples collected by the secretary shall be subject to testing, using post-decarboxylation or any other similarly reliable method, of delta-9 tetrahydrocannabinol concentration of industrial hemp produced. A licensee whose industrial hemp is sampled after it is harvested shall not sell, transfer, or transport any industrial hemp harvested from the licensed growing area where samples were collected until that licensee has received notice from the department that testing of the samples has shown a delta-9 tetrahydrocannabinol content of less than 0.3 percent on a dry-weight basis.

(f) Each licensee shall be assessed a \$225 fee for the required pre-harvest sample collected and tested by the secretary.

(g) At any time other than at the time of the required pre-harvest sample collected and tested by the secretary, a licensee may request that the secretary collect a sample and test the delta-9 tetrahydrocannabinol concentration, subject to a testing fee of \$225 for each test and additional costs assessed for the secretary's travel time and mileage.

(h) All samples collected by the secretary shall become the property of the secretary, and no compensation shall be owed to any licensee.

(i) Any licensee may request a test from a private laboratory at any time. However, test results from private laboratories shall not be considered official and shall not be substituted for a sample collected and tested by the secretary, and each licensee shall be responsible for the costs of testing by a private laboratory.

(j) Each sample collected and tested by the secretary and found to contain a delta-9 tetrahydrocannabinol concentration greater than 0.3 percent on a dry-weight basis shall be deemed to have been cultivated or produced in violation of the act and shall result in a failing report of analysis.

(k) Within seven days of notice of the failing report of analysis, any licensee may request, on a form provided by the secretary, an additional test by the secretary. The request shall include payment of a retesting fee of \$225 and any additional costs assessed for the secretary's travel time and mileage. If a licensee requests an additional test and the sample collected and tested pursuant to this subsection is found to contain a delta-9 tetrahydrocannabinol concentration greater than 0.3 percent on a dry-weight basis, then all plants in the licensed growing area shall be effectively disposed of as required by K.A.R. 4-34-25.

(l) For each licensee who is issued an order to effectively dispose of plants, one of the following requirements shall apply:

(1) The licensee shall be subject to a corrective action plan as specified in K.A.R. 4-34-29 and reported to the appropriate state or local law enforcement agency if the violation is deemed negligent.

(2) The licensee shall be reported to the United States department of agriculture, the office of the Kansas attorney general, the office of the United States attorney for the district of Kansas, and the appropriate state or local law enforcement agency if the violation is the result of a culpable mental state greater than negligence. If any plants are tested by the secretary and found to contain a delta-9 tetrahydrocannabinol concentration of greater than 2.0 percent, the licensee responsible for those plants shall be presumed to have acted with a culpable mental state greater than negligence.

(m) Except as provided in K.A.R. 4-34-28, each licensee or an authorized representative of each licensee shall be present whenever the secretary collects a sample of industrial hemp cultivated or produced pursuant to the act and whenever a compliance inspection is conducted pursuant to this regulation. (Authorized by K.S.A. 2019 Supp. 2-3906; implementing K.S.A. 2019 Supp. 2-3903 and 2-3906; effective Jan. 8, 2021.)

#### **4-34-25. Effective disposal; violations.**

(a) Each plant or plant part deemed to be in violation of the act for any reason, including containing a delta-9 tetrahydrocannabinol concentration greater than 0.3 percent on a dry-weight basis shall, by order of the secretary, be subject to effective disposal.

(b) If required pursuant to federal law, all plants or plant parts that require effective disposal shall be destroyed or disposed of as required by the

controlled substances act, 21 U.S.C. 801 et seq., and in compliance with requirements of the United States drug enforcement agency.

(c) If allowed pursuant to federal law, each licensee shall conduct effective disposal at the licensee's expense within 10 days of notice. Each licensee shall effectively dispose of all volunteer plants within and adjacent to the licensed growing area during the current license year and for at least three years after the last date of planting. Each licensee shall allow representatives of the secretary to be present during the effective disposal of plants or plant parts, or proof of the effective disposal may be required by the secretary. Each licensee who conducts effective disposal shall, within 14 days of conducting the effective disposal, report the number of acres effectively disposed of to the department. A licensee who conducts effective disposal shall not be eligible for a refund of any fees paid, the cost of effective disposal, or the value of the crop.

(d) Each licensee whose plants are effectively disposed of shall be responsible for reimbursing any law enforcement agency whose officers or agents are required to participate in or be present during the effective disposal for all of the law enforcement agency's costs associated with the effective disposal.

(e) Failure of a licensee to conduct effective disposal as required by the secretary within 10 days shall result in the secretary's conducting effective disposal at the expense of the licensee, unless an extension is granted by the secretary.

(f) A licensee's failure to conduct effective disposal as required by the secretary, failure to reimburse the secretary for any costs incurred as a result of the secretary's conducting effective disposal, or failure to reimburse any law enforcement agency for any costs associated with effective disposal shall be grounds for denial of any future hemp producer license application.

(g) Each licensee who violates the act with a culpable mental state of negligence shall be subject to a corrective action plan as specified in K.A.R. 4-34-29 and reported to the appropriate state or local law enforcement agency. Each licensee who violates the act with a culpable mental state greater than negligence shall be reported to the United States attorney's office and the Kansas attorney general's office, in addition to the appropriate state or local law enforcement agency. (Authorized by and implementing K.S.A. 2019 Supp. 2-3906; effective Jan. 8, 2021.)

**4-34-26. Transportation of industrial hemp.** (a) Each licensee who sells, trades, barter, gives away, or otherwise transfers any unprocessed industrial hemp to any other person shall ensure that the unprocessed industrial hemp is accompanied by a signed bill of lading that includes the licensee's license number, the total quantity of industrial hemp transferred, the date the transfer occurred, and the name of the person acquiring the industrial hemp. A certificate of analysis or other similar document shall be attached to the bill of lading.

(b) Each person who sells, trades, barter, gives away, or otherwise transfers unprocessed industrial hemp subsequent to an initial transfer involving unprocessed industrial hemp as specified in subsection (a) shall record the transfer and shall amend the bill of lading or attach the information regarding the subsequent transfer to the original bill of lading and shall include the name of the person acquiring possession of the industrial hemp, the amount of industrial hemp transferred, and the date of the transfer. Any individual in possession of unprocessed industrial hemp plants, plant parts, grain, or seeds without a valid hemp producer's license or a bill of lading may be presumed to have unlawfully cultivated or produced hemp in violation of the act or gained possession of industrial hemp plants, plant parts, grain, or seeds that were cultivated or produced in violation of the act.

(c) Each licensee shall comply with all local, state, and federal laws and regulations related to the transportation of industrial hemp and with the act. (Authorized by and implementing K.S.A. 2019 Supp. 2-3906; effective Jan. 8, 2021.)

**4-34-27. Planting restrictions; signage requirements; volunteer plants.** (a) A licensee shall not cultivate, plant, grow, or harvest industrial hemp plants, plant parts, grain, or seeds at any location not included on the license.

(b) A licensee shall not cultivate, plant, grow, or harvest industrial hemp plants, plant parts, grain, or seeds in a residential structure, within 50 feet of a residential structure, or within one-quarter mile of any public or private K-12 school or public recreational area, except with the secretary's written permission.

(c) A licensee shall not interplant any other crop with industrial hemp, except that any state educational institution licensee may do so upon authorization by the secretary. This subsection shall

not prohibit the use of ground cover, but ground cover shall not be harvested.

(d) A licensee shall not interplant different varieties of industrial hemp within a lot.

(e) Harvested lots of industrial hemp plants shall not be commingled with other harvested lots or other material.

(f) Each licensee shall post and maintain at least one sign at each licensed growing area listed on the license. A sign shall be posted along each licensed growing area boundary adjacent to a public road, except that if the licensed growing area is adjacent to an intersection of two or more public roads, a sign shall be posted at the intersection. If a licensed growing area is not adjacent to any public road, a sign shall be posted at the point of access to the licensed growing area. Each sign shall measure at least 36 inches per side, shall be clearly visible and legible from the adjacent public road, intersection of public roads, or access point, and shall include the following information:

(1) The following text: "Kansas Department of Agriculture Industrial Hemp Program";

(2) the licensee's name;

(3) the licensee's license number; and

(4) the department's telephone number.

(g) Each licensee shall allow the secretary to inspect, for volunteer plants, ditches, fence lines, or other unmanaged land areas adjacent to any licensed growing area. Each licensee shall destroy any volunteer plants for at least three years after the last date of planting. (Authorized by and implementing K.S.A. 2019 Supp. 2-3906; effective Jan. 8, 2021.)

**4-34-28. Access to records and property.**

(a) Acceptance of a license shall constitute a grant of authority by each licensee allowing the secretary to inspect all records related to the cultivation or production of industrial hemp.

(b) Each licensee shall grant the secretary access to all land identified for the cultivation or production of industrial hemp for purposes of inspection to determine compliance with the act and the implementing regulations. In addition to pre-harvest sampling and testing of all industrial hemp plants being cultivated or produced pursuant to the act as specified in K.A.R. 4-34-24, in accordance with federal law, each licensee's premises and records related to the cultivation or production of industrial hemp shall be subject to annual inspection to ensure compliance with the act and the implementing regulations.

(c) Each licensee shall consent to the secretary's providing information to the United States department of agriculture, law enforcement, fire and rescue agencies, and the public regarding each licensed growing area. Additionally, each licensee shall consent to the secretary's providing information about any licensed growing area, including global positioning system coordinates, to representatives of the United States department of agriculture, Kansas bureau of investigation, United States drug enforcement agency, and other law enforcement agencies.

(d) Each licensed growing area and all adjacent areas shall be subject to inspection by the secretary. The secretary shall have complete, unrestricted, and immediate access to all industrial hemp plants, plant parts, grain, and seeds, whether growing or not, including access to all land, buildings, facilities, motor vehicles, and other structures used for industrial hemp-related activities. Access shall be granted at reasonable times, without interference or obstruction, with or without cause, and with or without advance notice. The secretary's right of access specified in this regulation shall include the unrestricted right to inspect or take samples of any industrial hemp plants, plant parts, grain, or seeds, whether growing or not, present at the location being accessed, as well as the right to inspect any reports or records pertaining to industrial hemp plants, plant parts, grain, or seeds. (Authorized by and implementing K.S.A. 2019 Supp. 2-3906; effective Jan. 8, 2021.)

**4-34-29. Negligent violations; corrective action plans.** (a) Negligent violations of the act may include failure to provide a legal description of land on which a licensee produces industrial hemp, producing plants with a delta-9 tetrahydrocannabinol concentration greater than 0.5 percent on a dry-weight basis, or producing plants with a delta-9 tetrahydrocannabinol concentration greater than 0.3 percent on a dry-weight basis if the licensee did not make reasonable efforts to cultivate or produce industrial hemp. It shall not be a negligent violation of the act if a licensee produces plants with a delta-9 tetrahydrocannabinol concentration of 0.5 percent or less on a dry-weight basis and the licensee has made reasonable efforts to cultivate or produce industrial hemp. Each licensee who negligently violates the act or the implementing regulations shall be required to follow a corrective action plan developed by the secretary.

(b) Upon the first negligent violation, each licensee shall meet the following requirements:

(1) Correct the violation within 10 days of notification of the violation by the secretary, including conducting effective disposal of the industrial hemp crop if so ordered;

(2) for the duration of the time period specified in the corrective action plan, which shall be at least two years, provide a report to the secretary as often as is required by the secretary regarding the status of the violation; and

(3) complete any other actions required by the secretary.

(c) Upon a second negligent violation within five years of a previous negligent violation, each licensee shall meet the following requirements:

(1) Correct the violation within 10 days of notification of the violation by the secretary, including the effective disposal of the industrial hemp crop if so ordered;

(2) for the duration of the time period specified in the corrective action plan, which shall be at least two years, provide a report to the secretary at least every 30 days, or as often as is required by the secretary, regarding the status of the violation; and

(3) complete any other actions required by the secretary.

(d) Upon a third negligent violation within five years of the first negligent violation, each licensee shall be ineligible to cultivate or produce industrial hemp for a period of five years beginning on the date of the third violation. Each license or registration held by the licensee shall be subject to immediate revocation, and all of the licensee's industrial hemp shall be subject to destruction, if so ordered. (Authorized by and implementing K.S.A. 2019 Supp. 2-3906; effective Jan. 8, 2021.)

**4-34-30. State educational institutions.**

(a) Each state educational institution shall obtain a license before cultivating or producing industrial hemp for research purposes.

(b) Each state educational institution shall be exempt from all application and licensing fees if the state educational institution's license application is accompanied by a written summary of the research to be performed, except as provided in subsection (f).

(c) Each state educational institution shall be subject to all other requirements applicable to a hemp producer, except that a state educational institution may request the waiver of any require-

ment in K.A.R. 4-34-1 through K.A.R. 4-34-30 by submitting a written request to the secretary that explains why the waiver of an existing regulation is necessary for the proposed research.

(d) In spite of subsection (c), a state educational institution shall not request a waiver of the fingerprint-based state and national criminal history record check or corrective action plan requirements.

(e) Each state educational institution seeking licensure shall designate an individual as the primary licensee for any license. The primary licensee shall be responsible for all employees, agents, students, and volunteers of the institution, and any activities that the institution undertakes, related to industrial hemp at the locations identified in each

application. The costs associated with fingerprinting and the required state and national criminal history record check shall be the responsibility of the individual designated as the primary licensee.

The head of a department of the state educational institution, or a similar person with supervisory authority, shall submit a written letter designating the responsible individual as the primary licensee along with the application.

(f) Upon written request, a state educational institution may be granted a multiyear license that is valid for up to five years for completion of a multiyear research project. (Authorized by and implementing K.S.A. 2019 Supp. 2-3906; effective Jan. 8, 2021.)



Agency 5  
**Kansas Department of Agriculture—  
Division of Water Resources**

*Articles*

- 5-1. DEFINITIONS.
- 5-3. APPROPRIATION RIGHTS.
- 5-4. DISTRIBUTION OF WATER BETWEEN USERS.
- 5-5. CHANGE IN THE PLACE OF USE, THE POINT OF DIVERSION OR THE USE MADE OF WATER UNDER AN EXISTING WATER RIGHT.
- 5-7. ABANDONMENT AND TERMINATION.
- 5-9. TEMPORARY PERMITS.
- 5-12. AQUIFER STORAGE AND RECOVERY.
- 5-14. ENFORCEMENT AND APPEALS.
- 5-16. FLEX ACCOUNT.
- 5-17. WATER BANKING.
- 5-20. INTENSIVE GROUNDWATER USE CONTROL AREA.
- 5-21. WESTERN KANSAS GROUNDWATER MANAGEMENT DISTRICT No. 1.
- 5-22. EQUUS BEDS GROUNDWATER MANAGEMENT DISTRICT No. 2.
- 5-23. SOUTHWEST KANSAS GROUNDWATER MANAGEMENT DISTRICT No. 3.
- 5-24. NORTHWEST KANSAS GROUNDWATER MANAGEMENT DISTRICT No. 4.
- 5-25. BIG BEND GROUNDWATER MANAGEMENT DISTRICT No. 5.

**Article 1.—DEFINITIONS**

**5-1-1. Definitions.** As used in these regulations and the Kansas water appropriation act and by the division of water resources in the administration of the Kansas water appropriation act, unless the context clearly requires otherwise, each of the following terms shall have the meaning specified in this regulation:

(a) “Above-baseflow stage” means streamflow that is in response to a significant runoff event during which period the water level elevation of the stream is greater than the elevation of the adjacent water table.

(b) “Acceptable quality surface water” means surface water that will not degrade the quality of the groundwater source into which the surface water is discharged.

(c) “Application” means the formal document submitted on the form prescribed by the chief engineer for a permit to appropriate water for beneficial use and filed in the office of the chief engineer pursuant to K.S.A. 82a-708a and 82a-709, and amendments thereto.

(d) “Approval of application” means a permit

to proceed with construction of diversion works and the diversion and use of water in accordance with the terms and conditions specified in the permit. Approval of application shall not constitute any permit that may be required by other state laws.

(e) “Aquifer storage” means the act of storing water in an aquifer by artificial recharge for subsequent diversion and beneficial use.

(f) “Aquifer storage and recovery system” means the physical infrastructure that meets the following conditions:

(1) Is constructed and operated for artificial recharge, storage, and recovery of source water; and

(2) consists of apparatus for diversion, treatment, recharge, storage, extraction, and distribution.

(g) “Artificial recharge” means the use of source water to artificially replenish the water supply in an aquifer.

(h) “Authorized representative” means any staff employee designated by the chief engineer to perform duties and functions on behalf of the chief engineer.

(i) “Bank storage” means water absorbed by and temporarily stored in the banks and bed of a stream during above-baseflow stage.

(j) “Bank storage well” means a well used to divert or withdraw water from bank storage.

(k) “Basin storage area” means the portion of the aquifer used for aquifer storage that has defined horizontal boundaries and is delimited by a maximum index level and a minimum index level.

(l) “Basin storage loss” means that portion of artificial recharge naturally flowing or discharging from the basin storage area.

(m) “Basin term permit” means a term permit to appropriate surface water from a stream within a specific drainage basin, or a portion of it, for a reasonable quantity of water, not to exceed a maximum of 100 acre-feet per calendar year, for use in either of the following:

(1) Drilling oil and gas wells; or

(2) construction projects within the specified basin.

(n) “Battery of wells” means two or more wells connected to a common pump by a manifold, or not more than four wells in the same local source of supply within a 300-foot-radius circle that are being operated by pumps not to exceed a total maximum rate of diversion of 800 gallons per minute and that supply water to a common distribution system.

(o) “Beneficial uses of water” are the following:

(1) Domestic uses;

(2) stockwatering;

(3) municipal uses;

(4) irrigation;

(5) industrial uses;

(6) recreational uses;

(7) waterpower;

(8) artificial recharge;

(9) hydraulic dredging;

(10) contamination remediation;

(11) dewatering;

(12) fire protection;

(13) thermal exchange; and

(14) sediment control in a reservoir.

(p) “Complete and accurate water use report” means a water use report that the water right owner has filed pursuant to K.S.A. 82a-732, and amendments thereto, that provided all of the information required on the form prescribed by the chief engineer, including the following:

(1) The quantity of water diverted during the calendar year;

(2) if the diversion of water was required to be metered during the calendar year for which the report is being filed, the information required by K.A.R. 5-3-5e;

(3) if the water was used for irrigation purposes, the number of acres that were irrigated; and

(4) if the water was diverted from a sand and gravel pit operation, the size of the surface area of the pit in acres at the end of the calendar year for which the report was filed.

(q) “Completed substantially as shown on aerial photograph, topographic map, or plat,” as used to define the authorized point of diversion, means within 300 feet of the location as shown on the aerial photograph, topographic map, or plat accompanying the application.

(r) “Confined Dakota aquifer system” means that portion of the Dakota aquifer system overlain by a confining layer resulting in the aquifer normally being under greater than atmospheric pressure.

(s) “Conjunctive use” means the safe-yield management and operation of an aquifer in coordination with a surface water system to enhance the use of the total water supply availability in accordance with the provisions of the water appropriation act.

(t) “Contamination remediation” means the diversion of water by a state agency, or under a written agreement or order of an appropriate state agency, for the purpose of improving the water quality.

(u) “Dakota aquifer system” shall include the Dakota formation, the Kiowa formation, the Cheyenne sandstone, and, where hydraulically connected, the Morrison formation.

(v) “Dakota aquifer system well” means a well or proposed well screened in whole or in part in the Dakota aquifer system.

(w) “Dam” means any artificial barrier, together with all appurtenant works, that does or could impound water.

(x) “Dewatering” means the removal of surface water or groundwater to achieve either of the following:

(1) Facilitate the construction of a building, pipeline, or other facility; or

(2) protect a building, levee, mining activity, or other facility.

(y) “Direct diversion of surface water” means the diversion of surface water directly from a stream by means of a pump, headgate, siphon, or similar installation, for application to beneficial

use without storing it behind a dam, levee, or similar type of structure.

(z) “Diversion” means the act of bringing water under control by means of a well, pump, dam, or other device for delivery and distribution for the proposed use.

(aa) “Diversion works” means any well, pump, power unit, power source, dam, and any other devices necessary to bring water under control for delivery to a distribution system by which the water will be distributed to the proposed use and any other equipment required as a condition of the permit, including a check valve, water level measurement tube, meter, or other measuring device.

(bb) “Division” means the division of water resources of the Kansas department of agriculture.

(cc) “Dry hydrant” means a permanent, unpressurized intake pipe used to remove water from a pond, stream, reservoir, or other surface water supply by means of suction or vacuum supplied by a fire truck or other portable pumping device.

(dd) “Field inspection” means that for the purpose of issuing a certificate of appropriation pursuant to K.S.A. 82a-714 and amendments thereto, the chief engineer conducts a test of the rate of diversion of the diversion works under the normal and maximum conditions that the diversion works actually applied water to beneficial use during the perfection period. The chief engineer also collects all other information necessary to prepare a certificate, including the following:

(1) A description of the location and size of the place where water was actually applied to beneficial use during the perfection period in accordance with the terms, conditions, and limitations of the approval of application;

(2) information on the quantity and rate of water that was applied to the authorized use during the perfection period; and

(3) the actual location of the point or points of diversion from which water was diverted in accordance with the terms, conditions, and limitations of the approval of application.

(ee) “Fire protection” means the use of water for fire protection by a fire department for public protection in general.

(ff) “Fish farming” means the controlled cultivation and harvest of aquatic animals.

(gg) “Flow-straightening vanes” means vanes, or any other devices installed at the upstream throat of a measuring chamber for the purpose of aligning all velocity components of flow parallel with

the flow in the measuring chamber at the water flowmeter sensor location.

(hh) “Full irrigation” means the application of water to crops during the growing season. Full irrigation shall include water for preirrigation.

(ii) “Groundwater” means water below the surface of the earth.

(jj) “Growing season” means the average frost-free period of the year.

(kk) “Household purposes” means the use of water by a person for cooking, cleaning, washing, bathing, human consumption, rest room facilities, fire protection, and other uses normally associated with the operation of a household.

(1) “Fire protection” shall be considered to be use of water for “household purposes” if either of the following conditions is met:

(A) Water is available from a “dry hydrant” that has been installed on a pond located within 1,000 feet of the residence.

(B) Water can be pumped from a well located within 1,000 feet of the residence for fire protection.

(2) Household purposes shall also include the replacement of the potential net evaporation from a domestic pond of up to ½ acre in surface area if both of the following conditions are met:

(A) The pond is utilized for aesthetic purposes as an integral part of the landscaping of a house.

(B) Any portion of the pond is located within 300 feet of the closest edge of the house.

(3) The maximum reasonable annual quantity of groundwater that may be pumped into a pond to be withdrawn later for domestic fire protection shall not exceed 0.06 acre-feet plus the average annual potential net evaporation for a pond at that location in the state having a surface area of 0.2 of an acre.

(4) Household purposes shall also include the use of 1½ acre-feet of water or less per calendar year by an industrial user, restaurant, hotel, motel, church, camp, correctional facility, educational institution, or similar entity for household purposes.

(ll) “Hydraulic dredging” means the removal of saturated aggregate from a stream channel, pit, or quarry by means of hydraulic suction and the pumping of the aggregate and water mixture as a slurry to a location where at least 95 percent of the water returns directly to the source of supply.

(mm) “Immediate vicinity,” as used in specifying the place of use for a water right in which the water is authorized to be used for municipal purposes, means within 2,640 feet of the corporate

limits of the municipality, rural water district, or other entity.

(nn) “In compliance” means that a water flowmeter does not meet any of the criteria of K.A.R. 5-1-9 for being out of compliance.

(oo) “Index level” means elevations established spatially throughout a basin storage area to be used to represent the maximum volume of a basin storage area, and storage available for recovery based upon accounting methodology, and conditions of the permit.

(pp) “Indirect use” means the total of the seepage loss and the average annual potential net evaporation loss from the surface of water originally impounded in a reservoir for beneficial use.

(qq) “Industrial use” means the use of water in connection with the manufacture, production, transport, or storage of products, or the use of water in connection with providing commercial services, including water used in connection with steam electric power plants, greenhouses, fish farms, poultry operations that are not incidental to the operation of a traditional farmstead pursuant to K.S.A. 82a-701(c) and amendments thereto, secondary and tertiary oil recovery, air conditioning, heat pumps, equipment cooling, and all uses of water associated with the removal of aggregate for commercial purposes except the following:

(1) The evaporation caused by exposing the groundwater table or increasing the surface area of a stream, lake, pit, or quarry by excavation or dredging, unless the evaporation has a substantially adverse impact on the area groundwater supply; and

(2) hydraulic dredging.

(rr) “Irrigation use” means the use of water for the following:

(1) The growing of crops;

(2) the watering of gardens, orchards, and lawns exceeding two acres in area; and

(3) the watering of golf courses, parks, cemeteries, athletic fields, racetrack grounds, and similar facilities.

(ss) “Maximum index level” means the maximum elevation for storage within a basin storage area or, if the basin storage area is subdivided, a smaller subdivided area.

(tt) “Measuring chamber” means a cylindrical chamber in which a water flowmeter is installed that is calibrated to match the measuring element of the water flowmeter and the nominal size of the pipe in which it is installed.

(uu) “Minimum index level” means 20 feet above the bedrock elevation or an alternatively

proposed minimum elevation for storage within a basin storage area or, if the basin storage area is subdivided, a smaller subdivided area.

(vv) “Municipal use” means the various uses made of water delivered through a common distribution system operated by any of the following:

(1) A municipality;

(2) a rural water district;

(3) a water district;

(4) a public wholesale water supply district;

(5) any person or entity serving 10 or more hookups for residences or mobile homes; or

(6) any other similar entity distributing water to other water users for various purposes.

Municipal use shall also include the use of water by restaurants, hotels, motels, churches, camps, correctional facilities, educational institutions, and similar entities using water that does not qualify as a domestic use.

(ww) “Nonvolatile memory” means the ability of a water flowmeter to retain the values stored in the mechanical or electronic memory if all power, including backup battery power, is removed.

(xx) “Normal operating range” means the range of flow rates for which the water flowmeter will meet the accuracy requirements of K.A.R. 5-1-4 (a), as certified by the water flowmeter manufacturer.

(yy) “Off-season irrigation” means the application of water to land for the purpose of storing moisture in the soil for future use by a crop that will not be irrigated during the growing season.

(zz) “Operator,” as used in the regulation of sand and gravel pits, means any person who engages in mining sand or gravel, or both.

(aaa) “Perennial stream” means a stream, or part of a stream, that normally flows during all of the calendar year, except during a drought.

(bbb) “Perfect” means the actions taken by a water user to develop an approval of application into a water right. These actions shall consist of the completion of the diversion works and the actual application of water to the authorized beneficial use in accordance with the terms, conditions, and limitations of the approval of application.

(ccc) “Point of diversion” means the point at which water is diverted or withdrawn from a source of water supply.

(ddd) “Point of diversion of a dewatering site” means the geographic center of the area from which water is temporarily removed to lower the static water level or streamflow to allow one construction project or one excavation to take place. Each one-quarter linear mile of construc-

tion trench, or part thereof, shall have at least one point of diversion.

(eee) "Point of diversion of a remediation site" means the geographic center of the area from which water is being removed to be treated or injected into a single disposal well.

(fff) "Point of diversion for storage of surface water in a reservoir created by a dam" means the point at which the longitudinal axis of the dam crosses the centerline of the stream impounded by the reservoir.

(ggg) "Potential annual runoff" means the mean annual runoff for the watershed of the reservoir.

(hhh) "Preirrigation" means the application of water to the land for a crop before planting to ensure adequate moisture for early plant growth.

(iii) "Primary well" means a well for which a standby well is available.

(jjj) "Prior right" means a vested right, an appropriation right with earlier priority, or a permit with earlier priority than that of a subsequent appropriation right or permit.

(kkk) "Proven reserves" means extractable sand and gravel deposits for which good estimates of the quantity and quality have been made by various means, including core drilling.

(lll) "Recharge" means the natural infiltration of surface water or rainfall into an aquifer from its catchment area.

(mmm) "Recharge credit" means the quantity of water that is stored in the basin storage area and that is available for subsequent appropriation for beneficial use by the operator of the aquifer storage and recovery system.

(nnn) "Recreation storage" means the storage and use of water within the reservoir for recreational use as defined in this regulation. Water stored for recreational use in a reservoir shall be considered to be an indirect use of water.

(ooo) "Recreational use" means a use of water in accordance with a water right that provides entertainment, enjoyment, relaxation, and fish and wildlife benefits.

(ppp) "Rediversion of water" means releasing or withdrawing water that had been previously impounded behind a dam, levee, or similar type of structure, by use of a pump, outlet tube, headgate, or similar type of device, and the application of the water directly to beneficial use.

(qqq) "Register" means an integral or remote device that displays the quantity of water passing the water flowmeter sensor and is part of the water flowmeter.

(rrr) "Remediation site" means the geographic area where contamination is being removed from groundwater.

(sss) "Reservoir" means the area upstream from a dam that contains, or will contain, impounded water.

(ttt) "Reservoir capacity" means the volume of water that can be stored below the lower of either of the following:

- (1) The elevation of the principal spillway tube; or
- (2) the lowest uncontrolled spillway in the reservoir.

(uuu) "Reservoir having a total water volume of less than 15 acre-feet," as used in K.S.A. 82a-728 and amendments thereto, means a reservoir having a capacity of 15 acre-feet or less as measured at the principal spillway tube or the lowest uncontrolled spillway, whichever is lower.

(vvv) "Safe yield" means the long-term sustainable yield of the source of supply, including hydraulically connected surface water or groundwater.

(www) "Sand and gravel pit operation" means a project that meets the following conditions:

- (1) Excavates overburden for mining sand or gravel, or both, exposing the underlying groundwater table to evaporation; and
- (2) has a perimeter equal to or greater than its depth.

(xxx) "Sediment control in a reservoir" means a beneficial use of water that meets both of the following criteria:

- (1) The water is stored in a reservoir that has no other authorized type of beneficial use, except domestic use.
- (2) The water is stored only in the part of the reservoir designed and constructed for the storage of sediment.

(yyy) "Source water" means water used for artificial recharge that meets the following conditions:

- (1) Is available for appropriation for beneficial use;
- (2) is above base-flow stage in the stream;
- (3) is not needed to satisfy minimum desirable streamflow requirements; and
- (4) will not degrade the ambient groundwater quality in the basin storage area.

(zzz) "Specialty crop" means a crop other than a normal Kansas field crop. This term shall include turf grass, trees, vegetables, ornamentals, and other similar crops.

(aaa) "Standby well" means a well that can withdraw water from the same source of supply

as the primary well and that is used only when water is temporarily unavailable from the primary well or wells authorized to be used on the same place of use because of mechanical failure, maintenance, or power failure. A standby well may also be used for fire protection or a similar type of emergency.

(bbbb) “Static water level” means the depth below land surface at which the top of the groundwater is found when not affected by recent pumping.

(cccc)(1) “Stockwatering” means the watering of livestock and other uses of water directly related to either of the following:

(A) The operation of a feedlot with the capacity to confine 1,000 or more head of cattle; or

(B) any other confined livestock operation or dairy that would divert 15 or more acre-feet of water per calendar year.

(2) Stockwatering shall not include the irrigation of feed grains or other crops.

(3) For the purposes of this subsection, a group of feedlots or other confined feeding operations shall be considered to be one feedlot or confined feeding operation if both of these conditions are met:

(A) There are common feeding or other physical facilities.

(B) The group of facilities is under common management.

(dddd) “Straight pipe” means a straight length of pipe free of all internal obstructions, including size changes, valves, cooling coils, injection ports, sand or foreign material, and any other condition that would cause a disturbance of the internal velocity profile in the pipe. Internal obstructions shall not include properly designed, constructed, and installed straightening vanes and inspection ports.

(eeee) “Stream channel aquifer” means unconsolidated water-bearing deposits in river valleys, flood plains, and terraces that are separate and distinct from any other aquifer and capable of yielding water in sufficient quantities for beneficial use.

(ffff) “Surface water” means water in creeks, rivers, or other watercourses and in reservoirs, lakes, and ponds.

(gggg) “Term permit” means a permit to appropriate water that is issued for a specified period of time and exceeds the criteria for a temporary permit specified in K.S.A. 82a-727, and amendments thereto, and K.A.R. 5-9-3 through K.A.R. 5-9-5. At the end of the specified time, or any authorized extension approved by the chief engineer, the

term permit shall be automatically dismissed, and any priority it may have had shall be forfeited.

(hhhh) “The production and return of saltwater in connection with the operation of oil and gas wells in accordance with the written approval granted therefor by the Kansas corporation commission pursuant to K.S.A. 55-901, and amendments thereto” means only that saltwater actually produced during the primary production of oil and gas wells and shall not include the following:

(1) Saltwater used in the drilling of an oil and gas well; and

(2) saltwater injected into an enhanced recovery injection well, unless that saltwater was produced in the primary production of the oil and gas well, separated from the oil and gas, and then subsequently reinjected.

(iiii) “Thermal exchange” means the use of water for climate control in a nondomestic building and in a manner that is essentially nonconsumptive to the source of supply.

(jjjj) “Totalizer” means the mechanical or electronic portion of the register that displays the total quantity of water that has passed the water flowmeter sensor.

(kkkk) “Unconfined Dakota aquifer system” means that portion of the Dakota aquifer system not overlain by a confining layer in which the aquifer is in equilibrium with atmospheric pressure.

(llll) “Unconsolidated regional aquifer” means a body of mostly unconsolidated and heterogeneous water-bearing deposits that are hydraulically and geologically contiguous and are capable of yielding water in sufficient quantities for beneficial use.

(mmmm) “Waste of water” means any act or omission that causes any of the following:

(1) The diversion or withdrawal of water from a source of supply that is not used or reapplied to a beneficial use on or in connection with the place of use authorized by a vested right, an appropriation right, or an approval of application for a permit to appropriate water for beneficial use;

(2) the unreasonable deterioration of the quality of water in any source of supply, thereby causing impairment of a person’s right to the use of water;

(3) the escaping and draining of water intended for irrigation use from the authorized place of use; or

(4) the application of water to an authorized beneficial use in excess of the needs for this use.

(nnnn) “Waterpower use” means the use of falling water for hydroelectric or hydromechanical power.

(oooo) "Water balance" means the method of determining the amount of water in storage in a basin storage area by accounting for inflow to, outflow from, and changes in storage in that basin storage area.

(pppp) "Water flowmeter" means the combination of a flow-sensing device, measuring chamber, integral or remote display device or register, and any connecting parts required to make a working assemblage to measure, record, and allow determination of flow rate and total quantity of water flowing past the water flowmeter sensor.

(qqqq) "Water storage device" means a reservoir, elevated water tank, pressurized water tank, including a bladder tank, or other container into which water is pumped and stored before beneficial use.

(rrrr) "Water use correspondent" means a person designated in writing, on a form prescribed by the chief engineer, by one of the owners of a water right to file the water use reports required by K.S.A. 82a-732 and amendments thereto, on behalf of the owner or owners of that water right. (Authorized by and implementing K.S.A. 82a-706a; modified, L. 1978, ch. 460, May 1, 1978; amended May 1, 1980; amended May 1, 1981; amended May 1, 1983; amended May 1, 1986; amended Dec. 3, 1990; amended May 31, 1994; amended Sept. 22, 2000; amended Oct. 24, 2003; amended Oct. 31, 2008; amended April 29, 2016.)

**5-1-4. Water flowmeter specifications.** (a) Each water flowmeter required by the chief engineer, or required pursuant to a regulation adopted by the chief engineer, on or after the effective date of this regulation shall meet the following minimum requirements:

(1)(A) The water flowmeter has been certified by the manufacturer to register neither less than 98 percent nor more than 102 percent of the actual volume of water passing the water flowmeter when installed according to the manufacturer's instructions. This requirement shall be met throughout the water flowmeter's normal operating range without further adjustment or calibration.

(B) The manufacturer has certified to the chief engineer that it has an effective quality assurance program, including wet testing a random sample of production line water flowmeters with water flowmeter test equipment. The minimum number of samples to be tested shall be determined using a confidence interval of 90 percent, an expected

compliance of 95 percent, and an acceptable error of two percent. The minimum number of samples of each model that shall be tested shall be calculated by multiplying 1,300 times the annual production of that model of water flowmeter divided by Q. Q equals four times the annual production of that water flowmeter plus 1,300.

(C) The manufacturer has certified that the water flowmeter test equipment described in paragraph (a)(1)(B) has been tested annually and found accurate by standards traceable to the national institute of standards and technology (NIST). Documentation of the testing required in paragraphs (a)(1)(A) and (B) shall be maintained by the manufacturer for a period of at least five years and shall be made available to the chief engineer upon request during normal business hours.

(2) The water flowmeter shall be designed and constructed so that it will meet the following criteria:

(A) Maintain the accuracy required by the chief engineer in paragraph (a)(1)(A) through (C) and K.A.R. 5-1-9(a)(1);

(B) be protected by the following:

(i) A seal installed by the manufacturer or an authorized representative of the manufacturer; or

(ii) a way that makes it impossible to alter the totalizer reading without breaking the seal or obtaining the authorization of the manufacturer, an authorized representative of the manufacturer, or the chief engineer;

(C) clearly indicate the direction of water flow;

(D) clearly indicate the serial number of the water flowmeter;

(E) have a weatherproof register that is sealed from all water sources;

(F) have a register that is readable at all times, whether the system is operating or not;

(G) be able to be sealed by an authorized representative of the chief engineer to prevent unauthorized manipulation of, tampering with, or removal of the water flowmeter;

(H) be equipped with a manufacturer-approved measuring chamber through which all water flows. Except for positive displacement water flowmeters, full-bore electromagnetic water flowmeters, and multijet water flowmeters, flow-straightening vanes shall be installed at the upstream throat of the water flowmeter chamber. The flow-straightening vanes shall meet either of the following criteria:

(i) Be designed and installed by the manufacturer, or an authorized representative of the manufacturer; or

(ii) consist of at least three vanes that are longer, when placed parallel to the length of the pipe, than the inside diameter of the pipe, are equally spaced radially on the inner periphery of the pipe, and are wider in diametrical distance than one-fourth of the inside diameter of the pipe;

(I) be equipped with an inspection port if the straightening vanes are not designed, constructed, and installed by the manufacturer or an authorized representative of the manufacturer. The port shall be of sufficient size and placement to allow determination of the following:

(i) The proper installation of the flow-straightening vanes; and

(ii) the inside diameter of the pipe in which the water flowmeter sensor is installed;

(J) remain operable without need for recalibration to maintain accuracy throughout the operating life of the water flowmeter; and

(K) have a totalizer that meets the following criteria:

(i) Is continuously updated to read directly only in acre-feet, acre-inches, or gallons;

(ii) has sufficient capacity, without cycling past zero more than once each year, to record the quantity of water diverted in any one calendar year;

(iii) reads in units small enough to discriminate the annual water use to within the nearest 0.1 percent of the total annual permitted quantity of water;

(iv) has a dial or counter that can be timed with a stopwatch over not more than a 10-minute period to accurately determine the rate of flow under normal operating conditions; and

(v) has a nonvolatile memory.

(3) Each water flowmeter that is required to be installed by the chief engineer, or that was required to be installed as a condition of either an approval of application or an order of the chief engineer, or pursuant to a regulation adopted by the chief engineer before the effective date of this regulation, shall meet the following minimum specifications:

(A) Each water flowmeter shall be of the proper size, pressure rating, and style, and shall have a normal operating range sufficient to accurately measure the water flow passing the water flowmeter under normal operating conditions.

(B) Each water flowmeter shall meet the accuracy requirements of K.A.R. 5-1-9(a)(1). If the water flowmeter does not meet the accuracy requirements of K.A.R. 5-1-9(a)(1), then the water flowmeter shall meet either of the following criteria:

(i) Be repaired so that it meets the accuracy requirements of K.A.R. 5-1-9(a)(1); or

(ii) be replaced with a water flowmeter meeting all of the requirements of K.A.R. 5-1-4 and installed in a manner that meets the requirements of K.A.R. 5-1-6.

(b) A water flowmeter installed in the diversion works or a distribution system for a water right authorized for municipal use shall not be subject to the requirements of paragraph (a)(2)(B) if an accurate record of water use can be determined by readings from at least one alternate water flowmeter in the same diversion works or distribution system. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 82a-706c; effective Sept. 22, 2000; amended Oct. 24, 2003; amended May 21, 2010.)

**5-1-9. Criteria to determine when a water flowmeter is out of compliance.** (a) A water flowmeter shall be considered to be out of compliance if any of the following criteria is met:

(1) The water flowmeter registers less than 94 percent or more than 106 percent of the actual volume of water passing the water flowmeter. If necessary, this determination may be made by a field test conducted by, or approved by, the chief engineer.

(2) The seal placed on the totalizer by the manufacturer or the manufacturer's authorized representative has been broken, or the totalizer value has been reset or altered without the authorization of the manufacturer, an authorized representative of the manufacturer, or the chief engineer.

(3) A seal placed on the water flowmeter or totalizer by the chief engineer has been broken.

(4) The water flowmeter register is not visible or is unreadable for any reason.

(5) There is not full pipe flow through the water flowmeter.

(6) Flow-straightening vanes have not been properly designed, manufactured, and installed.

(7) The water flowmeter is not calibrated for the nominal size of the pipe in which the flowmeter is installed.

(8) The water flowmeter is not installed in accordance with the manufacturer's installation specifications. However, five diameters of straight pipe above the water flowmeter sensor and two diameters below the water flowmeter sensor shall be the minimum spacing, regardless of the manufacturer's installation specifications.

(9) A water flowmeter is installed at a location at which the flowmeter does not measure all of the water diverted from the source of supply.

(b) A water flowmeter installed in the diversion works or a distribution system for a water right authorized for municipal use shall not be subject to the requirements of paragraphs (a)(2) and (3) if an accurate record of water use can be determined by readings from at least one alternate water flowmeter in the same diversion works or distribution system. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 82a-706c; effective Sept. 22, 2000; amended Oct. 24, 2003; amended May 21, 2010.)

### Article 3.—APPROPRIATION RIGHTS

**5-3-4a. Hearing before issuance of an order.** (a) A hearing may be held pursuant to K.A.R. 5-14-3a by the chief engineer, or a person designated by the chief engineer, before the chief engineer issues an order if one of the following conditions is met:

(1) The chief engineer finds it to be in the public interest to hold a hearing.

(2) A hearing has been requested by a person who shows to the satisfaction of the chief engineer that approval of the application could cause impairment of senior water rights or permits.

(3) The chief engineer desires public input on the matter.

(b) The hearing shall be electronically recorded by the chief engineer.

(c) If all of the parties agree, an informal conference instead of a hearing may be held by the chief engineer pursuant to K.A.R. 5-14-3a. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a, K.S.A. 2008 Supp. 82a-708b, 82a-711, and 82a-737; effective May 1, 1980; amended May 31, 1994; amended March 20, 2009.)

**5-3-6a. Sealing diversion works.** (a) If the chief engineer or any authorized representative has reasonable cause to believe that any person has failed to obey an order or a notice and directive of the chief engineer to cease and desist from operating a diversion works, the chief engineer or authorized representative may place a seal, or a chain and padlock, on the diversion works or any part of the diversion works in a manner that renders the diversion works inoperable without breaking the seal, chain, or padlock.

(b) The chief engineer or any authorized representative may place a seal on any water flowmeter

or measuring chamber in a manner that prevents removal of the water flowmeter from the measuring chamber and prevents access to the internal working parts of the water flowmeter without breaking the seal. The seal may include a bolt, chain, lock, or any combination of these, or any other mechanism.

(c) For purposes of this regulation, “authorized representative” shall include any employee of the division or a groundwater management district that has been delegated this authority by the chief engineer in writing. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a, K.S.A. 2016 Supp. 82a-706b and K.S.A. 82a-706c; effective May 1, 1980; amended March 17, 2017.)

**5-3-23. Maximum reasonable annual quantity approvable for irrigation use for an application for change in place of use and a request to reduce a water right; exceptions.**

(a) Except as provided in subsections (c), (d), and (e), for water rights with a priority date before September 22, 2000, the maximum reasonable annual quantity of water that may be approved for either of the following shall be that quantity of water reasonably necessary to irrigate crops in the region of the state where the proposed place of use is located as specified in K.A.R. 5-3-19(a):

(1) An application for change in place of use for irrigation filed pursuant to K.S.A. 82a-708b and amendments thereto; or

(2) a request to reduce the authorized place of use for irrigation for a water right filed pursuant to K.A.R. 5-7-5.

(b) Except as provided in subsections (c), (d), and (e), for water rights with a priority date on or after September 22, 2000, the maximum reasonable annual quantity of water that may be approved for either of the following shall be that quantity of water reasonably necessary to irrigate crops in the region of the state where the proposed place of use is located as specified in K.A.R. 5-3-19(b):

(1) An application for change in place of use for irrigation filed pursuant to K.S.A. 82a-708b and amendments thereto; or

(2) a request to reduce the authorized place of use for a water right filed pursuant to K.A.R. 5-7-5.

(c) The maximum reasonable quantities approvable in subsections (a) and (b) shall not exceed either of the following:

(1) The applicable quantity specified in either subsection (a) or (b); or

(2) the maximum quantity of acre-feet per acre authorized by the vested water right or certificate of appropriation, whichever is greater. The maximum authorized quantity of acre-feet per acre shall be calculated by dividing the maximum annual quantity of water authorized when the application for change or request to reduce is filed by the number of acres authorized when the application for change is filed.

(d) The quantities specified in subsections (a), (b), and (c) may be exceeded only if the applicant demonstrates to the chief engineer that the requested quantity is reasonable for the intended irrigation use, is not wasteful, and will not otherwise prejudicially and unreasonably affect the public interest and if either of the following conditions is met:

(1) Because of specialty crops or other unusual conditions, the quantity specified in K.A.R. 5-3-19(a) is insufficient.

(2) A request for reduction of the authorized place of use is made for a water right located in both the Rattlesnake Creek Subbasin and the Big Bend Groundwater Management District Number Five to comply with the agriculture water enhancement program and both of the following conditions are met:

(A) The reduction of the authorized place of use will lead to an overall reduction in water use.

(B) The reduction of the authorized place of use pursuant to paragraph (d)(2) requires the approval of any future reduction or change to a water right so reduced to meet the requirements in subsections (a), (b), (c), and (e) of this regulation and in K.A.R. 5-5-11.

(e) The maximum annual quantity of water approved pursuant to this regulation shall not exceed the maximum annual quantity of water authorized by the water right when the change application is approved. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2009 Supp. 82a-707(e) and K.S.A. 2009 Supp. 82a-708b; effective Sept. 22, 2000; amended, T-5-8-16-10, Aug. 16, 2010; amended Nov. 19, 2010.)

#### **Article 4.—DISTRIBUTION OF WATER BETWEEN USERS**

**5-4-1. Distribution of water between users when a prior right is being impaired.** In responding to a complaint that a prior water right is being impaired, the following procedure shall be followed:

(a) Complaint. The complaint shall be submitted in writing to the chief engineer or that person's authorized representative. The chief engineer shall take no action until the written complaint is submitted and, for non-domestic groundwater rights, the information specified in paragraph (b)(2) is provided.

(b) Investigation. The chief engineer shall investigate the physical conditions involved, according to the water rights involved in the complaint.

(1) If the water right is domestic, the chief engineer may require the complainant to provide a written report similar to that described in paragraph (b)(2).

(2) If the water right claimed to be impaired is not a domestic right and its source of water is groundwater, the complainant shall provide to the chief engineer a written report completed within 180 days preceding the date of the complaint. Within 30 days of the complainant's request, the chief engineer shall provide the complainant with data from the division of water resources that is relevant to preparation of the required report. The complainant's report shall meet the following requirements:

(A) Be prepared by a licensed well driller, a professional engineer, or a licensed geologist;

(B) describe the construction and the components of the well;

(C) provide data to show the extent to which the well has fully penetrated the productive portions of the aquifer with water of acceptable quality for the authorized use; and

(D) provide testing and inspection data to show the extent to which the pump and power unit are in good working condition to make full use of the available aquifer.

(3) In assessing the complainant's written report, the chief engineer may use all relevant data, including historical data from water well completion records, Kansas geological survey bulletins, and other data in the water right files.

(4) If the area of complaint is located within the boundaries of a groundwater management district (GMD), the chief engineer shall notify the GMD of the complaint before initiating the investigation and shall give the board of directors of the GMD the opportunity to assist with the investigation.

(5) If the source of water is groundwater, the chief engineer may require hydrologic testing to determine hydrological characteristics as part of the investigation. The chief engineer shall provide notice to water right owners in a geographic area

sufficient to conduct the hydrologic testing and to determine who could be affected by the actions made necessary by the results of the investigation. These water right owners shall be known as the potentially affected parties. As part of the investigation, the chief engineer may require access to points of diversion or observation wells and may require the installation of observation wells.

(6) Data acquired during the investigation shall be provided to the complainant and any other persons notified for review and comment at their request as the investigation proceeds.

(c) Report. The chief engineer shall issue a report stating the relevant findings of the investigation.

(1) If the complainant's water right is a domestic water right or has surface water as its source and the complainant claims impairment by the diversion of water pursuant to surface rights, the chief engineer shall provide a copy of the report to the complainant and to the potentially affected parties. This report shall constitute the final report of the investigation.

(2) If the complainant's water right is not a domestic right and has groundwater as its source or if the complainant's water right has surface water as its source and claims impairment by the diversion of water pursuant to groundwater rights, a copy of the report shall be provided by the division of water resources to the complainant and to the potentially affected parties. The report shall be posted by the division of water resources on the department of agriculture's web site. This report shall constitute the initial report of the investigation.

(A) If the initial report shows impairment, the potentially affected parties shall have the opportunity to submit written comments on the initial report within 30 days of its posting on the department's web site or a longer period if granted by the chief engineer. The chief engineer shall consider the written comments of the potentially affected parties.

(B) If the area of complaint is located within the boundaries of a GMD, the chief engineer shall provide a copy of the initial report to the GMD and shall consider any written comments submitted by the GMD board within 30 days of the posting of the initial report on the department's web site or a longer period if granted by the chief engineer.

(C) Nothing in this regulation shall prevent the chief engineer from regulating water uses that the chief engineer has determined are directly im-

pairing senior water rights during the comment period or, if applicable, before obtaining written comments by the GMD board during the comment period.

(3) After reviewing comments on the initial report from potentially affected parties and, if applicable, from the GMD board, the chief engineer shall issue a final report, which shall be provided to the complainant, the potentially affected parties, and the GMD board if applicable and shall be posted on the department of agriculture's web site.

(4) The chief engineer may require conservation plans authorized by K.S.A. 82a-733, and amendments thereto, based on the initial and final reports.

(5) If the chief engineer's final report determines impairment and the source of water is a regional aquifer, the final report shall determine whether the impairment is substantially caused by a regional overall lowering of the water table. If the impairment is determined to be substantially caused by a regional overall lowering of the water table, no further action shall be taken under this regulation, and the procedure specified in K.A.R. 5-4-1a shall be followed.

(d) Request to secure water. If the complainant desires the chief engineer to regulate water rights that the final report has found to be impairing the complainant's water right, the complainant shall submit a written request to secure water to satisfy the complainant's prior right. The request to secure water shall be submitted on a prescribed form furnished by the division of water resources. The complainant shall specify the minimum reasonable rate needed to satisfy the water right and shall also provide information substantiating that need. The chief engineer shall determine how to regulate the impairing rights. Each request to secure water to satisfy irrigation-use water rights shall expire at the end of the calendar year in which the request was submitted.

(e) Notice of order.

(1) The chief engineer shall give a written notice and directive to those water right holders whose use of water must be curtailed to secure water to satisfy the complainant's prior rights.

(2) If the area of complaint is located within the boundaries of a GMD and if the final report determines that the impairment is substantially due to direct interference, the chief engineer shall allow the GMD board to recommend how to regulate the impairing water rights to satisfy the impaired right.

(3) The chief engineer may consider regulating the impairing rights the next year and rotating water use among rights.

(4) All water delivered to the user's point of diversion for that individual's use at the specified rate or less shall be applied to the authorized beneficial use and shall count against the quantity of water specified unless the user notifies the chief engineer or authorized representative that diversion and use will be discontinued for a period of time for good reason.

(5) When the quantity of water needed has been delivered to the user's point of diversion or when the user discontinues that individual's use of water, those persons who have been directed to regulate their use shall be notified that they may resume the diversion and use of water.

(6) If the available water supply in the source increases, the chief engineer may allow some or all of the regulated users to resume use, depending on the supply. (Authorized by and implementing K.S.A. 82a-706a; modified, L. 1978, ch. 460, May 1, 1978; amended Oct. 29, 2010.)

**5-4-1a. Distribution of water between users when a prior right is being impaired due to a regional lowering of the water table.** (a) When a complaint is received that a prior right to the use of water is being impaired, the procedure specified in K.A.R. 5-4-1 shall be followed until the determination is made that the impairment is caused substantially by a regional lowering of the water table.

(b)(1) If the area of complaint is located within the boundaries of a groundwater management district (GMD), the GMD board shall recommend the steps necessary to satisfy senior water rights. Recommendations may include following the GMD management program, amending the GMD management program, or pursuing any other means to satisfy senior water rights. The GMD board shall submit its recommendations to the chief engineer within six months of the determination that the impairment is caused substantially by a regional lowering of the water table or within a longer time if approved by the chief engineer.

(2) The GMD board shall publish notice of its recommendations once in a newspaper of general circulation in the county where the impairment is occurring.

(3) The chief engineer shall determine the appropriate course of action to satisfy senior water rights. To that end, the chief engineer shall con-

sider the GMD's timely recommendations and may conduct a study similar to that described in paragraph (c)(1).

(4) The chief engineer shall publish notice of the course of action once in a newspaper of general circulation in the county where the impairment is occurring.

(c)(1) If the area of complaint is located outside the boundaries of a GMD and determined to be caused by a regional lowering of the water table, the chief engineer shall conduct a study to determine the appropriate course of action. The study shall include a determination of the effectiveness and economic impact of administering one or more water rights in accordance with K.A.R. 5-4-1, the effectiveness and economic impact of the types of corrective controls listed under K.S.A. 82a-1038 and amendments thereto, and any other means to satisfy senior water rights while preserving the economic vitality of the region.

(2) The chief engineer shall determine the appropriate course of action, based on the study described in paragraph (c)(1).

(3) The chief engineer shall publish notice of the course of action once in a newspaper of general circulation in the county where the impairment is occurring. (Authorized by and implementing K.S.A. 82a-706a; effective Oct. 29, 2010.)

**Article 5.—CHANGE IN THE PLACE OF USE, THE POINT OF DIVERSION OR THE USE MADE OF WATER UNDER AN EXISTING WATER RIGHT**

**5-5-9. Approval of application for change in the use made of water from irrigation to any other type of beneficial use of water.** (a) The approval of a change in the use made of water from irrigation to any other type of beneficial use of water shall not be approved if the change will cause the net consumptive use from the local source of water supply to be greater than the net consumptive use from the same local source of water supply by the original irrigation use based on the following requirements:

(1) The maximum annual quantity of water to be allowed by the approved change shall be the authorized quantity of the water right multiplied by the consumptive use percentage specified for the county within which the change is approved, as shown on the department's map titled "consumptive use percentages in Kansas, by county," dated August 3, 2017 and hereby adopted by reference.

(2) In determining whether the net consumptive use of water will be increased by the proposed change in the use made of water, the applicant shall be given credit by the chief engineer for any return flows from the proposed type of beneficial use of water that will return to the same local source of supply as the return flows from the originally authorized type of beneficial use of water, as substantiated by the applicant to the satisfaction of the chief engineer by an engineering report or similar type of hydrologic analysis.

(3) The authorized quantity to be changed to the new type of beneficial use of water shall never exceed the maximum annual quantity authorized by the water right.

(4) If a water right that overlaps the authorized place of use of one or more other water rights, either in whole or in part, is being changed to a different type of beneficial use of water, the total net consumptive use of all water rights after the change is approved shall not exceed the total net consumptive use of all of the rights before the change is approved.

(5) The approval for a change in the use made of water shall also be limited by that quantity reasonable for the use proposed by the change in the use made of water in order to prevent waste pursuant to K.A.R. 5-1-1.

(b) Upon request of the applicant, the historic net consumptive use actually made during the perfection period, or before June 28, 1945 for vested rights, under the water right proposed to be changed shall be considered by the chief engineer. The burden shall be on the owner to document that historic net consumptive use with an engineering study, or equivalent documentation and analysis, and demonstrate to the satisfaction of the chief engineer that the analysis submitted by the applicant is a more accurate estimate of the historic net consumptive use than the net consumptive use calculated using the methodology specified in paragraph (a)(1).

(c) If the methods specified in subsection (a) produce an authorized annual quantity of water that could result in impairment of other water rights, the chief engineer shall make a site-specific net consumptive use analysis to determine the quantity of water that was actually beneficially consumed under the water right. If the water right is within a groundwater management district and the district has additional site-specific data available, the data may be submitted to the chief engineer for consideration. The quantity ap-

proved shall be limited to the quantity determined to be reasonable by the chief engineer's analysis.

(d) A term permit that would increase the consumptive use of the water right or would otherwise circumvent the limits specified in this regulation shall not be issued to any applicant. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2016 Supp. 82a-708b; effective Nov. 28, 1994; amended Sept. 22, 2017.)

**5-5-10. Partial changes in the use made of water from irrigation to another type of beneficial use of water.** (a) If an irrigation right is to be divided and only a portion of the rate and quantity will be changed to a different beneficial use of water, only that portion of the annual quantity of the water right being changed to a different type of beneficial use of water shall be reduced as necessary to prevent the net consumptive use from increasing.

(b) The authorized place of use for the irrigation right may be reduced in proportion to the reduction in annual quantity caused by the change. If the irrigator wants to retain more than that person's proportional allotment of acres after the change, the procedures specified in K.A.R. 5-5-11(b)(2)(B)(ii) shall be followed to determine whether the irrigator shall be allowed to retain more acreage.

(c) The authorized rate of diversion shall be divided between the irrigation use and the non-irrigation use. Each reasonable division of the rate by the parties shall be approved. A reasonable division of the rate shall be based on the actual rate of withdrawal at the time of the application and the existing physical conditions of the water source at the time of the application. The division of the maximum rate of diversion shall not be required to be proportional to the division of the quantity if the division of the rate of diversion is reasonable to divert each portion of the annual quantity of water after the division of the water right is made.

(d) The division of the annual quantity shall be calculated as follows:

(1) Calculate the maximum quantity that could be changed to another type of beneficial use of water if the entire water right were changed pursuant to K.A.R. 5-5-9(a)(1).

(2) Divide the annual quantity sought to be changed to the new beneficial use of water by the maximum quantity that could be changed if the entire water right were changed. The result shall be the percentage of the entire reduced water

right that will be changed to the new beneficial use of water. The remaining percentage of the current water right may be retained by the irrigation water right owner.

(3) Multiply the remaining percentage times the total currently authorized quantity. The result shall be the annual quantity of water that may be retained by the irrigation water right owner. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2016 Supp. 82a-708b; effective Nov. 28, 1994; amended Sept. 22, 2017.)

**5-5-16. Additional wells.** (a) An application to change a point of diversion by adding an additional point of diversion to divert groundwater, by either constructing a new well or moving a portion of a water right to a well that has previously been authorized by the chief engineer, shall not be approved unless the application meets the following requirements:

(1) Each proposed point of diversion shall meet the requirements of K.S.A. 82a-708b, and amendments thereto, and any applicable regulations adopted by the chief engineer.

(2) The total maximum quantity of water authorized to be diverted each calendar year by the original well or wells, and the additional well or wells, shall not exceed any of the following limits:

(A) The maximum annual quantity of water that has been perfected;

(B) the maximum annual quantity of water authorized to be diverted before approval of the change; or

(C) the maximum consumptive use of water during the perfection period as required by K.A.R. 5-5-3 and as specified in either of the following:

(i) If the water right authorizes the use of water for irrigation use, the consumptive use of water shall be presumed to not be increased in violation of K.A.R. 5-5-3 if the maximum annual quantity requested does not exceed the quantity in acre-feet calculated by use of the following formula: multiply the maximum number of acres legally irrigated in any one year during the perfection period by the 80 percent chance net irrigation requirements (N.I.R.), as specified in K.A.R. 5-5-12 expressed in acre-feet, and divide that number by a delivery efficiency of 0.85; or

(ii) if the water right authorizes the use of water for irrigation and an additional well or wells are authorized for a beneficial use of water that is not irrigation, the consumptive use of the portion of the water right used for irrigation shall be deter-

mined as specified in paragraph (a)(2)(C)(i). The non-irrigation portion of the water right available for diversion shall be determined as specified in K.A.R. 5-5-9 and K.A.R. 5-5-10.

(3) The total maximum rate of diversion that may be authorized for the original well or wells and the additional well or wells shall not be greater than the total maximum rate of diversion that could have been diverted from the original well or wells if they were currently being replaced by new wells at substantially the originally authorized location or locations in the same local source of supply. The maximum rate of diversion shall be one of the following:

(A) The total rate of diversion based on a current water flow rate test done on the point or points of diversion; or

(B) a value resulting from a hydraulic analysis, which may include rate tests, pump tests, and water level data, submitted by the applicant and acceptable to the chief engineer based on the veracity of its data and its proper application of scientific principles, showing the current capacity of the aquifer to yield water at the currently authorized point or points of diversion.

(4) A condition shall be placed on the approval of the application for change authorizing the additional well or wells that provides that, for the sole purpose of administering wells concerning direct impairment, the additional well or wells shall be considered to have the priority of the date the application was filed to add the additional well or wells.

(b) The applicant shall submit the following information:

(1) A well completion log of the currently authorized well or a stratigraphic log of a test hole located within 300 feet of the currently authorized well;

(2) the depth of the currently authorized well;

(3) the current depth to the static water level of the currently authorized well;

(4) a stratigraphic log of a test hole located within 300 feet of the proposed location of each of the proposed additional well or wells; and

(5) any additional information that the chief engineer may require to understand the nature of the proposed additional well or wells.

(c) The proposed additional well or wells shall meet one of the following conditions:

(1) Meet the well spacing requirements to all other wells with a priority earlier than the date on which the change application was filed; or

(2) demonstrate by a hydraulic analysis, which may include rate tests, pump tests, and water level data, as submitted by the applicant and acceptable to the chief engineer based on the veracity of its data and its proper application of scientific principles, that the approval of an additional well within 300 feet of a currently authorized well location, or within the geographic center of a currently authorized battery of wells, will neither impair any water rights senior to the date on which the application for change was filed nor prejudicially affect the public interest.

(d) Each point of diversion authorized by an approval of an application for change for an additional well shall have a specific assignment of a maximum instantaneous rate of diversion and a maximum annual quantity of water.

(e) Each well authorized by a water right that has been changed under the provisions of this regulation shall be equipped with a separate water flowmeter that meets or exceeds the specifications for water flowmeters adopted by the chief engineer.

(f) Each approval of an additional well or wells shall have a condition that reserves jurisdiction for the chief engineer to review the approval of the additional well or wells at intervals of at least five years, and not more than 10 years, to determine if the total annual quantity of water actually being withdrawn by all wells authorized by the approval of an application for change is exceeding the total annual quantity of water that could have been physically withdrawn if the additional well or wells had not been approved. If the chief engineer determines during the review that the total annual quantity being withdrawn by all the wells, including the additional wells, exceeds the total annual quantity of water that could have been physically withdrawn by the original well or wells, the total maximum annual quantity that can be withdrawn by all the wells shall be reduced by the chief engineer to the total maximum annual quantity that could have been physically withdrawn by the original well or wells. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 2016 Supp. 82a-708b; effective Sept. 22, 2000; amended Oct. 24, 2003; amended Sept. 22, 2017.)

## Article 7.—ABANDONMENT AND TERMINATION

**5-7-1. Due and sufficient cause for non-use.** (a) Each of the following circumstances shall be considered “due and sufficient cause,” as used in K.S.A. 82a-718 and amendments thereto:

(1) Adequate moisture from natural precipitation exists for the production of grain, forage, or specialty crops, as determined by the moisture requirements of the specific crop.

(2) A right has been established or is in the process of being perfected for use of water from one or more preferred sources in which a supply is available currently but is likely to be depleted during periods of drought.

(3) Water is not available from the source of water supply for the authorized use at times needed.

(4) Water use is temporarily discontinued by the owner for a definite period of time to permit soil, moisture, and water conservation, as documented by any of the following:

(A) Furnishing to the chief engineer a copy of a contract showing that land that has been lawfully irrigated with a water right that has not been abandoned is enrolled in a multiyear federal or state conservation program that has been approved by the chief engineer;

(B) enrolling the water right in the water right conservation program in accordance with K.A.R. 5-7-4, K.A.R. 5-7-4b, and K.S.A. 2013 Supp. 82a-741 and amendments thereto; or

(C) any other method acceptable to the chief engineer that can be adequately documented by the owner before the nonuse takes place.

(5) Management and conservation practices are being applied that require the use of less water than authorized. If a conservation plan has been required by the chief engineer, the management and conservation practices used shall be consistent with the conservation plan approved by the chief engineer to qualify under this subsection.

(6) The chief engineer has previously approved the placement of the point of diversion in a stand-by status in accordance with K.A.R. 5-1-2.

(7) Physical problems exist with the point of diversion, distribution system, place of use, or the operator. This circumstance shall constitute due and sufficient cause only for a period of time reasonable to correct the problem.

(8) Conditions exist beyond the control of the owner that prevent access to the authorized place of use or point of diversion, as long as the owner is taking reasonable affirmative action to gain access.

(9) An alternate source of water supply was not needed and was not used because the primary source of supply was adequate to supply the needs of the water right owner.

(10) The chief engineer determines that a manifest injustice would result if the water right were

deemed abandoned under the circumstances of the case.

(11) The water right is located in an area of the state that is closed to new appropriations of water by regulation or order of the chief engineer but is not closed by a safe-yield analysis.

(12) The water right has been deposited in a water bank authorized by K.S.A. 2013 Supp. 82a-761 through K.S.A. 2013 Supp. 82a-773, and amendments thereto.

(13) Water use, as authorized by the water right, is suspended because the water right is enrolled in a multiyear flex account, pursuant to K.S.A. 2013 Supp. 82a-736 and amendments thereto.

(b) In addition to circumstances considered due and sufficient cause pursuant to subsection (a), both of the following requirements shall also be met to constitute due and sufficient cause for nonuse of water:

(1) The reason purporting to constitute due and sufficient cause shall have in fact prevented, or made unnecessary, the authorized beneficial use of water.

(2) Except for the temporarily discontinued use of water as provided by paragraph (a)(4) and for physical problems with the point of diversion or distribution system as provided by paragraph (a) (7), the owner shall maintain the diversion works in a functional condition.

(c) Each year of nonuse for which the chief engineer finds that due and sufficient cause exists shall be considered to interrupt the successive years of nonuse for which due and sufficient cause does not exist.

(d) When a verified report of the chief engineer, or the chief engineer's authorized representative, is made a matter of record at a hearing held pursuant to K.S.A. 82a-718, and amendments thereto, that establishes nonuse of a water right for five or more successive years, the water right owner shall have the burden of showing that there have not been five or more successive years of nonuse without due and sufficient cause. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 2013 Supp. 82a-718; modified, L. 1978, ch. 460, May 1, 1978; amended May 1, 1986; amended May 31, 1994; amended Oct. 24, 2003; amended May 21, 2010; amended April 18, 2014.)

**5-7-4. Water rights conservation program; tier 1.** (a) Applications for enrollment in the water rights conservation program (WRCP)

received on or before December 31, 2009, shall be considered for enrollment in the program as tier 1 applications. Enrollment in tier 1 of the WRCP approved by the chief engineer and continued compliance with the WRCP shall constitute due and sufficient cause for nonuse pursuant to K.S.A. 82a-718, and amendments thereto, and K.A.R. 5-7-1.

(b) In order to qualify for enrollment in the WRCP as a tier 1 applicant, all of the following requirements and conditions shall be met:

(1) The point of diversion shall be located in either of the following locations:

(A) An area that is closed to new appropriations of water, except for temporary permits, term permits, and domestic use; or

(B) some other area designated by the chief engineer as an area where it would be in the public interest to allow water rights to be placed in the WRCP. In areas within the boundaries of a groundwater management district, the recommendations of the board of the district shall be taken into consideration by the chief engineer.

(2) Each of the owners of the water right shall agree to totally suspend all water use authorized by that water right for the duration of the contract.

(3) The owner or owners of the water right shall sign a contract with the chief engineer, or the chief engineer's authorized representative, before placing the water right into the WRCP. The contract shall be binding on all successors in interest to the water right owner.

(4) Only an entire water right may be placed into the WRCP. If a portion of a water right has been abandoned, the portion that is still in good standing may be enrolled in the WRCP. If a water right is administratively divided by the chief engineer, each portion of that divided water right shall be considered to be an entire water right for the purpose of this regulation.

(A) If at least five successive years of nonuse have occurred before application for enrollment in the WRCP, a determination of whether or not that water right is subject to abandonment before entry into the program, including an analysis of any reasons given that might constitute due and sufficient cause for nonuse, shall be made by the chief engineer.

(B) If, after review of the information, it appears that the right has been abandoned, the statutory procedures, including the right to a hearing, shall be followed to determine whether or not the right has been abandoned.

(5) Only the portion of a water right in good standing at the time of application for enrollment may be entered into the WRCP.

(c) Other requirements of enrollment in the WRCP program shall include the following:

(1) Water rights shall be placed into the WRCP for a definite period of calendar years of no fewer than five and no more than 10. Each WRCP contract shall terminate upon expiration of the time period specified in the contract.

(2) The water right owner or operator shall not be required to maintain the diversion works or delivery system during the period of the WRCP contract. If the pump is removed from a well, the well shall be properly capped or sealed during the contract. These requirements shall be in addition to those made by the Kansas department of health and environment pursuant to the groundwater exploration and protection act, K.S.A. 82a-1201 et seq. and amendments thereto.

(3) A certificate determining the extent to which a water right has been perfected shall be issued by the chief engineer before entering the water right into the WRCP if all of the following conditions are met:

(A) An applicant has a permit to appropriate water for beneficial use and has perfected all, or any portion, of the water right authorized by the permit.

(B) The time in which to perfect the water right has expired, including any authorized extensions of time.

(C) A field inspection has been completed.

(4) If the time to perfect the water right, or any authorized extension of that right, has not expired, enrollment in the WRCP shall be considered as suspending the time to perfect. Upon expiration of the WRCP contract pertaining to this water right, the time to perfect shall again commence, and the applicant shall be required to perfect the water right within the remainder of the time allowed to perfect, or any authorized extension of that time.

(5) Each year after authorized enrollment in the WRCP, the water use correspondent shall indicate on the water use report that no water was used because the water right was enrolled in the WRCP.

(6) If the owner breaches, or causes or allows a breach of, the WRCP contract with the chief engineer, each year of nonuse between the effective date of the contract and the date of the breach shall be counted as years of nonuse without due and sufficient cause for the purpose of

determining whether or not the water right has been abandoned pursuant to K.S.A. 82a-718, and amendments thereto. Before this penalty is imposed, the owner shall be given an opportunity to show either of the following:

(A) A breach of contract did not occur.

(B) A breach occurred, but either was minor or has been cured, and should not constitute grounds for imposing the penalty. (Authorized by K.S.A. 82a-706a and K.S.A. 2013 Supp. 82a-741; implementing K.S.A. 82a-706, K.S.A. 82a-713, K.S.A. 2013 Supp. 82a-714, K.S.A. 2013 Supp. 82a-718, and K.S.A. 2013 Supp. 82a-741; effective July 1, 1994; amended Sept. 22, 2000; amended Dec. 28, 2009; amended April 18, 2014).

**5-7-4b. Water rights conservation program; tier 2.** (a) Each application for enrollment in the water rights conservation program (WRCP) received on or after July 1, 2011, shall be considered as a WRCP tier 2 application.

(b) Enrollment of a water right in tier 2 of the WRCP shall be by order of the chief engineer and compliance with the requirements of subsection (d).

(c) For a water right to be eligible to be enrolled in tier 2 of the WRCP, each of the following requirements shall be met:

(1) Except for domestic use, the point of diversion shall be located in either of the following locations:

(A) An area that is closed to new appropriations of water by regulation or order of the chief engineer or, only within the Ogallala aquifer, is effectively closed due to overappropriation determined by a safe-yield analysis; or

(B) some other area designated by the chief engineer as an area where it would be in the public interest to allow water rights to be placed in the WRCP. In areas within the boundaries of a groundwater management district, the recommendations of the board of the district shall be taken into consideration by the chief engineer.

(2) Each of the owners of the water right shall agree to totally suspend all water use authorized by the water right for the duration of the enrollment period.

(3) The owner or owners of the water right shall submit an application to the chief engineer, or the chief engineer's authorized representative, requesting that the water right be enrolled.

(4) Only an entire water right may be enrolled in the WRCP. If a water right is administratively

divided by the chief engineer, each portion of the water right shall be considered to be an entire water right.

(5) The water right shall not be deemed abandoned pursuant to K.S.A. 82a-718, and amendments thereto.

(d) Requirements of any order enrolling a water right in the WRCP shall include the following:

(1) Water rights shall be placed into the WRCP for a definite period of calendar years of no fewer than five and no more than 10 as requested by the application.

(2) The water right owner or operator shall not be required to maintain the diversion works or delivery system during the period of enrollment. If the pump is removed from a well, the well shall be properly capped or sealed during the period of enrollment. These requirements shall be in addition to those requirements made by the Kansas department of health and environment pursuant to the groundwater exploration and protection act, K.S.A. 82a-1201 et seq. and amendments thereto.

(3) A certificate determining the extent to which a water right has been perfected shall be issued by the chief engineer before enrolling the water right in the WRCP.

(4) Each year after authorized enrollment in the WRCP, the water use correspondent shall indicate on the water use report that no water was used because the water right was enrolled in the WRCP.

(e) Each diversion of water for beneficial use, other than domestic use, under authority of a water right while enrolled in the WRCP shall result in revocation of the enrollment order and the loss of due and sufficient cause for nonuse of water during the portion of the enrollment period occurring before the diversion.

(f) Each diversion of water for beneficial use, other than domestic use, during the enrollment period shall be considered a violation of the order enrolling the water right. Any such diversion of water may result in a civil penalty pursuant to K.S.A. 2013 Supp. 82a-737, and amendments thereto. (Authorized by and implementing K.S.A. 2013 Supp. 82a-741; effective April 18, 2014.)

### Article 9.—TEMPORARY PERMITS

**5-9-3. Quantity.** A temporary permit shall not be granted for a quantity of water in excess of 4,000,000 gallons, except for either of the following:

(a) Dewatering purposes; or

(b) water that is to be diverted from a source located on a construction site and used on the construction site in connection with a project that the chief engineer has approved pursuant to K.S.A. 82a-301 through 82a-305a or K.S.A. 24-126, and amendments thereto. (Authorized by and implementing K.S.A. 2011 Supp. 82a-727; effective May 1, 1979; amended Dec. 3, 1990; amended June 22, 2012.)

### Article 12.—AQUIFER STORAGE AND RECOVERY

**5-12-1. Aquifer storage and recovery permitting.** (a) An operator may store water in an aquifer storage and recovery system under a permit to appropriate water for artificial recharge if the water appropriated is source water. The requirements of this article shall be in addition to any requirements of the Kansas department of health and environment concerning underground injection wells, including article 46 of the regulations adopted by the Kansas department of health and environment.

(b) Each application for a permit to appropriate water for artificial recharge shall describe the horizontal and vertical extent of the basin storage area in which the source water will be stored.

(1) The horizontal extent shall be determined by a closed boundary within which the recharge system used to store the water will be physically located. The recharge system may include recharge pits, recharge trenches, recharge wells, or other similar systems that cause source water to enter the storage volume of the basin storage area, either by gravity flow or by injection. The basin storage area may be subdivided into smaller areas representative of the areas that may be recharged by the individual recharge systems.

(2) The vertical extent shall be defined by a minimum index level and a maximum index level for the basin recharge storage area, or for each subdivided area within the basin storage area if the basin storage area is subdivided. The maximum index water level shall represent the maximum storage potential for the basin storage area.

(c) Each application for a permit to appropriate water for artificial recharge shall specify the maximum annual quantity and maximum rate of diversion of source water.

(d)(1) Each application for a permit to appropriate water for artificial recharge shall include a methodology for accounting for water stored in

a basin storage area both on an annual basis and on a cumulative basis so that recharge credits can be calculated. If more than one application for a permit to appropriate water for artificial recharge relates to the same aquifer storage and recovery system, each application shall use the same methodology for accounting for water stored in the basin storage area. The accounting of the water balance of all water entering and leaving the basin storage area shall be determined by using sound engineering methods based on actual measurements, generally accepted engineering methodology, or a combination of both.

(2) Approval of any application for a permit to appropriate water for artificial recharge shall be contingent upon the chief engineer's approval of the method for accounting for the basin storage area.

(e) Each applicant for recovery of water stored by the holder of a permit to appropriate water for artificial recharge to store water in a basin storage area shall obtain a permit separate from the aquifer storage permit to appropriate water for beneficial use for each well used to recover the water stored. The maximum annual quantity of water that may be appropriated for this purpose shall be no more than the maximum cumulative recharge credits available to the operator of the aquifer storage and recovery system. These credits shall be determined by the accounting methodology approved under a permit to appropriate water for artificial recharge pertaining to the aquifer storage and recovery system. In determining whether diversion of the annual quantity impairs other water rights, the following data may be considered by the chief engineer:

(1) The maximum storage volume available in the basin storage area;

(2) the spatial distribution of recharge and withdrawal systems;

(3) the maximum rate of diversion at which the water will be withdrawn; and

(4) any other relevant information.

Recharge credits may be accumulated over more than one year, and any amount of recharge credits available may be withdrawn in accordance with the permit if the withdrawal does not impair other water rights.

(f) The approval of application, if the water to be diverted is the water artificially recharged into the basin storage area, shall be conditioned upon the following:

(1) Generally accepted engineering methodology;

(2) a maximum annual quantity that does not exceed the recharge credits; and

(3) an annual reporting that complies with K.A.R. 5-12-2. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2015 Supp. 82a-711 and K.S.A. 82a-712; effective Sept. 22, 2000; amended April 29, 2016.)

#### Article 14.—ENFORCEMENT AND APPEALS

**5-14-3. Orders.** (a) An order subject to review pursuant to K.S.A. 82a-1901, and amendments thereto, shall be issued by the chief engineer in each of the following matters:

(1) The approval or dismissal of an application to change the place of use, the point of diversion, the use made of water, or any combination of these, filed pursuant to K.S.A. 82a-708b and amendments thereto;

(2) the approval or dismissal of an application to appropriate water for beneficial use filed pursuant to K.S.A. 82a-711 and amendments thereto;

(3) the declaration of abandonment and termination of a water right pursuant to K.S.A. 82a-718 and amendments thereto; and

(4) the suspension of the use of water under a term permit, an approved application for a permit to appropriate water for beneficial use, an appropriation right, or a vested right, pursuant to K.S.A. 82a-770 and amendments thereto.

(b) Each order that is issued pursuant to K.S.A. 82a-737, and amendments thereto, and is subject to review pursuant to K.S.A. 82a-1901, and amendments thereto, shall be issued by the chief engineer, or the chief engineer's designee, in the assessment of civil penalty, the modification of a person's water right or permit to use water, the suspension of a person's water right or permit to use water, or any combination of these.

(c) Unless limited or prohibited by statute, any person to whom the order is directed or who has a property interest that could be adversely affected by the action or proposed action may request a review pursuant to K.S.A. 82a-1901, and amendments thereto, without filing a request for a hearing before the chief engineer.

(d) The chief engineer shall not be required to hold a hearing before issuing an order unless required by statute.

(e)(1) Any person to whom an order will be directed may request a hearing before the chief engineer before the issuance of an order by the

chief engineer. The person shall then be notified by the chief engineer that, if the request is granted by the chief engineer, the person shall not be allowed to have a second hearing before the chief engineer after the issuance of the order. Within 15 days after the notice is sent, the person shall notify the chief engineer whether the requestor wants to proceed with a hearing before the chief engineer issues the order.

(2) If a hearing is held by the chief engineer before the issuance of the order by the chief engineer and the person to whom the order is directed still desires to have the order reviewed, the person shall seek review pursuant to K.S.A. 82a-1901, and amendments thereto, if that type of review is authorized by statute.

(f) If a person to whom an order was directed did not have a hearing before the issuance of an order, that person may request a hearing before the chief engineer after issuance of the order. The person shall submit a written request for hearing to the chief engineer within 15 days of service of the order pursuant to K.S.A. 77-531, and amendments thereto. If a hearing is not requested, the person may seek review pursuant to K.S.A. 82a-1901, and amendments thereto, within 30 days of service of the order pursuant to K.S.A. 77-531 and amendments thereto, if that type of review is authorized by statute. Each request for a hearing shall meet the following requirements:

(1) Be filed in writing with the chief engineer within 15 days after the date of service of the order; and

(2) set forth the factual and legal basis for the hearing request. The factual basis may be stated generally and shall not be required to be specific if the written request clearly establishes the existence of disputed facts. The request for hearing may be denied if the request fails to clearly establish factual or legal issues.

(g) A request for intervention in a matter pending hearing from a person or persons other than those to whom the order is directed may be granted by the chief engineer if all of the following conditions are met:

(1) The chief engineer has issued a notice of hearing.

(2) The person requesting to intervene has filed a notice with the chief engineer that the order in the pending matter could adversely affect one or more of the following:

(A) The person's property interest in the pending matter;

(B) the person's water right or permit to appropriate water; or

(C) the person's statutory duty to act.

(3) The chief engineer has determined that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a, K.S.A. 2008 Supp. 82a-708b, 82a-711, 82a-718, 82a-737, 82a-770, and 82a-1901; effective Sept. 22, 2000; amended March 20, 2009.)

**5-14-3a. Hearing procedure.** The procedures specified in this regulation shall apply to any hearing held by the chief engineer pursuant to K.A.R. 5-14-3. Upon notice to all parties, these procedures may be applied by the chief engineer to any other hearings held under the Kansas water appropriation act. (a) Unless otherwise required by statute, the following persons and entities shall be allowed to be parties to a formal hearing before the chief engineer:

(1) The division of water resources, Kansas department of agriculture (DWR);

(2) the person or persons to whom the order is, or will be, directed;

(3) the applicant to change the place of use, the point of diversion, the use made of water, or any combination of these, under K.S.A. 82a-708b and amendments thereto, or the applicant to appropriate water for beneficial use under K.S.A. 82a-711, and amendments thereto;

(4) the owners of the proposed place of use and the owners of the place of use authorized under the application, water right, or permit to appropriate water; and

(5) any other person who has filed a timely petition for intervention in accordance with K.A.R. 5-14-3(e).

(b) The hearing shall be presided over by the chief engineer or the chief engineer's designee. Authority may be delegated by the chief engineer to the presiding officer to issue the order or to make written recommendations to the chief engineer after the hearing.

(c) Unless otherwise required by statute, the presiding officer shall issue a written notice of hearing to all parties and to any person who requests notice of a hearing.

(1) Notice of hearing shall be served on the parties as required by statute, but not later than 15 days before the hearing.

(2) The notice of hearing shall be served by mail,

facsimile, electronic mail, or hand-delivery and shall be evidenced by a certificate of service. If due diligence fails to locate a person allowed to be a party, then notice by publication shall be made in the manner indicated in K.A.R. 5-14-3a (d) (2).

(3) The notice of hearing shall include the following:

(A) A case or other identification number and a descriptive title, which shall appear on all correspondence relating to the docket. If more than one matter has been consolidated for hearing, all numbers and descriptive titles shall appear on all correspondence;

(B) the names and mailing addresses of all parties;

(C) a statement of the time, place and nature of the hearing. If more than one matter has been consolidated for hearing, statement of the nature of the hearing shall include all matters to be heard;

(D) a statement that the presiding officer may complete the hearing without the participation of any party who fails to attend or participate in a prehearing conference, hearing, or other stage in the proceeding; and

(E) if nonparties are provided an opportunity to submit comments, the time and place where oral comments will be accepted and the deadline and mailing address for the submission of written comments.

(4) For abandonment hearings under K.S.A. 82a-718, and amendments thereto, the notice of hearing shall include a copy of the verified report of the chief engineer or the chief engineer's representative.

(d) Unless otherwise required by statute, if members of the public will be given an opportunity to submit oral and written comments, notice of the hearing shall be caused by the chief engineer to be distributed in the place or places where the action or proposed action will be effective.

(1) Notice of hearing shall be given as required by statute, but no later than 15 days before the hearing.

(2) The notice of hearing may be published in a newspaper of general circulation where the action or proposed action will be effective as required by statute, but shall be published at least 15 days before the hearing. The notice of hearing shall not be required to be in the form of a legal notice. The notice may also be given by any other means reasonably calculated to reach the residents of the area.

(e) Only the parties named in the notice of hearing or otherwise designated by the chief engineer may participate in the hearing.

(1) Any party may participate in person or, if the party is a corporation or other artificial person, by an authorized representative.

(2) Any party may be represented, at the party's own expense, by legal counsel or, if permitted by law, some other representative.

(3) The presiding officer may refuse to allow representation that would constitute the unauthorized practice of law.

(4) The presiding officer may give nonparties the opportunity to present oral or written statements to be included in the record of the proceedings.

(5) The presiding officer may consider only oral statements that are given under oath or affirmation and signed written statements.

(6) The presiding officer shall allow all parties a reasonable opportunity to challenge or rebut all oral and written statements received.

(f) The presiding officer may allow any party to participate in prehearing conferences, the hearing, or any other stage of the proceedings by telephone or videoconference.

(1) Unless otherwise authorized by the presiding officer, the party wishing to participate by telephone shall notify the presiding officer at least 48 hours in advance of the prehearing conference. The party wishing to participate by telephone may be granted a continuance if the presiding officer is not able to grant the request.

(2) The presiding officer may require the party wishing to participate by telephone to initiate the call.

(3) The presiding officer may refuse to allow any party to participate by telephone if the party has not notified the presiding officer in advance and made arrangements for that participation or if any party objects.

(g) The presiding officer may hold one or more prehearing conferences as necessary to address preliminary matters or to facilitate the hearing.

(1) Notice of all prehearing conferences shall be given by the presiding officer to all parties and to all persons who have requested that notice. Notice may also be given to other interested persons at least 15 days before the prehearing conference.

(2) The notice of prehearing conference shall include the following:

(A) The names and mailing addresses of all parties;

(B) a statement of the time, place, and nature of the prehearing conference; and

(C) a statement that the presiding officer may complete the hearing without the participation of any party who fails to attend or participate in a prehearing conference, hearing, or other stage in the proceeding.

(3) The presiding officer shall issue a prehearing order after each prehearing conference.

(h) Discovery shall be limited to matters that are clearly relevant to the proceeding.

(i) Each party shall have the opportunity to file pleadings, objections, and motions. At the presiding officer's discretion, any party may be given an opportunity to file briefs, proposed findings of fact and conclusions of law, and proposed orders.

(1) Each party shall serve a copy of any written filings on each of the other parties.

(A) Service may be made by mail, facsimile, electronic mail, or hand-delivery.

(B) Service shall be presumed if the person making service signs a written certificate of service.

(C) Service by mail shall be complete upon mailing.

(2) The presiding officer shall notify all parties of the deadlines for written filings and may extend the deadlines upon request of any party.

(A) Unless otherwise stated in the notice or order of the presiding officer, all deadlines to file documents within a specific number of days shall end at the close of business on the third working day after the deadline set in the notice or order mailed out by the presiding officer.

(B) In computing any deadline, the day of service shall not be included. Working days shall not include Saturdays, Sundays, state holidays, and federal holidays.

(3) The presiding officer shall not be required to consider any written filing that has not been filed on or before the deadline or that is not served on all parties.

(4) Service upon an attorney of record shall be deemed to be service upon the party represented by the attorney.

(j) After the presiding officer has issued a notice of hearing and before an order is issued, no party or its attorneys shall discuss the merits of the proceedings with the presiding officer or with any other person named in the prehearing order as assisting the presiding officer in the hearing, unless all parties have the opportunity to participate.

(1) If the presiding officer receives an ex parte communication, the presiding officer shall notify all parties that an ex parte communication has

been received and place the notice in the record of the pending matter. The notice shall contain the following:

(A) A copy of any written ex parte communication received and any written response to the communication; and

(B) a memorandum stating the substance of any oral ex parte communication received, any oral response made, and the identity of each person from whom the oral ex parte communication was received.

(2) Any party may submit written rebuttal to an ex parte communication within 15 days after service of notice of the communication. If any party submits a written rebuttal to an ex parte communication, that party shall simultaneously serve a copy on all other parties and the presiding officer. All timely filed written rebuttals shall be placed in the record of the pending matter.

(3) A presiding officer who has received an ex parte communication shall withdraw from the pending matter if the presiding officer determines that the communication has rendered the presiding officer no longer qualified to hear the pending matter because of bias, prejudice, or interest.

(4) Any party may petition for the disqualification of a presiding officer upon discovering facts establishing grounds for disqualification because of bias, prejudice, or interest.

(5) Each presiding officer whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination. The facts and reasons for the presiding officer's decision shall be entered into the record.

(k) The presiding officer may consolidate any proceedings if there are common issues to be resolved or a common factual basis for the proceedings. The presiding officer may consolidate proceedings on the presiding officer's own motion or upon the request of the parties to all proceedings.

(1) The presiding officer may continue the hearing or any other proceeding on that person's own motion or at the request of a party.

(1) A party shall notify all other parties before requesting a continuance.

(2) The presiding officer shall not be required to continue the hearing if all other parties have not been consulted or if any party objects.

(3) Each party who requires a continuance because of an emergency shall notify the presiding officer and any other party as soon as the party reasonably determines that an emergency exists.

(m) Each party shall have a reasonable opportunity to be heard. Each party shall be given the opportunity to present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as may be restricted by a pre-hearing order or limited grant of intervention.

(1) Unless otherwise limited by this regulation or the presiding officer, each party and each intervenor shall be given an opportunity to make opening statements and closing arguments.

(2) Unless the parties have been required to exchange exhibits before the hearing, each party shall bring a copy of each document offered as evidence for each party and at least two copies for the presiding officer. If possible, the original document, or a certified copy of the document, shall be offered into evidence at the hearing.

(3) All hearings shall be open to the public.

(4) All testimony of parties and witnesses shall be made under oath or affirmation.

(5) The direct examination of each witness shall be followed by cross-examination of the witness. Cross-examination shall be limited in scope to the testimony upon direct examination. Redirect examination shall be limited in scope to the testimony upon cross-examination. Recross-examination shall be limited in scope to the testimony upon redirect.

(6) No more than one attorney for each party shall examine or cross-examine a witness. The presiding officer may require that only one attorney be allowed to cross-examine a witness on behalf of all parties united in interest.

(7) All testimony shall be taken on the record unless the presiding officer grants a request to go off the record.

(8) At the time determined by the presiding officer, the presiding officer shall announce that the record of exhibits and testimony shall be closed and, if applicable, that the matter has been taken under advisement.

(9) The record shall not be reopened except upon order of the presiding officer or the chief engineer.

(n)(1) In any hearing concerning an application filed under K.S.A. 82a-708b or K.S.A. 82a-711 and amendments thereto, the applicant shall bear the burden of proving, by a preponderance of the evidence, that the application should be approved.

(2) If the DWR does not offer opinion testimony concerning whether and how the application complies or does not comply with the applicable regulations, its participation in the hearing shall be limited as follows:

(A) The DWR shall make a proffer of the records of the agency pertaining to the pending matter and may offer the testimony of fact witnesses to lay foundation for the proffer. These witnesses may be cross-examined, but cross-examination shall be limited to the scope of the direct questioning.

(B) If any member of the DWR's staff is called as a witness for or is cross-examined by another party, the DWR shall be allowed to conduct cross-examination of the witnesses offered by that party.

(3) The applicant shall be heard after the DWR's proffer, unless the presiding officer determines that another order of presentation will facilitate the conduct of the hearing.

(4) If the DWR offers opinion testimony concerning whether and how the application complies or does not comply with the applicable regulations, the DWR shall be heard after the applicant and the DWR may participate in the hearing to the same extent as the applicant, unless the presiding officer determines that a different order of presentation will facilitate the conduct of the hearing.

(5) The presiding officer shall determine the order in which other parties and intervenors may be heard.

(o) In hearings concerning the assessment of a civil penalty, the modification of a water right, the suspension of a water right, or the suspension of the use of water under a water right, the following requirements shall be met:

(1) The DWR shall bear the burden of proving, by a preponderance of the evidence, that a violation under K.S.A. 82a-737 and amendments thereto or K.S.A. 82a-770 and amendments thereto, or both, has occurred.

(2) The DWR shall be heard first at the hearing, unless the presiding officer determines that a different order of presentation will facilitate the conduct of the hearing. The presiding officer shall determine the order in which other parties and intervenors may be heard.

(p) In an abandonment hearing pursuant to K.S.A. 82a-718 and amendments thereto, the DWR shall first present the verified report specified in K.S.A. 82a-718, and amendments thereto.

(1) The verified report shall be a report of the DWR's investigation into the water use history and shall contain the following:

(A) Documentation that shows the use or non-use of water authorized by the water right as established by the contents of the DWR water right

file and as reported to the DWR, pursuant to K.S.A. 82a-732 and amendments thereto;

(B) the analysis of the documentation used in the verified report by the preparer of the verified report;

(C) a conclusion citing the specific successive years of nonuse to meet the criteria for abandonment found in K.S.A. 82a-718 and amendments thereto; and

(D) the years for which due and sufficient cause for nonuse pursuant to K.A.R. 5-7-1 was reported to the chief engineer pursuant to K.S.A. 82a-732, and amendments thereto, and verified by the DWR.

(2)(A) If the verified report specified by K.S.A. 82a-718(a), and amendments thereto, establishes that there has been no lawful, beneficial use of water for the period of time specified in K.S.A. 82a-718(a) and amendments thereto and that due and sufficient cause for the nonuse of water has not been reported to the DWR pursuant to K.S.A. 82a-732 and amendments thereto during this period, this shall be considered to be prima facie evidence that the water right has been abandoned.

(B) Upon a determination by the presiding officer that prima facie evidence of abandonment exists, the water right owner shall bear the burden of rebutting the prima facie evidence by a preponderance of the evidence establishing that there had been lawful, beneficial use of water during the time period in question or that due and sufficient cause existed for the nonuse of water during the period of time in question, or both, to avoid the application of K.S.A. 82a-718(a) and amendments thereto.

(3) The DWR may participate in the hearing to the same extent as the owner or owners of the water right.

(4) The DWR shall be heard first at the hearing, unless the presiding officer determines that another order of presentation will facilitate the conduct of the hearing.

(5) The presiding officer shall determine the order in which other parties and interveners may be heard.

(q) During the hearing, all of the following shall apply:

(1) The presiding officer shall not be bound by the technical rules of evidence.

(2) The presiding officer shall give the parties a reasonable opportunity to be heard and to present evidence.

(3) The presiding officer shall give effect to the privileges listed in K.S.A. 60-426 through 436, and

amendment thereto, and any other privileges recognized by law.

(4) Evidence shall not be required to be excluded solely if the evidence is hearsay.

(5) All parties may note, in the record, their exceptions to any ruling or other action of the presiding officer.

(6) If the presiding officer sustains an objection to evidence or testimony, the party may make a proffer of the excluded evidence. The presiding officer may add other statements to clearly show the character of the evidence, the form in which the evidence was offered, and the objection and the ruling made. Upon request, the excluded testimony or evidence shall be marked and preserved for the record upon appeal.

(7) Without notice to the parties and without receiving a request from any party, the presiding officer may take administrative notice of the following:

(A) The Kansas water appropriation act and other Kansas statutes;

(B) regulations promulgated by the chief engineer;

(C) orders issued by or on behalf of the chief engineer; and

(D) specific facts and propositions of general knowledge that are so universally known or known within the profession that they cannot reasonably be the subject of dispute or that are capable of immediate and accurate determination by using easily accessible sources of indisputable accuracy.

(8) Upon reasonable notice to the parties and the opportunity to contest and offer rebuttal evidence, the presiding officer may also take administrative notice of any of the following:

(A) Scientific or technical matters within the DWR's specialized knowledge;

(B) the record of other proceedings before the DWR; and

(C) codes and standards that have been adopted by an agency of the United States, the state of Kansas, or any other state or by a nationally recognized organization or association.

(r) The hearing and all prehearing conferences shall be electronically recorded at the expense of the Kansas department of agriculture (KDA).

(1) Copies of electronic recordings may be obtained from the DWR. Written transcripts of the recording shall be available by request, and the requestor shall pay the cost of transcription.

(2) The DWR shall hire and pay for a court reporter if deemed necessary by the presiding

officer for the presiding officer's use or for the preservation of testimony for later use in a court proceeding. Written transcripts shall be obtained directly from the court reporter at the requester's expense.

(s) If the chief engineer has not delegated authority to the presiding officer to issue an order, the presiding officer shall issue written recommendations to the chief engineer after the record of the hearing is closed.

(1) The recommendations shall be signed by the presiding officer and shall contain a statement of the recommended decision and the facts and conclusions of law upon which the recommended decision is based.

(2) The presiding officer shall serve the original, signed recommendations on the chief engineer and a copy of the recommendations on each party and on its counsel of record, if any, in the manner specified in this regulation.

(3) The recommendations shall state that the parties have at least 15 days after service in which to provide written comments to the chief engineer and shall contain a certificate of service. After the record of the hearing is closed, no party may submit additional evidence unless specifically permitted to do so by the presiding officer in advance of the submission. In order to receive permission to submit additional evidence, the party shall file a written request with the presiding officer, in advance, with a copy to each other party. Each other party shall be given a reasonable chance to respond to the request to submit additional information. If additional evidence is allowed, each other party shall be allowed a reasonable opportunity to rebut the additional evidence submitted.

(4) All comments submitted within the specified time frame shall be considered by the chief engineer before issuing an order.

(5) The order shall state that it is subject to review by the secretary of agriculture pursuant to K.S.A. 82a-1901, and amendments thereto.

(t) An order shall be issued by the chief engineer or, if so authorized, the presiding officer after the record of the hearing is closed.

(1) The order shall be signed by the chief engineer or the presiding officer and shall contain a statement of the relevant law and the facts upon which the decision is based.

(2) The order shall be served on each party or its counsel of record in the manner specified in these regulations and shall contain a certificate of service.

(3) If the presiding officer made recommendations to the chief engineer, the order shall state which recommendations, if any, have been accepted by the chief engineer. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2008 Supp. 82a-708b, 82a-711, 82a-718, 82a-737, 82a-770, 82a-1038, and 82a-1901; effective March 20, 2009.)

#### **5-14-10. Civil penalties for violations other than exceeding the authorized quantity of water.**

(a) Penalty order. In addition to any other authorized enforcement procedures, if the chief engineer finds that any of the violations specified in K.S.A. 82a-737, and amendments thereto, have occurred, a written order may be issued by the chief engineer pursuant to K.S.A. 82a-737(e), and amendments thereto.

(b) Civil penalties.

(1) Any civil penalty assessed in any order issued under this regulation may be no greater than the civil penalties specified in subsection (m) for each applicable violation. Any day on which the violation continues to occur may constitute a separate offense. If an order is issued, the chief engineer may include all known violations of this regulation or K.A.R. 5-14-12, or both, and all penalties pertaining to a given water right in the order. The order may include violations of this regulation or K.A.R. 5-14-12, or both, applicable to multiple water rights. Separate penalties may be assessed for each violation cited in a single order.

(2) The monetary penalties and suspension terms specified in subsection (m) may be reduced due to one or more of the following factors:

(A) The absence of any prior penalty assessed under the Kansas water appropriation act, or implementing regulations, during the five calendar years preceding the calendar year in which the most recent violation occurred and if that calendar year is not determinable, then preceding the calendar year in which the order is issued for the most recent violation;

(B) the absence of intentional noncompliance or gross negligence; or

(C) prompt cessation or correction of the violation upon discovery or notification by the chief engineer or an authorized representative or by personnel from a groundwater management district.

(c) Lower-tier miscellaneous. Any of the following actions or inactions may constitute a lower-tier miscellaneous violation:

(1) Operating and maintaining a water flowmeter or other water-measuring device required by the chief engineer that is out of compliance as specified in K.A.R. 5-1-9, unless the violation is a meter manipulation;

(2) failure to properly implement a conservation plan required by the chief engineer;

(3) committing a waste of water; and

(4) violating an order of the chief engineer or a term, condition, or limitation of a water right, approval of application, term permit or temporary permit, or any regulation not otherwise specifically listed as a violation in this regulation.

(d) Failure to provide information. Any of the following actions or inactions may constitute a failure to provide information:

(1) Failure to file a required monthly report; and

(2) failure to provide complete and accurate water use or other data, information, or records requested by the chief engineer or authorized representative, except the annual water use reports required by K.S.A. 82a-732 and amendments thereto, within the following time frames:

(A) For information regarding water use during administration of a water right, within 24 hours of the chief engineer's or authorized representative's request; and

(B) for all other information, within 15 days of the request made by the chief engineer or authorized representative or within any other time frame prescribed by the chief engineer or authorized representative when the request is made.

(e) Unauthorized diversion or threat to divert. Any of the following actions may constitute an unauthorized diversion or threat to divert:

(1) A threat to divert water without authorization from the chief engineer;

(2) irrigating an unauthorized place of use;

(3) diverting water at a rate in excess of the authorized rate of diversion;

(4) diverting water from an unauthorized point of diversion of water; and

(5) applying water to an unauthorized type of beneficial use.

(f) Denial of access. It may be a violation for any person to deny access to authorized agents of the chief engineer as required by K.S.A. 82a-706b, and amendments thereto.

(g) Lack of water flowmeter. It may be a violation for any person to fail to timely install, or to remove and fail to replace, a required water flowmeter or other acceptable water-measuring device.

(h) Noncompliance with a substantial order. Any of the following actions may constitute a violation of a substantial order of the chief engineer:

(1) Violating a cease-and-desist order issued by the chief engineer;

(2) violating an order of the chief engineer issued pursuant to K.S.A. 82a-706b, and amendments thereto;

(3) violating any order of the chief engineer issued pursuant to K.S.A. 82a-1038, K.S.A. 82a-1041, or K.S.A. 82a-745, and amendments thereto, or any associated term permit, relating to an intensive groundwater use control area, local enhanced management area, or water conservation area; and

(4) violating a minimum desirable streamflow order issued by the chief engineer pursuant to K.A.R. 5-15-1 through 5-15-3.

(i) Meter manipulation.

(1) Any of the following actions may constitute meter manipulation:

(A) Causing a water flowmeter or other acceptable water-measuring device to show an incorrect or inaccurate reading by any method, including any of the following:

(i) Tampering with the meter in any way;

(ii) physically altering the meter reading or the propeller;

(iii) operating the water flowmeter in reverse orientation or running the water flowmeter in reverse by any means; or

(iv) altering a water flowmeter from its factory specifications in a manner that causes the meter to underreport actual water use; and

(B) removing a seal placed on a pump, diversion device, or water flowmeter without the written permission of the chief engineer or the chief engineer's authorized representative.

(2) If a penalty is assessed for meter manipulation under this regulation and more than one water right is serviced by a single meter, then a single penalty may be assessed for all water rights serviced by that meter.

(j) Falsification. Any of the following actions may constitute falsification:

(1) Providing false water use data, including providing inaccurate information during a perfection period or after a water right has been certified, that underreports or overreports water use; and

(2) falsifying any other required data or information.

(k) Noncompliance with a special condition of change application approval.

(1) Any of the following actions may constitute a violation of a special condition of a change application approval:

(A) Violating any of the terms and conditions of a multiyear allocation; and

(B) violating a term or condition limiting the net acres that may be irrigated in any one calendar year pursuant to an approval to allow annual rotation of the authorized place of use for irrigation.

(2) The suspension specified in subsection (m) may apply to all or any portion of the annual water use authorized by the water right, any term permit, and any water right upon which a multiyear allocation or rotation was based. Additionally, a subsequent restriction of the authorized place of use to the base acreage at a location specified in the change approval may be applied. After any suspension has expired, the water right may revert to all conditions in effect on the water right before approval of the change application that authorized the multiyear allocation or rotation.

(l) Penalties for water rights in a term permit. If falsification or meter manipulation occurs during the term of a multiyear flex account term permit or other term permit during which the base water right is suspended, the chief engineer may revoke the term permit, and the base water right may be suspended for what would have been the remainder of the term permit. In addition to the suspension, a penalty corresponding to the falsification or meter manipulation violation cited may be imposed. Any additional reduction or suspension may run consecutively with the suspension for what would have been the remainder of the term permit.

(m) Penalty table. The following table may specify the maximum civil penalty and the maximum suspension term that may be assessed by the chief engineer for each violation of this regulation:

Violation	Monetary penalty	Maximum number of days monetary penalty applied	Suspension of water use
Lower-tier miscellaneous	\$500 per day	20	One year
Failure to provide information	\$500 per day, for each day the violation exists	20	One year
Unauthorized diversion or threat to divert	\$500 per day	20	One year

Violation	Monetary penalty	Maximum number of days monetary penalty applied	Suspension of water use
Denial of access	\$1,000 per day	10	Three years
Lack of water flowmeter	\$1,000 per day	10	Three years
Noncompliance with a substantial order	\$1,000 per day	10	Five years
Meter manipulation	\$1,000 per day	10	Five years
Falsification	\$1,000 per instance of falsification	Not applicable	Five years
Noncompliance with a special condition of a change application approval	\$1,000 per day	10	Two years

(n) Owner liability and effect of penalty on water right. Any civil penalty and any temporary reduction or suspension of the quantity of water authorized to be diverted under a water right in Kansas may be enforced against the owner or owners of the water right and shall attach to and transfer with the water right to any subsequent heir, assignee, purchaser, or other subsequent holder of the water right.

(o) Appeal. Any person aggrieved by an order of the chief engineer may request a review pursuant to K.S.A. 82a-1901, and amendments thereto, and after exhaustion of administrative remedies, may appeal to the district court in the manner provided by the act for judicial review and civil enforcement of agency actions. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a, K.S.A. 2016 Supp. 82a-737, and K.S.A. 2016 Supp. 82a-1901; effective Oct. 24, 2003; amended Oct. 31, 2008; amended July 14, 2017.)

**5-14-11. Civil fines; water use reporting.**

(a) Any owner of a water right or approval of application may be assessed a civil penalty of \$1,000 per year for each water right or approval of application for which the owner does not perform the following:

(1) Timely submit an annual water use report pursuant to K.S.A. 82a-732, and amendments thereto; and

(2) submit a complete and accurate water use report pursuant to K.S.A. 82a-732, and amendments thereto.

(b) If the owner submits both the complete and accurate water use report and payment of the civil penalty after March 1 but before June 1, the civil penalty per water right or approval of application may be reduced to \$250 for each water right or approval of application.

If the owner submits the reduced civil penalty but not the water use report after March 1, the civil penalty may increase on June 1 to the maximum civil penalty of \$1,000 for each water right or approval of application. The initial reduced civil penalty received after March 1 but before June 1 shall be applied toward the maximum civil penalty owed. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a, K.S.A. 2016 Supp. 82a-732, and K.S.A. 2016 Supp. 82a-737; effective Oct. 24, 2003; amended Sept. 22, 2017.)

**5-14-12. Civil penalties for exceeding the authorized quantity of water.** (a) Penalty order. In addition to any other authorized enforcement procedures, if the chief engineer finds a diversion of water in excess of the authorized quantity, a written penalty order may be issued by the chief engineer pursuant to 82a-737(e), and amendments thereto.

(b) Owner liability and effect of penalty on water right. Any civil penalty and any temporary reduction or suspension of the quantity of water authorized to be diverted under a water right in this state may be enforced against the owner or owners of the water right and shall attach to and transfer with the water right to any subsequent heir, assignee, purchaser, or other subsequent holder of the water right.

(c) Penalty categories. Any violation for diversion of water in excess of the authorized quantity may be subject to the penalties specified in one of the following categories, as listed in subsection (e): category 1, category 2, category 3, or category 4.

(1) A category 1 penalty may be assessed if no penalty for diversion of water in excess of the authorized quantity has been assessed against the water right for a violation that occurred during the five calendar years preceding the calendar year in which the most recent violation occurred.

(2) A category 2 penalty may be assessed if one prior penalty for diversion of water in excess of the authorized quantity has been assessed against the water right for a violation that occurred during the five calendar years preceding the calendar year in which the most recent violation occurred.

(3) A category 3 penalty may be assessed if two prior penalties for diversion of water in excess of the authorized quantity have been assessed against the water right for a violation that occurred during the five calendar years preceding the calendar year in which the most recent violation occurred.

(4) A category 4 penalty may be assessed if three or more prior penalties for diversion of water in excess of the authorized quantity have been assessed against the water right for a violation that occurred during the five calendar years preceding the calendar year in which the most recent violation occurred.

(d) Severity level of violation. Any violation may be assigned a severity level based upon the amount of water diverted in excess of the authorized quantity, according to the following:

(1) A water right that has exceeded its authorized quantity by less than an amount equal to the amount resulting from 24 hours of pumping at the maximum authorized rate may be assessed a maximum of a severity level A penalty.

(2) A water right that has exceeded its authorized quantity by an amount equal to at least the amount resulting from 24 hours of pumping but less than an amount equal to 72 hours of pumping at the maximum authorized rate may be assessed a maximum of a severity level B penalty.

(3) A water right that has exceeded its authorized quantity by an amount equal to at least the amount resulting from 72 hours of pumping at the maximum authorized rate may be assessed a maximum of a severity level C penalty.

(e) Penalty table. The following table may be used to determine the maximum civil penalty and the maximum reduction or modification of the water right that may apply to each violation, based on the penalty category and the severity level of the violation:

Penalty category	Severity level A	Severity level B	Severity level C
1	Written notice of noncompliance	\$1,000 per day and a reduction in quantity equal to two times the quantity overpumped, not to exceed the annual authorized quantity	\$1,000 per day and a reduction in quantity equal to three times the quantity overpumped, not to exceed the annual authorized quantity

Penalty category	Severity level A	Severity level B	Severity level C
2	\$1,000 per day and a reduction in quantity equal to two times the quantity overpumped, not to exceed the annual authorized quantity	\$1,000 per day and a one-year suspension	\$1,000 per day and three-year suspension
3	\$1,000 per day and a one-year suspension	\$1,000 per day and a three-year suspension	\$1,000 per day and a four-year suspension
4	\$1,000 per day and a three-year suspension	\$1,000 per day and a four-year suspension	\$1,000 per day and a five-year suspension

(f) Mitigating factors. The monetary penalties and suspension terms specified in subsection (e) may be reduced due to one or more of the following factors:

(1) The absence of any prior penalty assessed under the Kansas water appropriation act, or the implementing regulations, during the five calendar years preceding the calendar year in which the most recent violation occurred;

(2) the absence of intentional noncompliance or gross negligence; or

(3) prompt cessation or correction of the violation upon discovery or notification by the chief engineer or an authorized representative of the chief engineer or by personnel from a groundwater management district.

(g) Notice of noncompliance. Any notice of noncompliance issued under this regulation may be considered a category 1 penalty for purposes of classifying any future violation.

(h) Multiple water rights.

(1) If multiple water rights or permits authorize the use of water from a single point of diversion and if the water used exceeds the total quantity of water authorized by the water rights and permits, all water rights and permits under which the water was lawfully diverted may be deemed to be violated unless sufficient evidence to the contrary is offered by one or more of the water right owners.

(2) Any monetary penalty assessed under this regulation may be applied jointly and separately to the water rights, any temporary quantity reduction may be applied proportionally to each water right based on the authorized quantities for the

water rights, and any suspension may be applied to all the water rights, unless it can be determined that the quantity available under a given water right was not exceeded.

(i) Penalties for water rights in a term permit. For each instance of diversion of water in excess of the total authorized quantity under a multiyear flex account term permit or other term permit during which the base water right is suspended, the chief engineer may revoke the term permit. For each revocation, a suspension may be applied to the base water right for what would have been the remainder of the term of the permit, in addition to any penalty assessed according to subsection (e). Any additional reduction or suspension may run consecutively with the suspension for what would have been the remainder of the term of the term permit.

(j) Expiration of penalty.

(1) Any penalty assessed by the chief engineer for diversion of water in excess of the authorized quantity under this regulation may expire four calendar years after the end of the calendar year in which the penalty was assessed.

(2) Any penalty that has not expired may be counted as a prior penalty for purposes of determining the category level of any future penalty for diversion of water in excess of the authorized quantity.

(3) A penalty that has expired under paragraph (j)(1) shall not be considered in assessing a future penalty under this regulation or under K.A.R. 5-14-10.

(4) A penalty that has expired shall not be expunged from the record of a water right and, except as otherwise provided in this regulation, may be considered by the chief engineer for any purposes pursuant to the Kansas water appropriation act, K.S.A. 82a-701 et seq. and amendments thereto, and the implementing regulations. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 2016 Supp. 82a-737; effective July 14, 2017.)

**Article 16.—FLEX ACCOUNT**

**5-16-1. Definitions.** The terms and definitions in this regulation shall apply to this article and to K.S.A. 82a-736, and amendments thereto, unless the context clearly requires otherwise. (a) “Subdivision or subdivisions of the place of use for the base water right” means one or more portions of the authorized place of use under the base wa-

ter right that are identifiable and completely circumscribed by the boundaries of place of use for the base water right.

(b) “Water conservation” means conservation by means of actual physical changes in a water distribution system or management practices that improve water use efficiency, which shall include one or more of the following:

(1) Conversion from flood irrigation to center pivot irrigation with a nozzle package designed to improve water use efficiency;

(2) conversion to subsurface drip irrigation;

(3) removal of an end gun, resulting in a significant reduction in the number of irrigated acres; or

(4) enrollment of the base water right in the water right conservation program, the conservation reserve program, or any other multiyear water conservation program approved by the chief engineer. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2012 Supp. 82a-736; effective Oct. 11, 2002; amended Jan. 6, 2006; amended, T-5-8-29-11, Aug. 29, 2011; amended Dec. 16, 2011; amended June 21, 2013.)

**5-16-2.** (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2001 Supp. 82a-708a(d), as amended by L. 2002, Ch. 181, § 21; effective Oct. 11, 2002; revoked June 21, 2013.)

**5-16-3. Establishing a multiyear flex account.** (a) A multiyear flex account shall be established by filing an application for a multiyear flex account and a term permit on a form prescribed by the chief engineer. Each application shall meet the following requirements:

(1) Except as specified in subsection (e), a separate application shall be filed for each water right and each point of diversion for which the owner desires to establish a multiyear flex account. Each application shall be accompanied by the appropriate filing fee;

(2) be date-stamped showing the date the application was filed with the chief engineer;

(3) indicate the five consecutive calendar years that are to be designated as the multiyear flex account period; and

(4) indicate whether the multiyear flex account period will commence with the year in which the application is made if filed before October 1, or with the next calendar year after the calendar year in which the application is filed.

(b) Before any application to establish a multiyear flex account and a term permit will be ac-

cepted for filing, the application shall be signed by at least one owner of the water right or an authorized agent of an owner of the water right.

(c) Before the multiyear flex account can be established or the term permit approved, all of the water rights owners, or an authorized agent of the owners, shall verify upon oath or affirmation that the statements contained in the application are true and complete.

(d) If one or more owners refuse to sign the application or if a written request is filed by one or more of the owners to withdraw their signatures from the application before the application is approved, the application shall be dismissed.

(e) A single application to establish a multiyear flex account and apply for a term permit shall be filed in the following situations:

(1) Multiple water rights authorize the diversion of water from a single point of diversion that diverts water to an identical place of use.

(2) Multiple points of diversion are authorized by the chief engineer to divert water through a single water flowmeter before going to an identical place of use.

(f) The multiyear flex account shall not be established and the term permit to exercise the multiyear flex account shall not be valid until both have been approved by the chief engineer. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2012 Supp. 82a-736; effective Oct. 11, 2002; amended, T-5-8-29-11, Aug. 29, 2011; amended Dec. 16, 2011; amended June 21, 2013.)

**5-16-4. Conditions on the term permit.**

(a) The place of use authorized by a term permit shall be identical to the place or places of use authorized by the base water right or rights or a subdivision or subdivisions of the place of use for the base water right.

(b) The types of use authorized by a term permit shall be limited to the types of use authorized by the base water right or rights.

(c) The rate of diversion authorized by a term permit shall not exceed the maximum instantaneous rate of diversion authorized by the base water right or rights. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2012 Supp. 82a-736; effective Oct. 11, 2002; amended June 21, 2013.)

**5-16-5.** (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2010 Supp. 82a-736, as amended by L. 2011, ch. 89, sec. 28; effective Oct. 11, 2002; amended Jan. 6, 2006; amended, T-5-

8-29-11, Aug. 29, 2011; amended Dec. 16, 2011; revoked June 21, 2013.)

**5-16-6. Multiyear flex accounts and term permits.** (a) The duration of the multiyear flex account and term permit shall be five consecutive calendar years.

(b) If water use records for a base water right are inadequate to accurately determine actual water use during any calendar year in the period used to determine the base average usage, then the actual water use for that calendar year shall be deemed to be zero.

(c) There shall be no carryover of unused quantities of water from one multiyear flex account or term permit to another multiyear flex account or term permit.

(d) No multiyear flex account shall be allowed if the multiyear flex account is inconsistent with the provisions of any intensive groundwater use control area created pursuant to K.S.A. 82a-1036 through K.S.A. 82a-1040, and amendments thereto, or any local enhanced management area created pursuant to K.S.A. 82a-1041, and amendments thereto.

(e) Water flowmeters shall be required under all multiyear flex account term permits and shall meet all of the following requirements:

(1) A water flowmeter meeting the requirements of the chief engineer shall be installed on each point of diversion authorized by the base water right.

(2) Each water flowmeter and the measuring chamber shall be sealed to the diversion works in a manner to ensure that the flowmeter and the measuring chamber can not be removed and reinstalled without breaking the seal.

(3) Each water flowmeter register shall be sealed in a manner to ensure that the register can not be manipulated without breaking the seal.

(4) Each replacement of a water flowmeter during the duration of a multiyear flex account shall be equipped with an anti-reverse-flow mechanism.

(f) Only an entire water right, or a portion of a water right that has been formally divided, may be deposited in a multiyear flex account. Nothing in this subsection shall prevent a multiyear flex account term permit from authorizing a subdivision of the place of use for the base water right as the place of use for the multiyear flex account.

(g) All water diverted pursuant to a term permit and the base water rights associated with the

term permit shall be counted against the quantity of water deposited in the multiyear flex account. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2012 Supp. 82a-736; effective Oct. 11, 2002; amended June 21, 2013.)

**5-16-7. Conditions under which a base water right may be exercised.** Each term permit approved by the chief engineer pursuant to K.S.A. 82a-736, and amendments thereto, shall include the condition that if the term permit can no longer be exercised because of an order issued by the chief engineer, including an intensive groundwater use control area order, a minimum desirable streamflow order, or an order to administer water rights to prevent impairment, then any base water right may be exercised to the extent that all of the following conditions are met: (a) The base water right is in priority, including priority with respect to any established minimum desirable streamflow.

(b) The annual quantity of water authorized by the base water right has not been diverted during that calendar year.

(c) The five-year quantity authorized by the term permit has not been completely used.

(d) The use of water under the base water right does not impair water rights senior to the base water right. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2012 Supp. 82a-736; effective Oct. 11, 2002; amended June 21, 2013.)

## Article 17.—WATER BANKING

**5-17-2. Application to deposit a water right into a water bank or withdraw a deposit.**

(a) Each water right owner proposing to deposit all or a portion of a water right into a water bank shall complete an application on a form prescribed by the water bank and approved by the chief engineer. The application shall be filed with the water bank on or before April 1 of the year in which the deposit will be made. A water right, or a portion of a water right, may be deposited only in increments of full calendar years. A water right shall not be eligible for deposit if water use occurred under the water right, or a portion of the water right, at any time from January 1 through March 31 of the year in which the deposit will be made. The application shall contain the following information concerning the water right, or portion of the water right, that is proposed to be deposited:

(1) The file number of the water right to be deposited;

(2) if the water right is a vested right or an appropriation right that has been certified by the chief engineer, specification of that status;

(3) the hydrologic unit from which the water right is authorized to withdraw water;

(4) the calendar years during which the water right will be on deposit. This period shall not exceed five years; and

(5) any CRP contracts that were in effect for any part of the representative past period.

(b) A water right may be withdrawn from deposit only if both of the following conditions are met:

(1) The water right has not been leased in whole or part.

(2) An application to withdraw the water right from deposit is made before July 1 of the calendar year for which the deposit has been made. Withdrawal of a water right during one calendar year also shall withdraw the water right from deposit in any subsequent years for which the water right may have been deposited. (Authorized by K.S.A. 2009 Supp. 82a-769; implementing K.S.A. 2009 Supp. 82a-763, K.S.A. 2009 Supp. 82a-764, and K.S.A. 2009 Supp. 82a-769; effective Aug. 13, 2004; amended May 21, 2010.)

## ARTICLE 20.—INTENSIVE GROUNDWATER USE CONTROL AREA

**5-20-1. Intensive groundwater use control area; public hearings.** (a) In any case in which the chief engineer initiates proceedings for the designation of an intensive groundwater use control area (IGUCA), an independent hearing officer shall be appointed by the chief engineer. The independent hearing officer shall meet the following requirements:

(1) Not have been an employee of the department of agriculture for at least five years before the appointment;

(2) be admitted to practice law in this state; and

(3) be knowledgeable by training and experience in water law and administrative procedure.

(b)(1) The independent hearing officer shall conduct one or more public hearings to determine whether both of the following conditions are met:

(A) One or more of the circumstances specified in K.S.A. 82a-1036, and amendments thereto, exist.

(B) The public interest requires that one or more corrective control provisions should be adopted.

(2) If both of the conditions in paragraph (b) (1) are met, the independent hearing officer shall recommend the boundaries of the IGUCA.

(c) At the public hearing specified in subsection (b), all of the following requirements shall be met:

(1) Documentary and oral evidence shall be taken, and a full and complete record of the public hearing shall be kept.

(2) The division of water resource's (DWR's) staff shall make a proffer of the records of the division pertaining to the proposed IGUCA and may present background, hydrologic, and other information and an analysis of that information, concerning the area in question.

(3) The DWR's proffer and any other DWR presentations shall be heard first, unless the hearing officer determines that a different order of presentation will facilitate the conduct of the hearing.

(4) If any part of the proposed IGUCA is within the boundaries of a groundwater management district (GMD), a representative of that GMD shall be allowed to present the GMD's own data, analysis, comments, provisions of the GMD's revised management plan, regulations, and recommendations at any public hearing.

(5) Each person shall be allowed to give an oral statement under oath or affirmation or to present documentary evidence, including a signed written statement.

(6) At the end of the public hearing, a reasonable opportunity for any person to submit oral or written comments concerning the matters presented may be allowed by the hearing officer.

(7) The hearing shall be conducted according to the procedure specified in K.A.R. 5-14-3a. The hearing officer shall have the discretion to use a different procedure if it facilitates the conduct of the hearing.

(8) The independent hearing officer shall make the following findings of fact:

(A) Whether one or more of the circumstances specified in K.S.A. 82a-1036, and amendments thereto, exist; and

(B) whether the public interest requires that one or more corrective control provisions should be adopted.

(9) The independent hearing officer shall transmit the findings to the chief engineer.

(d) The proceeding shall be concluded if the independent hearing officer finds that at least one of the following conditions is met:

(1) None of the circumstances specified in K.S.A. 82a-1036, and amendments thereto, exist.

(2) The public interest does not require that any corrective control provisions should be adopted.

(e) The procedure specified in subsection (f) shall be followed by the chief engineer if the independent hearing officer meets all of the following conditions:

(1) Finds that one or more of the conditions specified in K.S.A. 82a-1036, and amendments thereto, exist;

(2) finds that public interest requires that any one or more corrective control provisions should be adopted; and

(3) recommends the boundaries of the proposed IGUCA.

(f) If the independent hearing officer makes the findings and recommendation specified in subsection (e), one or more public hearings shall be conducted by the chief engineer to determine the following:

(1) What the goals of the IGUCA should be;

(2) what corrective control provisions should be adopted; and

(3) what the final boundaries of the IGUCA should be. After the hearing, the order described in K.S.A. 82a-1038, and amendments thereto, shall be issued by the chief engineer. The chief engineer's order shall include the independent hearing officer's findings of fact.

(g) Notice of the public hearings held by the independent hearing officer shall be given by regular mail and by publication, as specified in K.S.A. 82a-1037 and amendments thereto. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 74-510a, K.S.A. 82a-1036, K.S.A. 82a-1037, and K.S.A. 2008 Supp. 82a-1038; effective Sept. 18, 2009.)

**5-20-2. Formal review of intensive groundwater use control area orders.**

(a) For each intensive groundwater use control area (IGUCA) designated by order of the chief engineer before July 1, 2008, pursuant to K.S.A. 82a-1038 and amendments thereto, a public hearing to review the designation shall be conducted by the chief engineer within seven years of the effective date of this regulation. A subsequent review of the designation shall occur within 10 years after the previous public review hearing or more frequently as determined by the chief engineer.

(b) For each IGUCA designated by order of the chief engineer on or after July 1, 2008, a public hearing to review the designation shall be conducted by the chief engineer within seven years after the order is final. A subsequent review of the designation shall occur within 10 years after the

previous public review hearing or more frequently as determined by the chief engineer.

(c) Upon the request of a petition signed by at least five percent of the affected water users in an IGUCA designated by order of the chief engineer, a public review hearing to review the designation shall be conducted by the chief engineer. This requested public review hearing shall not be conducted more frequently than every four years.

(d) Written notice of a public review hearing shall be given to each person holding a water right in the affected area. Notice of the hearing shall be given by publication in a newspaper or newspapers of general circulation within the affected area at least 30 days before the date set for the hearing. The notice shall indicate the reason for the hearing and shall specify the time and place of the hearing. At the public review hearing, documentary and oral evidence shall be taken, and a full and complete record of the public review hearing shall be kept.

(e) The following shall be considered by the chief engineer at the public review hearing:

(1) Whether one or more of the circumstances specified in K.S.A. 82a-1036, and amendments thereto, exist; and

(2) whether the public interest requires that the IGUCA designation be continued. The state shall have the burden of proving the need for continuance of the IGUCA designation.

(f) Based on the review specified in subsection (e), one of the following actions shall be taken by the chief engineer:

(1) Continue the IGUCA with its original or current corrective control provisions;

(2) reduce the restrictions imposed by one or more corrective control provisions within the scope and goals specified in the original IGUCA order;

(3) reduce the IGUCA boundaries;

(4) increase any allocations within the IGUCA;

(5) address any other issues that have been identified in the review; or

(6) revoke the IGUCA order and implement alternative measures, if necessary, to address the water issues in the affected areas.

(g) If, as a result of the review specified in subsection (e), the chief engineer determines that the restrictions imposed by current corrective control provisions may need to be increased or additional corrective control provisions may be needed, a hearing shall be conducted by the chief engineer according to K.A.R. 5-14-3a.

(h) If, as a result of the review specified in subsection (e), the chief engineer determines that the boundaries of the IGUCA may need to be increased, a new IGUCA proceeding shall be initiated by the chief engineer pursuant to K.A.R. 5-20-1. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706 and K.S.A. 82a-1036; effective Sept. 18, 2009.)

**Article 21.—WESTERN KANSAS  
GROUNDWATER MANAGEMENT  
DISTRICT NO. 1**

**5-21-3. Well spacing requirements.** (a) Each well location described in an application for a permit to appropriate water for a beneficial use, other than domestic use, that proposes the diversion or withdrawal of water from the Ogallala aquifer shall be spaced at least 2,640 feet from all other non-domestic wells constructed into the Ogallala aquifer.

(b)(1) Each well location described in an application for a permit to appropriate water for a beneficial use, other than domestic use, that proposes the diversion or withdrawal of water from the Dakota aquifer shall be spaced at least four miles from all other non-domestic wells constructed into the Dakota aquifer.

(2) Each well in the Dakota aquifer shall be sealed off between the Dakota aquifer and any other aquifers in a manner that prevents migration of water to or from the Dakota aquifer and any other aquifers.

(c) Each well included in an application for a permit to appropriate water for a beneficial use, other than domestic use, that proposes the diversion or withdrawal of water shall be at least 1,320 feet away from each domestic well constructed into the same aquifer unless the applicant has received written permission from the neighboring well owner or the applicant owns each domestic well.

(d) The location of each well on an application for approval to change the point of diversion under an existing water right shall be no more than 1,320 feet from the originally authorized point of diversion and shall meet one of the following requirements:

(1) Not decrease the distance to any other wells or authorized well locations by more than 300 feet; or

(2) meet the minimum well spacing requirements in this regulation.

(e) Each new well shall be drilled in the location substantially as shown on the approved application and the accompanying map, plat, or aerial photograph.

(f) Exceptions to this regulation may be granted on an individual basis by recommendation of the board in conjunction with the approval of the chief engineer. The applicant may be required by the board to submit information as it deems necessary in order to make the determination. (Authorized by and implementing K.S.A. 82a-706a and K.S.A. 2015 Supp. 82a-1028; effective May 1, 1979; amended May 23, 1994; amended March 17, 2017.)

**5-21-4. Safe yield.** (a) Except as specified in subsection (c), the district shall be closed to new appropriations of water in the portions of the unconsolidated aquifers commonly known as the Ogallala formation and the Niobrara formation that are located within the district.

(b) The approval of each application for a change in the point of diversion shall be subject to the following requirements, if the diversion works have not been completed under the original approved application:

(1) The proposed appropriation, when added to the vested rights, prior appropriation rights, and earlier priority applications, shall not exceed the allowable safe yield amount for the area included within a two-mile-radius circle, which is approximately 8,042 acres, of the proposed well.

(2) For the purpose of analysis, all vested rights, certificates, permits, and prior unapproved applications shall be considered to be fully exercised, and all limitation clauses listed on permits to appropriate water and certificates shall be considered to be in force.

(3) In the case of an application for change in the point of diversion referred to in subsection (b), each application and water right with a priority earlier than the priority established by the filing of the application for change shall be included in the analysis.

(4) The allowable annual safe yield amount shall be calculated using the following formula:

$$Q = \frac{AR}{12}$$

Q = the allowable annual safe yield amount in acre-feet per year

A = area of consideration, within a two-mile-radius circle, approximately 8,042 acres

R = average annual recharge of 0.5 inches per year

(5) If part of the radial area is located outside the district boundary, that part shall be included in the depletion analysis only if the chief engineer determines that hydraulically connected groundwater exists in that portion of the area outside the district. A part of the area of consideration lying outside the state of Kansas shall not be included in the analysis.

(6) If wells authorized under a vested right, a certified water right, or a permit to appropriate water are divided by the circumference of the radial area, the authorized quantity of water shall be assigned to each well. If specific quantities are not authorized for each well, a proportional amount shall be assigned to each well.

(c) This regulation shall not apply to the following:

- (1) Domestic use;
- (2) temporary permits and term permits; and
- (3) a new application filed to appropriate groundwater in any area of the district not within an intensive groundwater use control area, meeting all of the following criteria:

(A) The sum of the annual quantity requested by the proposed appropriation and the total annual quantities authorized by prior permits allowed because of an exemption pursuant to this subsection does not exceed 15 acre-feet in a two-mile-radius circle surrounding the proposed point of diversion.

(B) Well spacing criteria in the area have been met.

(C) The approval of the application does not authorize an additional quantity of water out of an existing authorized well with a nondomestic permit or water right that would result in a total combined annual quantity of water authorized from that well in excess of 15 acre-feet.

(D) All other criteria for approving a new application to appropriate water at that location have been met.

(d) Exceptions to this regulation may be granted on an individual basis by recommendation by the board in conjunction with the approval of the chief engineer. The applicant may be required by the board to submit information necessary in order to make the determination. (Authorized by K.S.A. 82a-706a and K.S.A. 2009 Supp. 82a-1028;

implementing K.S.A. 82a-706, K.S.A. 82a-708b, and K.S.A. 2009 Supp. 82a-1028; effective May 23, 1994; amended Sept. 22, 2000; amended April 15, 2011.)

**5-21-6. Water flowmeters.** (a) Except as specified in subsection (b), each well authorized within the boundaries of the district shall be equipped with a totalizing water flowmeter that is installed and maintained in accordance with the specifications in K.A.R. 5-1-4 through 5-1-12. Each water right owner shall maintain the water flowmeter so that the flowmeter functions properly whenever the diversion of water can reasonably be expected to occur. If the water flowmeter fails to function properly, the owner shall promptly initiate action to repair or replace the meter or to correct any problems with the installation.

(b) The following types of water use shall be exempt from the requirements of this regulation:

- (1) Domestic use; and
- (2) use pursuant to a temporary permit to appropriate water. (Authorized by K.S.A. 82a-706a and K.S.A. 2015 Supp. 82a-1028; implementing K.S.A. 82a-706c and K.S.A. 2015 Supp. 82a-1028; effective Jan. 24, 2003; amended May 27, 2016.)

**5-21-7.** (Authorized by K.S.A. 82a-706a and K.S.A. 82a-1028, as amended by L. 2002, Ch. 137, § 5; implementing K.S.A. 82a-1028, as amended by L. 2002, Ch. 137, § 5 and K.S.A. 2001 Supp. 82a-1903, as amended by L. 2002, Ch. 137, § 7; effective Jan. 24, 2003; revoked Nov. 15, 2019.)

## Article 22.—EQUUS BEDS GROUNDWATER MANAGEMENT DISTRICT NO. 2

### **5-22-4a. Water flowmeter requirement.**

Each nondomestic, nontemporary well meeting any of the following conditions shall be equipped with a water flowmeter that meets or exceeds the requirements of K.A.R. 5-22-4: (a) A well operated under the authority of an approval of application issued on or after September 1, 1987;

(b) a well operated under the approval of an application for change in the place of use, the point of diversion, or the use made of the water, or any combination of these, filed after September 1, 1987;

(c) a well that meets the standards for being a standby well as specified in K.A.R. 5-22-1;

(d) a well for which a certificate of appropriation was issued on or after July 1, 1995;

(e) a well not equipped with a water flowmeter before December 31, 2010. Each such well shall be equipped with a water flowmeter that meets or exceeds the requirements of K.A.R. 5-22-4, pursuant to the following schedule:

(1) On or before December 31, 2012, each well in the northeast quarter of every section located within the district boundaries;

(2) on or before December 31, 2013, each well in the southeast quarter of every section located within the district boundaries;

(3) on or before December 31, 2014, each well in the southwest quarter of every section located within the district boundaries; and

(4) on or before December 31, 2015, each well in the northwest quarter of every section located within the district boundaries; or

(f) a well for which the board determines it is necessary to have a water flowmeter to ensure any of the following:

(1) The accuracy of reported water use;

(2) compliance with the terms, conditions, and limitations of the water right, approval of application, or approval of change; or

(3) nonimpairment of other water rights. (Authorized by and implementing K.S.A. 2010 Supp. 82a-1028; effective Jan. 10, 2003; amended Aug. 5, 2011.)

**5-22-4d. Water flowmeter installation procedures.** (a) If installation of a water flowmeter is required by the board, the owner of the approval of application or the water right shall be notified of the requirement in writing.

(b) A water flowmeter shall be installed on a new or replacement point of diversion within 30 days after the point of diversion is operational, or before the diversion of water, whichever occurs first.

(c) Unless otherwise specified by the board, a water flowmeter shall be installed on an existing point of diversion within 30 days of the issuance of the water flowmeter order by the district, or before the diversion of water, whichever occurs first.

(d) An extension of time to install the water flowmeter may be granted by the board, or the board's designee, if a request for an extension of time is filed with the district before the expiration of the time to install the water flowmeter and one of the following conditions is met:

(1) The water right owner has a contract with a vendor to install a water flowmeter, but the vendor cannot complete the installation within the time allowed.

(2) Weather, site conditions, or other conditions beyond the control of the owner prevent the water flowmeter from being installed within the time allowed.

(3) The owner demonstrates any other reason constituting good cause why the water flowmeter cannot be installed within the time allowed and that granting an extension of time will not be adverse to the public interest.

(e) The water right owner shall notify the district within 30 days after the required water flowmeter is installed. The notification shall be submitted on a form prescribed by the board, or the board's designee.

(f) An inspection of the water flowmeter installation may be made by the board, or the board's designee, to determine if the water flowmeter has been properly installed in accordance with the requirements of K.A.R. 5-22-4, K.A.R. 5-22-4a, and K.A.R. 5-22-4b.

(g) If an inspection is made by the board or the board's designee, the owner shall be notified by the board, or the board's designee, of the results of the inspection in writing. (Authorized by and implementing K.S.A. 82a-706a and K.S.A. 2010 Supp. 82a-1028; effective Nov. 12, 2004; amended Aug. 5, 2011.)

**5-22-7. Safe yield.** (a) Except as specified in subsection (b), the approval of each application for a change in the point of diversion, term permit, and permit to appropriate water for beneficial use shall be subject to the following requirements:

(1) The sum of prior appropriations shall include all of the following:

(A) The proposed application;

(B) vested rights;

(C) appropriation rights;

(D) term permits;

(E) earlier priority applications; and

(F) baseflow nodes.

The sum of prior appropriations shall not exceed the allowable safe-yield amount for the area of consideration. The non-consumptive use of groundwater previously authorized by the chief engineer shall be excluded from the sum of prior appropriations.

(2) The quantity authorized on all prior permits, certificates, and vested rights, the quantity requested on prior applications, and the quantities allocated to baseflow nodes shall be used to calculate the sum of prior appropriations and baseflow allocations.

(3) All conditions and limitation clauses listed on all prior appropriations and applications in the area of consideration shall be considered in effect.

(4) The baseflow allocation for baseflow nodes shall be calculated using the formula  $Q_a = T/N$  where:

(A)  $Q_a$  is the baseflow allocation per baseflow node in acre-feet per year;

(B)  $T$  is the total baseflow allocation for a reach of a stream in acre-feet per calendar year.  $T$  is the average of the 12 calendar months' daily flow values in cubic feet per second that were equaled or exceeded 90 percent of the time during a specifically designated hydrologically significant period of record, times a factor of 724; and

(C)  $N$  is the number of baseflow nodes established on a stream or reach of a stream. Nodes are located at the upstream end of the watercourse reach and thereafter at the intersection of the channel of a watercourse and an arc of a 1,320-foot-radius circle whose center is located on the previously established baseflow node.

(5) The allowable safe-yield amount shall be calculated using the formula  $S = A \times K$  where:

(A)  $S$  is the allowable safe-yield amount in acre-feet per year;

(B)  $A$  is the area of consideration; and

(C)  $K$  is an aquifer recharge value in feet. Everywhere in the district, except in McPherson county and the well spacing areas specified in K.A.R. 5-22-2(d)(1),  $K$  is equal to 0.5 feet per year.

(i) In McPherson county,  $K$  is a constant equaling 0.25 feet per year.

(ii) In the well spacing areas specified in K.A.R. 5-22-2(d)(1) and located south of the centerline of the North Fork Ninnescah river,  $K$  is equal to 0.25 feet per year. In the well spacing areas specified in K.A.R. 5-22-2(d)(1) and located north of the centerline of the North Fork Ninnescah river,  $K$  is equal to 0.1667 feet per year.

$K$  is calculated by multiplying the recharge percentage times the average annual precipitation of 2.5 feet per year. The recharge percentage is 10 percent in McPherson county and the well spacing areas specified in K.A.R. 5-22-2(d)(1) and located south of the centerline of the North Fork Ninnescah river, 6.667 percent in the well spacing areas specified in K.A.R. 5-22-2(d)(1) and located north of the centerline of the North Fork Ninnescah river, and 20 percent for the rest of the district.

(6) When evaluating an application for a change in the point of diversion, each application with a priority earlier than the priority established by the

filing of the application of change shall be included in the safe-yield analysis.

(7) If the perimeter of the area under consideration intersects a group of wells authorized under prior applications, permits, certificates, or vested rights, a reasonable quantity of water shall be assigned to each well based upon the best available information.

(b) The following shall not be subject to this regulation:

(1) An application to appropriate groundwater in an area not closed by regulation or intensive groundwater use control area order by the chief engineer to new non-domestic, non-temporary permits and term permits for five or fewer years, if all of the following conditions are met:

(A) The annual quantity of water requested in the application does not exceed 15 acre-feet;

(B) the sum of the annual quantity of water requested in the application and the total annual quantities of water authorized by prior approvals of applications allowed because of an exemption pursuant to this regulation does not exceed 45 acre-feet in a two-mile-radius circle surrounding the proposed point of diversion;

(C) the approval of the application does not authorize an additional quantity of water out of an existing authorized point of diversion with a non-domestic approval of application or water right that would then authorize a total combined annual quantity of water from that point of diversion in excess of 15 acre-feet;

(D) the approval of the application does not authorize an additional quantity of water to be used on a currently authorized non-domestic place of use in excess of 15 acre-feet;

(E) the approval of the application does not authorize an additional quantity of water to be pumped through a common distribution system in excess of 15 acre-feet;

(F) the application meets the well spacing criteria in K.A.R. 5-22-2;

(G) the application meets the requirements of all other applicable regulations in effect when the application is filed; and

(H) the maximum authorized rate of diversion does not exceed 50 gallons per minute;

(2) an application for a non-consumptive use of groundwater;

(3) an application for change in point of diversion, if the following conditions are met:

(A) The diversion works were completed 300 feet or less from the originally authorized point of

diversion and within 150 feet of the location approved by the chief engineer;

(B) a notice of completion was timely filed with the chief engineer under the original approval of application; and

(C) if located within the well spacing areas specified in K.A.R. 5-22-2(d)(1), both of the following conditions are met:

(i) The number of wells comprising the point of diversion is not proposed to be increased; and

(ii) each point of diversion is proposed to be relocated 300 feet or less from the currently authorized location, the currently authorized point of diversion and diversion works have been completed, and a notice of completion has been timely filed with the chief engineer before the effective date of this regulation;

(4) an application requesting only an additional rate of diversion on an existing well, if the approval of the application meets the following requirements:

(A) Is limited to the maximum annual quantity of water authorized by a prior certified, vested, or appropriation right; and

(B) contains both of the following requirements:

(i) The approved application for additional rate shall be dismissed if the prior certified, vested, or appropriation right is dismissed and terminated; and

(ii) the approved or certified maximum annual quantity of water shall be reduced in an amount equal to any subsequent reduction in the maximum annual quantity of water authorized by the prior certified, vested, or appropriation right;

(5) an application for a standby well;

(6) an application for a bank storage well only to the extent that the bank storage well is withdrawing bank storage water; and

(7) an application for an aquifer storage and recovery well. (Authorized by and implementing K.S.A. 82a-706a and K.S.A. 2015 Supp. 82a-1028; effective May 1, 1983; amended Oct. 15, 1990; amended March 7, 1994; amended Nov. 12, 2004; amended May 14, 2010; amended June 12, 2015; amended March 25, 2016.)

**Article 23.—SOUTHWEST KANSAS  
GROUNDWATER MANAGEMENT  
DISTRICT NO. 3**

**5-23-4. High plains aquifer.** (a) Except as specified in subsection (b), the district shall be closed to new appropriations of water in the high plains aquifer.

(b) This regulation shall not apply to the following:

(1) Wells for domestic use;

(2) wells authorized by temporary permits;

(3) wells authorized by term permits of no more than five years;

(4) an application to appropriate 15 acre-feet of water or less if all of the following conditions are met:

(A) The area is closed to new appropriations, but the sum of the annual quantity requested by the proposed appropriation and the total quantities authorized by prior permits because of this exemption does not exceed 15 acre-feet in a circle with a radius of two miles surrounding the proposed point of diversion.

(B) Well spacing criteria have been met.

(C) Approval of the application will not authorize an additional quantity of water out of an existing well authorized by a nondomestic approval of application or water right, which would result in a total combined annual quantity of water authorized from that well in excess of 15 acre-feet.

(D) All other criteria for processing a new application have been met.

(c) Each application filed to request a well within the area described in subsection (e) shall include a driller's log, an electric log, and a laboratory analysis from a state-certified laboratory of the chloride concentrations in samples taken from whatever depths are necessary to determine the vertical location where the chloride concentrations exceed 250 milligrams per liter (mg/l). The samples shall be taken from a well located within a 300-foot radius of the proposed well. A state-certified laboratory analysis shall be used to determine the vertical location of the chloride concentrations exceeding 250 mg/l.

(d) Each well constructed in the area described in subsection (e) shall be constructed in a manner that prevents the movement of water containing 250 mg/l of chlorides beyond its naturally occurring condition.

(e) The level of chlorides may exceed 250 mg/l in the following areas:

(1) The west ½ of townships 33, 34, and 35 south, range 28 west in Meade County, Kansas;

(2) the east ½ of township 33 south, range 29 west in Meade County, Kansas;

(3) all of townships 34 and 35 south, ranges 29 and 30 west in Meade County, Kansas; and

(4) all of townships 34 and 35 south, ranges 31 and 32 west and the east ½ of townships 34 and 35

south, range 33 west in Seward County, Kansas. (Authorized by K.S.A. 82a-706a and K.S.A. 2015 Supp. 82a-1028; implementing K.S.A. 82a-706a, K.S.A. 2015 Supp. 82a-711, and K.S.A. 2015 Supp. 82a-1028; effective May 1, 1981; amended May 1, 1986; amended Aug. 28, 1989; amended Sept. 22, 2000; amended Nov. 21, 2003; amended May 13, 2016.)

**5-23-4b.** (Authorized by K.S.A. 82a-706a and K.S.A. 82a-1028; implementing K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; effective Sept. 22, 2000; amended Nov. 21, 2003; revoked May 13, 2016.)

**Article 24.—NORTHWEST KANSAS  
GROUNDWATER MANAGEMENT  
DISTRICT NO. 4**

**5-24-2. Allowable withdrawals.** (a) Except as specified in subsection (b) the district shall be closed to any new appropriation of water that partially or wholly requests a source of supply that includes the Ogallala formation.

(b) The following types of applications shall not be subject to the closure of the district under this regulation:

(1) A nondomestic application for an approval of application if the proposed point of diversion meets the following criteria:

(A) Is to be located in an alluvial aquifer not closed to new appropriations, except for domestic use, temporary permits, and term permits for five or fewer years;

(B) meets the well spacing requirements of K.A.R. 5-24-3; and

(C) meets the safe yield requirements of K.A.R. 5-3-9, K.A.R. 5-3-10, and K.A.R. 5-3-11;

(2) a nondomestic application to appropriate water from the Cretaceous system if the proposed point of diversion meets the well spacing criteria of K.A.R. 5-24-3;

(3) an application for a permit to appropriate water for domestic use;

(4) an application for a term permit for five years or less;

(5) an application for a temporary permit;

(6) an application for an approval of application filed on an existing well currently authorized by a vested right, appropriation right, or approval of application that requests a quantity of water equal to or less than the currently available quantity of water that will be conjunctively reduced from a

well authorized by either a vested right or certified appropriation right meeting either of the criteria specified in paragraph (c)(1);

(7) an application for an approval of application that meets the criteria of K.A.R. 5-24-10; and

(8) an application for an additional rate of diversion only that meets the requirements of K.A.R. 5-4-5.

(c)(1) To be exempt from this regulation, each application for an approval of application filed on an existing well currently authorized by a vested right, appropriation right, or approval of application that requests a quantity of water equal to or less than the currently available quantity of water that will be conjunctively reduced from a well authorized by either a vested right or certified appropriation right shall meet either of the following criteria:

(A) Be located within 2,640 feet of the existing well that will have its authorized quantity reduced; or

(B) be located within a distance from the currently authorized well for which a Theis analysis shows a .5 foot or greater drawdown, using the following assumptions:

(i) The certified rate of diversion of the currently authorized well;

(ii) the certified annual quantity of water for the currently authorized well;

(iii) the pumping time equal to the time it takes to pump the certified annual quantity at the certified rate of diversion;

(iv) the drawdown computed at the time equal to the pumping time; and

(v) the transmissivity and storage coefficient derived either from a time drawdown aquifer pump test of the currently authorized well or from use of the well log from the currently authorized well or a well log from a test hole or well located within 300 feet of the currently authorized well, using the table on page 26 and the calculation described in the second paragraph on page 27 of the United States geological survey's water-resources investigations report 85-4198, published in 1985. The portions of this document specified in this paragraph are hereby adopted by reference.

(2)(A) For water rights authorized for irrigation use, the currently available quantity of water shall be calculated as follows:

(i) Determine the maximum number of acres actually irrigated during the perfection period. For vested rights, use the maximum number of acres irrigated in any one calendar year before June 29, 1945; and

(ii) use the 80 percent chance rainfall net irrigation requirements (NIR) for corn as specified in K.A.R. 5-5-12 to determine the NIR for each acre, and then divide that value by .85 to adjust for efficiency.

(B) For non-irrigation water rights, the currently available quantity of water shall not exceed the actual consumptive use during the perfection period.

(3) Each well that has a reduced or new water right pursuant to this subsection shall be equipped with a water flowmeter meeting the requirements of article one of the chief engineer's regulations.

(4) The maximum distance that a well shall be relocated under paragraph (c)(1)(B) shall be the distance computed as described in paragraph (c)(1)(B), or 3,960 feet, whichever is less.

(5) The historic consumptive use of a well meeting the requirements of paragraph (b)(6) that is accounted for in the Republican river compact, K.S.A. 82a-518 and amendments thereto, accounting as a stream depletion reaching the Republican river downstream of Trenton dam shall not be transferred to a well that would cause a depletion reaching the Republican river upstream of Trenton dam.

(6) The total net acreage authorized by the following shall not exceed the current net total authorized acreage for both wells:

- (A) The approval of application;
- (B) the water right being reduced; and
- (C) the water right currently authorizing the well for which the new water right is sought. (Authorized by and implementing K.S.A. 82a-706a and K.S.A. 2015 Supp. 82a-1028; effective May 1, 1983; amended May 1, 1985; amended May 1, 1987; amended Aug. 19, 1991; amended Jan. 30, 2004; amended May 13, 2016.)

#### **Article 25.—BIG BEND GROUNDWATER MANAGEMENT DISTRICT NO. 5**

**5-25-2. Well spacing.** (a) With the exception of those wells described in subsection (b), the minimum spacing of all wells described in an application to appropriate water for beneficial use, other than those wells for domestic use, shall be 1,320 feet from the following:

- (1) All other non-domestic wells and proposed non-domestic wells that carry an earlier priority; and
- (2) baseflow nodes.

Non-domestic wells shall be 660 feet from all existing domestic wells, except those domestic wells owned by the applicant.

(b)(1) Each replacement well drilled within 300 feet of the originally authorized point of diversion shall be exempt from the well spacing requirement of subsection (a).

(2) Each non-domestic well that proposes the withdrawal of groundwater from the Dakota aquifer or any bedrock aquifer shall be one mile from all other wells withdrawing groundwater from the same formation, including domestic wells, except those domestic wells owned by the applicant.

(3) Each new well that enables the establishment of augmentation in the Rattlesnake creek subbasin pursuant to K.S.A. 82a-706b, and amendments thereto, in relation to other wells that enable or provide augmentation shall be exempt from the well spacing requirement of subsection (a). (Authorized by K.S.A. 82a-706a and K.S.A. 2018 Supp. 82a-1028; implementing K.S.A. 82a-706a and K.S.A. 2018 Supp. 82a-1028; effective May 1, 1980; amended April 19, 1996; amended Oct. 31, 2003; amended Nov. 15, 2019.)

**5-25-4. Sustainable yield.** (a) Except as specified in subsections (b) and (c), the entire district shall be closed to further new surface water and groundwater appropriations.

(b) The following types of applications shall be exempt from the closure of the district to new appropriations of water described in subsection (a):

- (1) Domestic use;
- (2) temporary permits;
- (3) applications for a change in the point of diversion for which the diversion works have been completed under the original approved application;
- (4) standby wells used for emergency purposes only;
- (5) permits to appropriate 15 acre-feet of water or less per year that are exempt pursuant to K.A.R. 5-25-15;
- (6) term permit applications of one year or less and those term applications meeting the requirements of K.A.R. 5-25-13;
- (7) permits to appropriate water from a bedrock aquifer;
- (8) permits to appropriate water from the Dakota aquifer if the applicant can show either of the following:

(A) No Pleistocene aquifer exists within 5,280 feet of the proposed well location; or

(B) there is a significant difference in hydraulic head between the Pleistocene aquifer and the Dakota aquifer;

(A) No Pleistocene aquifer exists within 5,280 feet of the proposed well location; or

(B) there is a significant difference in hydraulic head between the Pleistocene aquifer and the Dakota aquifer;

(9) an application that proposes to use water in a manner so that there is no significant consumptive use of the local source of supply either in quantity or availability of water for use by other appropriators;

(10) any application that will enable or provide augmentation in the Rattlesnake creek subbasin pursuant to K.S.A. 82a-706b and amendments thereto, except that no application shall be approved if the application would impair an existing use. The proposed well location shall meet the spacing requirements of K.A.R. 5-25-2; and

(11) any application filed pursuant to K.A.R. 5-25-22.

(c)(1) For each application for a change in the point of diversion, if the diversion works have not been completed, the application shall be exempt from the closure to new appropriations specified in subsection (a). However, the proposed appropriation, when added to the vested rights, prior appropriation rights, earlier priority applications, term permits for more than a year, and all baseflow node allocations within a two-mile-radius circle whose center is the location of the proposed well, shall not exceed 1,500 acre-feet. It shall be assumed for purposes of analysis that all prior applications, permits, certificates, and vested rights are being fully exercised and that all limitation clauses listed on permits and certificates are in force.

(2) If part of the area within the two-mile-radius circle around the proposed well location is outside the district boundaries, the 1,500 acre-feet quantity of water specified in paragraph (c)(1) shall be reduced proportionately by the percentage of the circle lying outside of the district boundaries. Only the baseflow node allocations, vested rights, prior appropriations, earlier priority applications, and term permits for more than one year assigned to wells within the portion of the circle within the district shall be considered.

(3) If all of the wells authorized under a vested right or an application are not included inside the circumference of the circle, then a reasonable quantity shall be allocated to each well based upon the best available information.

(4) Each analysis for an application for a change in the point of diversion specified in subsection (c) shall include all applications with a priority earlier than the priority established by the filing of the application for change. (Authorized by K.S.A. 82a-706a and K.S.A. 2018 Supp. 82a-1028; implementing K.S.A. 82a-706, K.S.A. 82a-706a, K.S.A.

2018 Supp. 82a-708b, and K.S.A. 2018 Supp. 82a-1028; effective May 1, 1980; amended May 1, 1981; amended, T-86-4, March 22, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended April 19, 1996; amended March 16, 2001; amended Oct. 31, 2003; amended Nov. 15, 2019.)

#### **5-25-5. Water flowmeter requirements.**

Each non-domestic well, except any well authorized by a temporary permit, shall be equipped with a water flowmeter. Each water flowmeter required by the board shall meet or exceed the specifications in K.A.R. 5-1-4 through 5-1-12. (Authorized by and implementing K.S.A. 82a-706a and K.S.A. 2009 Supp. 82a-1028; effective May 1, 1980; amended May 1, 1985; amended April 19, 1996; amended Oct. 31, 2003; amended Nov. 19, 2010.)

**5-25-15. Exemptions for up to 15 acre-feet of groundwater.** Except as specified in subsections (b) and (c), an application to appropriate groundwater for up to 15 acre-feet of water shall be approved if all of the conditions in subsection (a) are met.

(a) (1) The sum of the annual quantity of water requested by the new application and the total annual quantities authorized by prior approvals of applications because of an exemption pursuant to this regulation does not exceed 15 acre-feet in a one-mile-radius circle surrounding the proposed point of diversion.

(2) The application meets the spacing criteria set forth in K.A.R. 5-25-2.

(3) The approval of an application will not authorize an additional quantity of water from an existing non-domestic vested right, permit, or water right that would result in a total combined annual quantity of water authorized from the point of diversion in excess of 15 acre-feet.

(4) The applicant demonstrates that approval of up to 15 acre-feet of water will not impair existing water rights or permits to appropriate water for beneficial use and will not prejudicially and unreasonably affect the public interest.

(5) All requirements of K.S.A. 82a-709 and K.S.A. 82a-711, and amendments thereto, and K.A.R. 5-3-1 and K.A.R. 5-3-1b for processing a new application to appropriate water have been met.

(b) Exemptions to approve a new application to appropriate water in accordance with this regulation shall not be approved if the exemption would

conflict with any provisions of an intensive groundwater use control area order issued by the chief engineer pursuant to K.S.A. 82a-1036 through K.S.A. 82a-1040, and amendments thereto.

(c) In addition to meeting the conditions in subsection (a), each application to appropriate groundwater for beneficial use shall meet the requirements of subsection (d) if the application includes a proposed point of diversion located within the boundaries of any of the following drainage basins as defined in K.A.R. 5-6-15:

- (1) Rattlesnake Creek basin;
- (2) Arkansas River basin;
- (3) Walnut Creek basin;
- (4) Pawnee River basin; and
- (5) Buckner Creek basin.

(d) The following requirements shall apply to the applications described in subsection (c):

(1) The maximum annual quantity of water proposed in the application shall be 15 acre-feet or less.

(2) The proposed point of diversion shall meet the spacing criteria provided in K.A.R. 5-25-2.

(3) The authorized quantity of an existing water right shall be reduced, as provided in paragraph (d)(7), to offset the annual quantity requested in paragraph (d)(1), and the existing water right shall divert water from the same source of water supply that has a point of diversion located according to either of the following:

(A) Within 3.5 miles of the proposed point of diversion; or

(B) within a one-mile corridor of the major stream segment designated for stream restoration in the same basin of the proposed point of diversion.

(4) The point of diversion proposed through an offset shall not be closer to a stream than the point of diversion reduced pursuant to paragraph (a)(3) if the authorized well is within three miles of a stream.

(5) All issues relating to the possible abandonment of the offsetting water right shall be resolved by the chief engineer before determining the annual quantity of offset water that is available from the existing water right.

(6) The approval of the application shall not authorize an additional quantity of water to be used on a currently authorized nondomestic place of use.

(7) If the water right to be used as the offset for the new appropriation is a water right authorized for irrigation use, the authorized quantity of wa-

ter needed to offset the new appropriation of not more than 15 acre-feet of water shall be calculated as follows:

(A) Step one.

(i) Multiply the net irrigation requirement for the 50 percent chance rainfall for the county of origin, as specified in K.A.R. 5-5-12, times the maximum number of acres legally irrigated in any one calendar year during the perfection period. For vested rights, the acreage used shall be the maximum acreage legally irrigated in any one calendar year before June 28, 1945.

(ii) The calculation made in paragraph (d)(7)(A)(i) shall result in the maximum annual quantity of water that could be changed to another type of beneficial use if the entire water right were changed pursuant to K.A.R. 5-5-9(a)(1).

(B) Step two.

(i) Divide the annual quantity of water desired to be changed to the new beneficial use by the maximum annual quantity of water that could be changed if the entire water right were changed to the new use.

(ii) The calculation made in paragraph (d)(7)(B)(i) shall result in the percentage of the entire reduced water right that will be changed to the new use. The remaining percentage of the offsetting water right may be retained by the owner of the irrigation water right.

(C) Step three.

(i) Multiply the remaining percentage calculated in paragraph (d)(7)(B)(ii) times the total currently authorized quantity. The resulting product shall be the annual quantity of water that may be retained by the owner of the irrigation water right.

(ii) The portion of the authorized annual quantity of water not retained by the irrigator as described in paragraph (d)(7)(C)(i) shall be permanently reduced from the authorized annual quantity of the offsetting water right and used to offset the new appropriation.

(8) If the water right to be used as the offset for the new appropriation is an existing water right authorized for non-irrigation use, the total net consumptive use of the offsetting water right after the change and the new appropriation shall not exceed the net consumptive use of the offsetting water right before the change.

(9) The place of use authorized by the offsetting water right for irrigation shall be reduced in proportion to the reduction in the maximum annual quantity of water as determined in paragraph (d)(7)(A)(ii). The directions specified in K.A.R. 5-5-

11(b)(2)(B)(ii) shall be followed to determine the number of acres that may be retained.

(e) After the application has been approved pursuant to this regulation, no application to change that water right shall be approved if that approval would authorize the water use to be diverted from any other point of diversion authorized when the application is filed or to be used on any other place of use authorized when the application for change is filed.

(f) An application approved as an exemption under this regulation shall not be leased or placed in a water bank so that the approved water use can be diverted at another location. (Authorized by K.S.A. 82a-706a and K.S.A. 2009 Supp. 82a-1028; implementing K.S.A. 82a-706, K.S.A. 82a-706a, K.S.A. 2009 Supp. 82a-711, and K.S.A. 2009 Supp. 82a-1028; effective Oct. 31, 2003; amended May 21, 2010.)

**5-25-21. Alternative method for calculating the amount of water deposited in a multiyear flex account.** Each water right owner within the boundaries of the district who is otherwise eligible to establish a multiyear flex account under K.S.A. 82a-736, and amendments thereto, and the implementing regulations and who meets all of the requirements in subsection (b) shall be eligible to use the alternative calculation method in subsection (a) pursuant to K.S.A. 82a-736(c)(1)(D)(iii), and amendments thereto, to determine the amount of water deposited in the multiyear flex account.

(a) The alternative calculation method for the district shall be to compute 450 percent of the base water right's certified appropriation. However, the amount of water deposited in the multiyear flex account shall not exceed the greatest of the quantities derived using the calculation methods specified in K.S.A. 82a-736(c)(1)(D), and amendments thereto.

(b) To be eligible to use the alternative calculation method specified in subsection (a), the following requirements shall be met and shall remain met throughout the term of the period covered by the multiyear flex account permit:

(1) The owner shall meet all requirements and conditions for eligibility and participation specified in K.S.A. 82a-736, and amendments thereto, and the implementing regulations, except as modified by this regulation.

(2) The owner's base water right shall be for a center pivot irrigation system with a functional end gun.

(3) The owner shall remove the end gun from the center pivot and cap the end.

(4) Before diverting any water under the multiyear flex account, the owner shall certify to the chief engineer, on forms supplied by the chief engineer, the following information:

(A) The location of the tract of land to be covered by the multiyear flex account term permit;

(B) the length of each center pivot system covered by the multiyear flex account term permit;

(C) the type of end gun removed and any other information sufficient to enable the chief engineer to determine the number of acres irrigated by the end gun; and

(D) the date of removal of the end gun.

(5) The owner shall maintain the center pivot without an end gun for the duration of the period covered by the multiyear flex account term permit.

(6) The authorized place of use shall not be increased during the term of the multiyear flex account permit.

(7) The authorized place of use shall be located wholly within the boundaries of the district.

(c) If the owner qualifies for a multiyear flex account term permit and is eligible under this regulation to use the alternative calculation method, the chief engineer shall enter an order that reduces the authorized place of use of the owner's base water right during the multiyear flex account permit term. The reduced authorized place of use shall be equal to the maximum number of acres legally irrigated by the center pivot system for the previous five calendar years minus the number of acres irrigated by the center pivot system's end gun. (Authorized by K.S.A. 82a-706a and K.S.A. 2015 Supp. 82a-1028; implementing K.S.A. 2015 Supp. 82a-736; effective March 25, 2016.)

**5-25-22. Movement of water rights affecting streamflow at Rattlesnake creek.** (a)

To improve streamflow at the zenith gage on Rattlesnake creek, otherwise known as United States geological survey gage #07142575, each vested or certified water right located within zone D of the division of water resources' map titled "Rattlesnake creek streamflow response regions," dated February 14, 2018, hereby adopted by reference, and subsequently referred to in this regulation as "response map," shall be eligible to offset new appropriations of water located within the district if all of the following conditions are met:

(1) The source of water supply for the current-

ly authorized well is located within zone D of the response map.

(2) The rate and quantity of the existing water right are the maximum rate and quantity available for the new application. The rate and quantity of a new application for irrigation use shall be determined under K.A.R. 5-5-11. A new application may change the use made of water. However, the new application shall not allow for an increase in the net consumptive use greater than the existing water right under K.A.R. 5-5-3.

(3) The water right has reported use between January 1, 2003 and December 31, 2012, and the reported use is equal to or greater than 50 percent of the authorized use in at least two years. Each water right enrolled in a state or federal conservation program during this period that required the voluntary cessation of water use shall be eligible for movement under this regulation if all other requirements are met and the applicant demonstrates the existing water right's ability to pump at least 50 percent of authorized use during any year.

(4) The new location will reduce the impact at the zenith gage by 30 percent or more compared to the current location of the well as determined by the response map. The new location is in an area with less than 40 percent impact at the zenith gage as determined by the response map.

(5) The average saturated thickness in the two-mile-radius circle in which the proposed well will be located is greater than 40 feet as shown on the saturated thickness map in K.A.R. 5-25-19. However, additional site-specific information, including data from more recently drilled wells or test holes, may be submitted to demonstrate that the average saturated thickness is greater than 40 feet.

(6) The water level within the two-mile-radius circle surrounding the proposed well location has not declined more than five percent from the pre-development water level as shown in the relevant Kansas geological survey bulletins, including bulletin numbers 65, 80, 88, 120, 205, and 206. Any applicant may submit additional site-specific information, including data from more recently drilled wells or test holes, to demonstrate that the area has not declined more than five percent from the pre-development water level.

(7) The new location will meet the safe-yield analysis based on a two-mile-radius circle with a recharge rate of 2.25 inches and 75 percent available for appropriation pursuant to K.A.R. 5-3-11 or a safe-yield analysis utilizing modeling as completed by the applicant or district.

(8) No other well has previously been authorized by the chief engineer to be relocated within a one-mile radius of the proposed well location under this regulation, or the applicant demonstrates that the proposed well will not impair existing water rights.

(9) All other statutory and regulatory requirements for approval of a new appropriation of water for a beneficial use that do not conflict with this regulation are met.

(b) Any new application may request the movement of the entire existing water right to a new location, the movement of an entire existing water right to multiple locations, or the movement of a partial amount of the existing water right to a new location.

(1) Upon approval of any application under this regulation and the completion of diversion works and the application of water to a beneficial use at each new location, the dismissal of the entire existing water right shall be required except for the portion, if any, remaining in the original location. If the location of a new application is determined to be unfeasible after filing an application, the applicant may submit a new application for another location if diversion works have not been completed and water has not been applied to a beneficial use at the previously proposed location.

(2) If any portion of the existing water right remains in the original location, then the water right owner shall file an application to divide the water right proportionally based on the quantity that will remain and the quantity that will be dismissed to offset each new appropriation before submitting a new application to appropriate water in the district.

(3) For any quantity of the existing water right that remains in the original location, the place of use shall be reduced to the number of acres that can reasonably be irrigated under K.A.R. 5-3-24. This reduction shall be calculated by dividing the remaining quantity of water by the county value according to K.A.R. 5-3-24 to establish the number of acres that can reasonably be irrigated.

(4) A separate application shall be required for each different location that a portion of the existing water right is proposed to offset.

(c) Upon the establishment of a new appropriation under this regulation, the quantity of water dismissed to offset the new appropriation shall not be available for reappropriation in the previous or original location of the water right. (Authorized by and implementing K.S.A. 82a-706a and K.S.A. 2018 Supp. 82a-1028; effective Nov. 15, 2019.)

# Agency 7

## Secretary of State

### Articles

- 7-16. FEES.
- 7-23. VOTER REGISTRATION.
- 7-36. ABSENTEE AND ADVANCE VOTING.
- 7-41. KANSAS UNIFORM ELECTRONIC TRANSACTIONS ACT.
- 7-46. PHOTOGRAPHIC IDENTIFICATION REQUIREMENTS.
- 7-47. AUDITS.

### Article 16.—FEES

**7-16-1. Information and services fee.** In addition to any other fees specified in regulation or statute, the fees prescribed in the secretary of state's "schedule of information and services fees," dated May 27, 2010 and hereby adopted by reference, shall be charged by the secretary of state. (Authorized by and implementing K.S.A. 2009 Supp. 75-438 and L. 2009, ch. 47, sec. 35; effective, T-7-7-1-03, July 1, 2003; effective Oct. 10, 2003; amended Oct. 31, 2008; amended, T-7-7-1-10, July 1, 2010; amended Sept. 10, 2010.)

### Article 23.—VOTER REGISTRATION

**7-23-4. Notice of places and dates of registration.** The notice regarding registration required by K.S.A. 25-2310, and amendments thereto, shall be published one time, at least 10 days before the date the registration books will be open additional hours as provided in K.S.A. 25-2311, and amendments thereto. If late hours are not required, the notice shall be published one time, at least 10 days before the date the registration books will be closed. The publication notice shall be made in the following form:

"NOTICE OF PLACES AND DATES OF REGISTRATION

In compliance with the provisions of K.S.A. 25-2310, notice is hereby given that the books for registration of voters will be open at the following places during regular business hours:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Persons who apply for services at voter registration agencies may register at the following places during regular business hours:

\_\_\_\_\_  
\_\_\_\_\_

\* Beginning on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

additional hours of registration will be provided at the following places:

\_\_\_\_\_  
At \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, the books for registration of voters will close and will remain closed until the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

A citizen of the United States who is 18 years of age or older, or will have attained the age of 18 years at the next election, must register before he or she can vote. Registration is open until the close of business on the 21st day before the election.

When a voter has been registered according to law, the voter shall remain registered until the voter changes name by marriage, divorce or other legal proceeding or changes residence. The voter may reregister in person, by mail or other delivery when registration is open or the voter may reregister on election day.

Application forms shall be provided by the county election officer or the Secretary of State upon request. The application shall be signed by the applicant under penalty of perjury.

In Witness Whereof I have hereunto set my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
County Election Officer

(SEAL)

\* If late hours are not required, omit this paragraph."

(Authorized by K.S.A. 25-2310; implementing K.S.A. 25-2310 and K.S.A. 25-2311, as amended by L. 2011, ch. 112, § 19; effective Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1978; amended Sept. 24, 1990; amended Jan. 3, 1997; amended Feb. 24, 2012.)

**7-23-14. Assessing documents submitted as evidence of United States citizenship.** (a) In assessing documents submitted as evidence of United States citizenship, each election officer shall consider the following factors: first name, middle name or initial, surname, date of birth, place of birth, and sex.

(1) The first name and the middle name or initial, if provided, shall be consistent with the information

provided on the person's application for voter registration. Hyphenated names shall be permitted if not inconsistent with the information provided on the person's application for voter registration.

(2) If the name on the document is inconsistent with the applicant's name as it appears on the application for voter registration, the election officer shall perform the following:

(A) Ask the applicant for a second, government-issued document confirming the voter's current name;

(B) if the applicant is unable or unwilling to provide a second, government-issued document, allow the applicant to sign an affidavit pursuant to K.S.A. 25-2309 and amendments thereto, stating the inconsistency related to the applicant's name and swearing under oath that, despite the inconsistency, the applicant is the individual reflected in the document provided as evidence of citizenship; and

(C) if the applicant is either unable or unwilling to provide a second, government-issued document and refuses to sign an affidavit, inform the applicant of the applicant's right to appeal to the state election board, pursuant to K.S.A. 25-2309 and amendments thereto.

(3) The date of birth indicated on the document submitted as evidence of United States citizenship shall match the date of birth provided on the application for voter registration. If the dates of birth are inconsistent, the election officer shall inform the applicant of the applicant's right to appeal to the state election board, pursuant to K.S.A. 25-2309 and amendments thereto.

(4) If the place of birth is indicated on the document submitted as proof of United States citizenship, the place of birth may be used to assess the applicant's status as a United States citizen. If the document does not contain a place of birth, this fact shall not result in an unsatisfactory assessment.

(5) If the sex indicated on the document does not match the sex indicated on the application for the voter registration, the election officer shall perform the following:

(A) Ask the applicant for a second, government-issued document confirming the voter's sex;

(B) if the applicant is unable or unwilling to provide a second, government-issued document, allow the applicant to sign an affidavit pursuant to K.S.A. 25-2309 and amendments thereto, stating the inconsistency related to the applicant's sex and swearing under oath that, despite the inconsistency, the applicant is the individual reflected in the document provided as evidence of citizenship; and

(C) if the applicant is unable or unwilling to provide a second, government-issued document and refuses to sign an affidavit, inform the applicant of the applicant's right to appeal to the state election board, pursuant to K.S.A. 25-2309 and amendments thereto.

(6) If a document submitted as evidence of United States citizenship contains an expiration date and this date has passed when the document is submitted for purposes of voter registration, the document shall nonetheless be considered in assessing qualifications to register to vote.

(b) If an applicant for voter registration fails to submit evidence of United States citizenship before the deadline to register to vote before an election, the applicant may submit a valid citizenship document by mail or personal delivery to the county election office by the close of business on the day before the election or a valid citizenship document by electronic means before midnight on the day before the election. "Electronic means" shall include facsimile, electronic mail, and any other electronic means approved by the secretary of state. For each document received in accordance with this subsection, the county election officer shall perform the following:

(1) Accept and assess the citizenship document;

(2) add the applicant's name to the voter registration list as a registered voter; and

(3) if practicable, include the registrant's name in the poll book for the upcoming election. If poll books have already been printed, the county election officer shall, if practicable, communicate the registrant's name to the appropriate polling place with instructions to allow the registrant to vote a regular ballot. If the registrant's name is not communicated to the election board at the appropriate polling place by the county election officer before the opening of the polls on election day, the registrant shall be allowed to cast a provisional ballot. If any applicant to whom this subsection applies fails to submit satisfactory evidence of United States citizenship in accordance with this subsection and the applicant casts a provisional ballot, the ballot shall not be counted.

(c) A registered voter who has previously provided sufficient evidence of United States citizenship with a voter registration application in this state shall not be required to resubmit evidence of United States citizenship with any subsequent voter registration application. (Authorized by and implementing K.S.A. 2014 Supp. 25-2309; effective Jan. 1, 2013; amended Oct. 2, 2015.)

**7-23-15. Incomplete applications for voter registration.** (a) If the county election officer assessing an application for voter registration determines that the application does not contain the information required by law, including satisfactory evidence of United States citizenship, the county election officer shall designate the application as incomplete. Each county election office shall maintain a list of incomplete applications for voter registration.

(b) Any voter registration applicant whose voter registration application has been designated as incomplete under subsection (a) may complete the voter registration application, without submitting a new voter registration application, by providing the required information that was not provided with the original voter registration application within 90 days after the voter registration application was received by the county election office.

(c) If a voter registration application was designated as incomplete under subsection (a) and the application is not completed by the applicant under subsection (b), the voter registration application shall be deemed insufficient by the county election officer and the county election officer shall designate the voter registration application as canceled. Each voter registration applicant whose voter registration application was deemed insufficient under this subsection shall be required to submit a new voter registration application in order to become registered to vote. (Authorized by and implementing K.S.A. 2014 Supp. 25-2309; effective Oct. 2, 2015.)

#### **Article 36.—ABSENTEE AND ADVANCE VOTING**

**7-36-7. Processing advance voting ballot applications.** This regulation shall govern the processing of each application for an advance voting ballot received by a county election officer if the applicant is registered to vote in that election officer's county and wants to receive the ballot by mail.

(a) If the application does not contain sufficient information or if the information is illegible, the county election officer shall contact the applicant to obtain the information before election day, if practicable.

(b) If the application is not signed or the signature on the application is not consistent with the applicant's signature on the official voter registration list, the election officer shall attempt to con-

tact the applicant by any means to confirm that the applicant intended to apply for an advance voting ballot and shall attempt to obtain an updated signature.

(c) If the application does not contain the number of the applicant's Kansas driver's license or Kansas nondriver's identification card or if the number is illegible, the county election officer shall attempt to contact the applicant by any means to obtain the information. The county election officer shall provide the applicant with the information required by K.S.A. 25-1122(e)(2), and amendments thereto.

(d) The county election officer may collect an applicant's Kansas driver's license number or Kansas nondriver's identification card number by any legal means. If the applicant provides the necessary number and the number is consistent with the number on the voter registration list, the county election officer shall issue a regular advance voting ballot.

(e) If an applicant submits a photocopy of the qualifying photographic identification document and the document contains information that is illegible or inconsistent with the information on the voter registration list, the county election officer shall attempt to contact the applicant by any means to confirm that the applicant intended to apply for an advance voting ballot and shall attempt to obtain a satisfactory photocopy of the qualifying photographic identification document.

(f) If it is not practicable to contact the applicant before the election or if the information, signature, or photocopy provided is incomplete or inconsistent with the voter registration list, the county election officer shall issue a provisional advance voting ballot.

(g) The county election officer shall present each provisional advance voting ballot to the county board of canvassers for a determination of validity. If the voter provided additional information, an updated signature, or an additional photocopy upon request by the county election officer and if the information, signature, or photocopy is consistent with the voter registration list, the ballot shall be counted unless the ballot is determined to be invalid for another reason. If the voter did not provide additional information, an updated signature, or an additional photocopy upon request by the county election officer or if the information, signature, or photocopy is inconsistent with the information on the voter registration list, the ballot shall not be counted. (Authorized by

and implementing K.S.A. 2010 Supp. 25-1122, as amended by L. 2011, ch. 56, sec. 2; effective Feb. 24, 2012.)

**7-36-8. Uniformed and overseas citizens absentee voting act; ballot distribution deadline in local mail ballot elections.** When conducting a local mail ballot election pursuant to K.S.A. 25-431 et seq. and amendments thereto, the county election officer shall transmit a ballot to any person who is qualified to vote under the uniformed and overseas citizens absentee voting act and who has submitted an application for a federal services ballot 45 or more days before the date of the election. If a person submits an application for a federal services ballot less than 45 days before the date of the election, the county election officer shall transmit a ballot to the person within two business days after receipt of the application. (Authorized by K.S.A. 25-440 and 25-1225; implementing K.S.A. 25-435, K.S.A. 25-438, and K.S.A. 2011 Supp. 25-1218; effective Feb. 24, 2012.)

#### Article 41.—KANSAS UNIFORM ELECTRONIC TRANSACTIONS ACT

**7-41-1. Definitions.** (a) “Certificate” means a computer-based record or electronic message that at a minimum meets the following conditions:

- (1) Identifies the registered certification authority issuing the certificate;
- (2) names or identifies a subscriber;
- (3) contains the public key of the subscriber;
- (4) identifies the period of time during which the certificate is effective; and
- (5) is digitally signed by the registered certification authority.

(b) “Certificate policy” means the policy that identifies the applicability of a certificate to particular communities and classes of applications with common security requirements. This term is also known as “CP.”

(c) “Certificate revocation list” means a list maintained by a registered certification authority of the certificates the registered certification authority has issued that are revoked before their stated expiration dates. This term is also known as “CRL.”

(d) “Certification practice statement” means a statement published by a registered certification authority that specifies the policies or practices that the registered certification authority em-

ploys in issuing, publishing, suspending, revoking, and renewing certificates. This term is also known as “CPS.”

(e) “Compliance review” means documentation in the form of an information systems audit report verifying that the applicant or registered certification authority has the use of a trustworthy system as defined in subsection (r).

(f) “Identification and authentication” means the process of ascertaining and confirming through appropriate inquiry and investigation the identity of a certificate applicant in compliance with the requirements for certificate security levels specified in the ITEC certificate policy or the CP. This term is also known as “I and A.”

(g) “Information technology executive council” means the Kansas information technology executive council, pursuant to K.S.A. 75-7201 et seq. and amendments thereto, and is also known as “ITEC.”

(h) “Information technology executive council policy 9200” means the “certificate policy for the state of Kansas public key infrastructure,” version 2, including the appendices, approved by the ITEC, amended on April 24, 2008, and hereby adopted by reference. This document applies to state agencies offering or providing the option of using a digital signature to persons with whom the state agencies do business. This term is also known as “ITEC certificate policy.”

(i) “Information technology identity management group” means the group that has been delegated authority by the ITEC and is authorized by the ITEC to make day-to-day administrative and fiscal decisions for the public key infrastructure program. This term is also known as “ITIMG.”

(j) “Local registration authority” means a person operating under the ITEC certificate policy that has a relationship of trust with a community of potential subscribers and, for that reason, has a contractual relationship with a registration authority to perform duties including accepting applications and conducting identification and authentication for certificate applicants in accordance with the law, the ITEC certificate policy, and the appended agreements. This term is also known as “LRA.”

(k) “Local registration authority’s trusted partner” means a person operating under the ITEC certificate policy that has a relationship of trust with an LRA and that executes a trusted partner agreement with an LRA, as contained in the appendices to the ITEC certificate policy, in order to

secure LRA services for the community of potential subscribers of the local registration authority's trusted partner. This term is also known as "LRA's trusted partner."

(l) "Private key" means the key in a subscriber's key pair that is kept secret and is used to create digital signatures and to decrypt messages or files that were encrypted with the subscriber's corresponding public key.

(m) "Public key" means the key in a subscriber's key pair that can be used by another person to verify digital signatures created by a subscriber's corresponding private key or to encrypt messages or files that the person sends to the subscriber.

(n) "Public key infrastructure" means the architecture, organization, techniques, practices, policy, and procedures that collectively support the implementation and operation of a certificate-based, public key cryptography system. This term is also known as "PKI."

(o) "Registered certification authority" has the meaning specified in K.S.A. 16-1602, and amendments thereto. This term is also known as "registered CA."

(p) "Registration authority" means a person operating under the ITEC certificate policy who has been authenticated by a registered CA, issued a registration authority certificate by the registered CA, approved by the ITEC to process subscriber applications for certificates and, if required by the ITEC certificate policy, to conduct I and A of certificate applicants in accordance with the law, the ITEC certificate policy, and the appended agreements. This term is also known as "RA."

(q) "Subscriber" means a person operating under the ITEC certificate policy who meets the following criteria:

- (1) Is the subject of a certificate;
- (2) accepts the certificate from a registered certification authority; and
- (3) holds the private key that corresponds to the public key listed in that certificate.

(r) "Trustworthy system" means a secure computer system that materially satisfies the most recent common criteria protection profile for commercial security, known as "CSPP—guidance for COTS security protection profiles," published by the U.S. department of commerce in December 1999 and hereby adopted by reference.

(s) "X.509" means the standard published by the international telecommunication union-T (ITU-T) in March 2000 that establishes a model for certificates. This X.509 standard, including an-

nexes A and B, is hereby adopted by reference. (Authorized by K.S.A. 16-1605 and 16-1618; implementing K.S.A. 16-1605, 16-1617, and 16-1619; effective July 6, 2001; amended Aug. 19, 2005; amended March 6, 2009.)

**7-41-2. Original registration; renewal; expiration.** (a) Each original registration or renewal registration for a registered certification authority shall expire one year from the date of issuance.

(b) Each renewal application for registration shall be deemed timely if the registered certification authority files a renewal application with the secretary of state within 60 days before the date the original application or renewal application otherwise will expire. (Authorized by K.S.A. 16-1618; implementing K.S.A. 16-1617; effective July 6, 2001; amended March 6, 2009.)

**7-41-3. Registration forms.** (a) Each person, before performing the duties of a registered certification authority, shall register with the secretary of state on forms prescribed by the secretary of state.

(b) Original applications, renewal applications, and other information may be allowed by the secretary of state to be filed electronically.

(c) Each applicant for registered certification authority shall file the following with the original application or renewal application:

- (1) A compliance review with a report date within 90 days of the original application or renewal application date;
- (2) a copy of the applicant's certification practice statement and CP;
- (3) a nonrefundable original application or renewal application fee of \$1,000; and
- (4) a good and sufficient surety bond, certificate of insurance, or other evidence of financial security in the amount of \$100,000. (Authorized by K.S.A. 16-1618; implementing K.S.A. 16-1617; effective July 6, 2001; amended March 6, 2009.)

**7-41-4. Evidence of financial security.** The evidence of financial security shall include, in addition to the requirements of K.S.A. 16-1617 and amendments thereto, the following: (a) The identity of the insurer or the financial institution issuing the surety bond, certificate of insurance, or irrevocable letter of credit, including the following information:

- (1) The name;
- (2) the mailing address;
- (3) the physical address; and

(4) the identification, by number or copy of appropriate documentation, of the licensure or approval as a financial institution or as an insurer in this state;

(b) the identity of the registered certification authority on behalf of which the evidence of financial security is issued;

(c) a statement that the evidence of financial security is issued payable to the secretary of state for the benefit of persons holding qualified rights of payment against the registered certification authority named as principal of the surety bond, certificate of insurance, or irrevocable letter of credit;

(d) a statement that the evidence of financial security is issued for filing pursuant to the Kansas uniform electronic transactions act and amendments thereto; and

(e) a statement of term that extends at least as long as the term of the registration to be issued to the registered certification authority. (Authorized by K.S.A. 16-1618; implementing K.S.A. 16-1617; effective July 6, 2001; amended March 6, 2009.)

**7-41-5. Certification practice statement.**

Each registered certification authority shall file with the secretary of state a certification practice statement as required by K.A.R. 7-41-3. The statement shall declare the practices that the registered certification authority uses in issuing, suspending, revoking, and renewing certificates. The statement shall also include the following information: (a) If certificates are issued by security levels, the necessary criteria for each certificate security level, including the methods of certificate applicant identification applicable to each security level;

(b) disclosure of any warnings, liability limitations, warranty disclaimers, and indemnity and hold harmless provisions, if any, upon which the registered certification authority intends to rely;

(c) disclosure of any and all disclaimers and limitations on obligations, losses, or damages, if any, to be asserted by the registered certification authority;

(d) a written description of all representations from the certificate applicant required by the registered certification authority relating to the certificate applicant's responsibility to protect the private key; and

(e) disclosure of any mandatory dispute resolution process, if any, including any choice of forum and choice of law provisions. (Authorized by K.S.A. 16-1618; implementing K.S.A. 16-1617; effective July 6, 2001; amended March 6, 2009.)

**7-41-6. Changes to information.** Each original applicant or renewal applicant for a registered certification authority shall notify the secretary of state about any change to its CP, CPS, or information contained in its original application or renewal application, as the CP, CPS, or information appears in the secretary of state's files, within 30 days of the effective date of the change. (Authorized by K.S.A. 16-1618; implementing K.S.A. 16-1617; effective July 6, 2001; amended March 6, 2009.)

**7-41-7. Recordkeeping and retention of registered certification authority documents.**

Each registered certification authority shall maintain documentation of compliance with the Kansas uniform electronic transactions act and this article. The documentation shall include evidence demonstrating that the registered certification authority has met the following requirements:

(a) Each registered certification authority shall retain its records of the issuance, acceptance, and any suspension or revocation of a certificate for a period of at least 10 years after the certificate is revoked or expires. The registered certification authority shall retain custody of the records unless it ceases to act as a registered certification authority.

(b) All records subject to this article shall be in the English language. (Authorized by K.S.A. 16-1618; implementing K.S.A. 16-1617; effective July 6, 2001; amended March 6, 2009.)

**7-41-8 and 7-41-9.** (Authorized by K.S.A. 2000 Supp. 16-1618; implementing K.S.A. 2000 Supp. 16-1617; effective July 6, 2001; revoked March 6, 2009.)

**7-41-10. Procedure upon discontinuance of registered certification authority business.**

Each registered certification authority that discontinues providing registered certification authority services without making other arrangements for the preservation of the registered certification authority's records shall notify the secretary of state and the subscribers, in writing, of its discontinuance of business. (Authorized by K.S.A. 16-1618; implementing K.S.A. 16-1617; effective July 6, 2001; amended March 6, 2009.)

**7-41-11. Recovery against financial security.**

(a) In order to recover against a registered certification authority's surety bond, certificate of insurance, or other evidence of financial security, the claimant shall meet the following requirements:

(1) File a signed notice of the claim with the secretary of state, providing the following information:

- (A) The name and address of the claimant;
- (B) the amount claimed;
- (C) the grounds for the qualified right to payment; and
- (D) the date of the occurrence forming the basis of the claim; and

(2) attach to the notice a certified copy of the judgment upon which the qualified right to payment is based, except as provided in subsection (b).

(b) If the notice specified in this regulation is filed before entry of judgment, the notice shall be held on file by the secretary of state, without further action, until the claimant files a copy of the judgment. If the secretary of state determines that the action identified in the notice finally has been resolved without a judgment awarding the claimant a qualified right to payment, the notice may be expunged by the secretary of state from the secretary of state's records. A notice shall not be expunged by the secretary of state until two years have elapsed since the notice first was filed.

(c) A notice for filing shall be rejected by the secretary of state if the date of the occurrence forming the basis for the complaint is more than two years before the filing of the notice.

(d) If the notice and judgment are filed pursuant to paragraphs (a)(1) and (2), a copy of the notice and judgment shall be provided by the secretary of state to the surety, insurer, or issuer of the financial security for qualified right of payment to the claimant. (Authorized by K.S.A. 16-1618; implementing K.S.A. 16-1617; effective July 6, 2001; amended March 6, 2009.)

**7-41-12. Reciprocity.** (a) Any registered certification authority that is licensed, registered, or otherwise under the statutory oversight of a governmental agency, as defined by the Kansas uniform electronic transactions act and amendments thereto, may be registered as a registered certification authority in Kansas if all of the following conditions are met:

(1) The oversight of the governmental agency is equal to or greater than the oversight required pursuant to the Kansas uniform electronic transactions act and amendments thereto and this article.

(2) The registered certification authority submits to the secretary of state a written request for

registration and a copy of the license or registration issued by the governmental agency.

(3) The registered certification authority pays the \$1,000 application fee.

(b) Each registered certification authority registered pursuant to this regulation shall be exempt from the provisions of K.A.R. 7-41-3(c)(1).

(c) If the information filed pursuant to this regulation is satisfactory to the secretary of state, a registered certification authority may be issued a Kansas reciprocal registration by the secretary of state. (Authorized by K.S.A. 16-1618; implementing K.S.A. 16-1619; effective July 6, 2001; amended March 6, 2009.)

**7-41-13. Use of subscriber information.**

Each registered certification authority shall use subscriber and certificate applicant information only for the purpose of performing the identification and authentication process. (Authorized by K.S.A. 16-1618; implementing K.S.A. 16-1617; effective July 6, 2001; amended March 6, 2009.)

**7-41-14. State agency; compliance.** Each state agency offering or providing the option of using a digital signature to persons doing business with the state agency shall meet either of the following requirements:

(a)(1) Become an LRA by executing an agreement with the RA, as contained in the appendices to the ITEC certificate policy; and

(2) perform the duties of an LRA in accordance with the ITEC policy and these regulations; or

(b)(1) Become an LRA's trusted partner by executing a trusted partner agreement with an LRA, as contained in the appendices to the ITEC certificate policy; and

(2) perform the duties of an LRA's trusted partner in accordance with the ITEC certificate policy and these regulations. (Authorized by and implementing K.S.A. 16-1605; effective Aug. 19, 2005; amended March 6, 2009.)

**7-41-15. Registration authority, local registration authority, and local registration authority's trusted partner; compliance.** Each RA, LRA, and LRA's trusted partner shall meet the following requirements:

(a) Comply with these regulations and the ITEC certificate policy when administering any certificate or the associated keys; and

(b) ensure that I and A procedures are implemented in compliance with the requirements for certificate security levels specified in the ITEC

certificate policy. (Authorized by and implementing K.S.A. 16-1605; effective Aug. 19, 2005; amended March 6, 2009.)

**7-41-16. Registration authority, local registration authority, and local registration authority's trusted partner; general responsibilities.** (a) Each RA, LRA, and LRA's trusted partner shall perform that party's duties in a manner that meets the following requirements:

(1) Complies with the ITEC certificate policy;

(2) promotes a cooperative relationship with registered CAs; and

(3) uses keys and certificates issued by a registered CA only for authorized purposes.

(b) The primary duties of each RA, LRA, or LRA's trusted partner shall be the following:

(1) The establishment of a trustworthy environment and procedure for certificate applicants to submit applications;

(2) the I and A of each person applying for a certificate or requesting a certificate renewal or a certificate update in compliance with the requirements for certificate security levels specified in the ITEC certificate policy;

(3) the approval or rejection of certificate applications; and

(4) the revocation of certificates at the request of the subscriber or other authorized persons or upon the initiative of the RA, LRA, or LRA's trusted partner. (Authorized by and implementing K.S.A. 16-1605; effective Aug. 19, 2005; amended March 6, 2009.)

**7-41-17. Registration authority, local registration authority, and local registration authority's trusted partner; certification.** Each RA, LRA, and LRA's trusted partner shall certify on a form prescribed by the ITIMG that the RA, LRA, or LRA's trusted partner has secured an individual subscriber application from a certificate applicant and authenticated the certificate applicant's identity in compliance with the requirements for certificate security levels specified in the ITEC certificate policy when submitting certificate applicant information to an LRA, the RA, or a registered CA. (Authorized by and implementing K.S.A. 16-1605; effective Aug. 19, 2005; amended March 6, 2009.)

**7-41-18 through 7-41-29.** (Authorized by and implementing K.S.A. 2004 Supp. 16-1605; effective Aug. 19, 2005; revoked March 6, 2009.)

**7-41-30. Identification and authentication; certificate security levels.** Each RA, LRA, and LRA's trusted partner shall ensure that the applicable requirements for certificate security levels specified in the ITEC certificate policy are met when conducting the I and A of a certificate applicant. (Authorized by and implementing K.S.A. 16-1605; effective Aug. 19, 2005; amended March 6, 2009.)

**7-41-31.** (Authorized by and implementing K.S.A. 2004 Supp. 16-1605; effective Aug. 19, 2005; revoked March 6, 2009.)

**7-41-32. Agreements; registration authority; local registration authority; local registration authority's trusted partner; certificate applicant.** Each RA, LRA, LRA's trusted partner, and certificate applicant shall execute the agreements contained in the appendices of the ITEC certificate policy when contracting for certificate services. The agreements shall be executed before the issuance, administration, or use of the certificates. (Authorized by and implementing K.S.A. 16-1605; effective Aug. 19, 2005; amended March 6, 2009.)

**7-41-33. Picture identification credentials.** Each facial image identification required by an RA, LRA, or LRA's trusted partner for the purpose of I and A shall meet the minimum acceptable standards used in the identification credentials specified in the ITEC certificate policy for certificate security levels. (Authorized by and implementing K.S.A. 16-1605; effective Aug. 19, 2005; amended March 6, 2009.)

**7-41-34. Certificate; format and name.** Each certificate issued by a registered CA for use by a state agency pursuant to K.S.A. 16-1605, and amendments thereto, shall be in the X.509 format and contain a distinguished name in compliance with the ITEC certificate policy. (Authorized by and implementing K.S.A. 16-1605; effective March 6, 2009.)

**7-41-35. Registered certification authority; ITEC certificate policy.** Each person who performs the duties of a registered certification authority and issues certificates used by a state agency pursuant to K.S.A. 16-1605, and amendments thereto, shall comply with the ITEC certificate policy. (Authorized by K.S.A. 16-1605 and 16-1618; implementing K.S.A. 16-1605 and 16-1617; effective March 6, 2009.)

## Article 46.—PHOTOGRAPHIC IDENTIFICATION REQUIREMENTS

### 7-46-1. Postelection submission of photographic identification by provisional voter.

(a) Any voter who has cast a provisional ballot due to a failure or refusal to provide a valid photographic identification document at the time of voting may submit a valid photographic identification document by mail, in person, or by electronic means to the county election office in the county where the voter is registered to vote. “Electronic means” shall include facsimile, electronic mail, and any other electronic means approved by the secretary of state.

(b) If the voter submits a valid photographic identification document to the county election office before the county board of canvassers convenes, the county election officer shall present the document to the board of canvassers to determine the validity of the provisional ballot. If the board of canvassers determines the photographic identification document to be valid and the provisional ballot is not determined to be invalid for any other reason, the ballot shall be counted. (Authorized by and implementing K.S.A. 2010 Supp. 25-1122, as amended by L. 2011, ch. 56, sec. 2, and K.S.A. 2010 Supp. 25-2908, as amended by L. 2011, ch. 56, sec. 11; effective Feb. 24, 2012.)

### 7-46-2. Election board worker assessment of validity of photographic identification documents.

(a) Each election board worker to whom a photographic identification document is presented by a voter shall assess the sufficiency and validity of that document as follows:

(1) The election board worker shall perform the following:

(A) Verify that the name on the photographic identification document is consistent with the name on the poll book;

(B) allow for abbreviations and nicknames, including “Wm.” or “Bill” for “William”;

(C) if the name of the voter is consistent with the name in the poll book, proceed to paragraph (a)(2); and

(D) if the voter’s name is different from the name in the poll book or the name as stated by the voter due to marriage, divorce, hyphenation, or legal action, issue the voter a provisional ballot on the condition that the voter first completes an application for voter registration.

(2) The election board worker shall compare

the photograph to the voter to determine whether the voter is the person depicted in the photograph, considering hair color, glasses, facial hair, cosmetics, weight, age, injury to the voter, and other physical characteristics.

(A) If the election board worker is satisfied that the voter is the person depicted in the photographic identification document and the voter’s name is consistent with the name in the poll book, then the election board worker shall issue the voter a regular ballot.

(B) If the election board worker is unable to determine whether the voter is the person depicted in the photographic identification document because of degradation or insufficient photograph quality, then the election board worker shall issue a regular ballot to the voter if one of the following conditions is met:

(i) The voter’s date of birth on the presented photographic identification document matches the voter’s date of birth in the poll book.

(ii) The voter submits a different photographic identification document that contains a photograph that appears to the election board worker to depict the voter.

(iii) An election board worker at the polling place possesses knowledge that the person depicted in the photographic identification document is the voter.

(3) If the election board worker determines that the photographic identification document does not depict the voter, then the election board worker shall issue a provisional ballot unless the voter submits a different photographic identification document that contains a photograph that appears to the election board worker to depict the voter.

(b) The photographic identification document shall not be used to verify the address of the voter if the document contains an address. The photographic identification document shall be used to verify only the name and appearance of the voter. The poll book shall be used to verify the address of the voter by comparing the voter’s address in the poll book to the address stated by the voter.

(c) If there is a dispute regarding the application of this regulation to a voter or if the election board worker is unable to determine a voter’s eligibility, the supervising judge shall make a decision regarding whether a regular ballot or a provisional ballot shall be issued.

(d)(1) The county election officer shall present all provisional ballots to the county board of canvassers for a determination of validity.

(2) Each provisional ballot issued under this regulation shall be counted if both of the following conditions are met, unless the provisional ballot is determined to be invalid for another reason:

(A) Before the county board of canvassers convenes, the voter provides information to the county officer that remedies each deficiency or inconsistency that led to the issuance of the provisional ballot.

(B) The county board of canvassers determines that the voter's provisional ballot is valid.

(e) Nothing in this regulation shall require an election board worker to issue a regular ballot if the election board worker determines that a voter is attempting to circumvent the photographic identification requirement. Except as specified in K.S.A. 25-2908(i) and amendments thereto, nothing in this regulation shall exempt the voter from providing a photographic identification document. (Authorized by and implementing K.S.A. 2010 Supp. 25-2908, as amended by L. 2011, ch. 56, sec. 11; effective Feb. 24, 2012.)

**7-46-3. Declarations of religious objection.** (a) Each person who is otherwise entitled to vote and who seeks an exemption from the photographic identification requirement pursuant to K.S.A. 25-2908(i)(5), and amendments thereto, shall sign and submit a declaration form concerning the person's religious beliefs before receiving a ballot in each election in which the person intends to vote. The person may sign and submit the declaration form to the secretary of state or the county election officer before each election or when applying for a ballot.

(b) A voter shall not submit a declaration of religious objection in place of a valid photographic identification document after casting a ballot. (Authorized by and implementing K.S.A. 2010 Supp. 25-2908, as amended by L. 2011, ch. 56, sec. 11; effective Feb. 24, 2012.)

#### Article 47.—AUDITS

**7-47-1. Audit implementation.** The requirements of this regulation shall not apply to local question elections, mail-ballot elections pursuant to K.S.A. 25-431 through 25-441 and amendments thereto, or statewide constitutional amendments.

(a) As used in K.S.A. 25-3009 and amendments thereto, the term “unofficial election night re-

turns” shall include ballots cast and counted on election day, ballots cast in advance and counted on election day, and ballots cast by means of the uniformed and overseas citizens absentee voting act (UOCAVA) procedures and counted on election day. This term shall not include any ballots cast that are challenged or marked as provisional or any ballots that are cast in advance and received after election day.

(b) Training shall be provided by the secretary of state to each county election officer. Each county election officer shall provide training to the election board, as specified in K.S.A. 25-3009 and amendments thereto, conducting the postelection audit. The training shall include the identification of voter intent specific to the vote-casting technologies in use across Kansas.

(c)(1) An auditable race and precinct shall be a race and precinct meeting the requirements in K.S.A. 25-3009, and amendments thereto, for an audit to be conducted. The random selection of races and precincts shall take place in a public setting, and the procedure to randomize the selection of races and precincts shall be determined solely by each county election officer and the secretary of state. Upon completion of the audit, each election board shall transmit to the secretary of state and the county election office the results of the audit no later than 48 hours before the meeting of the county board of canvassers.

(2) In even-year elections, within 24 hours of the closing of the final polling location in Kansas, the list of randomly selected races to be audited shall be transmitted by the secretary of state to each county election officer. Each county election officer shall examine each race in the order specified until an auditable race is determined. Each county election officer shall then randomly select one percent of the total county precincts from the subset of auditable precincts. If no contested race exists, the election board shall audit the first race listed.

(3) In odd-year elections, each county election officer shall randomly select the races and then each precinct to be audited.

(d) Ballot images may be used for the manual audit if imaging technology exists during the tabulation process on election night. (Authorized by and implementing K.S.A. 2018 Supp. 25-3009; effective, T-7-6-26-19, June 26, 2019; effective Sept. 27, 2019.)

Agency 9

**Kansas Department of Agriculture—  
Division of Animal Health**

**Editor's Note:**

Pursuant to Executive Reorganization Order (ERO) No. 40, the Kansas Animal Health Department was abolished on July 1, 2011. Powers, duties and functions were transferred to the Kansas Department of Agriculture, Division of Animal Health. See L. 2011, Ch. 135.

*Articles*

- 9-2. BOVINE BRUCELLOSIS.
- 9-3. SWINE BRUCELLOSIS AND CERVIDS.
- 9-7. MOVEMENT OF LIVESTOCK INTO OR THROUGH KANSAS.
- 9-10. PUBLIC LIVESTOCK MARKETS.
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- 9-19. ANIMAL BREEDERS AND DISTRIBUTORS; FACILITY STANDARDS, ANIMAL HEALTH, HUSBANDRY, AND OPERATIONAL STANDARDS.
- 9-20. PET SHOPS.
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- 9-24. KENNEL OPERATORS.
- 9-25. RETAIL BREEDERS FACILITY STANDARDS; ANIMAL HEALTH, HUSBANDRY AND OPERATIONAL STANDARDS.
- 9-26. EUTHANASIA.
- 9-27. REPORTABLE DISEASES.
- 9-29. CERVIDAE.

**Article 2.—BOVINE BRUCELLOSIS**

**9-2-35. Movement of sexually intact cattle and bison from designated surveillance areas.** (a) Each of the following terms, as used in this regulation, shall have the meaning specified in this subsection:

(1) “Designated surveillance area” and “DSA” mean any area identified by the USDA with an elevated risk for brucellosis infection due to serological evidence of brucella exposure in wild elk sampled in that area.

(2) “Official identification” means a unique and permanent form of individual animal identification approved by the USDA’s animal and plant health inspection service or the animal health commissioner. This term shall not include breed registration tattoos, brands, or any registered brand even if the registered brand is accompanied by a brand inspection certificate.

(3) “Official test” means a USDA-approved test for brucellosis conducted at a USDA-approved lab pursuant to “brucellosis eradication: uniform methods and rules,” which is adopted by reference in K.A.R. 9-2-32.

(4) “USDA” means United States department of agriculture.

(b) All sexually intact cattle or bison, regardless of age and sex, moving from a DSA into Kansas shall have official identification for each animal, shall obtain a movement permit number from the Kansas animal health commissioner, and shall be accompanied by a certificate of veterinary inspection issued by a state-licensed and federally accredited veterinarian in the state of origin. The certificate of veterinary inspection shall include the movement permit number and a statement verifying that each animal has official identification.

(c) In addition to the requirements of subsection (b), the certificate of veterinary inspection for all sexually intact cattle and bison aged 12 months or older moving from a DSA into Kansas and all sexually intact cattle and bison moving from a DSA into Kansas for breeding or exhibition purposes, regardless of age, shall also include official identification for each animal and a statement that each animal being moved meets one of the following requirements:

(1) Originates and moves directly from a USDA-certified brucellosis-free herd in the state of origin;

(2) originates and moves directly from a herd that has had a negative whole-herd test for brucellosis conducted within the previous 12 months, including the date of the last qualifying whole-herd test; or

(3) has tested negative in response to an official test for brucellosis within the 30 days before movement to Kansas, including the date of the last qualifying test for the animal.

(d) One copy of the certificate of veterinary inspection shall accompany the cattle or bison shipment, one copy shall be retained by the official state agency in the state of origin, and one copy shall be sent by the inspecting veterinarian in the state of origin to the office of the Kansas animal health commissioner. (Authorized by K.S.A. 2019 Supp. 47-610 and 47-657; implementing K.S.A. 2019 Supp. 47-607, K.S.A. 2019 Supp. 47-608, K.S.A. 2019 Supp. 47-610, K.S.A. 2019 Supp. 47-657, K.S.A. 47-661, K.S.A. 47-663 and K.S.A. 47-664; effective Nov. 13, 2020.)

### Article 3.—SWINE BRUCELLOSIS AND CERVIDS

**9-3-6. Definitions.** As used in K.A.R. 9-3-6 through 9-3-17, each of the following terms shall have the meaning specified in this regulation:

(a) “Adult domesticated cervid” means any domesticated cervid that is 12 months of age or older.

(b) “Affected herd” means any domesticated cervid herd in which tissues or fluids collected from a live animal or carcass of an animal tested positive for any infectious or contagious disease for which the herd may be quarantined, including chronic wasting disease (CWD), bovine tuberculosis (TB), or *Brucella abortus* (brucellosis), using an approved test conducted at an approved laboratory.

(c) “Animal” means a member of the family Cervidae, unless otherwise stated.

(d) “APHIS” means the animal and plant health inspection service of the United States department of agriculture.

(e) “Approved laboratory” means any laboratory approved by APHIS to conduct brucellosis, TB, and CWD testing.

(f) “Approved test” means any test for brucellosis, TB, or CWD conducted under protocols established by APHIS.

(g) “Cervid” means any member of the family Cervidae and hybrids, including deer, elk, moose, caribou, reindeer, and related species.

(h) “Chronic wasting disease” and “CWD” mean a nonfebrile, transmissible spongiform encephalopathy that is insidious and degenerative and that affects the central nervous system of cervids.

(i) “Commingling” means grouping animals in a manner in which physical contact among animals could occur, including maintaining animals in the same pasture or enclosure. This term shall not include holding animals at a sale, during transportation, during artificial insemination, or in other situations in which only limited contact is involved.

(j) “Commissioner” means Kansas animal health commissioner.

(k) “CWD-clean herd” means a herd that has been a participating herd for at least 10 years in Kansas or in a state with a CWD monitoring program of equivalent status.

(l) “CWD-exposed animal” means an animal that is part of a CWD-positive herd or that has been exposed to a CWD-positive animal or contaminated premises within the previous five years.

(m) “CWD-exposed herd” means a herd in which a CWD-positive animal has resided within five years before that animal’s diagnosis as CWD-positive, as determined by an APHIS employee or representative of the commissioner.

(n) “CWD-infected herd” means any herd with a confirmed CWD-positive animal that has not completed a herd plan.

(o) “CWD-positive animal” means any cervid that tests positive on an approved test at an approved laboratory.

(p) “CWD-source herd” means a herd that is identified through testing or epidemiological investigations to be the source of CWD-positive animals identified in other herds.

(q) “CWD-suspect animal” means any cervid that showed clinical signs of the disease before death, but whose results on an approved test are inconclusive or have not yet been reported.

(r) “CWD-suspect herd” means a herd for

which unofficial CWD test results, laboratory evidence, or clinical signs suggest a diagnosis of CWD, as determined by an APHIS employee or state representative, but for which confirmatory laboratory results have been inconclusive or not yet reported.

(s) “Depopulate” means to remove, from a premises, animals that are determined to be infected or exposed to a specific disease by means of euthanizing the animals or by moving the animals to an approved slaughter facility for slaughter.

(t) “Domesticated cervid” means “domesticated deer,” as defined in K.S.A. 47-2101 and amendments thereto.

(u) “Domesticated cervid permit” means the permit required by K.S.A. 47-2101, and amendments thereto, to sell or raise any cervid.

(v) “Herd” means a group of animals maintained on the same premises or two or more groups of animals maintained in a manner that results in commingling.

(w) “Herd inventory” means an accounting that lists each adult domesticated cervid by its sex, age, breed or species, official identification and any other identification and that is confirmed by an accredited veterinarian or by a representative of the commissioner.

(x) “Herd plan” means a signed written agreement between the herd owner, the commissioner, and the APHIS administrator, detailing any testing requirements and allowable movements into and out of an affected herd. The herd plan may also include requirements on fencing, decontamination, and cleanup of premises.

(y) “Herd status” means the number of years during which a herd owner’s participating herd has been in an approved CWD monitoring program, indicating the probability that the herd is not affected by the disease. Herd status is determined by the length of time the herd has been monitored for CWD and by the herd owner’s full compliance with the program.

(z) “Official identification” means the identification required by K.S.A. 47-2101, and amendments thereto, which for any animal in a participating herd shall be in the form of a unique means of identification approved by APHIS and the commissioner. Acceptable forms of official identification shall include electronic implants, which are also known as microchips, radio frequency identification (RFID) tags, tamper-resistant tags, and national uniform eartagging system tags but shall exclude ear tattoos and flank tattoos.

(aa) “Participating herd” means any herd enrolled in the CWD monitoring program.

(bb) “Premises” means the grounds and buildings occupied by a herd and equipment used in the husbandry of the herd.

(cc) “Program” means the CWD monitoring program or the APHIS herd certification program, whichever is applicable.

(dd) “TB” means bovine tuberculosis. (Authorized by and implementing K.S.A. 2013 Supp. 47-607d, 47-610, and 47-2101; effective Sept. 19, 2014.)

**9-3-7. Fees.** (a) Each applicant for an annual domesticated cervid permit issued pursuant to K.S.A. 47-2101 et seq., and amendments thereto, shall pay one of the following application fees:

- (1) For 1-19 domesticated cervids, \$75.00;
- (2) for 20-49 domesticated cervids, \$125.00; or
- (3) for 50 or more domesticated cervids, \$175.00.

(b) Only those individuals with a current domesticated cervid permit may possess domesticated cervids.

(c) Each applicant shall submit the application for a domesticated cervid permit at least 30 days before taking possession of any domesticated cervid. (Authorized by and implementing K.S.A. 2013 Supp. 47-2101; effective Sept. 19, 2014.)

**9-3-8. Records.** Each holder of a domesticated cervid permit shall maintain records for each domesticated cervid purchased, acquired, held, transported, sold, or disposed of in any other manner. Each cervid, regardless of age, that enters a herd or leaves a herd alive for any purpose other than for direct movement to slaughter shall have official identification before change of ownership. The records shall be held for at least five years after the animal dies or leaves the premises and shall include the following information:

(a)(1) The name and either the residential or business address of the person from whom each domesticated cervid was acquired; and

(2) the geographic location from which each domesticated cervid was acquired, if this location is different from the residential or business address in paragraph (a)(1);

(b) the date each domesticated cervid was acquired or, if born on the premises, the year of birth of the domesticated cervid;

(c) a description of each domesticated cervid, including the following characteristics:

- (1) The species or breed;

(2) the age;  
 (3) all official identification numbers;  
 (4) the sex; and  
 (5) any other significant identification for that animal, including any of the following types of identification:

(A) An ear tag;  
 (B) an ear tattoo;  
 (C) an ear notch; or  
 (D) any brands, scars, or other permanent markings that help identify the animal;

(d)(1) The name and either the residential or business address of the person to whom any domesticated cervid is sold, given, or bartered or to whom the domesticated cervid is otherwise delivered;

(2) the geographic location to which the domesticated cervid is delivered, if this location is different from the residential or business address in paragraph (d)(1); and

(3) the date and method of disposition; and  
 (e) if the domesticated cervid dies, is euthanized, or is slaughtered, the following additional information:

(1) The date of the death of the animal;  
 (2) the cause of death of the animal; and  
 (3) the method of disposition of the animal.  
 (Authorized by and implementing K.S.A. 2013 Supp. 47-2101; effective Sept. 19, 2014.)

**9-3-9. Certificate of veterinary inspection; importation and intrastate movement requirements and permits.** (a) Each cervid imported into Kansas shall be identified with official identification and shall be accompanied by a certificate of veterinary inspection.

(b) Each individual importing a cervid into Kansas shall obtain an import permit from the Kansas department of agriculture, division of animal health before the cervid enters Kansas. The cervid shall not be allowed entry into Kansas without this permit.

(c) Each animal of the genera *Odocoileus*, *Cervus*, and *Alces*, including whitetail deer, mule deer, black-tailed deer and associated subspecies, North American elk (wapiti), red deer, sika deer, moose, and any hybrids of these species, and the genera *Rangifer*, including reindeer and caribou, regardless of age, not moving directly to a licensed slaughter establishment within Kansas shall originate and move directly from a herd with at least five years of herd status in the APHIS herd certification program or an equivalent program admin-

istered by the office of the state veterinarian in the state of origin.

Muntjacs, Père David's deer, fallow deer, and axis deer shall be exempt from the monitoring requirements for CWD in K.A.R. 9-3-15 and 9-3-16. Other cervid species may be exempted by the commissioner if the species are determined by APHIS to be nonsusceptible to CWD.

(d) All cervids originating from an area identified by APHIS as a designated surveillance area shall be prohibited entry into Kansas.

(e) Each domesticated cervid, except nursing young under four months of age and accompanied by their dam, that is entering Kansas, is not from a herd accredited by APHIS to be TB-free, and is not moving directly to a licensed slaughter establishment in Kansas shall be required to test negative for TB, using an approved test administered twice at least 90 days apart. The first test shall be administered no more than 180 days before entry into Kansas, and the second test shall be administered no more than 90 days before entry.

(f) Any imported cervid may be quarantined for a retest for TB by order of the commissioner.

(g) Each domesticated cervid, alive or dead, transported within the state of Kansas shall be accompanied by a completed transportation notice signed by the shipper on a form provided by the Kansas department of agriculture, division of animal health. One copy of the notice shall be mailed to the commissioner, one copy shall accompany the shipment, and one copy shall be retained by the shipper. The shipper shall possess a current domesticated cervid permit. (Authorized by K.S.A. 2019 Supp. 47-607, 47-607d, and 47-2101; implementing K.S.A. 2019 Supp. 47-607, 47-607a, and 47-2101; effective Sept. 19, 2014; amended March 10, 2017; amended Nov. 13, 2020.)

**9-3-10. Brucellosis.** (a) Any adult domesticated cervid known or suspected to have been exposed to brucellosis may be quarantined for a test or retest for brucellosis by order of the commissioner.

(b) The owner of any domesticated cervid herd infected with brucellosis shall take either of the following steps:

(1) Quarantine and depopulate the herd; or  
 (2) quarantine the herd until a herd plan to eradicate brucellosis from the infected herd has been completed. (Authorized by K.S.A. 2016 Supp. 47-610; implementing K.S.A. 2016 Supp. 47-610 and K.S.A. 47-614; effective Sept. 19, 2014; amended March 10, 2017.)

**9-3-11. Tuberculosis.** (a) The following portions of the document titled “bovine tuberculosis eradication: uniform methods and rules, effective January 22, 1999,” published by APHIS, are hereby adopted by reference:

(1) Part I, except the definitions of “affected herd,” “approved laboratory,” “herd,” and “individual herd plan”;

(2) part II, except II.A and II.K.3;

(3) part IV;

(4) part VI; and

(5) appendix 1.

(b) All testing and sample collection for the testing of TB in cervids shall be conducted by a licensed and accredited veterinarian in the state of origin who has been certified by APHIS to conduct TB testing in cervids.

(c) Each adult domesticated cervid that is changing ownership within Kansas, is not intended for immediate slaughter, and has not originated and moved directly from a herd accredited by APHIS to be TB-free shall be required to test negative for TB by an approved test conducted within 90 days before change of ownership.

(d) The owner of each herd infected with TB shall take one of the following steps:

(1) Quarantine and depopulate the herd; or

(2) quarantine the herd until a herd plan to eradicate TB from the infected herd has been completed.

(e) Any imported cervid may be quarantined for a test for TB by order of the commissioner. The test shall be at the owner’s expense. (Authorized by K.S.A. 2013 Supp. 47-607d and 47-610; implementing K.S.A. 2013 Supp. 47-607, 47-610, 47-631, and 47-634; effective Sept. 19, 2014.)

**9-3-12. Confinement, handling, and health.** (a) Perimeter fencing. Each owner shall confine domesticated cervids with perimeter fencing, which shall meet the following requirements:

(1) Provide a barrier that prevents the escape of the domesticated cervids confined within and prevents the entry of wild cervids from outside the fenced area;

(2) be structurally sound;

(3) be in good repair; and

(4) be of sufficient height to prevent escape, but not less than eight feet for elk, red deer, whitetail deer, moose, and mule deer and not less than six feet for all other types of domesticated cervid. Any perimeter fencing constructed before January 23,

1998 that does not meet the height requirements in this paragraph may be utilized subject to written approval of the commissioner. All new fencing constructed on these premises shall meet the requirements of this paragraph.

(b) Facilities.

(1) Each owner shall provide handling facilities, which shall be adequate to allow each domesticated cervid to be physically handled without undue harm to the domesticated cervid or the handler.

(2) Each access lane and catch pen shall be constructed of materials and shall be of a design adequate to safely contain domesticated cervids for any inspection, identification, testing, quarantine, or other action required by the commissioner.

(c) Herd management. The owner shall provide each domesticated cervid with free access to the following:

(1) Clean water;

(2) adequate feed;

(3) appropriate shelter, natural or otherwise; and

(4) protection from predators.

(d) Health. Each owner or handler of domesticated cervids shall meet the requirements of all federal and state regulations for contagious and communicable diseases. (Authorized by and implementing K.S.A. 2013 Supp. 47-2101; effective Sept. 19, 2014.)

**9-3-13. Escaped domesticated cervids.** (a) The owner of any domesticated cervid that has escaped confinement shall report the animal as missing to the commissioner within 48 hours of noticing the animal missing. This report shall include the following information:

(1) The breed or species of cervid that has escaped;

(2) the sex of the escaped animal;

(3) the date the animal was found to be missing;

(4) the official identification of the animal; and

(5) any secondary identification on the animal, including plastic tags and brands.

(b) The owner of an escaped domesticated cervid shall bear the cost of recovering that animal.

(c) The following types of domesticated cervids shall be immediately destroyed without compensation to the owner upon the order of the commissioner:

(1) Any escaped domesticated cervid from a herd that is quarantined because the herd is infected with or has been exposed to any infectious or contagious disease; or

(2) any escaped domesticated cervid that is deemed by the commissioner to constitute a hazard to livestock or wildlife through the spread of disease. (Authorized by K.S.A. 2013 Supp. 47-610 and 47-2101; implementing K.S.A. 2013 Supp. 47-610, K.S.A. 47-614, and K.S.A. 2013 Supp. 47-2101; effective Sept. 19, 2014.)

**9-3-14. Handling, care, treatment, and transportation.** The following portions of 9 C.F.R. part 3, as in effect on January 1, 2013, as applied to cervids, are hereby adopted by reference:

(a) Secs. 3.125 through 3.133, except sec. 3.127(d); and

(b) secs. 3.136 through 3.142, except that in sec. 3.136(c), “a veterinarian accredited by this Department” shall be replaced by “a veterinarian accredited by APHIS,” and “part 160 of this title” shall be replaced by “9 C.F.R. Part 160.” (Authorized by and implementing K.S.A. 2013 Supp. 47-610 and 47-2101; effective Sept. 19, 2014.)

**9-3-15. Participation in the chronic wasting disease monitoring program.** (a) Each participating herd shall be maintained or held only on premises for which a current domesticated cervid permit has been issued by the commissioner. If a herd owner wishes to maintain separate herds, the herd owner shall maintain separate herd inventories, records, working facilities, water sources, equipment, and land use. There shall be a buffer zone of at least 30 feet between the perimeter fencing around each separate herd, and no commingling may occur. Movement between herds shall be recorded as if the herds were separately owned.

(b) Each application for enrollment of a herd in the chronic wasting disease program shall be submitted on a form provided by the commissioner and shall include the following:

(1) Documentation that a current domesticated cervid permit has been issued to the owner of the premises on which the herd is held or maintained;

(2) a copy of an initial herd inventory, including documentation of at least one form of official identification for each animal and one form of other visible identification, including ear tags, brands, and any other means that are unique to that animal in the herd; and

(3) adequate herd records and documentation of the history of the herd since it originated or over at least the previous 60 months, whichever is less, including the following:

(A) For each animal added to the herd, any available records documenting the herd status of the herd from which the animal was transferred; and

(B) records establishing that no animal has displayed any clinical signs of CWD and that the herd has not had any CWD-positive animals.

(c) The date of the initial application into the CWD monitoring program shall be the anniversary date. On initial application, a herd inventory, including all official identification and any other identification, shall be completed and confirmed by means of visual inspection by an accredited veterinarian or a representative of the commissioner.

An application accompanied by a herd inventory, including all official identification and any other identification, shall be completed annually and confirmed by an accredited veterinarian or by a representative of the commissioner. Each herd inventory shall be filed at least 11 months and no more than 13 months after the last anniversary date of the participating herd's enrollment in the program. A visual inspection of the identification listed on the herd inventory shall be conducted and confirmed by an accredited veterinarian or by a representative of the commissioner at least once every three years.

An approved test for CWD shall be administered to the carcass of each animal that is 12 months of age or older at the time the animal dies or is slaughtered, unless an exception is granted by the commissioner.

(d) Failure to comply with this regulation shall result in a reduction or loss of herd status. (Authorized by and implementing K.S.A. 2013 Supp. 47-610 and 47-2101; effective Sept. 19, 2014.)

**9-3-16. Program levels.** (a) Each participating herd shall be assigned herd status based on the following:

(1) The number of years that the participating herd has been under surveillance with no evidence of CWD; and

(2) the herd owner's compliance with K.A.R. 9-3-15.

Herd status shall be reassigned based on the herd status of each herd from which the participating herd has received any animal.

(b)(1) Each of the following shall start at the entry level of year one:

(A) Each herd that has not received any animal from a herd with previous herd status;

(B) each herd that has received any animal of unknown herd status; and

(C) each herd that is not currently a participating herd.

(2) Application for renewal and advancement within the CWD monitoring program shall be yearly as described in K.A.R. 9-3-15. Each herd meeting the requirements of K.A.R. 9-3-15 shall advance one year in herd status for every year during which these requirements are met. Each participating herd with at least 10 years with no evidence of CWD shall be considered a CWD-clean herd. To maintain herd status as a CWD-clean herd, a herd shall receive animals only from other CWD-clean herds.

(c) Any owner of a herd in which all animals received have been moved directly from herds of a designated herd status within Kansas, or from a state with a CWD monitoring program equivalent to the Kansas program, may apply for the same level of herd status. However, the participating herd shall be assigned the herd status of the herd with the lowest herd status from which the participating herd has obtained any animal.

(d) Each herd that receives any animals from a herd of lesser herd status shall drop to the lowest level of herd status of the animals received. If a participating herd receives any animals of unknown or no herd status, then the herd status of the participating herd shall be reduced to year one. (Authorized by and implementing K.S.A. 2013 Supp. 47-610 and 47-2101; effective Sept. 19, 2014.)

**9-3-17. CWD-infected herds.** Each CWD-infected herd shall be subject to the following requirements:

(a) A herd quarantine shall be issued by the commissioner immediately after receiving a report from an approved laboratory of a positive test for CWD in an animal from a herd.

(b) A herd plan shall be developed by a representative of the commissioner and the owner within 21 days of the date the herd quarantine is issued. This herd plan shall be approved by the owner, the state APHIS representative, and the commissioner and shall detail how animal movement into and from the CWD-infected herd may occur.

(c) Each domesticated cervid permittee shall notify the commissioner of the death of any animal in a CWD-infected herd. The notice shall be given to the commissioner within 24 hours of the discovery of the animal's death. An approved test shall be administered by a designee of the

commissioner to the carcass of each animal in the CWD-infected herd that dies.

(d) If an animal in a CWD-infected herd shows symptomatic or clinical signs of CWD, the domesticated cervid permittee shall notify the commissioner. The animal shall be euthanized and administered an approved test by a designee of the commissioner.

(e) The carcass of each CWD-positive animal shall be disposed of only by a method and at a site approved by the commissioner and the secretary of the Kansas department of health and environment or the secretary's designee.

(f) The quarantine on the CWD-infected herd shall be removed after five consecutive years in which there are no animals in the CWD-infected herd with any clinical signs of CWD and no positive results on an approved test. The owner of a CWD-infected herd may apply to reenroll the herd in the program with a year-five herd status. (Authorized by K.S.A. 2013 Supp. 47-610 and 47-2101; implementing K.S.A. 2013 Supp. 47-610, K.S.A. 47-614, K.S.A. 2013 Supp. 47-622 and 47-2101; effective Sept. 19, 2014.)

## Article 7.—MOVEMENT OF LIVESTOCK INTO OR THROUGH KANSAS

### 9-7-4. Tuberculosis and brucellosis in cattle. (a) Tuberculosis.

(1) Breeding cattle six months of age and over shall not be imported into Kansas unless accompanied by an official health certificate showing that the cattle meet the following requirements:

(A) Originated in a herd accredited to be tuberculosis-free;

(B) originated in a tuberculosis-free state; or

(C) have been tested and were found negative for tuberculosis within 60 days before date of entry.

(2) Dairy cattle that are used for breeding and are six months of age or older shall originate from a herd accredited to be tuberculosis-free or shall be tested negative for tuberculosis within 60 days before entry.

(b) Brucellosis.

(1) Brucellosis tests, regardless of method, shall be conducted at a laboratory approved by the United States department of agriculture, animal and plant health inspection service (APHIS).

(2) Breeding cattle six months of age or over imported into Kansas shall meet interstate requirements according to state certification, as outlined in chapter 2 of the United States department of

agriculture's document titled "brucellosis eradication: uniform methods and rules, effective October 1, 2003," APHIS publication 91-45-013. The following portions of this document, which shall apply to only this subsection, are hereby adopted by reference:

(A) In chapter 1, part I; and

(B) chapter 2. (Authorized by K.S.A. 2015 Supp. 47-607d, 47-610, and 47-657; implementing K.S.A. 2015 Supp. 47-607, 47-610, and 47-657; effective Jan. 1, 1966; amended Jan. 1, 1971; amended Jan. 1, 1974; amended, E-76-28, Aug. 15, 1975; amended May 1, 1976; amended May 1, 1982; amended, T-9-5-12-10, May 12, 2010; amended Sept. 24, 2010; amended Oct. 4, 2013; amended May 27, 2016.)

**9-7-4a. Trichomoniasis in cattle.** (a) Definitions. For the purposes of this regulation, each of the following terms shall have the meaning specified in this subsection:

(1) "Approved laboratory" means any laboratory designated and approved by the commissioner for performing official *Tritrichomonas foetus* PCR tests.

(2) "Certified negative *Tritrichomonas foetus* bull" means a bull that is individually identified by an official identification method approved by the commissioner and meets one of the following requirements:

(A) Originates from a herd that is not known to be infected and, following at least 14 days of sexual rest before sampling and testing, has had a negative official *Tritrichomonas foetus* PCR test result within the last 60 days, with no subsequent exposure to female bovine; or

(B) originates from a positive *Tritrichomonas foetus* herd but, following at least 14 days of sexual rest before sampling and testing, has had a series of two negative official *Tritrichomonas foetus* PCR test results at intervals of at least 14 days, with the second test occurring within the last 60 days, with no subsequent exposure to female bovine.

(3) "Commissioner" means the animal health commissioner of the Kansas department of agriculture.

(4) "Herd" means a group of both sexually intact male animals and sexually intact female animals under common ownership or control and consisting of all bovines over 12 months of age at the time of commingling that have commingled for any period of time during the last 12 months.

(5) "Official positive trichomoniasis infection identification tag" means an individual identification tag approved by the commissioner and signifying that an animal is trichomoniasis-infected.

(6) "Official *Tritrichomonas foetus* PCR test" means a polymerase chain reaction test method approved by the commissioner that detects, through in vitro amplification, the presence of *Tritrichomonas foetus* deoxyribonucleic acid (DNA). Each official *Tritrichomonas foetus* PCR test shall be performed only on an animal that is individually identified by an official identification method approved by the commissioner. Each sample shall be collected using a test kit system approved by the commissioner, packaged and transported according to the approved laboratory's protocol for the transport of specimens, and collected by a veterinarian who has completed trichomoniasis training. This training shall be approved by the commissioner; include preputial sampling, sample handling and shipping, appropriate recordkeeping, and official animal identification; and be repeated every five years.

(7) "Positive *Tritrichomonas foetus* bull" means a bull that has had a positive official *Tritrichomonas foetus* PCR test.

(8) "Positive *Tritrichomonas foetus* herd" means either of the following:

(A) A herd in which any male or female animal has had a positive diagnosis for *Tritrichomonas foetus*; or

(B) a herd that has commingled for any period of time during the last 12 months with another herd, or portion thereof, from which an animal has had a positive diagnosis for *Tritrichomonas foetus*. The herd, or a portion thereof, shall no longer be classified as a positive *Tritrichomonas foetus* herd once any trichomoniasis quarantine has been lifted for the herd or that portion of the herd.

(9) "Trichomoniasis-infected bovine" means a bovine that has tested positive on an official *Tritrichomonas foetus* PCR test.

(10) "Trichomoniasis quarantine" means a movement restriction issued by the commissioner and placed on all cattle in a positive *Tritrichomonas foetus* herd. This restriction shall specify the identity of the animals and the premises to which the animals shall be confined.

(b) Importation of male bovines into Kansas.

(1) Bulls shall not be imported into Kansas from another state unless they go directly to a licensed slaughter plant or an approved Kansas livestock market to be sold for slaughter, or for feeding pur-

poses and then to slaughter, or are accompanied by a completed certificate of veterinary inspection. The certificate of veterinary inspection shall meet the following requirements:

- (A) Have been issued within the past 30 days;
- (B) state whether, to the veterinarian's knowledge, trichomoniasis has or has not occurred in the herd of origin within the past two years; and
- (C) for virgin bulls 18 months of age or younger, have attached to the certificate a statement signed by the veterinarian or owner or owner's representative and indicating that the bulls have not been sexually exposed to breeding-aged females.

(2) With the exception of bulls exempted in paragraph (b)(3), non-virgin bulls, bulls older than 18 months of age, and bulls of unknown virginity status shall not be imported into Kansas from another state for breeding purposes unless these bulls are certified negative *Tritrichomonas foetus* bulls. The inspecting veterinarian shall either attach a copy of the official *Tritrichomonas foetus* PCR test results to the certificate of veterinary inspection or provide the following information on the certificate: type of test, results of the test, accession number, and name and address of the testing laboratory.

(3) Each imported bull going to a sanctioned rodeo event or to a livestock show where the bull will be shown and then returned to the state of origin without being sexually exposed to any breeding-aged females shall be exempt from the requirements of paragraph (b)(2).

(c) Importation of female bovines into Kansas. Cows and heifers shall not be imported into Kansas from another state unless the cows and heifers go directly to a licensed slaughter plant or an approved Kansas livestock market to be sold for slaughter, or for feeding purposes and then to slaughter, or are accompanied by a completed certificate of veterinary inspection. The certificate of veterinary inspection shall meet the following requirements:

- (1) Have been issued within the past 30 days; and
- (2) except for cows or heifers imported into Kansas for a sanctioned rodeo event or a livestock show that will be shown and then returned to the state of origin without being sexually exposed to any bull while in Kansas, document that the cows and heifers meet at least one of the following conditions:

(A) Have a calf at side and no exposure since parturition to bulls other than certified negative *Tritrichomonas foetus* bulls;

- (B) are at least 120 days pregnant;
- (C) are virgin heifers with no sexual exposure to bulls since weaning;
- (D) are documented to have had at least 120 days of sexual isolation;
- (E) are heifers or cows exposed only to bulls that are certified negative *Tritrichomonas foetus* bulls;
- (F) are purchased for feeding purposes only, with no exposure to bulls after entering Kansas; or
- (G) are moving for the purpose of embryo transfer or other artificial reproduction procedure, with no exposure to bulls after entering Kansas.

(d) Intrastate movement of bulls.

(1) Except as provided in paragraphs (d)(2) and (d)(3), if any non-virgin bull, bull older than 18 months of age, or bull of unknown virginity status changes possession or ownership in Kansas by private sale, public sale, lease, trade, barter, or other method, that animal shall be a certified negative *Tritrichomonas foetus* bull at the time of the movement accompanying the change of ownership or possession.

(2) If an individual has a herd management plan to reduce risk of trichomoniasis that has been approved by the commissioner, virgin bulls 24 months of age or younger included within the approved herd management plan shall not be required to be certified negative *Tritrichomonas foetus* bulls when changing ownership in Kansas. However, non-virgin bulls, virgin bulls older than 24 months of age, and bulls of unknown virginity status shall be certified negative *Tritrichomonas foetus* bulls before movement with a change in possession or ownership in Kansas even if these bulls originate from a herd with an approved herd management plan.

(3) Each non-virgin bull, bull older than 18 months of age, and bull of unknown virginity status sold at a livestock market shall be a certified negative *Tritrichomonas foetus* bull, go directly to slaughter, or be purchased for feeding purposes only and then to slaughter.

(e) Trichomoniasis-infected bovines and herds.

(1) The sale, lease, or movement of a bovine from a positive *Tritrichomonas foetus* herd for reproductive purposes shall be prohibited while the bovine is under trichomoniasis quarantine.

(2) The owner or manager of a positive *Tritrichomonas foetus* herd shall inform the commissioner of the total number of bulls and the total number of sexually intact female cattle in the herd.

(3) Each trichomoniasis-infected bovine, and the entire positive *Tritrichomonas foetus* herd

from which the bovine originates, shall be placed under trichomoniasis quarantine at the time of positive lab confirmation.

(4) Bulls from a positive *Tritrichomonas foetus* herd shall remain under trichomoniasis quarantine as follows:

(A) Each positive *Tritrichomonas foetus* bull shall be identified with an official positive trichomoniasis infection identification tag by a licensed veterinarian within seven days of the positive official *Tritrichomonas foetus* PCR test.

(B) Positive *Tritrichomonas foetus* bulls shall be sent directly to slaughter or to public livestock market to be sold for slaughter. Each bull shall have an official positive trichomoniasis infection identification tag before the bull is moved to slaughter or public livestock market.

(C) All other bulls in a positive *Tritrichomonas foetus* herd shall remain under trichomoniasis quarantine until one of the following conditions is met:

(i) The bulls have been declared certified negative *Tritrichomonas foetus* bulls.

(ii) The bulls are identified with an official positive trichomoniasis infection identification tag and sent directly to slaughter or to public livestock market to be sold for slaughter.

(D) The owner or manager of a positive *Tritrichomonas foetus* herd shall assist the commissioner in determining the destination of all non-virgin bulls and bulls of unknown virginity status sold during the 12 months before the diagnosis of trichomoniasis in the herd.

(5) Each reproductive bovine female from a positive *Tritrichomonas foetus* herd shall remain under trichomoniasis quarantine until one of the following conditions is met:

(A) The female is sold directly to slaughter.

(B) The female is sold or transferred directly to a feedyard for feeding purposes and then to slaughter.

(C) The female is sold through an approved livestock market to be sold for slaughter or for feeding purposes and then to slaughter.

(D) Each bull from the female's herd has been declared a certified negative *Tritrichomonas foetus* bull or has been identified with an official positive trichomoniasis infection identification tag and sent directly to slaughter or to public livestock market to be sold for slaughter, and the female meets one of the following conditions:

(i) Has a calf at side and has had no exposure since parturition to bulls other than bulls that are certified negative *Tritrichomonas foetus* bulls;

(ii) has documented 120 days of sexual isolation, except that breeding by artificial insemination with semen from a certified negative *Tritrichomonas foetus* bull shall be allowed during the isolation period; or

(iii) is determined by a licensed veterinarian to be at least 120 days pregnant.

(E) Regardless of the status of bulls from the positive *Tritrichomonas foetus* herd, the owner or manager of the female obtains a release from trichomoniasis quarantine from the commissioner by providing adequate information and assurances, to the satisfaction of the commissioner, that despite being part of the positive *Tritrichomonas foetus* herd, the female has had no exposure to trichomoniasis.

(6) Unless otherwise allowed by the commissioner, all quarantined bovine females moved from the original premises of trichomoniasis quarantine during the trichomoniasis quarantine period shall be identified with an official positive trichomoniasis infection identification tag.

(7) The owner or manager of a positive *Tritrichomonas foetus* herd shall assist the commissioner in determining the destination of all non-virgin female bovines sold during the 12 months before the diagnosis of trichomoniasis in the herd.

(f) Approved laboratory responsibilities. Each approved laboratory shall immediately report any *Tritrichomonas foetus*-positive specimen to the commissioner. Each report shall include the official identification device; brand; owner's name, address, and telephone number; and the submitting veterinarian's name, address, and telephone number.

(g) Self-reporting. The owner or manager of cattle who has reason to believe that at least one of those cattle is affected with trichomoniasis shall report this belief to the commissioner as required by K.S.A. 47-622, and amendments thereto, and K.A.R. 9-27-1.

(h) Stray bulls. Any stray bull found on public or private land, from a known or unknown herd of origin, may be confined and placed under a hold order until the bull has one or more official *Tritrichomonas foetus* PCR tests. Each test and the cost of holding the bull shall be the responsibility of the bull's owner. The conditions of the hold or trichomoniasis quarantine order and the number of tests shall be determined by the commissioner.

(i) Neighbor notification. The owner or manager, or both, of a positive *Tritrichomonas foetus* herd shall, within 14 days after lab confirmation of the diagnosis, submit to the commissioner a list of

the names and contact information of all known adjacent landowners or land managers. For purposes of this subsection, “adjacent landowners or land managers” shall include all owners and managers of land capable of maintaining livestock susceptible to trichomoniasis whose land is located within the perimeter of the epidemiological study established by the commissioner.

If an owner or manager does not comply with this subsection, the commissioner may assess all administrative costs associated with the notification process against the owner or manager, or both. (Authorized by K.S.A. 2015 Supp. 47-607d and 47-610; implementing K.S.A. 2015 Supp. 47-607 and 47-610; effective May 27, 2016.)

### **Article 10.—PUBLIC LIVESTOCK MARKETS**

**9-10-33a. Electronic auctions; health certificates.** For each electronic auction, the costs associated with issuance of the health certificate required under K.S.A. 47-1008, and amendments thereto, shall be paid by the consignor. Each of these health certificates shall meet the requirements of K.A.R. 9-10-3. (Authorized by and implementing K.S.A. 2016 Supp. 47-1008; effective, T-9-8-29-00, Aug. 29, 2000; effective Dec. 29, 2000; amended Sept. 22, 2017.)

**9-10-40. License fees and renewals.** (a) As part of the application for a public livestock market license, each owner or operator shall pay a license application fee of \$375 to the commissioner.

(b)(1) Each owner or operator of a public livestock market shall pay an annual license fee of \$250 on or before June 30.

(2) Each owner or operator of an electronic auction shall pay an annual license fee of \$250 on or before June 30, except as specified in this paragraph. If the owner or operator of an electronic auction is also the owner or operator of a public livestock market, the annual fee for the electronic auction license shall be \$125.

(c) Each license shall expire annually on June 30, pursuant to K.S.A. 47-1001e and amendments thereto.

(d) It shall be illegal to operate a public livestock market or conduct an electronic auction without a valid license, pursuant to K.S.A. 47-1001e and amendments thereto. (Authorized by and implementing K.S.A. 47-1001a and K.S.A. 2016 Supp. 47-1001e; effective Sept. 22, 2017.)

### **Article 18.—ANIMAL FACILITY INSPECTION PROGRAM—LICENSE AND REGISTRATION FEES**

**9-18-1.** (Authorized by and implementing K.S.A. 2004 Supp. 47-1721, as amended by 2005 SB 266, sec. 1; effective, T-9-7-22-89, July 27, 1989; amended Sept. 11, 1989; amended, T-9-7-1-91, July 1, 1991; amended, T-9-10-22-91, Oct. 22, 1991; amended Feb. 10, 1992; amended, T-9-7-1-96, July 1, 1996; amended Nov. 15, 1996; amended, T-9-5-31-01, May 31, 2001; amended, T-9-9-27-01, Sept. 27, 2001; amended May 30, 2003; amended, T-9-7-1-05, July 1, 2005; amended Sept. 16, 2005; revoked Nov. 17, 2017.)

**9-18-2 and 9-18-3.** (Authorized by K.S.A. 47-1712; implementing K.S.A. 47-1709; effective, T-9-7-1-03, July 1, 2003; effective Nov. 7, 2003; revoked Nov. 17, 2017.)

**9-18-4. Definitions.** For purposes of this article of the department’s regulations, each of the following terms shall have the meaning specified in this regulation:

(a) “Act” means Kansas pet animal act, K.S.A. 47-1701 et seq., and amendments thereto.

(b) “Adult animal” means a dog or cat that is four months of age or older.

(c) “Housing facility” has the meaning specified in K.S.A. 47-1701, and amendments thereto, and shall include any land or area housing or intended to house animals.

(d) “Indoor housing facility” means any structure or building with environmental controls that houses or is intended to house animals and that is an enclosure created by the continuous connection of a roof, walls, and floor.

(e) “Licensee” means the individual, group of individuals, or entity to whom a license is issued by the Kansas department of agriculture, animal health division’s animal facility inspection program.

(f) “Outdoor housing facility” means any facility that houses or is intended to house animals and does not meet the definition of indoor housing facility or sheltered housing facility. The temperatures for outdoor housing facilities typically cannot be controlled.

(g) “Pet animal foster home” means the licensed premises of an individual who has a written and signed agreement to provide temporary care for one or more dogs or cats owned by an animal shelter or a rescue network that is licensed by the state of Kansas.

(h) “Rescue network” means the premises of a rescue network manager and all pet animal foster homes organized under that rescue network manager that provide temporary care for one or more dogs or cats not owned by an animal shelter that maintains a central facility for keeping animals.

(i) “Rescue network manager” means the person designated by a rescue network to be responsible for the following functions:

(1) Approving the membership of each pet animal foster home in the rescue network;

(2) carrying out the duties of the rescue network manager under K.A.R. 9-18-27, including the intake of all dogs and cats in the care of the rescue network;

(3) maintaining on that person’s premises all documentation required by K.A.R. 9-18-27 and 9-18-28, including records pertaining to the adoption, placement, or other disposition of each dog and cat receiving temporary care from the rescue network; and

(4) ensuring compliance with this regulation and K.A.R. 9-18-28 by each pet animal foster home belonging to the rescue network.

(j) “Sheltered housing facility” means a housing facility that includes a structure or building with environmental controls and also allows animals independent access to the outside. This term shall include any facility that does not meet the definition of indoor housing facility due to having a gravel or dirt floor or not being entirely enclosed.

(k) “Temporary care” means the care and housing of an animal for 12 months or less during the calendar year, except as provided by K.A.R. 9-18-27(g) and K.A.R. 9-18-28(j).

(l) “Temporary pet shop” means a type of pet shop that operates for a total of 12 or fewer sale days per license year and is not permanently located on a premises.

(m) “U.S.D.A.” means United States department of agriculture. (Authorized by and implementing K.S.A. 2016 Supp. 47-607d and K.S.A. 47-1712; effective Nov. 17, 2017.)

**9-18-5. Importing dogs and cats.** Dogs and cats shall not be imported into Kansas unless the dogs and cats are accompanied by a certificate of veterinary inspection issued by a licensed veterinarian, stating that each dog and cat meets the following requirements:

(a) Is free from symptoms of any communicable disease;

(b) has not been exposed to rabies; and

(c) has been vaccinated against rabies with a product licensed by the U.S.D.A., with the duration of immunity and method of administration in accordance with the manufacturer’s guidelines. Dogs and cats under three months of age shall not be required to be vaccinated against rabies. (Authorized by K.S.A. 2016 Supp. 47-607, 47-607d, 47-610; implementing K.S.A. 2016 Supp. 47-607, 47-607d, 47-608, 47-610; effective Nov. 17, 2017.)

**9-18-6. Fees.** Each applicant for a license or permit and each applicant, licensee, or permittee subject to or requesting an inspection pursuant to K.S.A. 47-1701 et seq., and amendments thereto, shall pay the applicable fee or fees, as follows:

- (a) License for animal breeder premises of a person licensed under 7 U.S.C. § 2131 et seq. .... \$450.00
- (b) License for an animal shelter located as follows:
  - (1) First-class city, as defined in K.S.A. 13-101, and amendments thereto, or any entity contracting with a first-class city ..... \$400.00
  - (2) Second-class city, as defined in K.S.A. 14-101, and amendments thereto, or any entity contracting with a second-class city ..... \$335.00
  - (3) Third-class city, as defined in K.S.A. 15-101, and amendments thereto, or any entity contracting with a third-class city ..... \$285.00
- (4) License for a rescue network manager, regardless of location ..... \$125.00
- (c) License for a retail breeder licensed under 7 U.S.C. § 2131 et seq. .... \$450.00
- (d) License for a retail breeder not licensed under 7 U.S.C. § 2131 et seq. .... \$450.00
- (e) License for an operator of a temporary pet shop with 12 or fewer sale days in a license year ..... \$200.00
- (f) License for an operator of a pet shop ..... \$600.00
- (g) License for an operator of a research facility licensed under 7 U.S.C. § 2131 et seq. .... \$300.00
- (h) License for an operator of a research facility not licensed under 7 U.S.C. § 2131 et seq. .... \$300.00
- (i) License for a hobby breeder ..... \$250.00
- (j) License for a boarding or training kennel operator ..... \$200.00
- (k) License for an animal distributor licensed under 7 U.S.C. § 2131 et seq. .... \$400.00
- (l) Out-of-state distributor permit ..... \$650.00

- (m) Temporary closing permit for a hobby breeder or training kennel operator ..... \$45.00
- (n) Temporary closing permit for an animal shelter, animal breeder, animal distributor, retail breeder, pet shop, or research facility..... \$95.00
- (o) Inspection fee for each inspection performed upon request by a licensee, permittee, or applicant for a license or permit ..... \$200.00
- (p) No-contact fee pursuant to K.S.A. 47-1721, and amendments thereto ..... \$200.00
- (q) Reinspection fee pursuant to K.S.A. 47-1721, and amendments thereto ..... \$200.00
- (r) License for each premises required to be licensed under multiple license categories.....the fee for the most expensive applicable license and a fee of \$50 for each additional applicable license
- (s) Late fee for failure to renew any existing license before October 1 ..... \$70.00

(Authorized by and implementing K.S.A. 2018 Supp. 47-1721; effective Nov. 17, 2017; amended Feb. 8, 2019.)

**9-18-7. Records.** (a) Each licensee shall maintain records for each animal purchased, acquired, held, transported, sold, or disposed of in any other manner.

(1) Each cat or dog of weaning age and older shall be individually identified. The records shall include the following:

- (A) The name and address of the person from whom each animal was acquired;
- (B) the date each animal was acquired; and
- (C) a description of each animal, including the following:
  - (i) The animal's age, size, color markings, sex, species, and breed;
  - (ii) any available information regarding vaccinations;
  - (iii) any other significant identification for each animal, including any official tag number, microchip, or tattoo; and
  - (iv) the name and address of the person to whom any animal is sold, given, bartered, or otherwise delivered or euthanized, and the date on which the action took place. The record shall show the method of disposition.

(2) The records of animals other than cats and dogs shall be kept so that the origins of lots can be identified. Animals from multiple origins may be comingled if records indicate all of the ori-

gins of a lot. The records shall include the date the lots were acquired, from whom the lots were acquired, general identification information, and disposition information.

(b) Each licensee shall store records for the current license year and previous two license years on the premises where the animals are located and shall make the records available for inspection. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

**9-18-8. Access to premises.** Each licensee shall provide the commissioner or the commissioner's representatives with access to the licensee's premises Monday through Friday, between 7:00 a.m. and 7:00 p.m., in order to take any of the following actions:

- (a) Enter the licensee's place of business;
- (b) examine records required to be kept under K.A.R. 9-18-7;
- (c) make copies of the records;
- (d) inspect premises and animals as the commissioner or the commissioner's representatives consider necessary to enforce the provisions of the act and this article of the department's regulations;
- (e) document, by the taking of photographs and other means, any conditions and areas of noncompliance; and
- (f) use a room, table, or other facilities necessary for the examination of the records and inspection. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

**9-18-9. Inspections of premises.** (a) Each premises that is licensed or that the commissioner finds reasonable grounds to believe is required to be licensed under the act shall be subject to routine inspections by the commissioner or any of the commissioner's authorized representatives to determine compliance with the act and all applicable regulations.

(b) Each premises shall be subject to routine inspections at the following intervals:

- (1) A routine inspection shall be conducted every three to 12 months for each new premises and each premises that has failed one of its two most recent inspections.
- (2) A routine inspection shall be conducted every nine to 18 months for each premises that has passed its two most recent inspections.
- (3) A routine inspection shall be conducted every 15 to 24 months for each premises that has passed its three most recent inspections.

(c) In addition to routine inspections, any premises may be subject to one or more additional inspections under any of the following circumstances:

- (1) A violation was found in a previous inspection.
- (2) A complaint is filed regarding the premises.
- (3) The ownership of the premises changed in the previous year.
- (4) The license for the premises was not renewed in a timely manner.

(d) Routine inspections shall be made on Monday through Friday, between the hours of 7:00 A.M. and 7:00 P.M., except that these inspections may be conducted at alternate times, upon the agreement of all interested persons or entities.

(e) If the owner or operator of the premises is not routinely available between the hours of 7:00 A.M. and 7:00 P.M., the owner or operator shall designate a representative who will be present while the inspection is conducted and shall notify the commissioner in writing of the name of the designated representative. The designated representative shall be 18 years of age or older and mentally and physically capable of representing the licensee in the inspection process. The owner or operator shall notify the commissioner in writing of any new representative who is designated to be present during inspections.

(f) Any inspection to investigate allegations of violations adversely affecting the health, safety, and welfare of the animals may be conducted on any day of the week and at any hour deemed reasonably necessary by the commissioner.

(g) Prior notice of inspection dates shall not be provided to the owner or operator of any licensed premises. (Authorized by K.S.A. 47-1712; implementing K.S.A. 2018 Supp. 47-1709, K.S.A. 2018 Supp. 47-1733, and K.S.A. 2018 Supp. 47-1736; effective Nov. 17, 2017; amended Feb. 8, 2019.)

**9-18-10. General requirements for housing facilities.** (a) Construction. Each housing facility shall be designed and constructed as follows:

- (1) In a manner that is structurally sound; and
- (2) in a manner that protects animals from injury, contains the animals securely, and restricts other animals from entering.

(b) Housekeeping. Each licensee shall keep the premises where housing facilities and food storage are located, including buildings and surrounding grounds, clean and in good repair to protect the animals from injury, to facilitate the husbandry practices required by K.A.R. 9-18-14 and to reduce or eliminate breeding and living areas for

rodents and other pests and vermin. The licensee shall keep the premises free of accumulations of trash, junk, waste products, and discarded matter. The licensee shall control weeds, grasses, and bushes so as to facilitate cleaning of the premises and pest control and to protect the health and well-being of the animals.

(c) Surfaces.

(1) The surfaces of each housing facility, including any houses, dens, fixtures, and objects in the housing facility that are similar to furniture, shall be constructed and maintained in a manner and made of materials that allow them to be readily cleaned and sanitized on a regular basis, or shall be removed or replaced when worn or soiled.

(2) All interior surfaces and any surfaces that come into contact with animals shall meet the following requirements:

(A) Be free of rust; and

(B) be free of jagged edges or sharp points that might injure the animals.

(3) Each licensee shall maintain all surfaces on a regular basis, which shall include regular cleaning and sanitizing. Surfaces shall be replaced when the surfaces are worn or permanently soiled and can no longer be effectively cleaned and sanitized.

(4) The floors and walls of each indoor housing facility, and any other surfaces in contact with the animals, shall be impervious to moisture. The ceilings of each indoor housing facility shall be impervious to moisture or shall be replaceable.

(d) Water and electric power. Each indoor housing facility or sheltered housing facility shall have electric power. Each outdoor housing facility shall have lighting and electric power that allows for animal husbandry as required under this act. Each housing facility shall have access to adequate potable water for animal and facility needs.

(e) Storage. Each licensee shall store supplies of food and bedding in a manner that protects the supplies from spoilage, contamination, and vermin infestation. Food requiring refrigeration shall be stored accordingly. Each licensee shall keep all open supplies of food and bedding in leakproof containers with tightly fitted lids. Only food and bedding currently being used may be kept in the animal areas. The licensee shall not store any substance that is toxic to the animals in food storage and preparation areas. However, toxic substances that are required for normal husbandry practices may be stored in the animal areas if stored in a manner that prevents harmful exposure to animals.

(f) Drainage and waste disposal.

(1) Each licensee shall provide for the regular and frequent collection, removal, and disposal of animal and food wastes and other debris in a manner that minimizes contamination and disease risks.

(2) If present, disposal facilities and drainage systems shall be properly constructed, installed, and maintained in such a manner to avoid all foul odors and any backup of sewage.

(3) Each licensee shall ensure that any standing liquid in the animal enclosures is removed in an efficient manner so that the animals stay dry.

(4) Each licensee shall use trash containers for facility waste that are leakproof and shall keep tightly fitted lids on the containers at all times.

(g) Washing facilities. Washing facilities shall be provided for animal caretakers and shall be readily accessible. Washing facilities may include washrooms, basins, sinks, or showers. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

**9-18-11. Additional requirements for indoor housing facilities and sheltered housing facilities.** The requirements in this regulation shall be in addition to the requirements in K.A.R. 9-18-10.

(a) Structure. The building or structure of each indoor housing facility and each sheltered housing facility shall be constructed so that temperature and humidity levels can be controlled and odors can be eliminated rapidly. The building or structure shall have at least one door for entry and exit that can be opened and closed. Any windows or openings that provide natural light shall be covered with glass, hard plastic, or a similar hard, transparent material.

(b) Heating, cooling, and temperature. Each licensee operating an indoor housing facility or a sheltered housing facility shall ensure that the facility is sufficiently heated and cooled to protect and provide for the animals' health and well-being.

(1) Each licensee operating an indoor housing facility or a sheltered housing facility shall ensure that, when dogs or cats are present, the ambient temperature in the facility does not fall below 45°F or 7.2°C for more than four consecutive hours and does not exceed 85°F or 29.5°C for more than four consecutive hours.

(2) Each licensee shall provide dry bedding, solid resting boards, or other means of conserving

body heat whenever the ambient temperature inside the facility is below 50°F or 10°C.

(3) Except as approved by the attending veterinarian, a licensee operating an indoor housing facility or a sheltered housing facility shall not permit the ambient temperature in the facility to fall below 50°F or 10°C when any of the following dogs or cats are present:

(A) Any dog or cat not acclimated to lower temperatures;

(B) Any dog or cat of a breed that cannot tolerate lower temperatures without stress or discomfort, including short-haired breeds; or

(C) any dog or cat that is sick, infirm, or of a young or advanced age so that the dog or cat cannot tolerate lower temperatures without stress or discomfort.

(c) Ventilation. When animals are present, each indoor housing facility or sheltered housing facility shall be sufficiently ventilated at all times to provide for the animals' health and well-being and to minimize odors, drafts, ammonia levels, and moisture condensation. Ventilation shall be provided by windows, vents, fans, or air conditioning units. The licensee shall provide auxiliary ventilation whenever the ambient temperature is at least 85°F or 29.5°C. Auxiliary ventilation may include fans, blowers, and air conditioning units. The licensee shall maintain the relative humidity at a level that ensures the health and well-being of the animals housed in the facility, in accordance with the directions of the attending veterinarian and generally accepted professional and husbandry practices.

(d) Lighting. Each licensee shall provide enough lighting in all animal areas of each indoor housing facility or sheltered housing facility to permit inspection and cleaning of the facility and observation of the animals. All animal areas shall be provided with a regular, uniform diurnal lighting cycle of either natural or artificial light when species-appropriate. Each primary enclosure shall be placed in a manner that protects the dogs and cats from excessive light. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

**9-18-12. Additional requirements for outdoor housing facilities.** The requirements in this regulation shall be in addition to the requirements in K.A.R. 9-18-10.

(a) Restrictions.

(1) A licensee shall not keep any of the following categories of dogs or cats in outdoor housing facil-

ities, unless that practice is specifically approved in writing by the attending veterinarian:

(A) Any dog or cat that is not acclimated to the temperatures prevalent in the area or whose acclimation status is unknown;

(B) any dog or cat of a breed that cannot tolerate the prevalent temperatures of the area without stress or discomfort, including short-haired breeds in cold climates; and

(C) any dog or cat that is sick, infirm, or of a young or advanced age so that the dog or cat cannot tolerate the prevalent temperatures of the area without stress or discomfort.

(2) If a licensee operating an outdoor housing facility does not know whether a dog or cat is acclimated, the licensee shall not keep that dog or cat in the outdoor housing facility whenever the ambient temperature is less than 50°F or 10°C.

(b) Shelter from the elements. Each outdoor housing facility shall include one or more shelter structures accessible to each animal, large enough to allow each animal in the shelter to sit, stand, and lie in a normal manner and to turn about freely, and of appropriate size to allow each animal to conserve body heat. In addition to the shelter structures, each licensee shall provide one or more separate, outside areas of shade that are large enough to contain all the animals at one time and protect them from the direct rays of the sun. Each shelter structure in an outdoor housing facility for dogs or cats shall contain a roof, four sides, and a flat floor and shall meet the following requirements:

(1) Provide protection and shelter from the cold, heat, and direct effects of sun, wind, rain, snow and other elements;

(2) be provided with a wind break and rain break at the entrance; and

(3) contain clean, dry bedding material as necessary. Bedding shall be provided if the ambient temperature is below 50°F or 10°C. The licensee shall provide additional clean, dry bedding material when the temperature is 35°F or 1.7°C or lower.

(c) Prohibited shelter structures. A licensee shall not use metal barrels, cars, refrigerators, freezers, or any similar items as shelter structures. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

**9-18-13. Primary enclosures.** (a) Construction. Each primary enclosure shall be designed and constructed of suitable materials so

that the primary structure is structurally sound. Each licensee shall keep the primary enclosure in good repair.

(b) Maintenance. Each primary enclosure shall be constructed and maintained so that the primary enclosure meets the following conditions:

(1) Provides all the animals with shelter and protection from extreme temperatures and weather conditions that could be uncomfortable or hazardous;

(2) provides sufficient shade to protect from direct sun all the animals housed in the primary enclosure simultaneously;

(3) has floors that are constructed in a manner that protects the animals' feet and legs from injury. If the floor is constructed of mesh or slats, the floor shall not allow the animals' feet to pass through any openings in the floor. If any metal strands are used to construct a suspended floor for the primary enclosure, the metal strands shall be nine-gauge wire or wire that is greater than 1/8 of an inch in diameter or shall be coated with plastic, fiberglass, or a comparable material. If any suspended floor is used in a primary enclosure, that floor shall be strong enough that the floor does not sag or bend between structural supports; and

(4) if stacked cages are used to house animals, provides an impervious barrier between the levels of stacked cages. The barrier may be removed as needed for cleaning.

(c) Additional requirements for cats. The requirements of this subsection shall be in addition to the requirements in subsection (a), (b), and (e).

(1) Space. The licensee shall provide the following minimum vertical space and floor space for each cat that is housed in the primary enclosure, including any weaned kitten:

(A) Each primary enclosure housing cats shall be at least 24 inches (60.96 centimeters) high.

(B) Each cat weighing not more than 8.8 pounds (4 kilograms) shall be provided with at least 3.0 square feet (0.28 square meters) of floor space.

(C) Each cat weighing more than 8.8 pounds (4 kilograms) shall be provided with at least four square feet (0.37 square meters) of floor space.

(D) Each queen with nursing kittens shall be provided with an additional amount of floor space, based on her breed and behavioral characteristics and in accordance with generally accepted husbandry practices.

(E) The minimum floor space required by this subsection shall not include any space occupied by food or water pans. The litter pan may be con-

sidered part of the floor space if the pan is cleaned and sanitized.

(2) Litter. The licensee shall provide a receptacle in each primary enclosure that contains sufficient clean litter to contain excreta and other body wastes.

(3) Resting surfaces. Each primary enclosure housing cats shall contain one or more elevated resting surfaces that, when added together, are large enough to hold simultaneously all the occupants of the primary enclosure comfortably. Low resting surfaces that do not allow the space under them to be comfortably occupied by the animal shall be counted as part of the floor space.

(d) Additional requirements for dogs. The requirements of this subsection shall be in addition to the requirements in subsections (a), (b), and (e).

(1) Space.

(A) The licensee shall provide a minimum amount of floor space for each dog housed in the primary enclosure, including each weaned puppy housed in a primary enclosure, using the following calculation: the length of the dog or puppy from the tip of the nose to the base of the tail in inches plus six inches, squared, and then divided by 144, shall equal the required minimum floor space in square feet.

(B) The licensee shall provide each bitch that has nursing puppies with an additional amount of floor space, based upon the dog's breed and behavioral characteristics and in accordance with generally accepted husbandry practices, as determined by the attending veterinarian.

(C) The interior height of a primary enclosure shall be at least six inches higher than the head of the tallest dog in the primary enclosure in a normal standing position.

(2) Prohibited types of primary enclosures for dogs. The tethering of dogs shall be prohibited for use as a permanent primary enclosure.

(e) Innovative primary enclosures. Any licensee may use an innovative primary enclosure not meeting the floor area and height requirements specified in this regulation if the commissioner determines that the primary enclosure will provide the dogs or cats with a sufficient volume of space and the opportunity to express species-typical behavior. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

**9-18-14. Cleaning, sanitization, and pest control.** (a) Each licensee shall spot-clean daily all surfaces with which the animals come into con-

tact. These surfaces shall be sanitized as necessary to avoid excessive accumulation of excreta, reduce disease hazard, avoid animal contact with excreta, and prevent or eliminate odors, insects, pest, and vermin infestation. If steam or water is used to clean the primary enclosure, whether by hosing, flushing, or other methods, the licensee shall first remove the animals, unless the enclosure is large enough to ensure that the animals will not be harmed, wetted, or distressed in the process.

(b)(1) Each licensee shall clean and sanitize each used primary enclosure and each used food and water receptacle using one of the methods prescribed in paragraph (b)(3) before the primary enclosure or food and water receptacle is used to house, feed, or water another dog, cat, or social grouping of animals.

(2) The licensee shall sanitize all used primary enclosures and food and water receptacles for animals at least once every two weeks using one of the methods prescribed in paragraph (b)(3), and more often if necessary to prevent an accumulation of dirt, debris, food waste, excreta, and other disease hazards.

(3) Each licensee shall sanitize the surfaces of primary enclosures and the food and water receptacles using one of the following methods:

(A) Spraying all surfaces with steam under pressure;

(B) washing all surfaces with hot water that is at least 180°F or 82.2°C and with soap or detergent, using a mechanical cage washer or similar device; or

(C)(i) Washing all soiled surfaces with appropriate detergent solutions and disinfectants or with a product that is a combination of a detergent and a disinfectant that accomplishes the same purpose;

(ii) thoroughly cleaning the surfaces to remove all organic material and mineral buildup and to provide sanitization; and

(iii) rinsing with clean water.

(4) Each licensee shall remove any contaminated material that cannot be sanitized using the methods specified in paragraph (b)(3), including gravel, sand, grass, earth, or absorbent bedding, as often as necessary to prevent odors, diseases, pests, insects, and vermin infestation.

(c) Each licensee shall establish and maintain an effective program for the control of insects and external parasites affecting animals. Additionally, the licensee shall develop a plan for the management of birds and mammals that are pests or potential hazards so as to promote the health and well-being

of the animals and reduce contamination by pests in animal areas. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

**9-18-15. Compatible grouping.** No licensee shall house any animals in groups that are incompatible, including incompatibility due to age, sexual status, aggressive disposition, breed, species, contagious disease, or any other reasons. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

**9-18-16. Separation of animals by gender.** All sexually intact adult animals shall be housed separately from all other sexually intact adult animals of the opposite sex within an animal shelter, rescue network, or pet animal foster home. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

**9-18-17. Feeding and watering.** (a)(1) Each licensee shall meet the “adequate feeding” requirements as defined in K.S.A. 47-1701, and amendments thereto. Each licensee shall feed all animals as appropriate to species and age. All cats and dogs shall be fed at least once each day, unless restricted by written order by the attending veterinarian. The food shall be uncontaminated, wholesome, palatable, and of sufficient quantity and nutritive value to maintain the normal condition and weight of the animal. The diet shall be appropriate for each animal’s age and condition.

(2) Each licensee shall provide a sufficient number of food receptacles for animals, which shall meet the following requirements:

- (A) Be easily accessible to all animals being fed;
- (B) be located so as to minimize contamination by excreta and pests;
- (C) be protected from rain and snow; and
- (D) either be discarded after one use or be easily cleaned and sanitized.

(b) Each licensee shall meet the “adequate watering” requirements as defined in K.S.A. 47-1701, and amendments thereto. Drinkable water shall be supplied in a sanitary manner and in adequate amounts at intervals suitable for each animal’s species and either continuously accessible to each animal or supplied to maintain the health and well-being of each animal. If water is not continuously accessible, then water shall be provided at least twice daily for at least one hour each time or more often as conditions warrant, unless restricted by written order of the attending veterinarian or not species-appropriate. (Authorized by

and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

**9-18-18. Contingency planning.** Each licensee shall develop, document, and follow a written contingency plan to provide for the humane handling, treatment, transportation, housing, and care of the animals on the premises if an emergency or natural disaster occurs. The plan shall be updated annually, be made available to the commissioner or the commissioner’s representatives upon request, and at minimum include the following:

(a) Identification of potential known risks, including power failures, fires, natural disasters, and faulty heating, ventilation, and air conditioning systems;

(b) an outline of specific tasks required to be carried out in response to the identified emergency; and

(c) identification of the individual or individuals responsible for carrying out the plan, along with contact information for each individual. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

**9-18-19. Employees and volunteers.** Each licensee shall employ enough individuals to provide the level of husbandry practices and care required by the act and this article of the department’s regulations. Each employee or volunteer who provides husbandry and care or who handles animals shall be supervised by an individual who has the knowledge, background, and experience in proper husbandry and care of animals to supervise others. The licensee shall ensure that the supervisor, other employees, and volunteers perform to these standards. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

**9-18-20. Age of animal.** A licensee shall not sell, exchange, or adopt any animal if the animal is at an age at which doing so would be detrimental to the animal’s health or well-being. No puppy or kitten may be sold, exchanged, or adopted until the animal is at least eight weeks of age and has been weaned, which shall mean eating solid food and not nursing, for at least five days.

For the purposes of this regulation, weight and other factors may be used to approximate the age of an animal of unknown age. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

**9-18-21. Adequate veterinary medical care.** Each licensee shall have an attending veterinarian who provides the licensee's animals with "adequate veterinary medical care," as defined in K.S.A. 47-1701 and amendments thereto. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

**9-18-22. Exercise.** (a) Each licensee shall develop, document, and follow a plan to provide dogs over 12 weeks of age, except bitches with litters, with the opportunity for exercise. The plan shall include written standard procedures. Forced exercise devices shall be strictly prohibited. If a dog is without sensory contact with another dog, the dog shall be provided with positive physical contact with humans at least daily. The opportunity for exercise may be provided in a number of ways, which may include the following:

(1) Providing group housing in cages, pens, or runs that provide at least 100 percent of the required space for each dog under the minimum floor space requirements of K.A.R. 9-18-13;

(2) maintaining individually housed dogs in cages, pens, or runs that provide at least twice the minimum floor space required by K.A.R. 9-18-13; and

(3) providing access to a run or open area at the frequency and duration prescribed by the attending veterinarian.

(b) If, in the opinion of the attending veterinarian, it is inappropriate for a dog to exercise because of the dog's health, condition, or well-being, the attending veterinarian shall document this exemption in writing. The licensee shall make this documentation available to the commissioner or the commissioner's representatives upon request. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

**9-18-23. Transfer, movement, adoption, or other permanent relocation of feline immunodeficiency virus-positive cats.** (a) The transfer, movement, adoption, or other permanent relocation of any feline immunodeficiency virus-positive cat (FIV-positive cat) from a licensed animal shelter or rescue network to another licensed animal shelter or rescue network and to a foster home or a member of the public shall be allowed if a veterinarian who has a veterinarian-client-patient relationship with the animal shelter or rescue network where the FIV-positive cat is currently located performs the following:

(1) Confirms that the FIV-positive cat to be transferred, moved, adopted, or otherwise perma-

nently relocated is a nonsymptomatic FIV-positive cat; and

(2) provides a written statement to the animal shelter or rescue network and to the new owner or holder authorizing the transfer, movement, adoption, or other permanent relocation of the FIV-positive cat that states the symptoms, the risks, and the recommendations of how the cat should be housed to minimize the spread of the virus.

(b) All notifications and statements created under this regulation shall be maintained as a part of the recordkeeping requirements under K.A.R. 9-18-7.

(c) If the commissioner determines that the continued transfer, movement, adoption, or other permanent relocation of FIV-positive cats endangers the health of any other domestic animals, this regulation may be temporarily suspended by order of the commissioner. (Authorized by and implementing K.S.A. 2018 Supp. 47-610 and K.S.A. 47-1712; effective Dec. 20, 2019.)

**9-18-24. Animal breeders and animal distributors.** K.A.R. 9-18-10 through 9-18-15, K.A.R. 9-18-17, K.A.R. 9-18-19, and K.A.R. 9-18-22 shall not apply to animal breeders and animal distributors. Each animal breeder and each animal distributor shall comply with 9 C.F.R. 3.1 through 3.4 and 3.6 through 3.12, as in effect on January 1, 2015. These sections are hereby adopted by reference, with the following modifications and deletions:

(a) All references to "the administrator," "APHIS," "pertinent funding federal agency," and "USDA officials" shall be deemed to refer to the commissioner.

(b) All references to "dealer" or "dealers" and to "exhibitor" or "exhibitors" shall be deemed to refer to animal breeders and animal distributors.

(c) All references to "research facility," "research facilities," "federal research facilities," and "research needs" shall be deleted.

(d) In 9 C.F.R. 3.6, paragraphs (b)(5) and (c)(3) shall be deleted.

(e) In 9 C.F.R. 3.8, paragraphs (b)(1) and (d)(2) shall be deleted. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

**9-18-25. Prohibiting the sale or gift of certain animals by pet shops.** (a) A pet shop shall not sell any reptiles, offer any reptiles for sale, or offer any reptiles as a gift or promotion-

al consideration unless a notice regarding safe reptile-handling practices meeting the requirements of subsection (b) is prominently posted or displayed at each location in the pet shop where the reptiles are displayed, housed, or held.

(b) Each notice regarding safe reptile-handling practices shall be the notice provided at no charge by the Kansas department of agriculture upon the request of any pet shop, any notice created by the centers for disease control and prevention, or any other notice that meets the following requirements:

(1) The dimensions of each notice shall be at least 8.5 inches by 11 inches. The notice shall use one or more typefaces or fonts that are clearly visible and readily draw attention to the notice.

(2) At a minimum, the notice shall contain the following statements:

“As with many other animals, reptiles carry salmonella bacteria, which can make people sick. To reduce the chance of infection, follow these safe reptile-handling steps:

“Always wash your hands thoroughly after you handle your pet reptile, its food, and anything it has touched.

“Keep your pet reptile and its equipment out of the kitchen or any area where food is prepared.

“Don’t nuzzle or kiss your pet reptile.

“Keep reptiles out of homes where there are children less than one year of age or people with weakened immune systems. Children less than five should handle reptiles only with adult or parental guidance, and they should wash their hands afterwards.”

(c) A pet shop shall not possess, sell, offer for sale, or offer as a gift or promotional consideration any skunk, raccoon, fox, or coyote.

(d) A pet shop shall not possess, sell, offer for sale, or offer as a gift or promotional consideration any viable turtle eggs or live turtles with a carapace length of less than four inches. For purposes of this subsection, the term “turtle” shall include all animals commonly known as turtles, tortoises, terrapins, and all other animals of the order Testudinata, class Reptilia, except marine species. (Authorized by K.S.A. 47-1712; implementing K.S.A. 47-1713; effective Nov. 17, 2017.)

**9-18-26. Animal research facilities.** Each animal research facility shall meet all requirements of K.A.R. 9-18-10 through 9-18-15, K.A.R. 9-18-17, K.A.R. 9-18-20, and K.A.R. 9-18-22, unless differing conditions are needed for legitimate research reasons. These differing conditions and legitimate research reasons shall be documented

in a specific research protocol and shall be made available to the commissioner or the commissioner’s authorized representatives upon request. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

**9-18-27. Rescue networks.** (a) An application form for a rescue network manager license shall be provided by the commissioner at the request of any individual seeking a license as a rescue network manager. The individual shall submit the completed application and the license fee to the commissioner.

(b) Except for stray dogs and cats, each dog or cat in the care of a licensee, other than the personal pets of the licensee, shall have been relinquished by an owner, transferred from another licensee, or transferred from an animal shelter licensed in Kansas. Each rescue network manager shall be responsible for the intake of all dogs or cats in the rescue network. Each licensee that obtains a dog or cat from a veterinarian for the purpose of adopting shall comply with K.S.A. 47-1731, and amendments thereto. Stray dogs, cats, puppies, or kittens may be placed with a rescue network only after the requirements of K.S.A. 47-1710, and amendments thereto, have been met by a licensed animal shelter.

(c) Each rescue network manager wanting to maintain or house more than 19 adult animals at any time at the premises of the rescue network manager shall apply for and receive an animal shelter license before accepting more than 19 adult animals. The limit of 19 adult animals shall include the following:

(1) Any adult animal that is a personal pet of the rescue network manager; and

(2) any adult animal owned by any other individual or entity and maintained, housed, or harbored by the rescue network manager.

(d) Any licensee may offer any animal in its custody for adoption and may transfer ownership of the animal pursuant to K.S.A. 47-1731, and amendments thereto.

(e) Each rescue network manager shall arrange to spay or neuter each cat and dog, or certify each animal as unable to be spayed or neutered, within 10 business days of receipt of the dog or cat.

(f) Each rescue network manager shall process all documentation for each adoption of a dog or cat in the custody of the rescue network and for all spay and neuter deposits required by K.S.A. 47-1731, and amendments thereto. A copy of each

of these documents shall be kept at the premises of the rescue network manager. Intact dogs, cats, puppies, or kittens may be adopted only from the premises of the rescue network manager or a licensed animal shelter.

(g) Each rescue network manager shall comply with K.A.R. 9-18-28 regarding adoption and transfer of ownership of each dog or cat receiving temporary care in a pet animal foster home.

(h) Dogs or cats shall not remain in the custody of a rescue network for more than 12 months without written permission from the commissioner. Each licensee wanting to retain custody of a dog or cat beyond 12 months shall send a written request to the commissioner, stating the reasons for the request.

(i) Each licensee accepting animals from out of state shall comply with the importation and certificate of veterinary inspection requirements specified in K.A.R. 9-18-5 and K.A.R. 9-7-11. The original of each certificate of veterinary inspection shall be maintained with the files of the licensed rescue network manager or animal shelter. A copy of the health certificate shall be available at the pet animal foster home.

(j) Rescue network manager licenses shall not be transferable. (Authorized by K.S.A. 47-1712 and K.S.A. 2015 Supp. 47-1731; implementing K.S.A. 2015 Supp. 47-1701, K.S.A. 47-1704, K.S.A. 2015 Supp. 47-1710, K.S.A. 47-1712, and K.S.A. 2015 Supp. 47-1731; effective Nov. 17, 2017.)

**9-18-28. Pet animal foster homes.** (a) Rescue networks and animal shelters may utilize pet animal foster homes.

(b) Rescue network managers and animal shelter licensees shall require each of their prospective pet animal foster homes to sign a pet animal foster home agreement with the supervising rescue network or animal shelter licensee. The rescue network manager or animal shelter licensee shall state in the agreement that the pet animal foster home is required to comply with all the requirements contained in this regulation.

(c) Each rescue network manager and animal shelter licensee shall keep records of all pet animal foster homes utilized by the rescue networks and animal shelter.

(d) Each rescue network manager and each animal shelter licensee shall ensure that all pet animal foster homes utilized by the rescue network or animal shelter comply with the Kansas pet animal act and all applicable regulations.

(e) Each animal shelter licensee or rescue network manager using a pet animal foster home shall develop a plan of veterinary care to be followed by the pet animal foster home. The plan of veterinary care shall be recorded on the form specified in the definition of “adequate veterinary medical care” in K.S.A. 47-1701, and amendments thereto. This plan shall include the name of the licensed veterinarian whom the pet animal foster home shall contact in case of injury or illness and the name of the party responsible for the payment of treatment and office call charges. The animal shelter licensee or rescue network manager shall require each pet animal foster home to notify the sponsoring animal shelter or rescue network manager of any dog or cat receiving veterinary care within 24 hours of treatment. A copy of the plan of veterinary care shall be filed annually with the commissioner.

(f) The animal shelter licensee or rescue network manager shall require that a pet animal foster home not directly accept stray dogs or cats or any animal relinquished by its owner. Each pet animal foster home wanting to accept stray dogs or cats or animals that are relinquished by their owners shall apply for and receive an animal shelter license before accepting these animals. Each rescue network manager shall be responsible for the intake of all animals in the care of the rescue network. No stray dog or cat may be placed with a pet animal foster home until the applicable requirements of K.S.A. 47-1710, and amendments thereto, have been met.

(g) A pet animal foster home shall not foster more than 10 adult cats or dogs at the same time.

(h)(1) A pet animal foster home shall not at any time maintain or house on the premises more than 19 adult dogs or cats. The limit of 19 dogs or cats shall include the following:

(A) Any adult dog or cat that is a personal pet of the pet animal foster home caretaker; and

(B) any adult dog or cat owned by any other individual or entity and maintained, housed, or harbored on the premises.

(2) If more than 19 adult dogs or cats will be housed on the premises for any reason, the pet animal foster home shall apply for an animal shelter license and shall not accept any adult dogs or cats in excess of that limit before receiving the animal shelter license.

(i)(1) An animal shelter licensee or rescue network manager shall not place any intact dog or cat six months of age or older into the custody of a pet animal foster home unless spaying or neuter-

ing is contraindicated by a licensed veterinarian. If a veterinarian has examined and recommends that the dog or cat should not be altered, the pet animal foster home shall obtain a copy of a written opinion by the veterinarian as to why the animal cannot be altered and an estimated time of when, if ever, the animal can be altered. A copy of the written opinion shall be kept by both the pet animal foster home and the rescue network manager or animal shelter licensee.

(2) Intact female dogs or cats that are nursing puppies or kittens may be housed in a pet animal foster home until the puppies or kittens are weaned. Puppies or kittens shall be considered weaned once they are eating solid food and not nursing for five consecutive days. Puppies or kittens may remain unaltered in foster care only up to six months of age. Puppies and kittens at four months of age shall be considered adults and shall be counted as part of the 10 total dogs or cats that rescue network managers or animal shelter licensees may place at pet animal foster homes.

(j) The animal shelter licensee or rescue network manager shall process all documentation for each adoption and all spay and neuter deposits required by K.S.A. 47-1731, and amendments thereto. Each intact dog, cat, puppy, or kitten shall be adopted directly from the animal shelter or, in the case of a rescue network, from the premises of the rescue network manager. Any altered dog, cat, puppy, or kitten may be adopted directly from the pet animal foster home only after all final adoption paperwork has been processed through the animal shelter or rescue network manager and all applicable requirements of K.S.A. 47-1710, and amendments thereto, have been met by a licensed animal shelter. (Authorized by K.S.A. 47-1712; implementing K.S.A. 2018 Supp. 47-1701, K.S.A. 2018 Supp. 47-1704, K.S.A. 2018 Supp. 47-1710, K.S.A. 47-1712, and K.S.A. 2018 Supp. 47-1731; effective Nov. 17, 2017; amended Feb. 8, 2019.)

**9-18-29. Mobile adoption facilities.** Once an animal shelter license or rescue network manager license has been obtained, the animal shelter licensee or the rescue network manager may host adoption events at a location other than the licensed premises if the requirements of all applicable statutes and regulations are met at the licensee's other locations. The animal shelter licensee or rescue network manager shall provide notice to the commissioner or the commissioner's authorized representative of the date and location

of each adoption event at least five business days before the adoption event. (Authorized by K.S.A. 47-1712; implementing K.S.A. 47-1704; effective Nov. 17, 2017.)

**9-18-30. Tethering of animals by boarding or training kennel operators.** The tethering of dogs by boarding or training kennel operators for training purposes may be permitted for periods not to exceed two hours per interval and never to exceed a total of four hours per day. This tethering shall not adversely affect the welfare of the animal. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

**9-18-31. Euthanasia methods; prohibition.** The following portion of the American veterinary medical association's document titled "AVMA guidelines for the euthanasia of animals: 2013 edition" is hereby adopted by reference: pages 5-102, excluding the section titled "references" on pages 84-97 and any portion that applies to any animal that is not an "animal" as defined in K.S.A. 47-1701 and amendments thereto. For the purposes of this document, the terms "animal" and "euthanasia" shall have the meanings specified in K.S.A. 47-1701, and amendments thereto.

Each licensee who euthanizes any animals shall follow the recommendations and guidelines for the handling and care of animals during the euthanasia process as identified in this document and shall use only the acceptable methods of euthanasia for a particular species to be euthanized specified in this document. Inhaled carbon monoxide shall not be used as a method of euthanasia of dogs and cats. (Authorized by K.S.A. 47-1712; implementing K.S.A. 2015 Supp. 47-1718; effective April 29, 2016.)

#### **Article 19.—ANIMAL BREEDERS AND DISTRIBUTORS; FACILITY STANDARDS, ANIMAL HEALTH, HUSBANDRY, AND OPERATIONAL STANDARDS**

**9-19-12.** (Authorized by and implementing K.S.A. 47-1712; effective, T-9-7-1-03, July 1, 2003; effective Oct. 31, 2003; revoked Nov. 17, 2017.)

#### **Article 20.—PET SHOPS**

**9-20-1, 9-20-2, and 9-20-3.** (Authorized by and implementing K.S.A. 1990 Supp. 47-1712, as amended by L. 1991, Ch. 152, Sec. 32; effective, T-9-10-22-91, Oct. 22, 1991; effective Feb. 10, 1992; revoked Nov. 17, 2017.)

**9-20-4.** (Authorized by K.S.A. 1998 Supp. 47-1712; implementing K.S.A. 1998 Supp. 47-1713; effective Feb. 26, 1999; revoked Nov. 17, 2017.)

#### **Article 21.—ANIMAL RESEARCH FACILITY**

**9-21-1, 9-21-2, and 9-21-3.** (Authorized by and implementing K.S.A. 1990 Supp. 47-1712, as amended by L. 1991, Ch. 152, Sec. 32; effective, T-9-10-22-91, Oct. 22, 1991; effective Feb. 10, 1992; revoked Nov. 17, 2017.)

#### **Article 22.—ANIMAL POUNDS AND SHELTERS**

**9-22-1, 9-22-2, and 9-22-3.** (Authorized by and implementing K.S.A. 1990 Supp. 47-1712, as amended by L. 1991, Ch. 152, Sec. 32; effective, T-9-10-22-91, Oct. 22, 1991; effective Feb. 10, 1992; revoked Nov. 17, 2017.)

**9-22-4 and 9-22-5.** (Authorized by K.S.A. 47-1712 and 47-1731; implementing K.S.A. 47-1701, 47-1704, 47-1710, 47-1712, and 47-1731; effective, T-9-5-31-01, May 31, 2001; effective, T-9-9-27-01, Sept. 27, 2001; effective May 30, 2003; amended, T-9-7-1-03, July 1, 2003; amended Sept. 19, 2003; revoked Nov. 17, 2017.)

#### **Article 23.—HOBBY KENNEL OPERATORS**

**9-23-1, 9-23-2, and 9-23-3.** (Authorized by and implementing K.S.A. 1990 Supp. 47-1712, as amended by L. 1991, Ch. 152, Sec. 32; effective, T-9-10-22-91, Oct. 22, 1991; effective Feb. 10, 1992; revoked Dec. 20, 2019.)

#### **Article 24.—KENNEL OPERATORS**

**9-24-1, 9-24-2, and 9-24-3.** (Authorized by and implementing K.S.A. 1990 Supp. 47-1712, as amended by L. 1991, Ch. 152, Sec. 32; effective, T-9-10-22-91, Oct. 22, 1991; effective Feb. 10, 1992; revoked Nov. 17, 2017.)

#### **Article 25.—RETAIL BREEDERS FACILITY STANDARDS; ANIMAL HEALTH, HUSBANDRY AND OPERATIONAL STANDARDS**

**9-25-1, 9-25-2, 9-25-3, and 9-25-4.** (Authorized by and implementing K.S.A. 1995 Supp. 47-1712, as amended by Sub. for 1996 HB

2607, § 15; effective, T-9-7-1-96, July 1, 1996; effective Nov. 15, 1996; revoked Nov. 17, 2017.)

**9-25-5 and 9-25-6.** (Authorized by and implementing K.S.A. 47-1712; effective, T-9-7-1-96, July 1, 1996; effective Nov. 15, 1996; amended, T-9-7-1-03, July 1, 2003; amended Oct. 31, 2003; revoked Nov. 17, 2017.)

**9-25-7, 9-25-8, 9-25-9, 9-25-10, and 9-25-11.** (Authorized by and implementing K.S.A. 1995 Supp. 47-1712, as amended by Sub. for 1996 HB 2607, § 15; effective, T-9-7-1-96, July 1, 1996; effective Nov. 15, 1996; revoked Nov. 17, 2017.)

**9-25-12.** (Authorized by and implementing K.S.A. 47-1712; effective, T-9-7-1-96, July 1, 1996; effective Nov. 15, 1996; amended, T-9-7-1-03, July 1, 2003; amended Nov. 7, 2003; revoked Nov. 17, 2017.)

**9-25-13, 9-25-14, and 9-25-15.** (Authorized by and implementing K.S.A. 1995 Supp. 47-1712, as amended by Sub. for 1996 HB 2607, § 15; effective, T-9-7-1-96, July 1, 1996; effective Nov. 15, 1996; revoked Nov. 17, 2017.)

#### **Article 26.—EUTHANASIA**

**9-26-1.** (Authorized by K.S.A. 47-1712; implementing K.S.A. 47-1718; effective Nov. 15, 1996; amended, T-9-7-1-03, July 1, 2003; amended Oct. 31, 2003; revoked April 29, 2016.)

#### **Article 27.—REPORTABLE DISEASES**

**9-27-1. Designation of infectious or contagious diseases.** The following diseases shall be designated as reportable infectious or contagious animal diseases and shall be reported in accordance with K.S.A. 47-622, and amendments thereto:

- (a) Anthrax;
- (b) all species of brucellosis;
- (c) equine infectious anemia;
- (d) classical swine fever, which is also known as hog cholera;
- (e) pseudorabies;
- (f) psoroptic mange;
- (g) rabies;
- (h) tuberculosis;
- (i) vesicular stomatitis;
- (j) avian influenza;
- (k) pullorum;
- (l) fowl typhoid;

(m) psittacosis;  
 (n) viscerotropic velogenic Newcastle disease, which is also known as exotic Newcastle disease;  
 (o) foot-and-mouth disease;  
 (p) rinderpest;  
 (q) African swine fever;  
 (r) piroplasmosis;  
 (s) vesicular exanthema;  
 (t) Johne's disease;  
 (u) scabies;  
 (v) scrapie;  
 (w) trichomoniasis;  
 (x) equine herpesvirus myeloencephalopathy;  
 (y) western equine encephalomyelitis;  
 (z) eastern equine encephalomyelitis;  
 (aa) Venezuelan equine encephalomyelitis;  
 (bb) West Nile virus;  
 (cc) bovine spongiform encephalopathy;  
 (dd) chronic wasting disease; and  
 (ee) any other diseases that the animal health commissioner determines to be immediately reportable due to an animal health emergency situation. (Authorized by K.S.A. 2015 Supp. 47-610 and 47-1832; implementing K.S.A. 2015 Supp. 47-610 and 47-622; effective Jan. 23, 1998; amended Sept. 24, 2010; amended Aug. 19, 2016.)

#### Article 29.—CERVIDAE

**9-29-1, 9-29-2, and 9-29-3.** (Authorized by and implementing K.S.A. 47-2101; effective Jan. 23, 1998; revoked Sept. 19, 2014.)

**9-29-4.** (Authorized by K.S.A. 1996 Supp. 47-607 and K.S.A. 47-607d; implementing K.S.A. 1996 Supp. 47-607 and K.S.A. 47-607a; effective Jan. 23, 1998; revoked Sept. 19, 2014.)

**9-29-5.** (Authorized by K.S.A. 1996 Supp. 47-607, K.S.A. 47-607d, 47-610, 47-611, and 47-657; implementing K.S.A. 1996 Supp. 47-607, K.S.A. 47-608, 47-610, 47-612, 47-614, and 47-657; effective Jan. 23, 1998; revoked Sept. 19, 2014.)

**9-29-6.** (Authorized by K.S.A. 1998 Supp. 47-607, K.S.A. 47-607d, 47-610, 47-611, and 47-631; implementing K.S.A. 1998 Supp. 47-607, K.S.A. 47-608, 47-610, 47-612, 47-614, 47-631, 47-632, 47-633a, 47-634, and K.S.A. 1998 Supp. 47-635; effective Jan. 23, 1998; amended July 2, 1999; revoked Sept. 19, 2014.)

**9-29-7.** (Authorized by K.S.A. 47-2101; implementing K.S.A. 47-122; effective Jan. 23, 1998; revoked Sept. 19, 2014.)

**9-29-8.** (Authorized by K.S.A. 47-610; implementing K.S.A. 47-122, 47-610 and 47-614; effective Jan. 23, 1998; revoked Sept. 19, 2014.)

**9-29-9.** (Authorized by K.S.A. 1996 Supp. 47-607, 47-607d, 47-610, 47-611, 47-631, and 47-657; implementing K.S.A. 1996 Supp. 47-607, K.S.A. 47-610, 47-631, and 47-657; effective Jan. 23, 1998; revoked Sept. 19, 2014.)

**9-29-10.** (Authorized by K.S.A. 47-607d; implementing K.S.A. 47-608 and 47-2101; effective Jan. 23, 1998; revoked Sept. 19, 2014.)

**9-29-11.** (Authorized by K.S.A. 47-607d, 47-610, and 47-631; implementing K.S.A. 47-608, 47-610, 47-611 and 47-631; effective Jan. 23, 1998; revoked Sept. 19, 2014.)

**9-29-12, 9-29-13, and 9-29-14.** (Authorized by K.S.A. 47-607d, 47-610, and 47-2101, as amended by L. 2001, Ch. 5, Sec. 176; implementing K.S.A. 47-610 and 47-2101, as amended by L. 2001, Ch. 5, Sec. 176; effective Jan. 18, 2002; revoked Sept. 19, 2014.)

**9-29-15.** (Authorized by K.S.A. 47-607, 47-607d, 47-610, and 47-2101, as amended by L. 2001, Ch. 5, Sec. 176; implementing K.S.A. 47-607, 47-610, 47-614, 47-622, and 47-2101, as amended by L. 2001, Ch. 5, Sec. 176; effective Jan. 18, 2002; revoked Sept. 19, 2014.)

# Agency 10

## Kansas Bureau of Investigation

### Articles

- 10-10. COLLECTION AND REPORTING.
- 10-22. FIELD TESTING FOR CONTROLLED SUBSTANCES.
- 10-23. KANSAS ASSET SEIZURE AND FORFEITURE REPOSITORY.
- 10-24. KANSAS SCRAP METAL DATA REPOSITORY.

### Article 10.—COLLECTION AND REPORTING

**10-10-2. Reporting time frame.** Each criminal justice agency required to report criminal history record information to the central repository shall do so within 14 days of the reportable event to which the information relates, unless otherwise specified by law. (Authorized by K.S.A. 2012 Supp. 22-4704, as amended by 2013 HB 2041, sec. 3; implementing K.S.A. 2012 Supp. 22-4705; effective, E-81-31, Oct. 8, 1980; effective May 1, 1981; amended Aug. 23, 2013.)

**10-10-5. Electronic reporting by district courts.** Each district court shall electronically report all case filings and dispositions for all violations of K.S.A. 8-1567, K.S.A. 2013 Supp. 8-1025, K.S.A. 2013 Supp. 21-5426, K.S.A. 2013 Supp. 21-6419, K.S.A. 2013 Supp. 21-6420, K.S.A. 2013 Supp. 21-6421 or K.S.A. 2013 Supp. 21-6422, and amendments thereto, to the central repository. The case filings and dispositions shall be electronically submitted by a method approved by the director. (Authorized by and implementing K.S.A. 2013 Supp. 22-4704, as amended by 2014 HB 2501, sec. 6; effective Aug. 23, 2013; amended, T-10-5-30-14, July 1, 2014; amended Sept. 19, 2014.)

### Article 22.—FIELD TESTING FOR CONTROLLED SUBSTANCES

**10-22-1. Approved field tests.** (a) Law enforcement officers shall use only the field tests specified in this regulation on suspected controlled substances for admission of the field test results at any preliminary examination pursuant to K.S.A. 22-2902, and amendments thereto.

(b) The following reagents shall be the only reagents approved by the director of the Kansas bureau of investigation (KBI) for reagent-based field tests:

- (1) Chen's reagent;
- (2) cobalt thiocyanate reagent;
- (3) Dille-Koppanyi reagent;
- (4) Duquenois-Levine reagent;
- (5) Ehrlich's reagent;
- (6) fast blue B or BB reagent or the salts of either reagent;
- (7) Fröhdes reagent;
- (8) Mandelin reagent;
- (9) Marquis reagent;
- (10) Mecke's reagent;
- (11) nitric acid reagent;
- (12) Sanchez reagent;
- (13) Scott reagent;
- (14) sodium nitroprusside reagent, which is also known as nitrosylpentacyanoferrate, nitroprussidnatrium, sodium nitroprussate, sodium nitrosylpentacyanoferrate, or disodium pentacyanonitrosylferrate. This reagent may be used only in conjunction with the Marquis reagent; and
- (15) Zwikker reagent.

(c) The following instruments shall be the only instruments approved by the director of the KBI for instrument-based field tests:

- (1) B&W Tek TacticID®-N handheld Raman analyzer, without utilizing the "mixture ID" software feature; and
- (2) Thermo Scientific TruNarc™ handheld narcotics analyzer. (Authorized by and implementing K.S.A. 22-2902c; effective March 11, 2005; amended June 17, 2005; amended Sept. 20, 2019.)

### Article 23.—KANSAS ASSET SEIZURE AND FORFEITURE REPOSITORY

**10-23-1. Definitions.** As used in this article of the KBI's regulations, each of the following terms shall have the meaning specified in this regulation:

- (a) "Director" means director of the KBI.

(b) “KBI” means Kansas bureau of investigation.

(c) “Law enforcement agency” means any Kansas entity vested by law with a duty to maintain public order or to make arrests for violations of the laws of Kansas or ordinances of any Kansas municipality. A law enforcement agency is deemed a seizing agency when the law enforcement agency makes a seizure for forfeiture.

(d) “Repository” means the Kansas asset seizure and forfeiture repository.

(e) “Seizing agency” has the meaning specified in K.S.A. 60-4102, and amendments thereto. (Authorized by and implementing K.S.A. 2018 Supp. 60-4127; effective June 21, 2019.)

**10-23-2. Accuracy and completeness; duplicate reporting prohibited.** Each law enforcement agency shall ensure the accuracy and completeness of all information that the law enforcement agency submits to the repository. No law enforcement agency shall knowingly provide a duplicate of any report required by the repository. (Authorized by and implementing K.S.A. 2018 Supp. 60-4127; effective June 21, 2019.)

**10-23-3. Means of reporting.** The information reported to the repository shall be submitted electronically or on a paper form that has been approved by the director. (Authorized by and implementing K.S.A. 2018 Supp. 60-4127; effective June 21, 2019.)

**10-23-4. Seizure for forfeiture report.** Once a seizing agency submits a seizure for forfeiture report to the repository, the repository staff shall review the report. Repository staff shall contact the seizing agency if the staff has any questions about the report. If the seizure for forfeiture report needs to be changed, the seizing agency shall submit an amended report to the repository within 30 calendar days of the date on which the repository staff requests an amended report. (Authorized by and implementing K.S.A. 2018 Supp. 60-4127; effective June 21, 2019.)

**10-23-5. Forfeiture fund report.** (a)(1) Once a law enforcement agency submits a forfeiture fund report for the preceding calendar year, the repository staff shall review the report.

(2) Repository staff shall contact the law enforcement agency if the staff has any questions about the forfeiture fund report. If the report needs to be changed, the law enforcement agency shall submit an amended report to the repository

within 30 calendar days of the repository staff’s request for an amended report.

(b) If a law enforcement agency had zero seizures for forfeiture during the preceding calendar year, the law enforcement agency shall provide verification to the repository of no activity on the forfeiture fund report on or before the following February 1.

(c) Repository staff shall electronically send a request to complete a forfeiture fund report to all law enforcement agencies that have not met the requirements of paragraph (a)(1) or subsection (b). Each law enforcement agency that receives the request to complete a forfeiture fund report shall provide the repository with a forfeiture fund report or an electronic signature confirming zero seizures for forfeiture during the preceding calendar year. Each law enforcement agency that receives the request to complete a forfeiture fund report shall respond to the repository within 30 calendar days of the date on which the request was sent by the repository. (Authorized by and implementing K.S.A. 2018 Supp. 60-4127; effective June 21, 2019.)

**10-23-6. Point of contact.** With each annual submission of the forfeiture fund report, each law enforcement agency shall provide the repository with a point of contact for the law enforcement agency, including name, phone number, electronic-mail address, and mailing address. Each law enforcement agency shall notify the repository within 30 calendar days of any change in the point of contact’s information. (Authorized by and implementing K.S.A. 2018 Supp. 60-4127; effective June 21, 2019.)

## Article 24.—KANSAS SCRAP METAL DATA REPOSITORY

**10-24-1. Definitions.** As used in this article of the KBI’s regulations, each of the following terms shall have the meaning specified in this regulation:

(a) “KBI” means Kansas bureau of investigation.

(b) “Repository” means the Kansas scrap metal data repository.

(c) “Seller” means an individual selling regulated scrap metal to a scrap metal dealer.

(d) “Transaction” means the purchase or receipt of any junk vehicle or regulated scrap metal by a scrap metal dealer that requires information to be recorded pursuant to K.S.A. 2019 Supp. 50-6,110, as amended by L. 2019, ch. 66, sec. 6, and amend-

ments thereto. (Authorized by and implementing K.S.A. 2019 Supp. 50-6,110, as amended by L. 2019, ch. 66, sec. 6; effective, T-10-5-4-20, July 1, 2020; effective Sept. 11, 2020.)

**10-24-2. Information to be submitted.**

For each transaction, each scrap metal dealer shall submit to the KBI the following information for entry into the repository:

- (a) The date and place of the transaction;
- (b) the seller's name, address, date of birth, and sex;
- (c)(1) The identifying number from the seller's driver's license, military identification card, passport, or personal identification license; or
- (2) the identifying number from the seller's official governmental document for a country other than the United States;
- (d) the license number, make, and model of the vehicle in which the junk vehicle or other regulated scrap metal is delivered in the transaction, if applicable;
- (e) a general description, made in accordance with the custom of the trade, of the predominant type of junk vehicle or other regulated scrap metal property purchased in the transaction;

(f) the weight or quantity, made in accordance with the custom of the trade, of the regulated scrap metal property purchased;

(g) if a junk vehicle or vehicle part, a description of the junk vehicle or vehicle part, including the make, the model, and either the vehicle identification number or the serial number; and

(h) the name of the individual acting on behalf of the scrap metal dealer in making the purchase. (Authorized by and implementing K.S.A. 2019 Supp. 50-6,110, as amended by L. 2019, ch. 66, sec. 6; effective, T-10-5-4-20, July 1, 2020; effective Sept. 11, 2020.)

**10-24-3. Manner of submission.** Each scrap metal dealer shall submit the information specified in K.A.R. 10-24-2 to the repository either by using the KBI's electronic form online or by using a standard software interface to electronically transfer the information from the scrap metal dealer's transaction storage system to the repository. (Authorized by and implementing K.S.A. 2019 Supp. 50-6,110, as amended by L. 2019, ch. 66, sec. 6; effective, T-10-5-4-20, July 1, 2020; effective Sept. 11, 2020.)



# Agency 11

## Kansas Department of Agriculture— Division of Conservation

### Editor's Note:

Pursuant to Executive Reorganization Order (ERO) No. 40, powers, duties and functions of the State Conservation Commission were transferred to the Kansas Department of Agriculture, Division of Conservation. See L. 2011, Ch. 135.

### Articles

11-12. WATER RIGHT TRANSITION ASSISTANCE PILOT PROJECT PROGRAM.

11-13. KANSAS SEDIMENT AND NUTRIENT REDUCTION INITIATIVE.

### Article 12.—WATER RIGHT TRANSITION ASSISTANCE PILOT PROJECT PROGRAM

**11-12-1. Definitions.** (a) “Active vested or certified water right” means a vested water right or currently certified appropriation water right that was put to lawful beneficial use in at least six out of the last 10 calendar years of actual irrigation, including any water use that occurred before certification.

(b) “Chief engineer” means chief engineer of the division of water resources, Kansas department of agriculture.

(c) “Closed to new appropriations” and “closed to further appropriations” mean that the chief engineer has issued a formal findings and order or has adopted a regulation and that either the formal findings and order or the regulation prevents the approval of new applications to appropriate water except for domestic use, temporary permits, term permits for five or fewer years, and small use exemptions for 15 acre-feet or less, if the use, permit, or exemption does not conflict with this program.

(d) “Commission” means state conservation commission, which serves as the division’s conservation program policy board created by K.S.A. 2-1904, and amendments thereto, within the department of agriculture.

(e) “Consumptive use” means the gross diversions minus the following:

(1) The waste of water, as defined in K.A.R. 5-1-1; and

(2) the return flows to the source of water supply in the following ways:

(A) Through surface water runoff that is not waste; and

(B) by deep percolation.

(f) “Division” means division of conservation, Kansas department of agriculture.

(g) “Dry land transition plan” means a plan submitted by an applicant describing how the use of dry land crops or permanent vegetation, including warm season grasses and cool season grasses, or both uses, will be established on land that was previously irrigated. If permanent vegetation will be established on land that was previously irrigated, the plan shall meet the following requirements:

(1) Specifically describe the amount and timing of any irrigation that will be necessary to establish this cover; and

(2) not exceed three calendar years.

(h) “Eligible water right” means a water right that meets all of the following criteria:

(1) The water right is an active vested or certified water right that has not been abandoned and is privately owned.

(2) The water right has been verified by the chief engineer as being in a target area that is in need of aquifer restoration or stream recovery and is closed to new appropriations of water by the chief engineer, except those for domestic use, temporary permits, term permits for five or fewer years, and small use exemptions for 15 acre-feet or less, if the use, permit, or exemption does not conflict with this program.

(3) The state’s dismissal of the water right would have a net reduction in consumptive water use of the aquifer or stream designated for restoration or recovery by the chief engineer.

(4) The point of diversion is located within a target area.

(i) “Groundwater management district” and “GMD” mean any district created by K.S.A. 82a-1020 et seq., and amendments thereto.

(j) “High-priority area” means a geographic area that meets the following conditions:

(1) Is designated by one of the following:

(A) A groundwater management district and the chief engineer, if the area is within the boundaries of a groundwater management district; or

(B) the chief engineer, if the area is outside the boundaries of a groundwater management district; and

(2) is located within a target area that has been delineated for the purpose of ranking any applications being received for grant funding approval in the water right transition assistance program.

(k) “Historic consumptive water use retirement goal” means the total quantity of historic consumptive water use necessary to be retired to meet the goal of the water right transition assistance program in each target area. The identification of a historic consumptive water use retirement goal in each target area provides a reference point for evaluating the program objectives of the water right transition assistance program. The attainment of a historic consumptive water use retirement goal in a particular target area indicates that no more water right transition assistance program funds should be expended in that target area without a requantification of the historic consumptive water use retirement goal.

(l) “Local entity” means any political subdivision chartered to address water conservation.

(m) “Partial water right” means a portion of a water right that will be formally and permanently reduced from a water right by the chief engineer upon approval of an application for enrollment based on the agreement of all of the owners of the water right. Before enrollment of the partial water right, the chief engineer shall determine the net historic consumptive water use that was associated with each portion of the beneficial use of the water right being considered. At the time of enrollment of the partial water right, the owner shall reduce the quantity remaining under the portion of the water right not being enrolled in the water right transition assistance program and any overlapping water rights to the net consumptive use requirement associated with the remainder of the operation.

(n) “Secretary” means secretary of agriculture or designee of the secretary.

(o) “Water right” means any vested right or appropriation right under which a person may law-

fully divert and use water. A water right is a real property right appurtenant to and severable from the land on or in connection with which the water is used. The water right passes as an appurtenance with a conveyance of the land by deed, lease, mortgage, will, or other voluntary disposal, or by inheritance.

(p) “WTAP” and “program” mean water right transition assistance program. (Authorized by and implementing K.S.A. 2012 Supp. 2-1930 and 2-1930a; effective Aug. 3, 2007; amended Sept. 26, 2008; amended May 31, 2013.)

**11-12-2. Eligible areas.** (a) Each eligible area shall meet one of the following criteria:

(1) The board of the GMD has designated the area as a target area, and this designation has been approved by the chief engineer. Each eligible area within a GMD shall require a formal action by the board of a GMD requesting the chief engineer to approve the designation of a target area. The request shall include documentation on the criteria used by the GMD to identify the area that is in need of aquifer restoration or streamflow recovery, which shall include the historic consumptive water use retirement goal for each proposed target area and the designation of any high-priority areas within the target area.

(2) Outside a GMD, the chief engineer has designated the area as a target area. Each eligible area outside a GMD shall require documentation of the criteria used by the chief engineer to identify the area that is in need of aquifer restoration or streamflow recovery, which shall include the historic consumptive water use retirement goal for each proposed target area and the designation of any high-priority areas within the target area.

(b) The chief engineer shall notify the division of all approved target areas and high-priority areas before January 1 of each grant funding cycle and shall provide technical data that will assist the division in considering the ranking of the areas relative to any previously designated target areas or high-priority areas.

(c) The ranking of target areas and high-priority areas relative to any previously designated target areas and high-priority areas shall be determined by the secretary, after review of the input from the division. (Authorized by and implementing K.S.A. 2012 Supp. 2-1930 and 2-1930a; effective Aug. 3, 2007; amended Sept. 26, 2008; amended May 31, 2013.)

**11-12-3. Application and review.** (a) The application periods for the program shall be October 1 through November 15 and February 15 through March 31.

(b) Notification of the program shall be published in the Kansas register before each application period.

(c) The program procedures and application forms shall be available at the division office and at conservation district offices.

(d) Each application shall be submitted on a form supplied by the division. The application shall include all of the following:

(1) The name, address, telephone number, and tax identification number of the owner of the water right;

(2) the water right file number and the priority date of the water right;

(3) the location of the point of diversion;

(4) documentation of the annual water usage, in acre-feet, for the previous 10 years of actual irrigation;

(5) the authorized annual quantity of water associated with the water right;

(6) the bid price expressed on a "per acre-foot of historic consumptive water use" basis;

(7) if the land is going to be planted to permanent cover, a dry land transition plan;

(8) documentation that verifies historical crop information for the previous 10 years of actual irrigation;

(9) documentation of the normal rate of diversion during the normal irrigation season. If the documentation is not based on data from an accurate water flowmeter, the results of a certified well flow rate test conducted no more than six months before the application date by a person or entity approved by the chief engineer and in a manner prescribed by the chief engineer shall be used for this documentation;

(10) the total amount of historic consumptive water use available for permanent retirement or permanent reduction under the water right as determined from the calculation method specified in K.S.A. 2-1930, and amendments thereto; and

(11) the total amount of historic consumptive water use being proposed for permanent retirement of a water right or permanent reduction of a water right and specification of whether only a partial water right is being submitted for permanent retirement in the application.

(e)(1) Upon the division's receipt of each application, it shall be reviewed for completeness by

the division. If the application is not complete, the missing information shall be provided by the applicant to the division within 30 calendar days of the division's written request.

(2) After the application is determined to be complete, the application shall be provided by the division to the chief engineer to determine the eligibility of the water right.

(f) Upon completion of the review by the chief engineer, the following certifications shall be requested by the division from the chief engineer:

(1) A statement indicating whether the water right is an eligible water right;

(2) the historic consumptive water use associated with each water right or portion of a water right;

(3) the potential impact of dismissing or permanently reducing the water right on aquifer restoration or stream recovery; and

(4) any other additional documentation necessary to quantify or qualify the water use reports.

(g) Comments and recommendations from the appropriate GMD shall be requested by the division regarding WTAP applications in any target area within that GMD. The chief engineer and the appropriate GMD shall be notified by the division regarding approval or disapproval of any WTAP applications in any target area within that GMD.

(h) Each applicant shall be notified by the division of the approval or the disapproval of the program application no later than 60 calendar days after the close of the application period in which the application is filed. If an application is not approved, the application, water right dismissal form, and all other related documents shall be considered void and shall be returned to the applicant.

(i) Any application meeting the requirements of this article may be approved contingent upon funding and the receipt of official documentation by the division that the water right has been dismissed by the chief engineer and its priority has been forfeited.

(j) The negotiations between owners and lessees regarding program participation shall not involve the commission or the division.

(k) No more than 10 percent of a county's irrigated acres shall be eligible for the duration of this program.

(l) Each program application that does not meet the requirements of these regulations shall be rejected by the division. (Authorized by and implementing K.S.A. 2012 Supp. 2-1930 and 2-1930a; effective Aug. 3, 2007; amended Sept. 26, 2008; amended May 31, 2013.)

**11-12-4. Payment.** (a) Each water right owner shall sign a water right transition assistance grant agreement before payment is made by the division. Each grant agreement shall include the following provisions:

(1) The price to be paid by the division to the water right owner for the dismissal or permanent reduction of the subject water right and the terms of payment;

(2) the date on which the agreement will become effective;

(3) the file number of the water right to be retired or permanently reduced;

(4) one of the following statements:

(A) The approval is conditional on documentation being provided to the division indicating that the chief engineer has dismissed or permanently reduced the water right and ordered its priority to be forfeited; or

(B) the approval is conditional on documentation being provided to the division indicating any terms of the chief engineer to continue irrigation on a limited basis, not to exceed three years, for the purpose of establishing permanent vegetation. The documentation shall include the date on which the water right dismissal will become effective and its priority will be forfeited; and

(5) if the point of diversion is located within a GMD, a provision that any remaining water user charges assessed by the district before the water right is dismissed will remain the sole responsibility of the owner of the water right.

(b) Payment shall be made in equal annual installments, not to exceed 10, or, if approved by the division, in one lump sum payment. If annual payments are elected, the first payment shall be made within 60 calendar days after execution of the water right transition assistance grant. The subsequent payments shall be made within 60 calendar days after the beginning of each new state fiscal year. The following factors shall be considered by the division when determining which payment schedule to use:

(1) The number of eligible applicants; and

(2) the amount of program funds for that year.

(c) If there is a standing crop at the time of application approval, payment shall not be made until after irrigation from the subject water right has permanently ceased. (Authorized by and implementing K.S.A. 2012 Supp. 2-1930 and 2-1930a; effective Aug. 3, 2007; amended Sept. 26, 2008; amended May 31, 2013.)

**11-12-5. Transition to dry land.** (a) If land that will no longer be irrigated is to be planted, under this program, to permanent vegetation including warm or cool season grasses, the chief engineer may be requested by the division to condition the dismissal of the associated water right to allow limited irrigation of the land for up to three years to establish this cover.

(b) The applicant shall submit a dry land transition plan to the division if land is to be planted to warm or cool season grasses or other permanent vegetation. A dry land transition plan may be disapproved by the executive director of the division and modifications to any dry land transition plan may be required by the executive director of the division if the plan does not meet the requirements for soil erosion prevention practices in section IV of the “Kansas field office technical guide” as adopted by reference in K.A.R. 11-7-14. (Authorized by and implementing K.S.A. 2012 Supp. 2-1930 and 2-1930a; effective Aug. 3, 2007; amended May 31, 2013.)

**11-12-6. Dismissal or permanent reduction of water right.** (a) Each water right or partial water right for which payment is received from the program shall be dismissed or permanently reduced by the chief engineer, and the priority of the water right or that portion of the water right shall have been forfeited.

(b) A copy of the WWC-5 form that has been filed with the Kansas department of health and environment as a result of the well plugging or well capping, the written verification of a domestic well retrofitting, or the written authorization for a well to be placed on inactive status shall be provided to the division before the grantee receives the first payment. The requirements specified in this subsection shall be temporarily waived if a conditional water right is approved by the chief engineer under a dry land transition plan.

(c) For wells approved to continue operating under a dry land transition plan, a copy of the WWC-5 form that has been filed with the Kansas department of health and environment as a result of the well plugging or well capping, the written verification of a domestic well retrofitting, or the written authorization for a well to be placed on inactive status shall be provided to the division within 60 calendar days of the last time that the permanent vegetation is irrigated. (Authorized by and implementing K.S.A. 2012 Supp. 2-1930 and 2-1930a; effective Aug. 3, 2007; amended Sept. 26, 2008; amended May 31, 2013.)

**11-12-7. Petition for reconsideration.** (a) Any water right owner may request reconsideration of any decision of the division by filing a petition for reconsideration.

(b) Each petition for reconsideration shall be submitted in writing to the division within 30 calendar days of the division's decision and shall state why the decision should be reviewed by the secretary and why the decision should be affirmed, modified, or reversed.

(c) The secretary's final decision shall state each reason for this determination.

(d) The decision of the division shall be considered the final agency action if no petition for reconsideration of that decision has been received by the division after 30 calendar days from the date on which the decision was made. (Authorized by and implementing K.S.A. 2012 Supp. 2-1930 and 2-1930a; effective Aug. 3, 2007; amended May 31, 2013.)

### **Article 13.—KANSAS SEDIMENT AND NUTRIENT REDUCTION INITIATIVE**

**11-13-1. Definitions.** Each of the following terms, as used in this article of the division of conservation's regulations, shall have the meaning specified in this regulation:

(a) "Bottomland timber establishment" means the trees planted in floodplains adjacent to perennial streams to provide wildlife habitat and other benefits.

(b) "CRP" means the conservation reserve program administered by the USDA farm service agency.

(c) "Director" means the executive director of the division of conservation, Kansas department of agriculture or the executive director's designee.

(d) "Farmable wetland or farmable wetland buffer" means land eligible for restoration by improving the land's hydrology and vegetation.

(e) "Filter strip" means a strip or area of grass for removing sediment, organic matter, and other pollutants from runoff and wastewater and for providing food and cover for wildlife.

(f) "FSA" means the farm service agency in the USDA.

(g) "Grassed waterway" means a designated strip of grass that is designed to convey runoff and gully erosion for the purpose of improving water quality and providing wildlife habitat.

(h) "Habitat buffers for upland birds" means a narrow band of native grasses, legumes, forbs, or

shrubs, or any combination of these, to provide habitat for bobwhite quail, ring-necked pheasant, and other upland birds and to limit the amount of nutrients, sediment, pesticides, and other contaminants entering water bodies.

(i) "HUC 12 watershed" means a hydrological unit code consisting of a sequence of 12 numbers identifying a hydrological feature like a river, river reach, or lake or an area like a drainage basin.

(j) "Initiative" means the Kansas water quality buffer initiative and the application requirements for the program specified in this article of the division of conservation's regulations. This term is also known as the Kansas sediment and nutrient reduction initiative.

(k) "NRCS" means natural resources conservation service.

(l) "Practices" means the use of cultural techniques or structures installed or constructed on land for the purpose of improving or maintaining water quality.

(m) "Program-eligible area" means the Big Creek, Delaware, Little Arkansas, Lower Big Blue, Lower Kansas, Lower Little Blue, Lower Republican, Lower Smoky Hill, Neosho Headwaters, Upper Cottonwood, and Lower Cottonwood watersheds.

(n) "Program-eligible boundaries" means the boundaries based on HUC 12 watersheds that are above Tuttle Creek, Milford, Perry, John Redmond, and Clinton reservoirs and are identified as target areas for nutrient and sediment reduction in watershed restoration and protection strategy plans. The program-eligible boundaries shall contain two tiers for priority enrollment, which are called tier 1 areas and tier 2 areas.

(o) "Shallow water areas for wildlife" means wet areas that have been developed or restored and include 6-18 inches of water depth for wildlife.

(p) "Tier 1 areas" means those HUC 12 watersheds identified in watershed restoration and protection strategy plans as the highest priority target areas for nutrient and sediment reduction within program-eligible boundaries.

(q) "Tier 2 areas" means all areas within the program-eligible boundaries that are not tier 1 areas.

(r) "Unfarmable field" means the remaining portion of a field in which 51 percent or more of the total acreage has been enrolled in CRP.

(s) "USDA" means United States department of agriculture.

(t) "Wetland restoration" means the restoration of constructed wetlands for the purpose of inter-

cepting tile runoff, reducing nutrient loss, improving water quality, and enhancing agricultural production practices.

(u) “WRAPS” means watershed restoration and protection strategy, which consists of a planning and management framework intended to engage stakeholders in a process to identify watershed restoration. The process documents stakeholder goals, strategies to achieve the goals, and the resources required to implement the strategies. (Authorized by and implementing K.S.A. 2017 Supp. 2-1915; effective June 1, 2018.)

**11-13-2. Initiative requirements for new applications; funds for existing contracts.** On and after the effective date of this regulation, all new applications for the initiative shall be required to meet the requirements in this article of the division of conservation’s regulations. These requirements shall be known as the Kansas sediment and nutrient reduction initiative, which consists of the new requirements for the Kansas water quality initiative. All persons with parcels currently enrolled in the initiative with contracts whose terms have not yet expired shall continue to be paid through funds made available under K.S.A. 2-1915, and amendments thereto, and any other available sources. (Authorized by and implementing K.S.A. 2017 Supp. 2-1915; effective June 1, 2018.)

**11-13-3. Selection of applicants for initiative.** Funding may be distributed to initiative applicants for proposed projects that meet the eligibility requirements specified in K.S.A. 2-1915 and K.S.A. 2017 Supp. 2-1933, and amendments thereto, and the director’s requirements as follows:

(a) Land shall lie within a tier 1 area or a tier 2 area of the initiative-eligible area and meet the basic eligibility criteria for CRP.

(b) To be eligible for tier 1 area payments, all of the land shall be within the tier 1 area. To be eligible for tier 2 area payments, all of the land shall be within the tier 2 area.

(c) Land that has an existing CRP contract or an approved offer with a CRP contract pending shall not be eligible for the initiative. (Authorized by K.S.A. 2017 Supp. 2-1915; implementing K.S.A. 2017 Supp. 2-1915 and 2-1933; effective June 1, 2018.)

**11-13-4. Haying and grazing.** Any eligible initiative applicant that is authorized to hay or graze, or both, pursuant to an existing CRP contract may conduct these activities upon initiative-eligible land without penalty. (Authorized by K.S.A. 2016 Supp. 2-1915; implementing K.S.A. 2016 Supp. 2-1915 and 2-1933; effective June 1, 2018.)

**11-13-5. Practices eligible for incentive payments.** (a) Any of the following practices may be eligible for incentive payments:

- (1) Grassed waterways;
- (2) shallow water areas for wildlife;
- (3) filter strips;
- (4) riparian buffers;
- (5) wetland restorations;
- (6) improvements to farmable wetland or farmable wetland buffers by utilizing any of the practices listed in this regulation or any other conservation practice approved by the director;
- (7) bottomland timber establishment; or
- (8) habitat buffers for upland birds.

(b) Payments made through the initiative shall be in addition to any CRP payments. (Authorized by K.S.A. 2017 Supp. 2-1915; implementing K.S.A. 2017 Supp. 2-1915 and 2-1933; effective June 1, 2018.)

**11-13-6. Incentive payments; refunds.** (a) Incentive payments under the initiative shall be made on a one-time basis coinciding with enrollment in the CRP. Each incentive payment shall be an upfront payment on all eligible acres enrolled.

(b) Incentive payments shall not exceed the following:

- (1) \$225.00 per acre in tier 1 areas; and
- (2) \$162.50 per acre in tier 2 areas.

(c) Any acres determined to be in an unfarmable field may be eligible for the one-time incentive payment if the applicant agrees to establish and maintain permanent vegetative cover for the duration of the CRP contract.

(d) If a CRP contract is terminated by the FSA for any contract violation or for any other reason, a refund of the incentive payment shall be required.

(e) A refund of the incentive payment shall be required from any initiative participant who fails to meet the initiative requirements. (Authorized by K.S.A. 2017 Supp. 2-1915; implementing K.S.A. 2017 Supp. 2-1915 and 2-1933; effective June 1, 2018.)

## Agency 14

# Kansas Department of Revenue— Division of Alcoholic Beverage Control

### Articles

- 14-6. CONTAINERS AND LABELS.
- 14-10. TRADE PRACTICES.
- 14-11. FARM WINERIES.
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- 14-19. CLASS A CLUBS.
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### Article 6.—CONTAINERS AND LABELS

**14-6-2a.** (Authorized by K.S.A. 1987 Supp. 41-210; implementing K.S.A. 41-211, and K.S.A. 41-1119; effective May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended Sept. 26, 1988; revoked Sept. 17, 2010.)

**14-6-3.** (Authorized by K.S.A. 1987 Supp. 41-210; K.S.A. 41-211; implementing K.S.A. 41-211, 41-706; effective Jan. 1, 1966; amended May 1, 1987; amended Sept. 26, 1988; revoked Sept. 17, 2010.)

**14-6-4.** (Authorized by K.S.A. 41-211; implementing K.S.A. 41-211 and K.S.A. 41-706; effective Jan. 1, 1966; amended May 1, 1985; amended Oct. 1, 1988; amended Aug. 6, 1990; amended Sept. 17, 2010; revoked, T-14-6-26-19, June 26, 2019; revoked Oct. 25, 2019.)

### Article 10.—TRADE PRACTICES

**14-10-6. General.** (a) Action taken by an industry member, retailer, club, drinking establishment, or caterer in accordance with interpretive memoranda issued by the alcohol and tobacco tax and trade bureau, department of the treasury shall be considered good faith compliance with this article unless the director has communicated a contrary interpretation pertaining to the subject of the memoranda.

(b) Subject to the exceptions provided in this article, industry members shall be prohibited from inducing the purchases of a retailer, club, drinking establishment, or caterer by furnishing, giving, renting, lending, or selling to the retailer, club, drinking establishment, or caterer any equipment, fixtures, signs, supplies, money, services, or any other things of value. (Authorized by and implementing K.S.A. 41-703; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; amended Jan. 20, 2012.)

**14-10-7.** (Authorized by and implementing K.S.A. 1987 Supp. 41-703; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; revoked Jan. 20, 2012.)

**14-10-8.** (Authorized by and implementing K.S.A. 1987 Supp. 41-703; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; revoked Jan. 20, 2012.)

**14-10-9.** (Authorized by and implementing K.S.A. 1987 Supp. 41-703; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; revoked Jan. 20, 2012.)

**14-10-10.** (Authorized by K.S.A. 1991 Supp. 41-703; implementing K.S.A. 1991 Supp. 41-703; 41-308 as amended by 1992 HB 2840; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988;

amended, T-14-11-9-92, Nov. 9, 1992; amended Dec. 21, 1992; revoked Jan. 20, 2012.)

**14-10-11. Value-added packages.** Any industry member may include in packaging with alcoholic liquor other goods to be offered directly to the consumer. All costs directly related to the assembly of packages containing alcoholic liquor and other goods shall be borne solely by the industry member. An industry member shall not include any goods in packaging with alcoholic liquor for sale to a retailer before obtaining written approval from the director. The industry member shall request approval by submitting the following information to the director at least 30 days in advance of the intended shipping date:

(a) A color photograph, at least five inches by seven inches in size, of the complete package;

(b) the cost to the industry member of each item to be packaged with the alcoholic liquor;

(c) the total cost of the complete package, including alcoholic liquor, to be charged to the distributor or retailer by the industry member;

(d) a description of each item's intended use or value to the consumer, including a statement identifying the expiration date of any item intended for human consumption; and

(e) the "unimetric" (universal numeric) code number assigned to the package. (Authorized by K.S.A. 41-210, K.S.A. 41-308, and K.S.A. 41-703; implementing K.S.A. 41-210, K.S.A. 41-308, K.S.A. 41-702, and K.S.A. 41-703; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; amended, T-14-11-9-92, Nov. 9, 1992; amended Dec. 21, 1992; amended Jan. 20, 2012.)

**14-10-12.** (Authorized by and implementing K.S.A. 1991 Supp. 41-703; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; amended, T-14-11-9-92, Nov. 9, 1992; amended Dec. 21, 1992; revoked Jan. 20, 2012.)

**14-10-13.** (Authorized by and implementing K.S.A. 41-703; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; revoked Jan. 20, 2012.)

**14-10-14.** (Authorized by and implementing K.S.A. 1987 Supp. 41-703; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; revoked Jan. 20, 2012.)

**14-10-15.** (Authorized by and implementing K.S.A. 1987 Supp. 41-703; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; revoked Jan. 20, 2012.)

**14-10-16. Defective liquor containers.**

(a) No industry member shall knowingly sell any liquor containers that leak, contain foreign matter in the bottle, are short-filled, have broken seals, have badly soiled or stained labels, or are otherwise not fit for resale to the general public. Industry members shall not arrange to have retailers accept such merchandise.

(b) Each industry member that sells such damaged merchandise shall take the following action:

(1) Retrieve the damaged merchandise and exchange for merchandise fit for sale; or

(2) authorize the destruction of the damaged merchandise and refund to the distributor or retailer the purchase price. (Authorized by and implementing K.S.A. 41-210 and K.S.A. 41-211; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; amended Jan. 20, 2012.)

**14-10-17. Trade practices.** (a) To the extent not otherwise prevented by statute or regulation, the trade practice regulations of the alcohol and tobacco tax and trade bureau, department of the treasury in 27 C.F.R. Part 6, subpart B, subpart C, and subpart D, as in effect on April 1, 2010, excluding the following portions, are hereby adopted by reference and shall be the authorized trade practices under the liquor control act:

(1) The first four paragraphs in section 6.11;

(2) subsections (a) and (f) of section 6.21;

(3) sections 6.25, 6.26, 6.27, 6.31, 6.32, 6.33, 6.34, 6.35, 6.41, 6.44, 6.45, 6.51, 6.52, 6.53, 6.54, 6.55, 6.56, 6.61, 6.65, 6.66, 6.67, 6.71, 6.72, 6.85, and 6.98;

(4) the first two sentences in section 6.81(a); and

(5) the phrases "within the meaning of the Act" and "within the meaning of section 105(b) (3) of the Act" in sections 6.42(a), 6.43, 6.83(a), 6.84(a), 6.88(a), 6.91, 6.93, 6.96(a), 6.99(b), 6.100, 6.101(a)(b), and 6.102.

(b) For the purpose of this regulation, the terms "retailer" and "industry member" shall have the meaning specified in 27 C.F.R. Part 6, subpart B, section 6.11. (Authorized by and implementing K.S.A. 41-703; effective Jan. 20, 2012.)

**14-10-18. Repurchase by distributor; when allowed.** (a) Any distributor may perform any of the following:

(1) Buy back any item of alcoholic liquor or cereal malt beverage when required by the supplier;

(2) buy back any item of alcoholic liquor or cereal malt beverage from a club, drinking estab-

ishment, caterer, or retailer that has obtained the approval of the director to close out;

(3) buy back, with approval of the director, any unopened item of alcoholic liquor or cereal malt beverage for which the distributor has a franchise agreement to sell from a club, drinking establishment, caterer, or retailer who is quitting business;

(4) buy back or exchange, at the original sales price, any item of beer or cereal malt beverage that is within 14 days of its expiration date;

(5) buy back or exchange, within 24 hours after delivery, any item of alcoholic liquor that is broken, leaking, or short-filled, contains foreign material, has a soiled or stained label, or is otherwise not fit for resale to the general public; or

(6) buy back, with written permission from the director and within three business days after the end of an event conducted under a special event retailer's permit issued under K.S.A. 41-2703 and amendments thereto, any cereal malt beverage sold to the holder of the special event retailer's permit.

(b) A product shall not be returned or exchanged because it is overstocked or slow-moving.

(c) Products for which there is only a seasonal demand, including holiday decanters and certain distinctive bottles, shall not be returned or exchanged. (Authorized by and implementing K.S.A. 41-210 and K.S.A. 41-211; effective Jan. 20, 2012.)

## Article 11.—FARM WINERIES

**14-11-1. Definitions.** As used in this article and the liquor control act, unless the context clearly requires otherwise, the following terms shall have the meanings specified in this regulation:

(a) "Bonded wine premises" means a facility registered under the internal revenue code, 26 U.S.C. chapter 51, for the production, blending, cellar treatment, storage, bottling, or packing of wine.

(b) "Calendar year" means the period of time from January 1 through the following December 31.

(c) "Domestic fortified wine" has the meaning provided by K.S.A. 41-102, and amendments thereto.

(d) "Domestic table wine" has the meaning provided by K.S.A. 41-102, and amendments thereto.

(e) "Farmers' market" means a regularly scheduled gathering of vendors, the primary purpose of which is to sell produce and other agricultural products directly to consumers.

(f) "Farm winery" has the meaning provided by K.S.A. 41-102, and amendments thereto.

(g) "Farm winery outlet" means a facility owned by the owner of a farm winery that is licensed by the director to manufacture, store, and sell the same brands of domestic table wine and domestic fortified wine as those of the farm winery.

(h) "Federal basic wine manufacturing permit" means a permit issued under the federal alcohol administration act, 27 U.S.C. chapter 8, to a bonded wine premises to produce wine.

(i) "Manufacturer" has the meaning provided by K.S.A. 41-102, and amendments thereto.

(j) "Standard case" means a package of original containers consisting of a total of 9,000 milliliters of wine of one brand or a combination of brands.

(k) "Wine" has the meaning provided by K.S.A. 41-102, and amendments thereto.

(l) "Winery" has the meaning provided by K.S.A. 41-350, and amendments thereto. (Authorized by K.S.A. 2009 Supp. 41-350; implementing K.S.A. 2009 Supp. 41-308a; effective Sept. 17, 2010.)

### **14-11-4. Registration of employees; salesperson permits.**

(a) The licensee of each farm winery and farm winery outlet shall notify the director of the name of each employee who will sell or serve domestic wine, within five days after that employee begins work and upon each renewal of the license. The notification shall be submitted upon forms provided by the director.

(b) Each person engaged in the sale of domestic table wine or domestic fortified wine off the premises of a farm winery or farm winery outlet, or the taking or soliciting of orders for the sale of domestic table wine or domestic fortified wine on behalf of a farm winery or farm winery outlet, shall obtain a salesperson's permit as required by K.S.A. 41-333 and amendments thereto. Each salesperson shall provide that person's permit for inspection upon request by the director or any agent or employee of the director or secretary. (Authorized by K.S.A. 41-210; implementing K.S.A. 2009 Supp. 41-308a, as amended by L. 2010, ch. 142, sec. 5, and K.S.A. 41-333; effective Sept. 17, 2010.)

### **14-11-5. Licensed warehouses.**

Each licensee of a farm winery or farm winery outlet shall provide, at the licensee's own expense, a warehouse area situated on and constituting a part of the farm winery's or farm winery outlet's premises. The warehouse area shall be used for the storage of domestic table wine and domestic fortified wine manufactured by that farm winery

or farm winery outlet. Domestic table wine and domestic fortified wine shall not be stored in any other place. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-401 and K.S.A. 2009 Supp. 41-308a, as amended by L. 2010, ch. 142, sec. 5; effective May 1, 1984; amended Sept. 17, 2010.)

**14-11-6. Opened containers of domestic table wine or domestic fortified wine on the licensed premises.** The licensee of a farm winery or farm winery outlet that sells domestic table wine or domestic fortified wine at retail shall not permit the original package or container of any domestic table wine or domestic fortified wine to be opened on that portion of the licensed premises that is used for retail sales, except as needed for serving free samples. (Authorized by K.S.A. 41-210; implementing 2009 Supp. 41-308a; effective May 1, 1984; amended Sept. 17, 2010.)

**14-11-7. Retail sales and deliveries.** (a) Retail sales of domestic table wine and domestic fortified wine by a farm winery or farm winery outlet shall be made only on the licensed premises. Deliveries of domestic table wine and domestic fortified wine sold at retail by a farm winery or farm winery outlet shall be made only on the licensed premises for consumption off the premises.

(b) Any farm winery may deliver domestic table wine and domestic fortified wine to either of the following:

- (1) The licensed premises of any of the following:
  - (A) A club;
  - (B) a drinking establishment;
  - (C) a wine distributor; or
  - (D) a retailer; or

(2) the principal place of business of a caterer. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-210 and K.S.A. 2009 Supp. 41-308a; effective May 1, 1984; amended Sept. 17, 2010.)

**14-11-9. Farm winery or farm winery outlet licensee prohibited from warehousing domestic table wine or domestic fortified wine for consumers.** No farm winery or farm winery outlet that sells domestic table wine or domestic fortified wine at retail shall take orders, or otherwise arrange sales of the wine, for consumers for the purpose of delivering the wine before the legal opening hour, after the legal closing hour, or on any day when sales at retail are prohibited. (Authorized by K.S.A. 41-210; implementing K.S.A. 2009 Supp. 41-712; effective May 1, 1984; amended Sept. 17, 2010.)

**14-11-10a.** (Authorized by K.S.A. 41-1118; implementing K.S.A. 1983 Supp. 41-1101; effective May 1, 1984; revoked Sept. 17, 2010.)

**14-11-10b.** (Authorized by K.S.A. 41-1118; implementing K.S.A. 41-1112, K.S.A. 1983 Supp. 41-1101; effective May 1, 1984; revoked Sept. 17, 2010.)

**14-11-10d.** (Authorized by K.S.A. 41-1118; implementing K.S.A. 1983 Supp. 41-1101; effective May 1, 1984; revoked Sept. 17, 2010.)

**14-11-11.** (Authorized by K.S.A. 41-1118; implementing K.S.A. 1983 Supp. 41-1101; effective May 1, 1984; revoked Nov. 29, 2010.)

**14-11-14.** (Authorized by K.S.A. 41-211; implementing K.S.A. 1984 Supp. 41-714; effective May 1, 1984; amended May 1, 1985; revoked Sept. 17, 2010.)

**14-11-15. Public display of domestic table wine or domestic fortified wine.** (a) Domestic table wine or domestic fortified wine intended for retail sale for purposes of consumption shall not be placed on public display in any place or at any other location than the licensed premises of any of the following:

- (1) A farm winery;
- (2) a farm winery outlet;
- (3) a retail liquor store;
- (4) a farmers' market for which a bona fide farmers' market sales permit has been issued; or
- (5) a special event approved and monitored by the director.

(b) Any farm winery licensee may, if approved by the director upon receipt of a written request, display domestic table wine or domestic fortified wine at state or county fairs or other agricultural shows if all of the following conditions are met:

- (1) No free samples are dispensed.
- (2) No retail sales are made at the fair or show.
- (3) No orders are taken for subsequent sales.

(Authorized by K.S.A. 41-211; implementing K.S.A. 2009 Supp. 41-714; effective May 1, 1984; amended Sept. 17, 2010.)

**14-11-16. Farm wineries and farm winery outlets selling at retail; marking prices; price or inventory control tags; shelf markings.** Any licensee of a Kansas farm winery or farm winery outlet that sells domestic table wine and domestic fortified wine at retail may mark the retail selling price on the glass portion of the

original container by using a crayon, grease pencil, or other similar means. Licensees may affix, to an original container, a price or inventory control paper or tag, or both. Luminous or fluorescent paper, or any similar paper, may be used for price or inventory control tags.

Farm winery and farm winery outlet licensees may place on a wall, or on a freestanding device, a list of items available and the price per item or case. In addition, licensees may place price information on point-of-sale materials. (Authorized by K.S.A. 41-210 and K.S.A. 41-211; implementing K.S.A. 41-210, K.S.A. 41-211, and K.S.A. 2009 Supp. 41-714; effective May 1, 1984; amended Sept. 17, 2010.)

**14-11-22. Special order shipping; license requirements.** (a) Each owner or operator of a winery located either within this state or in another state wishing to ship wine directly to consumers in Kansas shall first obtain a special order shipping license from the secretary.

(b) Each application for a special order shipping license shall be submitted upon a form prescribed by the director, contain all information that the director deems necessary, and include the following:

(1) A copy of the winery's federal basic wine manufacturing permit;

(2) the appropriate license and registration fees; and

(3) a bond, pursuant to K.S.A. 41-317(b) and amendments thereto.

(c) The application of any winery may be rejected by the director for any of the following reasons:

(1) The application does not include all information that the director deems necessary.

(2) The application does not include a copy of the winery's federal basic wine manufacturing permit.

(3) The application does not include the appropriate license and registration fees.

(4) The application does not include the required bond.

(5) The applicant or its owners, officers, agents, or managers have violated a provision of the liquor control act or these regulations relating to special order shipping.

(6) The applicant or its owners, officers, agents, or managers are currently delinquent in payment of any gallonage tax, enforcement tax, or any fees or fines to the state of Kansas.

(7) The applicant or its owners, officers, agents, or managers previously held a license issued under the liquor control act or the club and drinking

establishment act, and when that license expired or was surrendered, the licensee was delinquent in payment of any gallonage tax, enforcement tax, or any fees or fines to the state of Kansas.

(8) The applicant has had a liquor license revoked for cause in Kansas or another state.

(9) The applicant or its owners, officers, agents, or managers are currently delinquent in payment of any tax, fees, or fines to any state or to the United States.

(d) The special order shipping license shall be valid for two years from the date of issuance. The owner or operator of a winery wishing to renew its special order shipping license shall submit its renewal application to the department at least 30 days before the expiration of its current license. (Authorized by and implementing K.S.A. 2009 Supp. 41-350, as amended by L. 2010, ch. 142, sec.10; effective Nov. 29, 2010.)

**14-11-23. Special order shipping.** (a) No holder of a special order shipping license, and no owner, employee, or agent of the licensee, shall sell, give, or deliver wine to a person under 21 years of age.

(b) No licensee shall ship wine that was not manufactured by the licensee to a consumer in Kansas.

(c) For each shipment of wine to be sent directly to a consumer in Kansas, the licensee shall complete an invoice or sales slip containing all of the following information:

(1) The name, address, and license number of the winery;

(2) the name and address of the purchaser;

(3) the date of the purchase;

(4) the quantity and size of each brand of wine purchased;

(5) the subtotal of the cost of the wine and the total price of the shipment, including enforcement tax and shipping charge;

(6) a statement that the purchaser's age was verified and that the purchaser is at least 21 years of age; and

(7) the type of photo identification examined and the internet-based age and identification service utilized.

(d) For each sale of wine to be shipped directly to a consumer in Kansas, the licensee shall collect gallonage tax as required by K.S.A. 41-501 and amendments thereto.

(e) Each licensee, other than a licensed Kansas farm winery or manufacturer, shall file gallonage

tax returns and remit these taxes annually. These returns and remittances shall be submitted on or before the 15th day of January for the preceding calendar year. The gallonage tax returns shall be accompanied by an annual sales report, which shall be submitted on a form prescribed by the director and shall reflect all sales made under the license during that calendar year.

(f) Each licensee shall file enforcement tax returns and shall submit returns showing zero sales if no wine was sold under the license during that tax period.

(g) Each licensee of a Kansas farm winery or farm winery outlet that also holds a special order shipping license shall maintain separate records and file separate returns for its special order shipping license. The licensee of each farm winery or farm winery outlet shall remit these taxes separately from the taxes collected and reported under any other license or permit held by the farm winery or farm winery outlet.

(h) Each licensee shall maintain, on the licensed premises, a copy of the invoice or sales slip for each shipment of wine sent directly to a consumer in Kansas for at least three years from the date of sale. The copies shall be made available for inspection by the director or any agent or employee of the director or secretary upon request. (Authorized by K.S.A. 41-210 and K.S.A. 2009 Supp. 41-350; implementing K.S.A. 41-211 and K.S.A. 2009 Supp. 41-350; effective Sept. 17, 2010.)

**14-11-24. Bona fide farmers' market sales permit.** A farm winery licensee may sell domestic table wine and domestic fortified wine manufactured by the licensee at a farmers' market only after obtaining a bona fide farmers' market sales permit from the director.

(a) Each farm winery licensee intending to sell wine at a farmers' market shall submit an application to the director for a bona fide farmers' market sales permit. Each application shall be submitted on a form prescribed by the director and shall include all information the director deems necessary. The application shall indicate the location of the farmers' market and the day of the week on which the applicant intends to sell wine.

(b) No bona fide farmers' market sales permit shall be issued if the local governing body has not approved the sale of alcoholic liquor at retail for the proposed location of the farmers' market.

(c) No bona fide farmers' market sales permit shall be issued for any farmers' market located on

state property or within 200 feet of any school, college, or church.

(d) The director may reject an application for a bona fide farmers' market sales permit for either of the following reasons:

(1) The application does not include all information the director deems necessary.

(2) The applicant or its owners, officers, agents, or managers are currently delinquent in payment of any gallonage tax, enforcement tax, or any fees or fines to the state of Kansas.

(e) Each bona fide farmers' market sales permit shall be valid for one year from the date of issuance. Each farm winery licensee wishing to renew its bona fide farmers' market sales permit shall submit its renewal application to the department at least 30 days before the expiration of its current permit.

(f) No holder of a bona fide farmers' market sales permit shall sell domestic table wine or domestic fortified wine at a farmers' market on any day of the week other than the day specified in the application or at any farmers' market other than the one specified in the application.

(g) Domestic table wine and domestic fortified wine shall be sold at a farmers' market only in the original, unopened container. The serving of samples of domestic table wine or domestic fortified wine at a farmers' market shall be prohibited.

(h) Any of the following may sell domestic table wine and domestic fortified wine at a farmers' market:

(1) The holder of a bona fide farmers' market sales permit;

(2) a member of the permit holder's family who is at least 21 years of age; or

(3) an employee of the permit holder who is at least 21 years of age and is reported to the director as an employee, on a form prescribed by the director.

(i) Each person selling domestic table wine and domestic fortified wine under a bona fide farmers' market sales permit shall possess a salesperson's permit as required by K.S.A. 41-333 and amendments thereto. The person shall produce the permit upon request by the director or any agent or employee of the director or secretary upon request.

(j) Each farm winery selling wine at a farmers' market shall display its bona fide farmers' market sales permit in a conspicuous place in its farmers' market sales area.

(k) For each sale of domestic table wine or domestic fortified wine at a farmers' market, the

holder of a bona fide farmers' market sales permit shall collect liquor enforcement tax as required by K.S.A. 79-4101 and amendments thereto. The permittee shall file enforcement tax returns and remit payment according to the provisions of the liquor enforcement tax act, K.S.A. 79-4101 et seq. and amendments thereto.

(l) Each licensee of a Kansas farm winery that also holds a bona fide farmers' market sales permit shall maintain separate records and file separate returns for its bona fide farmers' market sales permit. The farm winery licensee shall remit enforcement taxes collected from sales at the farmers' market separately from the taxes collected and reported under its farm winery license. (Authorized by K.S.A. 41-210, K.S.A. 2009 Supp. 41-351, and K.S.A. 79-4106; implementing K.S.A. 41-211 and K.S.A. 2009 Supp. 41-351; effective Sept. 17, 2010.)

**14-11-25. Licensee of farm winery also licensed as manufacturer.** (a) A farm winery licensee may request a license as a manufacturer by submitting an application to the director.

(b) Each application for a manufacturer's license shall be submitted upon forms prescribed by the director, shall contain all information the director deems necessary, and shall include the following:

(1) The appropriate license fee pursuant to K.S.A. 41-310(c), and amendments thereto;

(2) a bond pursuant to K.S.A. 41-317(b), and amendments thereto; and

(3) the registration fee pursuant to K.S.A. 41-317(a), and amendments thereto.

(c) The director may reject an application for a manufacturer's license for any of the following reasons:

(1) The application does not include all information the director deems necessary.

(2) The application does not contain the appropriate license fee, bond, or registration fee.

(3) The applicant or its owners, officers, agents, or managers are currently delinquent in payment of any gallonage tax, enforcement tax, or any fees or fines to the state of Kansas.

(d) Each farm winery licensee shall maintain separate storage facilities, production records, and sales records from those of the manufacturer.

(e) No alcoholic liquor or cereal malt beverage manufactured by the manufacturer shall be sold at or under any of the following:

(1) The licensed premises of any farm winery;

(2) the licensed premises of any farm winery outlet;

(3) a bona fide farmers' market; or

(4) any special order shipping license.

(f) No alcoholic liquor or cereal malt beverage manufactured by the manufacturer shall be displayed or sampled in any sales area or tasting area of the farm winery premises.

(g) Each farm winery licensee that also holds a manufacturer's license shall file separate gallonage tax returns for its manufacturer's license. The farm winery licensee shall remit gallonage taxes separately from the taxes reported under its manufacturer's license.

(h) Each farm winery licensee that also holds a manufacturer's license shall submit a monthly sales report with each manufacturer license's gallonage tax return. The report shall be submitted on a form prescribed by the director and shall reflect all sales made under the manufacturer's license during that month.

(i) Each farm winery licensee that also possesses a manufacturer's license shall be subject to the record retention and reporting requirements of both license types. (Authorized by K.S.A. 41-210 and K.S.A. 79-4106; implementing K.S.A. 41-211, K.S.A. 2009 Supp. 41-305, K.S.A. 2009 Supp. 41-317; effective Sept. 17, 2010.)

**14-11-26. Label approval required.** Before offering for sale in this state any domestic table wine or domestic fortified wine, a farm winery or farm winery outlet shall submit each label and a "certificate of label approval" from the federal tax and trade bureau to the director. No domestic table wine or domestic fortified wine shall be sold in this state unless the label and the "certificate of label approval" have been submitted to the director. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-211; effective Sept. 17, 2010.)

**14-11-27.** (Authorized by K.S.A. 41-210; implementing K.S.A. 41-211, K.S.A. 2009 Supp. 41-308a; effective Sept. 17, 2010; revoked Dec. 27, 2010.)

**14-11-28. Sales to minors prohibited.** No farm winery licensee, farm winery outlet licensee, holder of a special order shipping license, holder of a bona fide farmers' market sales permit, or any owner, employee, or agent of any of these individuals shall sell, give, or deliver domestic table wine or domestic fortified wine to any person under 21 years of age. (Authorized

by K.S.A. 41-210; implementing K.S.A. 41-211; effective Sept. 17, 2010.)

**14-11-29. Record retention; reporting requirements.** (a) Each farm winery licensee, farm winery outlet licensee, holder of a bona fide farmers' market sales permit, or holder of a special order shipping license shall maintain records of all sales made under the license or permit for at least three years after the date of sale. The records required by this subsection shall be available for inspection by the director, any agent or employee of the director, or the secretary upon request.

(1) Each record required by the regulation shall be maintained on the premises of the farm winery or farm winery outlet for at least 90 days after the sale.

(2) Any record required by this regulation may be stored electronically and maintained off the licensed premises.

(b) Each farm winery licensee shall submit a monthly sales report with each gallonage tax return. The report shall be submitted on a form prescribed by the director and shall reflect all sales made under any license or permit issued under the liquor control act and held by the farm winery licensee during that month. (Authorized by K.S.A. 41-210, K.S.A. 2009 Supp. 41-350, as amended by L. 2010, ch. 142, sec. 10, and K.S.A. 2009 Supp. 41-351; implementing K.S.A. 41-211 and K.S.A. 2009 Supp. 41-350, as amended by L. 2010, ch. 142, sec. 10; effective Sept. 17, 2010.)

### Article 13.—RETAIL LIQUOR DEALER

**14-13-1. Definitions.** As used in this article of the division's regulations, unless the context clearly requires otherwise, each of the following terms shall have the meaning specified in this regulation:

(a) "Adjacent premises" means an enclosed permanent structure that is contiguous to the licensed premises and may be located in front of, beside, behind, below, or above the licensed premises. Adjacent premises shall be under the direct or indirect control of the retailer. This term shall not include empty lots, parking lots, temporary structures, or enclosed structures not contiguous to the licensed premises.

(b) "Beneficial interest" means any ownership interest by a person or that person's spouse in a business, corporation, partnership, trust, association, or other form of business organization.

(c) "Bulk wine" means wine that is sold to a club by either a retailer or a distributor in barrels, casks, or bulk containers that individually exceed 20 liters.

(d) "Cereal malt beverage" has the meaning specified in K.S.A. 41-2701, and amendments thereto.

(e) "Church" means a building that is owned or leased by a religious organization and is used exclusively as a place for religious worship and other activities ordinarily conducted by a religious organization.

(f) "Crime opposed to decency and morality" means a crime involving any of the following:

- (1) Prostitution;
- (2) solicitation of a child under 18 years of age for any immoral act involving sex;
- (3) possession or sale of narcotics, marijuana, amphetamines, or barbiturates;
- (4) rape;
- (5) incest;
- (6) gambling;
- (7) adultery;
- (8) bigamy; or
- (9) procuring any person to be involved in the commission of any of the criminal acts specified in paragraphs (f) (1)-(8).

(g) "Licensed premises" means those areas described in an application for a retailer's license that are under the control of the applicant and are intended as the area in which alcoholic liquor is to be sold for consumption off the licensed premises or stored for later sale.

(h) "Manager" means a person with the status, duties, and authority to have control over the licensee's business operation, finances, or disbursement of business funds including any of the following:

- (1) The authority to make decisions concerning the day-to-day operations of the business;
- (2) the authority to hire or fire employees;
- (3) the authority to sign business checks;
- (4) the authority to direct payment of business funds; or
- (5) supervision of those employees responsible for any of these duties.

(i) "Mixer" means any liquid capable of being consumed by a human being that can be combined with alcoholic liquor for consumption.

(j) "Tasting event" means any time during which a retailer or supplier is serving free samples of alcoholic liquor on the retailer's licensed premises or at adjacent premises monitored and regulated

by the director. (Authorized by K.S.A. 41-210 and K.S.A. 2017 Supp. 41-212; implementing K.S.A. 2017 Supp. 41-102; effective May 1, 1988; amended Aug. 6, 1990; amended, T-14-11-9-92, Nov. 9, 1992; amended Dec. 21, 1992; amended, T-14-6-28-12, July 1, 2012; amended, T-14-10-25-12, Oct. 29, 2012; amended Feb. 22, 2013; amended June 7, 2018.)

**14-13-2. Application for retail liquor license; requirements, conditions, and restrictions on issuance of license.** (a) A retailer's license shall be issued by the director to each applicant who is determined by the director to have met the requirements of the liquor control act.

(b) Each application for a retailer's license shall be submitted on forms prescribed by the director and include the following:

(1) A copy of any partnership agreement, operating agreement of a limited liability company, declaration of trust, or other documents specifying the aims and purposes of the trust, if applicable;

(2) a copy of a written lease or proof of ownership of the premises to be licensed;

(3) a certified statement from the applicant that the licensed premises are located in one of the following areas:

(A) An area where the zoning regulations of the city, township, or county allow the operation of a retail liquor store; or

(B) an area where no zoning regulations have been adopted;

(4) the proper license fee and registration fee;

(5) a bond, pursuant to K.S.A. 41-317 and amendments thereto;

(6) a diagram of the licensed premises, showing the area or areas in which alcoholic liquor will be stored and sold. Subject to the prior approval of the director, the licensed premises may include either of the following:

(A) Those areas outside the main sales area that are within 100 yards of the main sales area and located upon property that is subject to the applicant's legal control; or

(B) a detached storage area, located within 100 yards of the main sales area and used exclusively for storage of alcoholic liquor by the retailer; and

(7) all other information necessary to complete the application process.

(c) On and after April 1, 2020, in addition to the items specified in subsection (b), each application for a renewal of a retailer's license shall include a statement of gross receipts from the previous

12-month period showing that the sale of all goods and services other than cereal malt beverage and alcoholic liquor is not more than 20 percent of the retailer's total gross sales. For the purposes of this calculation, all fees derived from the sale of lottery tickets and cigarette and tobacco products shall be excluded.

(d) The initial application for any retailer's license, or any renewal application for a retailer's license, may be rejected by the director for any of the following reasons:

(1) The applicant does not provide all the information necessary for completion of the application process.

(2) The applicant does not include the proper license fee and registration fee.

(3) The applicant does not include the required bond.

(4) The applicant or its owners, officers, resident agent, or managers have violated a provision of the liquor control act or these regulations relating to the sales of alcoholic liquor that may have been grounds for license revocation.

(5) The applicant or its owners, officers, resident agent, or managers are currently delinquent in payment of any gallonage tax, liquor enforcement tax, liquor drink tax, license fees, or liquor-related fines to the state of Kansas.

(6) The applicant or its owners, officers, resident agent, or managers previously held a license issued under the liquor control act or the club and drinking establishment act, and when that license expired or was surrendered, the licensee was delinquent in payment of any gallonage tax, liquor enforcement tax, liquor drink tax, license fees, or liquor-related fines to the state of Kansas.

(7) The applicant has had a liquor license revoked for cause in Kansas or another state.

(8) The applicant or its owners, officers, resident agent, or managers have been convicted of a crime opposed to decency and morality.

(9) For any renewal application received on or after April 1, 2020, the licensee has failed to demonstrate that the sale of all goods and services other than cereal malt beverage and alcoholic liquor is not more than 20 percent of the retailer's total gross sales pursuant to subsection (c).

(e) Each person who provides financing to or leases premises to a retailer upon terms that result in that person having a beneficial interest in the retailer's business shall be deemed to be a partner in the retailer's business. Each person who provides financing to a retailer shall be deemed to

have a beneficial interest in the retailer's business if the terms for repayment are conditioned on the amount of the retailer's receipts or profits from the sale of alcoholic liquor. A lessor shall be deemed to have a beneficial interest in a retailer's business if the lessor receives as rent, in whole or in part, a percentage of the retailer's receipts or profits from the sale of alcoholic liquor. (Authorized by K.S.A. 41-210 and K.S.A. 2017 Supp. 41-212; implementing K.S.A. 2017 Supp. 41-308, K.S.A. 2017 Supp. 41-310, K.S.A. 2017 Supp. 41-311, K.S.A. 41-315, and K.S.A. 2017 Supp. 41-317; effective May 1, 1988; amended Aug. 6, 1990; amended, T-14-11-9-92, Nov. 9, 1992; amended Dec. 21, 1992; amended Feb. 22, 2013; amended June 7, 2018.)

**14-13-3.** (Authorized by K.S.A. 41-210 as amended by L. 1987, Ch. 182, Sec. 10; implementing K.S.A. 41-211, 41-318, 41-327; effective May 1, 1988; revoked Feb. 22, 2013.)

**14-13-4. Local occupation or license tax; display requirement.** (a) If the retail premises are located in a city or county that imposes a local occupation or license tax, a retailer shall not sell or offer for sale any alcoholic liquor until the retailer has paid the occupation or license tax.

(b) Each retailer whose licensed premises is located in a city or county that requires a local occupation or license tax shall cause proof of payment of the occupation or license tax to be framed and hung in a conspicuous place on the retailer's licensed premises. (Authorized by K.S.A. 41-210; implementing K.S.A. 2011 Supp. 41-310, as amended by L. 2012, ch. 144, sec. 13; effective May 1, 1988; amended Aug. 6, 1990; amended Feb. 22, 2013.)

**14-13-5. Retailers; employees; roster; responsibility for conduct.** (a) Each retailer shall be responsible for the conduct of the retailer's business and shall be directly responsible for violations of the liquor control act or these regulations by any employee engaged in and acting in the course of employment.

(b) Each retailer shall maintain, on the licensed premises, a roster of all employees, including unpaid volunteers, who are involved in the sale or service of alcoholic liquor. This roster shall be made available for inspection upon request by the director, any agent or employee of the director, or secretary.

The roster required by this regulation shall contain each employee's first name, last name, middle

initial, gender, and date of birth. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-713 and K.S.A. 41-904; effective May 1, 1988; amended July 1, 1991; amended Feb. 22, 2013.)

**14-13-6. Change of location of business.**

(a) Any retailer may change the location of the licensed premises only upon written permission of the director.

(b) At least 20 days before changing the location of the business, the retailer shall submit a written request, on forms prescribed by the director, to change the location of the business.

(c) Each request required by subsection (b) shall contain all of the following:

- (1) The retailer's name and license number;
- (2) the retailer's current business address;
- (3) the retailer's new business address;

(4) a copy of a written lease or proof of ownership of the new premises sought to be licensed; and

(5) a certified statement, from the clerk of the city or county in which the premises sought to be licensed are located, that the premises are in one of the following areas:

(A) An area where the zoning regulations of the city, township, or county allow the operation of a retail liquor store; or

(B) an area where no zoning regulations have been adopted.

(d) Any request to change the location of a licensed business may be denied by the director for any of the following reasons:

(1) The new location is in an area where the zoning regulations of the city, township, or county do not allow the operation of a retail liquor store.

(2) The new location is within 200 feet of any school, college, or church.

(3) The new location has an inside entrance that connects with another place of business. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-315, K.S.A. 2011 Supp. 41-710, as amended by L. 2012, ch. 144, sec. 24, and K.S.A. 41-711; effective May 1, 1988; amended Feb. 22, 2013.)

**14-13-7. Licenses, loss or destruction of; duplicate license.**

(a) Whenever any license issued by the director is lost or destroyed before its expiration, the retailer to whom the license was issued may submit a written application to the director for a duplicate license.

(b) The application required by subsection (a) shall be submitted on forms prescribed by the

director and shall contain the facts and circumstances concerning the loss or destruction of the license.

(c) The director may issue a duplicate license upon receipt of information that the license has been lost or destroyed. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-211; effective May 1, 1988; amended Feb. 22, 2013.)

**14-13-8. Transfer of retailer's stock of alcoholic liquor; application for permission; seizure and sale of abandoned alcoholic liquor.**

(a) When a retailer's license has expired or been surrendered or revoked, that retailer may apply to the director for permission to transfer the retailer's stock of alcoholic liquors to another licensee.

(b) The application to transfer the retailer's stock of alcoholic liquors shall be submitted on forms prescribed by the director and shall contain all of the following:

- (1) The retailer's name and license number;
- (2) the purchaser's name and license number;
- (3) the gross sale price of the transferred alcoholic liquor; and
- (4) the quantity, brand, and type of each container of alcoholic liquor to be transferred.

(c) No alcoholic liquor in the possession of a retailer shall be transferred under the provisions of subsection (a) unless the director has granted written permission.

(d) The director may deny an application to transfer alcoholic liquor under the provisions of subsection (a) if the retailer owes any gallonage tax, liquor enforcement tax, liquor drink tax, license fees, or liquor-related fines to the state of Kansas.

(e) The director or any employee or agent of the director may seize and sell any alcoholic liquor located on the premises subject to a retailer's license if the director determines that the alcoholic liquor has been abandoned by the licensee. The director may consider any of the following criteria in making a determination that the alcoholic liquor has been abandoned:

- (1) The licensee has quit its occupation of the building, leaving alcoholic liquor in the building.
- (2) The licensee has been evicted and has made no attempt to collect the alcoholic liquor.
- (3) Attempts to contact the licensee to determine its plans for the alcoholic liquor have been unsuccessful.
- (4) The presence of the alcoholic liquor in the building poses a threat to the public health, safety, and welfare or the orderly regulation of the market.

(f) Upon the director's determination that the alcoholic liquor has been abandoned, the director shall notify the retailer, in writing, of the director's intent to seize and sell the alcoholic liquor. If, within seven calendar days after the date of the director's notice, the retailer has not notified the director that the retailer intends to maintain possession of the alcoholic liquor, the director may seize and sell the alcoholic liquor.

(g) The proceeds from the sale of alcoholic liquor under subsection (e) shall be deposited into the state general fund. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-1102; effective May 1, 1988; amended Feb 22, 2013.)

**14-13-9. Transactions prohibited; deliveries by retailer for sale or resale off licensed premises.** (a) Any retailer may sell and deliver alcoholic liquor to a club, drinking establishment, public venue, or caterer if all of the following conditions are met:

(1) All deliveries of alcoholic liquor are made to the licensed premises of a club, public venue, or drinking establishment and to the principal place of business of a caterer.

(2) All deliveries are made by an employee of the retailer.

(3) The retailer provides a sales slip or numbered invoice, purchase order, or sales ticket for each item delivered as required by K.A.R. 14-13-10.

(4) The retailer receives payment for all deliveries before or at the time of the deliveries.

(5) The retailer has first obtained a federal wholesale basic permit and displays a sign on the licensed premises stating that the retailer is a "Wholesale Liquor Dealer Under Federal Law."

(6) All deliveries of alcoholic liquor are made on those days and during those hours that a retailer may sell alcoholic liquor pursuant to K.S.A. 41-712, and amendments thereto.

(7) All deliveries originate from the licensed premises of the retailer.

(b) Any retailer may sell alcoholic liquor to a temporary permit holder if all of the following conditions are met:

- (1) Sales are made only upon the licensed premises of the retailer.
- (2) No deliveries are made to a temporary permit holder.
- (3) The retailer provides a sales slip or numbered invoice, purchase order, or sales ticket as required by K.A.R. 14-13-10.

(c) No retailer shall sell or deliver any alcoholic liquor to any person with knowledge of, or with reasonable cause to believe, that the person to whom the liquor is sold or delivered has acquired the alcoholic liquor for the purpose of peddling or reselling the alcoholic liquor in violation of this article, the Kansas liquor control act, or the club and drinking establishment act.

(d) All alcoholic liquor of a retail licensee shall be stored upon the licensed premises of the licensee. Alcoholic liquor shall not be stored upon the licensed premises after the sale. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-210, K.S.A. 41-308, as amended by L. 2012, ch. 144, sec. 10, and K.S.A. 41-717, as amended by L. 2012, ch. 144, sec. 26; effective May 1, 1988; amended Aug. 6, 1990; amended July 1, 1991; amended Nov. 21, 2003; amended Feb. 22, 2013.)

**14-13-10. Records of purchases and sales; retention of records; reports.** (a) Each retailer purchasing alcoholic liquor from a licensed distributor shall obtain a numbered invoice, purchase order, or sales ticket that contains the following information:

- (1) The date of purchase;
- (2) the name, address, and license number of the retailer;
- (3) the name, address, and license number of the distributor;
- (4) the name of the individual making the purchase for the retailer;
- (5) the brand, size, and amount of each brand purchased;
- (6) the unit cost and total price for each brand and size; and
- (7) the subtotal of the cost of the alcoholic liquor purchased and the total cost of the order including delivery charge, if any.

(b) Each retailer engaged in sales to licensed clubs, drinking establishments, caterers, public venues, or temporary permit holders shall provide a numbered invoice, purchase order, or sales ticket in connection with all purchases, which shall include the following information:

- (1) The date of purchase;
- (2) the name, address, and license number of the retailer;
- (3) the name, address, and license number of the club, drinking establishment, caterer, public venue, or temporary permit holder;
- (4) the name of the individual making the purchase for the club, drinking establishment, cater-

er, public venue, or temporary permit holder and that individual's position with the club, drinking establishment, caterer, public venue, or temporary permit holder;

(5) the brand, size, and amount of each brand purchased;

(6) the unit cost and total price for each brand and size; and

(7) the subtotal of the cost of the alcoholic liquor sold and the total cost of the order including enforcement tax and delivery charge, if any.

(c) Each retailer who holds a federal wholesale basic permit shall, between the first and the fifteenth day of each month, upon a form prescribed by the director, submit a certified report of all sales made to any licensed club, drinking establishment, caterer, public venue, or temporary permit holder during the preceding month. The report shall include the following information for each order placed by and sold to a club, drinking establishment, caterer, public venue, or temporary permit holder:

- (1) The date of the order;
- (2) the name, address, and license number of the club, drinking establishment, caterer, public venue, or temporary permit holder; and
- (3) the total price paid for each order.

(d) On and after April 1, 2019, each retailer shall keep all sales receipts from the sale to any customer of all alcoholic liquor, cereal malt beverage, and any other goods or services, excluding the sales of lottery tickets and cigarette and tobacco products.

(e) The retailer shall keep a copy of each invoice, purchase order, or sales ticket required by this regulation for at least three years from the date the alcoholic liquor was sold.

(f) The records required by this regulation shall be available for inspection by the director, any agent or employee of the director, or the secretary upon request.

(1) Each record required by this regulation shall be maintained on the retailer's licensed premises for at least 90 days after the sale. These records may be maintained in electronic format and shall be capable of being printed immediately upon request.

(2) After 90 days, all records required by this regulation may be stored and maintained off the licensed premises and shall be provided in electronic or paper format upon request. (Authorized by K.S.A. 41-210 and K.S.A. 2017 Supp. 41-212; implementing K.S.A. 2017 Supp. 41-308, K.S.A. 41-407, K.S.A. 41-703, and K.S.A. 41-708; effec-

tive May 1, 1988; amended Feb. 22, 2013; amended June 7, 2018.)

**14-13-11.** (Authorized by K.S.A. 1989 Supp. 41-210; implementing K.S.A. 1989 Supp. 41-308; K.S.A. 41-715; effective May 1, 1988; amended Aug. 6, 1990; revoked Feb. 22, 2013.)

**14-13-12. Defective liquor containers; repurchase by retailer.** (a) No retailer shall knowingly sell any liquor containers that leak, contain foreign matter in the bottle, are short-filled, have broken federal seals, have badly soiled or stained labels, or are otherwise not fit for resale to the general public.

(b) Any retailer may perform the following:

(1) Buy back from a customer any item of alcoholic liquor when required by the distributor to do so;

(2) buy back any item of alcoholic liquor from a club, drinking establishment, or caterer for which the club, drinking establishment, or caterer has obtained the approval of the director to close out;

(3) buy back or exchange, within 24 hours of delivery, any item of alcoholic liquor that is damaged, as described in subsection (a); and

(4) buy back, with written permission from the director and within three business days after the end of an event conducted under a temporary permit issued under K.S.A. 41-2645 and amendments thereto, any beer sold to the holder of the temporary permit. (Authorized by and implementing K.S.A. 41-210 and K.S.A. 41-211; effective May 1, 1988; amended Aug. 5, 2011.)

**14-13-13. Prohibited conduct of retailer.**

(a) A retailer shall not permit gambling or the possession of any gambling or gaming device on the licensed premises. However, any retailer may sell, operate, possess, and offer to the public lottery tickets permitted by the Kansas lottery act if the retailer is authorized by the Kansas lottery commission to do so.

(b) A retailer shall not, as a condition for the sale or delivery of alcoholic liquor to a customer or to any other licensee who is licensed under the liquor control act or the club and drinking establishment act, require that the other licensee or customer purchase or contract to purchase alcoholic liquor of another form, quantity, or brand in addition to or partially in lieu of that specifically ordered or wanted by the licensee or customer.

(c) A retailer shall not sell or deliver alcoholic liquor of a particular form or brand to a customer

or to any other licensee who is licensed under the liquor control act or the club and drinking establishment act under any arrangement, agreement, or understanding, direct or implied, such that the sale or delivery will be made only if the other licensee or customer also buys or accepts delivery of a quantity of alcoholic liquor of another form or brand.

(d) A retailer shall not refuse to permit the director or any agent or employee of the director to inspect the licensed premises and any alcoholic liquor in the retailer's possession or under the retailer's control upon the licensed premises or upon any other premises where the retailer has stored any alcoholic liquor.

(e) A retailer shall not make any false or misleading representations with respect to any alcoholic liquor product or any licensed premises or in connection with a sales transaction relating to brand, type, proof, or age of an alcoholic liquor or beer. A retailer shall not deceive or attempt to deceive a customer by removing or changing any label or sanitation cover from a container of alcoholic liquor.

(f) A retailer shall not sell or remove any alcoholic liquor from the licensed premises on any day other than a legal day for the sale of alcoholic liquor at retail, after the legal closing hour or before the legal opening hour.

(g) A retailer shall not, directly or indirectly, offer or furnish any gifts, prizes, premiums, rebates, or similar inducements with the sale of any alcoholic liquor, nor shall any retailer directly or indirectly offer, furnish, or sell any alcoholic liquor at less than its cost plus enforcement tax, except according to the following:

(1) Any retailer may include in the sale of alcoholic liquor any goods included by the manufacturer in packaging with the alcoholic liquor. Goods included by the manufacturer shall be packaged with one or more original packages of alcoholic liquor in such a manner as to be delivered to the consumer as a single unit. A retailer shall not sell or give away goods included by a manufacturer that are not packaged as a single unit with the original package of alcoholic liquor as shipped by the manufacturer.

(2) Any retailer may distribute consumer advertising specialty items, subject to the limitations imposed by this regulation. For the purposes of this regulation, consumer advertising specialty items shall be limited to the following: ashtrays, bottle or can openers, corkscrews, matches,

printed recipes, informational pamphlets, cards and leaflets, blotters, postcards, posters, printed sports schedules, pens, pencils, and other items of minimal value as approved by the director. Each consumer advertising specialty item shall contain advertising material relating to a brand name of alcoholic liquor or to the operation of the retail liquor store distributing the consumer advertising specialty item. No charge may be made for any consumer advertising specialty item or any purchase required in order to receive any consumer advertising specialty item.

(h) A retailer shall not open or permit to be opened, on the licensed premises, any container or original package containing alcoholic liquor or cereal malt beverage, except as provided in K.A.R. 14-13-16 and K.A.R. 14-13-17.

(i) A retailer shall not permit the drinking of alcoholic liquors or cereal malt beverage on or about the licensed premises, except that any consumer who is at least 21 years of age may sample alcoholic liquor available for sale by the retailer, on the licensed premises and at adjacent premises monitored and regulated by the director, in accordance with K.A.R. 14-13-16 and K.A.R. 14-13-17.

(j) A retailer shall not allow an intoxicated person to frequent, loiter, or be employed upon the licensed premises. A retailer's manager or employee shall not be intoxicated while on duty for the licensee.

(k) A retailer shall not permit any other person to use the licensed premises for the purpose of carrying on any business activity other than the sale of alcoholic liquor.

(l) A retailer shall not accept or receive from any agent or employee of any licensed distributor any cash rebate or thing of value, or enter into or be a party to any agreement or transaction with any licensed distributor, directly or indirectly, that would result in, or have as its purpose, the purchase of any alcoholic liquor by the retailer at a price less than the listed price that has been filed by the distributor in the office of the director.

(m) A retailer shall not sell, give, or deliver any intoxicating liquor to any person under the age of 21 years. A retailer shall not sell, give, or deliver any intoxicating liquor to any person if the retailer knows or has reason to know that the intoxicating liquor is being obtained for a person under 21 years of age.

(n) A retailer shall not purchase or sell any alcoholic liquor on credit. A retailer shall not enter into any transaction or scheme the purpose of

which is to buy or sell alcoholic liquor on credit. The following transactions shall be considered to be buying or selling alcoholic liquor on credit:

- (1) Taking or giving a postdated check;
- (2) giving an insufficient funds check;
- (3) taking a check with knowledge that there are insufficient funds to pay the check upon presentment;
- (4) accepting delivery from a distributor without making payment for the alcoholic liquor when delivered or before delivery;
- (5) making delivery to a club, drinking establishment, or caterer without receiving payment before or at the time of delivery; and
- (6) allowing any alcoholic liquor to be removed from the licensed premises without receiving payment for the alcoholic liquor.

(o) A retailer shall not fail to make the reports or keep the records required by these regulations.

(p) A retailer who is authorized by the Kansas lottery commission to sell lottery tickets shall not commingle the proceeds from the sale of the lottery tickets with the proceeds from the sale of alcoholic liquor.

(q) A retailer shall not refill a package of alcoholic liquor and shall not sell alcoholic liquor in anything other than the original package. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-211, K.S.A. 2017 Supp. 41-308, K.S.A. 41-702, K.S.A. 41-703, K.S.A. 2017 Supp. 41-717, K.S.A. 2017 Supp. 41-718; effective May 1, 1988; amended, T-14-11-9-92, Nov. 9, 1992; amended Dec. 21, 1992; amended, T-14-6-28-12, July 1, 2012; amended, T-14-10-25-12, Oct. 29, 2012; amended Feb. 22, 2013; amended June 7, 2018.)

**14-13-15. “Doing business as” names.** (a) Each applicant for a retailer's license shall include in the license application the “doing business as” (d/b/a) name by which the applicant wishes to operate the store for which licensure is sought.

(b) An application with a d/b/a name that suggests to the public that multiple stores are part of a chain or are owned or operated by a corporation shall not be approved by the director.

(c) Each retailer shall post its d/b/a name within the store or on the exterior of the store.

(d) Each retailer wishing to change its approved d/b/a name shall submit, on a form prescribed by the director, a request for approval to change its d/b/a name. The request shall contain all of the following:

- (1) The retailer's name and license number;

- (2) the retailer's current d/b/a name; and
- (3) the retailer's requested new d/b/a name.

(e) The director may deny a retailer's request to change its d/b/a name for any of the following reasons:

(1) The requested d/b/a name is currently in use in the same county where the retailer's premises is located.

(2) The requested d/b/a name misleads the public by indicating that the retail store is part of a chain.

(3) The requested d/b/a name misleads the public by indicating that the retail store is owned by a corporation. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-211 and K.S.A. 2011 Supp. 41-311, as amended by L. 2012, ch. 144, sec. 14; effective July 5, 2002; amended Feb. 22, 2013.)

**14-13-16. Tasting events; requirements; prohibitions.** Any retailer may provide free samples of alcoholic liquor offered for sale by the retailer to members of the general public on the retailer's licensed premises and at adjacent premises as approved by the director.

(a) No retailer shall receive payment from any person, either directly or indirectly, to conduct a tasting event.

(b)(1) Each container of alcoholic liquor to be sampled shall be removed from the retailer's inventory.

(2) The retailer shall clearly mark each container of alcoholic liquor removed from inventory for sampling as reserved for samples only. The marking shall not obscure the label of the alcoholic liquor container.

(c) No samples of alcoholic liquor may be served on a retailer's licensed premises or on adjacent premises at any time other than those hours and days during which the retailer may sell alcoholic liquor, pursuant to K.S.A. 41-712 and amendments thereto.

(d) Except as specifically allowed by this subsection, no employee of the retailer who is on duty may consume alcoholic liquor during the tasting event.

The owner or manager of a retail premises may consume wine from an original container sufficient to verify that the wine has not deteriorated in quality or has otherwise become unfit for human consumption.

(e) The director, or any agent or employee of the director, shall be granted immediate entry to and inspection of any adjacent premises used for tasting events at any time the adjacent premises are

occupied. Failure to grant immediate entry shall be grounds for revocation of the retailer's license.

(f) Except as specifically allowed in this subsection, no retailer may provide any food, service, or other thing of value other than samples of alcoholic liquor at any tasting event.

(1) Any retailer conducting a tasting event on the licensed premises may provide cups, napkins, and mixers.

(2) Any retailer conducting a tasting event on adjacent premises may provide cups, napkins, food, mixers, and other similar items.

(g) A licensed distributor or its agent, employee, or representative shall not purchase alcoholic liquor for tasting, pour samples, or provide any supplies or things of value, except that an agent, employee, or representative of a distributor may provide education on the product or products being sampled.

(h)(1) Any partially used container of alcoholic liquor removed from the licensed premises for tasting at adjacent premises shall be disposed of or returned to the licensed premises before the retailer's close of business on the same date the container was removed.

(2) Each retailer shall perform one of the following for each partially used container of alcoholic liquor used for sampling:

(A) Dispose of the container;

(B) store the container on the licensed premises in a secured, locked storage area, separate from containers of alcoholic liquor available for purchase; or

(C) secure the container with a tamperproof seal around the opening of the container.

(i) Each retailer engaged in tasting events shall keep, for at least three years, records of all alcoholic liquor removed from inventory for the tasting events. These records shall be available for inspection by the director, any agent or employee of the director, or the secretary, upon request.

(1) Each record required by this regulation shall be maintained on the licensed premises of the retailer for at least 90 days after the date on which the alcoholic liquor was removed from inventory. These records may be maintained in electronic format but shall be capable of being printed immediately upon request.

(2) After 90 days, any record required by this regulation may be stored electronically and maintained off the licensed premises. Each record shall be provided in electronic or paper format, upon request. (Authorized by K.S.A. 41-210 and

K.S.A. 2012 Supp. 75-5155; implementing K.S.A. 2012 Supp. 41-308d; effective, T-14-6-28-12, July 1, 2012; effective, T-14-10-25-12, Oct. 29, 2012; effective May 10, 2013.)

**14-13-17. Tasting events; supplier participation; requirements; prohibitions.** Any supplier may participate in a retail tasting event through the supplier's employee or agent. For the purpose of this regulation, "supplier" shall mean any person holding a permit issued pursuant to K.S.A. 41-331, and amendments thereto.

(a) A supplier's "agent" may include a third party contracted for the purpose of conducting the tasting. This term shall not include a licensed distributor or any agent, employee, or representative of a licensed distributor.

(b) For the purpose of participation in tasting events, each licensed distributor who also possesses a Kansas supplier permit shall be limited to providing educational information about the product or products being sampled. A distributor or its agent or employee shall not participate in any other manner in a tasting event.

(c) The supplier shall purchase alcoholic liquor to be sampled at a tasting event from the retailer. For each purchase under this regulation, the retailer shall provide the supplier with a numbered invoice or sales slip that contains the following information:

- (1) The date of purchase;
- (2) the name and license number of the retailer;
- (3) the name and Kansas permit number of the supplier;
- (4) the brand, size, and quantity of all alcoholic liquor purchased; and
- (5) the subtotal of the cost of the alcoholic liquor and the total cost of the purchase, including enforcement tax.

(d) Any supplier may store containers of alcoholic liquor used for sampling at a tasting event on the retailer's licensed premises if all of the following conditions are met:

- (1) Each container of alcoholic liquor is clearly marked, in a manner that does not obscure the label, as reserved for samples only.
- (2) The container is secured in a locked storage area separate from containers of alcoholic liquor available for purchase or is secured with a tamperproof seal around the opening of the container.
- (3) The container is accompanied by a copy of the invoice provided to the supplier by the retailer.
- (e)(1) Any supplier participating in a tasting

event on the retailer's licensed premises may provide cups, napkins, and mixers.

(2) Any supplier participating in a tasting event on the retailer's adjacent premises may provide nonalcoholic mixers, cups, napkins, food, and similar items.

(f) Each retailer who sells alcoholic liquor to a supplier participating in a tasting event shall keep a copy of the invoice or sales slip required by this regulation for at least three years. The records required by this subsection shall be available for inspection by the director, any agent or employee of the director, or the secretary, upon request.

(1) Each record required by this regulation shall be maintained on the retailer's licensed premises for at least 90 days after the sale. These records may be maintained in electronic format but shall be capable of being printed immediately upon request.

(2) After 90 days, any record required by this regulation may be stored electronically and maintained off the licensed premises. Each record shall be provided in electronic or paper format, upon request. (Authorized by K.S.A. 41-210 and K.S.A. 2012 Supp. 75-5155; implementing K.S.A. 2012 Supp. 41-308d; effective, T-14-6-28-12, July 1, 2012; effective, T-14-10-25-12, Oct. 29, 2012; effective May 10, 2013.)

**14-13-18. Change of ownership; notice to director.** (a) Each retailer intending to transfer ownership in its business association shall report this intent to the director at least 20 days before the intended transfer of ownership if the transfer would result in any person holding a beneficial interest greater than five percent in the business association that is subject to the license.

(b) Each retailer shall notify the director within 10 days after each transfer of ownership specified in subsection (a).

(c) The retailer shall submit the notifications required by subsections (a) and (b) on forms prescribed by the director and shall include all information necessary to determine the continued eligibility of the retailer under K.S.A. 41-311, and amendments thereto. (Authorized by K.S.A. 41-210; implementing K.S.A. 2012 Supp. 41-311; effective May 10, 2013.)

## Article 16.—LICENSES; SUSPENSION AND REVOCATION

**14-16-25. Imposition of penalties for violations.** (a) The director may revoke or suspend

the license of any licensee for any violation of the liquor control act, the club and drinking establishment act, or any implementing regulation.

(b) In addition to or in lieu of any other civil or criminal penalty for any violation of the liquor control act, the club and drinking establishment act, or any implementing regulation, the director may order a civil fine not exceeding \$1,000 per violation.

(c) The director may order a penalty based upon the schedule specified in subsection (d). Penalties may vary from the schedule based on the presence of aggravating or mitigating circumstances.

(d) The department's "liquor fine and penalty schedule," dated July 16, 2012, is hereby adopted by reference. (Authorized by K.S.A. 41-210 and K.S.A. 41-2634; implementing K.S.A. 41-211, K.S.A. 2011 Supp. 41-328, K.S.A. 2011 Supp. 41-2611, and K.S.A. 41-2633a; effective Sept. 17, 2010; amended Dec. 14, 2012.)

#### Article 19.—CLASS A CLUBS

**14-19-27. Storage of liquor; removal from club premises.** (a) Each licensee shall store its liquor only on the licensed premises of the club unless the licensee has received prior approval in writing from the director to do otherwise.

(b) Any licensee may store wine purchased by a customer only in the unopened original container on the licensed premises, pursuant to K.S.A. 41-2637 and amendments thereto. The licensee shall be responsible for the contents of each customer's wine storage area.

(c) The wine storage area shall be subject to immediate entry and inspection by any law enforcement officer or any officer or agent of the director. Each licensee shall maintain, on the licensed premises, a key or other means to access the contents of the wine storage area.

(d)(1) The licensee may allow a customer to have access to the customer's wine storage area. An agent or employee of the licensee shall accompany each customer to the customer's wine storage area.

(2) A receipt showing the quantity of each brand of wine purchased shall be maintained in each customer's wine storage area. Each time the customer requests the removal of any wine from the storage area, the licensee or its owner, employee, or agent shall mark the receipt showing the date of removal and the quantity of each brand removed.

(e) No licensee, and no owner, employee, or agent of the licensee, shall make any sales of alcoholic liquor for consumption off the licensed premises. No alcoholic liquor purchased on the club premises shall be removed from the club premises, except in accordance with this regulation.

(f)(1) A licensee may permit its customers to remove partially consumed bottles of wine from the licensed premises, in accordance with K.S.A. 41-2653 and amendments thereto.

(2) If any customer wishes to remove from the licensed premises a partially consumed bottle of wine that had been stored in its original unopened container pursuant to K.S.A. 41-2637 and amendments thereto and this regulation, the licensee or its employee shall provide the customer with a copy of the original receipt with a notation that the bottle was removed from the customer's wine storage area on that date. (Authorized by K.S.A. 41-2634; implementing K.S.A. 41-2613, K.S.A. 2009 Supp. 41-2637, and K.S.A. 2009 Supp. 41-2653; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended Sept. 17, 2010.)

**14-19-38. Denial, revocation, or suspension of license upon request for hearing by governing body of city or county; request; evidence.**

(a) The governing body of a city or county may request a hearing before the director to determine whether an application for licensure or renewal shall be denied or whether a license issued under the club and drinking establishment act shall be revoked or suspended.

(b) The request shall be submitted in writing by the governing body, on city or county letterhead, to the director and shall be accompanied by evidence that indicates reasonable cause exists to conduct a hearing to deny, revoke, or suspend the license.

(c) The director shall review the evidence presented and determine whether reasonable cause exists to conduct a hearing to deny, revoke, or suspend the license. The director shall notify the governing body of the date and time of the hearing, or denial of the request, in writing as soon as reasonably possible.

(d) The hearing and notices shall be in accordance with the Kansas administrative procedures act (KAPA). The director shall consider the evidence presented by the governing body and the licensee at the hearing and determine whether the license shall be denied, revoked, or suspended.

(e) Evidence to be considered in determining whether a license shall be denied, revoked, or suspended shall include the following:

(1) A crime of violence has occurred in, on, or about the premises, arising from conduct occurring within the licensed premises.

(2) The licensed premises and surrounding areas under relative control of the licensee constitute an abnormal and unreasonable drain on public resources to secure the safety of patrons, local residents, and businesses.

(3) The licensed premises, including surrounding areas under relative control of the licensee, constitute a threat to public health, safety, and welfare.

(4) The governing body has filed one or more nuisance actions against the licensee or the licensed premises.

(5) The governing body or licensee has taken all reasonable remedial steps regarding the situation.

(f) For purposes of this regulation, “crime of violence” shall include arson, murder, manslaughter, rape or sexual assault, armed robbery, assault, and battery, and an attempt to commit any of these crimes. (Authorized by and implementing K.S.A. 2009 Supp. 41-2651; effective Sept. 17, 2010.)

**14-19-39. Extension of premises.** (a) A licensee may permanently or temporarily extend its licensed premises upon written approval by the director.

(b) A licensee shall request the director’s approval to extend its licensed premises in writing at least 10 days before the proposed extension.

(c) Each request shall be accompanied by a diagram of the extended premises, clearly showing the boundaries of the premises, entrances to and exits from the premises, and the area in which the service of alcoholic liquor would take place.

(d) For a temporary extension, the request shall include the dates on which and times during which the premises would be extended. If the licensee does not own or lease the area to be included in the temporarily extended premises, the request shall also include written permission from the governing body, owner, or property manager to extend the licensed premises into that area.

(e) No premises shall be extended permanently into an area for which the licensee does not possess a valid lease or deed.

(f) The boundary of any premises extended beyond the interior of a building shall be marked by a three-dimensional obstacle.

(g) The licensee shall maintain, on the licensed premises, a copy of the diagram showing the extended premises. The copy shall be available for inspection upon request by any law enforcement officer or any officer or agent of the director.

(h) The licensee shall maintain, on the licensed premises, a copy of the director’s written approval to extend the licensed premises, which shall be deemed to be an essential part of the premises license. The copy shall be available for inspection upon request by any law enforcement officer or any officer or agent of the director.

(i) No licensee, and no owner, employee, or agent of the licensee, shall allow the serving or consumption of alcoholic liquor on extended premises that have not been approved by the director. (Authorized by and implementing K.S.A. 41-2621; effective Sept. 17, 2010.)

**14-19-40. Class A clubs; automated devices.** (a)(1) “Automated device” shall mean any mechanized device capable of dispensing wine directly to a customer in exchange for compensation that a licensee has received directly from the customer.

(2) “Business day” shall mean the hours authorized by state law during which alcohol can be served on the licensed premises.

(b) No licensee shall allow an automated device to be used on its licensed premises without first providing written or electronic notification to the director of the licensee’s intent to use the automated device. The licensee shall provide this notification at least 48 hours before any automated device is used on the licensed premises.

(c) Each licensee offering customer self-service of wine from any automated device shall provide constant video monitoring of the automated device at all times during which the licensee is open to the public. The licensee shall keep recorded footage from the video monitoring for at least 60 days and shall provide the footage, upon request, to any agent of the director or other authorized law enforcement agent.

(d) The compensation required by subsection (a) shall be in the form of a programmable, prepaid access card containing a fixed amount of monetary credit that may be directly exchanged for wine dispensed from the automated device. Access cards may be sold, used, or reactivated only during a business day.

Each access card shall be purchased from the licensee by a customer. A licensee shall not issue

more than one active access card to a customer. For purposes of this regulation, an access card shall be deemed “active” if the access card contains monetary credit or has not yet been used to dispense 15 ounces of wine.

Each purchase of an access card under this regulation shall be subject to the liquor drink tax imposed by K.S.A. 79-41a02, and amendments thereto.

(e) In order to obtain a prepaid access card from a licensee, each customer shall produce a valid driver’s license, identification card, or other government-issued document that contains a photograph of the individual and demonstrates that the individual is at least 21 years of age. Each access card shall be programmed to require the production of the customer’s valid identification before the access card can be used for the first time during any business day or for any subsequent reactivation as provided in subsection (f). Each access card shall become inactive at the end of each business day.

(f) Each access card shall be programmed to allow the dispensing of no more than 15 ounces of wine to a customer. Once an access card has been used to dispense 15 ounces of wine to a customer, the access card shall become inactive. Any customer in possession of an inactive access card may, upon production of the customer’s valid identification to the licensee or licensee’s employee, have the access card reactivated to allow the dispensing of an additional 15 ounces of wine from an automated device.

This subsection shall not apply to wine dispensed by an automated device if the wine is dispensed directly to the licensee or the licensee’s agent or employee. (Authorized by K.S.A. 2014 Supp. 41-2640, as amended by 2015 HB 2223, sec. 5; implementing K.S.A. 2014 Supp. 41-2640, as amended by 2015 HB 2223, sec. 5, and K.S.A. 2014 Supp. 79-41a02; effective, T-14-7-1-15, July 1, 2015; effective Oct. 9, 2015.)

## Article 20.—CLASS B CLUBS

**14-20-29. Storage of liquor; removal from club premises.** (a) Each licensee shall store its liquor only on the licensed premises of the club unless the licensee has received prior approval in writing from the director to do otherwise.

(b) Any licensee may store wine purchased by a customer only in the unopened original container on the licensed premises, pursuant to K.S.A. 41-

2641 and amendments thereto. The licensee shall be responsible for the contents of each customer’s wine storage area.

(c) The wine storage area shall be subject to immediate entry and inspection by any law enforcement officer or any officer or agent of the director. Each licensee shall maintain, on the licensed premises, a key or other means to access the contents of the wine storage area.

(d)(1) The licensee may allow a customer to have access to the customer’s wine storage area. An agent or employee of the licensee shall accompany each customer to the customer’s wine storage area.

(2) A receipt showing the quantity of each brand of wine purchased shall be maintained in each customer’s wine storage area. Each time the customer requests the removal of any wine from the storage area, the licensee or its owner, employee, or agent shall mark the receipt showing the date of removal and the quantity of each brand removed.

(e) No licensee, and no owner, employee, or agent of the licensee, shall make any sales of alcoholic liquor for consumption off the licensed premises. No alcoholic liquor purchased on the club premises shall be removed from the club premises, except in accordance with this regulation.

(f)(1) A licensee may permit its customers to remove partially consumed bottles of wine from the licensed premises, in accordance with K.S.A. 41-2653 and amendments thereto.

(2) If any customer wishes to remove from the licensed premises a partially consumed bottle of wine that had been stored in its original unopened container pursuant to K.S.A. 41-2641 and amendments thereto and this regulation, the licensee or its employee shall provide the customer with a copy of the original receipt with a notation that the bottle was removed from the customer’s wine storage area on that date. (Authorized by K.S.A. 41-2634; implementing K.S.A. 41-2613, K.S.A. 2009 Supp. 41-2641, and K.S.A. 2009 Supp. 41-2653; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended Sept. 17, 2010.)

**14-20-40. Denial, revocation, or suspension of license upon request for hearing by governing body of city or county; request; evidence.** (a) The governing body of a city or county may request a hearing before the director to determine whether an application for licensure or renewal shall be denied or whether a license

issued under the club and drinking establishment act shall be revoked or suspended.

(b) The request shall be submitted in writing by the governing body, on city or county letterhead, to the director and shall be accompanied by evidence that indicates reasonable cause exists to conduct a hearing to deny, revoke, or suspend the license.

(c) The director shall review the evidence presented and determine whether reasonable cause exists to conduct a hearing to deny, revoke, or suspend the license. The director shall notify the governing body of the date and time of the hearing, or denial of the request, in writing as soon as reasonably possible.

(d) The hearing and notices shall be in accordance with the Kansas administrative procedures act (KAPA). The director shall consider the evidence presented by the governing body and the licensee at the hearing and determine whether the license shall be denied, revoked, or suspended.

(e) Evidence to be considered in determining whether a license shall be denied, revoked, or suspended shall include the following:

(1) A crime of violence has occurred in, on, or about the premises, arising from conduct occurring within the licensed premises.

(2) The licensed premises and surrounding areas under relative control of the licensee constitute an abnormal and unreasonable drain on public resources to secure the safety of patrons, local residents, and businesses.

(3) The licensed premises, including surrounding areas under relative control of the licensee, constitute a threat to public health, safety, and welfare.

(4) The governing body has filed one or more nuisance actions against the licensee or the licensed premises.

(5) The governing body or licensee has taken all reasonable remedial steps regarding the situation.

(f) For purposes of this regulation, “crime of violence” shall include arson, murder, manslaughter, rape or sexual assault, armed robbery, assault, and battery, and an attempt to commit any of these crimes. (Authorized by and implementing K.S.A. 2009 Supp. 41-2651; effective Sept. 17, 2010.)

**14-20-41. Extension of premises.** (a) A licensee may permanently or temporarily extend its licensed premises upon written approval by the director.

(b) A licensee shall request the director’s approval to extend its licensed premises in writing at least 10 days before the proposed extension.

(c) Each request shall be accompanied by a diagram of the extended premises, clearly showing the boundaries of the premises, entrances to and exits from the premises, and the area in which the service of alcoholic liquor would take place.

(d) For a temporary extension, the request shall include the dates on which and times during which the premises would be extended. If the licensee does not own or lease the area to be included in the temporarily extended premises, the request shall also include written permission from the governing body, owner, or property manager to extend the licensed premises into that area.

(e) No premises shall be extended permanently into an area for which the licensee does not possess a valid lease or deed.

(f) The boundary of any premises extended beyond the interior of a building shall be marked by a three-dimensional obstacle.

(g) The licensee shall maintain, on the licensed premises, a copy of the diagram showing the extended premises. The copy shall be available for inspection upon request by any law enforcement officer or any officer or agent of the director.

(h) The licensee shall maintain, on the licensed premises, a copy of the director’s written approval to extend the licensed premises. The copy shall be available for inspection upon request by any law enforcement officer or any officer or agent of the director.

(i) No licensee, and no owner, employee, or agent of the licensee, shall allow the serving or consumption of alcoholic liquor on extended premises that have not been approved by the director. (Authorized by K.S.A. 41-2621; implementing K.S.A. 41-2621 and K.S.A. 2009 Supp. 41-2645; effective Sept. 17, 2010.)

**14-20-42. Class B clubs; automated devices.** (a)(1) “Automated device” shall mean any mechanized device capable of dispensing wine directly to a customer in exchange for compensation that a licensee has received directly from the customer.

(2) “Business day” shall mean the hours authorized by state law during which alcohol can be served on the licensed premises.

(b) No licensee shall allow an automated device to be used on its licensed premises without first providing written or electronic notification to the

director of the licensee's intent to use the automated device. The licensee shall provide this notification at least 48 hours before any automated device is used on the licensed premises.

(c) Each licensee offering customer self-service of wine from any automated device shall provide constant video monitoring of the automated device at all times during which the licensee is open to the public. The licensee shall keep recorded footage from the video monitoring for at least 60 days and shall provide the footage, upon request, to any agent of the director or other authorized law enforcement agent.

(d) The compensation required by subsection (a) shall be in the form of a programmable, prepaid access card containing a fixed amount of monetary credit that may be directly exchanged for wine dispensed from the automated device. Access cards may be sold, used, or reactivated only during a business day.

Each access card shall be purchased from the licensee by a customer. A licensee shall not issue more than one active access card to a customer. For purposes of this regulation, an access card shall be deemed "active" if the access card contains monetary credit or has not yet been used to dispense 15 ounces of wine.

Each purchase of an access card under this regulation shall be subject to the liquor drink tax imposed by K.S.A. 79-41a02, and amendments thereto.

(e) In order to obtain a prepaid access card from a licensee, each customer shall produce a valid driver's license, identification card, or other government-issued document that contains a photograph of the individual and demonstrates that the individual is at least 21 years of age. Each access card shall be programmed to require the production of the customer's valid identification before the access card can be used for the first time during any business day or for any subsequent reactivation as provided in subsection (f). Each access card shall become inactive at the end of each business day.

(f) Each access card shall be programmed to allow the dispensing of no more than 15 ounces of wine to a customer. Once an access card has been used to dispense 15 ounces of wine to a customer, the access card shall become inactive. Any customer in possession of an inactive access card may, upon production of the customer's valid identification to the licensee or licensee's employee, have the access card reactivated to allow the dispensing

of an additional 15 ounces of wine from an automated device.

This subsection shall not apply to wine dispensed by an automated device if the wine is dispensed directly to the licensee or the licensee's agent or employee. (Authorized by K.S.A. 2014 Supp. 41-2640, as amended by 2015 HB 2223, sec. 5; implementing K.S.A. 2014 Supp. 41-2640, as amended by 2015 HB 2223, sec. 5, and K.S.A. 2014 Supp. 79-41a02; effective, T-14-7-1-15, July 1, 2015; effective Oct. 9, 2015.)

## Article 21.—DRINKING ESTABLISHMENTS

### 14-21-12. Storage of liquor; removal from drinking establishment premises.

(a) Each licensee shall store its liquor only on the licensed premises of the drinking establishment unless the licensee has received prior approval in writing from the director to do otherwise.

(b) Any licensee may store wine purchased by a customer only in the unopened original container on the licensed premises, pursuant to K.S.A. 41-2642 and amendments thereto. The licensee shall be responsible for the contents of each customer's wine storage area.

(c) The wine storage area shall be subject to immediate entry and inspection by any law enforcement officer or any officer or agent of the director. Each licensee shall maintain, on the licensed premises, a key or other means to access the contents of the wine storage area.

(d)(1) The licensee may allow a customer to have access to the customer's wine storage area. An agent or employee of the licensee shall accompany each customer to the customer's wine storage area.

(2) A receipt showing the quantity of each brand of wine purchased shall be maintained in each customer's wine storage area. Each time the customer requests the removal of any wine from the storage area, the licensee or its owner, employee, or agent shall mark the receipt showing the date of removal and the quantity of each brand removed.

(e) No licensee, and no owner, employee, or agent of the licensee, shall make any sales of alcoholic liquor for consumption off the licensed premises. No alcoholic liquor purchased on the drinking establishment premises shall be removed from the drinking establishment premises, except in accordance with this regulation.

(f)(1) A licensee may permit its customers to remove partially consumed bottles of wine from the licensed premises, in accordance with K.S.A. 41-2653 and amendments thereto.

(2) If any customer wishes to remove from the licensed premises a partially consumed bottle of wine that had been stored in its original unopened container pursuant to K.S.A. 41-2642 and amendments thereto and this regulation, the licensee or its employee shall provide the customer with a copy of the original receipt with a notation that the bottle was removed from the customer's wine storage area on that date.

(g) Any licensee that has extended its licensed premises onto the premises of a special event, as defined by K.S.A. 41-719 and amendments thereto, for which a temporary permit has been issued may allow customers to remove alcoholic liquor from the licensed premises onto the special event premises. Each licensee that extends its licensed premises onto the special event premises shall be liable for any violation of the club and drinking establishment act or these regulations occurring on the special event premises. (Authorized by K.S.A. 41-2634; implementing K.S.A. 41-2613, K.S.A. 2009 Supp. 41-2642, and K.S.A. 2009 Supp. 41-2653; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended Sept. 17, 2010.)

**14-21-21. Extension of premises.** (a) A licensee may permanently or temporarily extend its licensed premises upon written approval by the director.

(b) A licensee shall request the director's approval to extend its licensed premises in writing at least 10 days before the proposed extension.

(c) Each request shall be accompanied by a diagram of the extended premises, clearly showing the boundaries of the premises, entrances to and exits from the premises, and the area in which the service of alcoholic liquor would take place.

(d) For a temporary extension, the request shall include the dates on which and times during which the premises would be extended.

(e) If the licensee does not own or lease the area to be included in the temporarily extended premises, the request shall also include written permission from the governing body, owner, or property manager to extend the licensed premises into that area, unless the licensee is requesting an extension into a special event as defined by K.S.A. 41-719 and amendments thereto.

(f) No premises shall be extended permanently into an area for which the licensee does not possess a valid lease or deed.

(g) The boundary of any premises extended beyond the interior of a building shall be marked by a three-dimensional obstacle.

(h) The licensee shall maintain, on the licensed premises, a copy of the diagram showing the extended premises. The copy shall be available for inspection upon request by any law enforcement officer or any officer or agent of the director.

(i) The licensee shall maintain, on the licensed premises, a copy of the director's written approval to extend the licensed premises. The copy shall be available for inspection upon request by any law enforcement officer or any officer or agent of the director.

(j) Each licensee who elects to extend its premises into a special event, as defined by K.S.A. 41-719 and amendments thereto, for which a temporary permit has been issued shall post a copy of the director's written approval to extend the premises at each entrance to the special event area and at each entrance to the drinking establishment.

(k) No licensee, and no owner, employee, or agent of the licensee, shall allow the serving or consumption of alcoholic liquor on extended premises that have not been approved by the director. (Authorized by K.S.A. 41-2621; implementing K.S.A. 41-2621 and K.S.A. 2009 Supp. 41-2645; effective Sept. 17, 2010.)

**14-21-22. Denial, revocation, or suspension of license upon request for hearing by governing body of city or county; request; evidence.**

(a) The governing body of a city or county may request a hearing before the director to determine whether an application for licensure or renewal shall be denied or whether a license issued under the club and drinking establishment act shall be revoked or suspended.

(b) The request shall be submitted in writing by the governing body, on city or county letterhead, to the director and shall be accompanied by evidence that indicates reasonable cause exists to conduct a hearing to deny, revoke, or suspend the license.

(c) The director shall review the evidence presented and determine whether reasonable cause exists to conduct a hearing to deny, revoke, or suspend the license. The director shall notify the governing body of the date and time of the hearing, or denial of the request, in writing as soon as reasonably possible.

(d) The hearing and notices shall be in accordance with the Kansas administrative procedures act (KAPA). The director shall consider the evidence presented by the governing body and the licensee at the hearing and determine whether the license shall be denied, revoked, or suspended.

(e) Evidence to be considered in determining whether a license shall be denied, revoked, or suspended shall include the following:

(1) A crime of violence has occurred in, on, or about the premises, arising from conduct occurring within the licensed premises.

(2) The licensed premises and surrounding areas under relative control of the licensee constitute an abnormal and unreasonable drain on public resources to secure the safety of patrons, local residents, and businesses.

(3) The licensed premises, including surrounding areas under relative control of the licensee, constitute a threat to public health, safety, and welfare.

(4) The governing body has filed one or more nuisance actions against the licensee or the licensed premises.

(5) The governing body or licensee has taken all reasonable remedial steps regarding the situation.

(f) For purposes of this regulation, “crime of violence” shall include arson, murder, manslaughter, rape or sexual assault, armed robbery, assault, and battery, and an attempt to commit any of these crimes. (Authorized by and implementing K.S.A. 2009 Supp. 41-2651; effective Sept. 17, 2010.)

**14-21-23. Drinking establishments; automated devices.** (a)(1) “Automated device” shall mean any mechanized device capable of dispensing wine directly to a customer in exchange for compensation that a licensee has received directly from the customer.

(2) “Business day” shall mean the hours authorized by state law during which alcohol can be served on the licensed premises.

(b) No licensee shall allow an automated device to be used on its licensed premises without first providing written or electronic notification to the director of the licensee’s intent to use the automated device. The licensee shall provide this notification at least 48 hours before any automated device is used on the licensed premises.

(c) Each licensee offering customer self-service of wine from any automated device shall provide constant video monitoring of the automated device at all times during which the licensee is open

to the public. The licensee shall keep recorded footage from the video monitoring for at least 60 days and shall provide the footage, upon request, to any agent of the director or other authorized law enforcement agent.

(d) The compensation required by subsection (a) shall be in the form of a programmable, prepaid access card containing a fixed amount of monetary credit that may be directly exchanged for wine dispensed from the automated device. Access cards may be sold, used, or reactivated only during a business day.

Each access card shall be purchased from the licensee by a customer. A licensee shall not issue more than one active access card to a customer. For purposes of this regulation, an access card shall be deemed “active” if the access card contains monetary credit or has not yet been used to dispense 15 ounces of wine.

Each purchase of an access card under this regulation shall be subject to the liquor drink tax imposed by K.S.A. 79-41a02, and amendments thereto.

(e) In order to obtain a prepaid access card from a licensee, each customer shall produce a valid driver’s license, identification card, or other government-issued document that contains a photograph of the individual and demonstrates that the individual is at least 21 years of age. Each access card shall be programmed to require the production of the customer’s valid identification before the access card can be used for the first time during any business day or for any subsequent reactivation as provided in subsection (f). Each access card shall become inactive at the end of each business day.

(f) Each access card shall be programmed to allow the dispensing of no more than 15 ounces of wine to a customer. Once an access card has been used to dispense 15 ounces of wine to a customer, the access card shall become inactive. Any customer in possession of an inactive access card may, upon production of the customer’s valid identification to the licensee or licensee’s employee, have the access card reactivated to allow the dispensing of an additional 15 ounces of wine from an automated device.

This subsection shall not apply to wine dispensed by an automated device if the wine is dispensed directly to the licensee or the licensee’s agent or employee. (Authorized by K.S.A. 2014 Supp. 41-2640, as amended by 2015 HB 2223, sec. 5; implementing K.S.A. 2014 Supp. 41-2640,

as amended by 2015 HB 2223, sec. 5, and K.S.A. 2014 Supp. 79-41a02; effective, T-14-7-1-15, July 1, 2015; effective Oct. 9, 2015.)

#### Article 23.—TEMPORARY PERMITS

**14-23-2. Applications; documents required.** (a) Each application for a temporary permit shall be submitted upon forms prescribed by the director and shall contain all information the director deems necessary. Any application that does not contain all required information may be returned to the applicant.

(b) Each application shall be accompanied by the permit fee.

(c) Each application shall be accompanied by a diagram of the premises covered by the temporary permit. The diagram shall clearly show the boundaries of the premises, entrances to and exits from the premises, and the area in which the service of alcoholic liquor would take place. (Authorized by K.S.A. 41-2634; implementing K.S.A. 2009 Supp. 41-2645; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended Sept. 17, 2010.)

**14-23-5. Events; filings; notice; prohibitions.** (a) Each temporary permit holder shall be allowed to offer for sale, sell, and serve alcoholic liquor for consumption at an event in accordance with the club and drinking establishment act and these regulations. Each temporary permit holder shall be allowed to sell wine in the unopened, original container at the state fair.

(b) Each temporary permit holder shall prominently display at each event upon a poster or other device located at the entrance to the permitted premises all of the following:

- (1) The temporary permit;
- (2) the name of the agent of the organization who is in charge of the event;

(3) a diagram of the premises covered by the temporary permit, clearly showing the boundaries of the premises, entrances to and exits from the premises, and the area in which the service of alcoholic liquor will take place; and

(4) for a special event, as defined by K.S.A. 41-719 and amendments thereto, the business names of all drinking establishments that have elected to extend their licensed premises into the event area.

(c) A temporary permit holder shall not perform any of the following:

- (1) Conduct an event upon licensed premises;
- (2) conduct an event lasting longer than three days, except that the holder of the temporary per-

mit for the state fair may conduct an event for the duration of the state fair;

(3) deny access to an event to any law enforcement officer;

(4) sell or serve alcoholic liquor between the hours of 2:00 A.M. and 9:00 A.M.;

(5) sell cereal malt beverages at an event;

(6) make any sales of alcoholic liquor at an event for consumption off the permitted premises, except as provided in this regulation; or

(7) refill any original container with alcoholic liquor or any other substance.

(d)(1) An individual permit holder shall be present at all times during an event or designate another individual who will be responsible for the conduct of the event in the permit holder's absence.

(2) An organization that is a permit holder shall designate one or more agents who shall be present at all times during an event and who shall be responsible for the conduct of the event. (Authorized by K.S.A. 41-2634; implementing K.S.A. 2009 Supp. 41-2645; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended Sept. 17, 2010.)

**14-23-8. Purchase of alcoholic liquor; requirements and restrictions.** (a) Each temporary permit holder shall purchase alcoholic liquor only from a retailer or a farm winery.

(b) Temporary permit holders shall not receive delivery of alcoholic liquor from a retailer or a farm winery.

(c) Temporary permit holders shall not purchase alcoholic liquor from any retail liquor licensee who does not possess a federal wholesaler's basic permit and who does not have on display at the retail establishment a sign that states that the licensee is a "Wholesale Liquor Dealer Under Federal Law." Temporary permit holders shall not warehouse any liquor on the premises of any retail liquor store or farm winery. All liquor purchased on any one day shall be picked up at the retail liquor store or farm winery on that same day.

(d) Each temporary permit holder, when making alcoholic liquor purchases from a retailer or farm winery, shall obtain and keep for at least one year from the date of purchase a sales slip that contains the following information:

- (1) The date of purchase;
- (2) the name and address of the retailer or farm winery;

(3) the name and address of the permit holder as it appears on the permit;

(4) the brand, size, proof, and amount of all alcoholic liquor purchased; and

(5) the subtotal of the cost of the alcoholic liquor and the total cost of the order, including enforcement tax. (Authorized by K.S.A. 41-210, K.S.A. 41-211, K.S.A. 41-2634, and K.S.A. 2009 Supp. 41-2645; implementing K.S.A. 2009 Supp. 41-2645 and K.S.A. 2009 Supp. 79-41a03; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended Sept. 17, 2010.)

**14-23-10. Removal of liquor from event premises prohibited; boundary requirement.**

(a) No permit holder shall sell alcoholic liquor for removal from or consumption off the licensed premises, except that liquor may be removed to a drinking establishment that has extended its premises into the special event area in accordance with K.S.A. 41-2645 and amendments thereto.

(b) The boundary of any premises covered by a temporary permit shall be marked by a three-dimensional obstacle. (Authorized by K.S.A. 41-2634; implementing K.S.A. 41-2604 and K.S.A. 2009 Supp. 41-2645; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended Sept. 17, 2010.)

**Article 24.—WINERY SHIPPING PERMITS**

**14-24-1.** (Authorized by and implementing K.S.A. 2006 Supp. 41-348 and 41-349; effective Dec. 28, 2007; revoked Sept. 17, 2010.)

**14-24-2.** (Authorized by and implementing K.S.A. 2006 Supp. 41-348 and 41-349; effective Dec. 28, 2007; revoked Sept. 17, 2010.)

**14-24-3.** (Authorized by and implementing K.S.A. 2006 Supp. 41-348 and 41-349; effective Dec. 28, 2007; revoked Sept. 17, 2010.)

**14-24-4.** (Authorized by and implementing K.S.A. 2006 Supp. 41-348 and 41-349; effective Dec. 28, 2007; revoked Sept. 17, 2010.)

**14-24-5.** (Authorized by and implementing K.S.A. 2006 Supp. 41-348 and 41-349; effective Dec. 28, 2007; revoked Sept. 17, 2010.)

**14-24-6.** (Authorized by and implementing K.S.A. 2006 Supp. 41-348 and 41-349; effective Dec. 28, 2007; revoked Sept. 17, 2010.)

**Article 25.—OFF-PREMISES CEREAL MALT BEVERAGE RETAILERS**

**14-25-1. Definitions.** As used in this article of the division's regulations, unless the context clearly requires otherwise, each of the following terms shall have the meaning specified in this regulation:

(a) "Alcoholic liquor" has the meaning specified in K.S.A. 41-102, and amendments thereto.

(b) "Beer" has the meaning specified in K.S.A. 41-102, and amendments thereto.

(c) "Cereal malt beverage" has the meaning specified in K.S.A. 41-2701, and amendments thereto.

(d) "Director" means the director of the division of alcoholic beverage control in the department of revenue.

(e) "Distributor" has the meaning specified in K.S.A. 41-102, and amendments thereto.

(f) "Inventory" means a retailer's entire or partial stock of cereal malt beverage or beer containing not more than six percent alcohol by volume.

(g) "Licensed premises" means those areas described in an application for a retailer's license that are under the control of the applicant and are intended as the area in which cereal malt beverage or beer containing not more than six percent alcohol by volume is to be sold for consumption off the licensed premises or stored for later sale.

(h) "Person" means any natural person, corporation, partnership, trust, or association.

(i) "Retailer" means any person who is licensed under the Kansas cereal malt beverage act and who sells or offers for sale any cereal malt beverage or beer containing not more than six percent alcohol by volume for use or consumption off the licensed premises. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

**14-25-2. Trade practices; applicability.**

(a) Each action taken by an industry member or retailer in accordance with interpretive memoranda issued by the alcohol and tobacco tax and trade bureau of the department of the treasury shall be considered good faith compliance with this article of the division's regulations, unless the director has issued a contrary interpretation pertaining to the subject of the memoranda.

(b) The trade practice regulations of the alcohol and tobacco tax and trade bureau of the department of the treasury, as adopted by reference in

K.A.R. 14-10-17, shall apply to each retailer, as defined in K.A.R. 14-25-1. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

**14-25-3. Retailer's responsibility for conduct of business and employees.** Each retailer shall be responsible for the conduct of the retailer's business. Each retailer shall be responsible for all violations of the cereal malt beverage act and this article of the division's regulations by any person selling cereal malt beverage or beer containing not more than six percent alcohol by volume. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

**14-25-4. Recordkeeping.** (a) Each retailer purchasing cereal malt beverage or beer containing not more than six percent alcohol by volume from a licensed distributor shall obtain a numbered invoice or purchase order that contains the following information:

- (1) The date of purchase;
- (2) the name, address, and license number of the retailer;
- (3) the name, address, and license number of the distributor;
- (4) the name of the individual making the purchase for the retailer;
- (5) the brand, size, and amount of each brand purchased;
- (6) the unit cost and total price for each brand and size; and
- (7) the subtotal of the cost of the cereal malt beverage or beer containing not more than six percent alcohol by volume purchased and the total cost of the order including delivery charge, if any.

(b) The retailer shall keep a copy of each sales receipt involving the sale of cereal malt beverage or beer containing not more than six percent alcohol by volume made to a customer.

(c) The retailer shall keep a copy of each invoice, purchase order, or sales receipt involving sales made to customers required by this regulation for at least three years from the date on which the cereal malt beverage or beer containing not more than six percent alcohol by volume was sold.

(d) The retailer shall keep a copy of the diagram of the licensed premises, as submitted with the initial application, on the licensed premises and shall make a copy available for inspection upon request.

(e) The records required by this regulation shall be available for inspection by the director, any agent or employee of the director, the secretary, or any law enforcement officer upon request.

(1) Each record required by this regulation shall be maintained on the retailer's licensed premises for at least 90 days after the sale. These records may be maintained in electronic format and shall be capable of being printed immediately upon request.

(2) After 90 days, all records required by this regulation may be stored and maintained off the licensed premises and shall be provided in electronic or paper format within seven business days upon request. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

**14-25-5. Transfer of retailer's inventory; application for permission; seizure and sale of abandoned inventory.** (a) If a retailer's license has expired or been surrendered or revoked, that retailer may apply to the director for permission to transfer the retailer's inventory to another active licensee.

(a) If a retailer's license has expired or been surrendered or revoked, that retailer may apply to the director for permission to transfer the retailer's inventory to another active licensee.

(b) The application to transfer the retailer's inventory shall be submitted on forms prescribed by the director and shall contain the following:

- (1) The retailer's name and license number;
- (2) the purchaser's name and license number;
- (3) the gross sale price of the transferred inventory; and
- (4) the quantity, brand, and type of each container or package of cereal malt beverage or beer containing not more than six percent alcohol by volume to be transferred.

(c) No cereal malt beverage or beer containing not more than six percent alcohol by volume in the possession of a retailer shall be transferred under the provisions of subsection (a) unless the director has granted written permission.

(d) The director may deny an application to transfer inventory under the provisions of subsection (a) if the selling retailer owes either of the following:

- (1) Any applicable tax; or
- (2) any fines imposed pursuant to applicable law.

(e) The director or any employee or agent of the director may seize and sell any inventory located on the premises subject to a retailer's license if the director determines that the inventory has been abandoned by the licensee. The director may consider any of the following criteria in making a determination that the inventory has been abandoned:

(1) The licensee no longer occupies the building and has left inventory in the building.

(2) The licensee has been evicted and has made no attempt to collect the inventory.

(3) Attempts to contact the licensee to determine the licensee's plans for the inventory have been unsuccessful.

(4) The presence of the inventory in the building poses a threat to the public health, safety, and welfare or to the orderly regulation of the market.

(f) Upon the director's determination that the inventory has been abandoned, the director shall notify the retailer, in writing, of the director's intent to seize and sell the inventory. If, within seven calendar days after the date of the director's notice, the retailer has not notified the director that the retailer intends to maintain possession of the inventory, the director may seize and sell the inventory.

(g) The proceeds from the sale of any inventory specified in subsection (e) shall be deposited into the state general fund. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

#### **14-25-6. Prohibited conduct of retailer.**

(a) A retailer shall not permit gambling or the possession of any gambling or gaming device on the licensed premises.

(b) A retailer shall not, as a condition for the sale of cereal malt beverage or beer containing not more than six percent alcohol by volume to a customer, require that the customer purchase or contract to purchase cereal malt beverage or beer containing not more than six percent alcohol by volume of another form, quantity, or brand in addition to or partially in lieu of that specifically desired by the customer.

(c) A retailer shall not sell or deliver cereal malt beverage or beer containing not more than six percent alcohol by volume of a particular form or brand to a customer under any arrangement, agreement, or understanding, direct or implied, such that the sale will be made only if the customer also buys a quantity of cereal malt beverage or beer containing not more than six percent alcohol by volume of another form or brand.

(d) A retailer shall not refuse to permit the director, any agent or employee of the director, or any law enforcement officer to inspect the licensed premises and any cereal malt beverage or beer containing not more than six percent alcohol by volume in the retailer's possession or under the

retailer's control upon the licensed premises or upon any other premises where the retailer has stored any cereal malt beverage or beer containing not more than six percent alcohol by volume.

(e) A retailer shall not make any false or misleading representations with respect to any cereal malt beverage or beer containing not more than six percent alcohol by volume on the licensed premises or in connection with a sales transaction relating to brand, type, proof, or age of any cereal malt beverage or beer containing not more than six percent alcohol by volume. A retailer shall not deceive or attempt to deceive a customer by removing or changing any label or sanitation cover from a container or package of cereal malt beverage or beer containing not more than six percent alcohol by volume.

(f) A retailer shall not sell or remove any cereal malt beverage or beer containing not more than six percent alcohol by volume from the licensed premises on any day other than a legal day for the sale of cereal malt beverage or beer containing not more than six percent alcohol by volume at retail, after the legal closing hour or before the legal opening hour.

(g) A retailer shall not, directly or indirectly, offer or furnish any gifts, prizes, premiums, rebates, or similar inducements with the sale of any cereal malt beverage or beer containing not more than six percent alcohol by volume, nor shall any retailer directly or indirectly offer, furnish, or sell any cereal malt beverage or beer containing not more than six percent alcohol by volume at less than its cost plus applicable tax, except according to the following:

(1) Any retailer may include in the sale of cereal malt beverage or beer containing not more than six percent alcohol by volume any goods included by the manufacturer in packaging with the cereal malt beverage or beer containing not more than six percent alcohol by volume. Goods included by the manufacturer shall be packaged with one or more original packages of cereal malt beverage or beer containing not more than six percent alcohol by volume in such a manner as to be delivered to the consumer as a single unit. A retailer shall not sell or give away goods included by a manufacturer that are not packaged as a single unit with the original package of cereal malt beverage or beer containing not more than six percent alcohol by volume as shipped by the manufacturer.

(2) Any retailer may distribute consumer advertising specialty items, subject to the limitations

imposed by this regulation. For the purposes of this regulation, consumer advertising specialty items shall be limited to the following: ashtrays, bottle or can openers, corkscrews, matches, printed recipes, informational pamphlets, cards and leaflets, blotters, postcards, posters, printed sports schedules, pens, pencils, and other items of minimal value as approved by the director. Each consumer advertising specialty item shall contain advertising material relating to a brand name of cereal malt beverage or beer containing not more than six percent alcohol by volume or to the operation of the retailer distributing the consumer advertising specialty item. No charge may be made for any consumer advertising specialty item or any purchase required in order to receive any consumer advertising specialty item.

(h) A retailer shall not open or permit to be opened, on the licensed premises, any container or original package containing cereal malt beverage or beer containing not more than six percent alcohol by volume, unless the retailer is also licensed as an on-premises retailer.

(i) A retailer shall not permit the drinking of alcoholic liquors or cereal malt beverage on or about the licensed premises, unless the retailer is also licensed as an on-premises retailer.

(j) A retailer shall not allow an intoxicated person to frequent, loiter, or be employed upon the licensed premises. A retailer's employee shall not be intoxicated while on duty for the retailer.

(k) A retailer shall not accept or receive from any agent or employee of any licensed distributor any cash rebate or thing of value, or enter into or be a party to any agreement or transaction with any licensed distributor, directly or indirectly, that would result in, or have as its purpose, the purchase of any cereal malt beverage or beer containing not more than six percent alcohol by volume by the retailer at a price less than the listed price that has been filed by the distributor in the office of the director.

(l) A retailer shall not sell, give, or deliver any cereal malt beverage or beer containing not more than six percent alcohol by volume to any person under 21 years of age. A retailer shall not sell, give, or deliver any cereal malt beverage or beer containing not more than six percent alcohol by volume to any person if the retailer knows or has reason to know that the cereal malt beverage or beer containing not more than six percent alcohol by volume is being obtained for a person under 21 years of age.

(m) A retailer shall not purchase or sell any cereal malt beverage or beer containing not more than six percent alcohol by volume on credit. A retailer shall not enter into any transaction or scheme the purpose of which is to buy or sell cereal malt beverage or beer containing not more than six percent alcohol by volume on credit. The following transactions shall be considered to be buying or selling cereal malt beverage or beer containing not more than six percent alcohol by volume on credit:

(1) Taking or giving a postdated check;

(2) giving an insufficient funds check;

(3) taking a check with knowledge that there are insufficient funds to pay the check upon presentation;

(4) accepting delivery from a distributor without making payment for the cereal malt beverage or beer containing not more than six percent alcohol by volume when delivered or before delivery; and

(5) allowing any cereal malt beverage or beer containing not more than six percent alcohol by volume to be removed from the licensed premises without receiving payment for the cereal malt beverage or beer containing not more than six percent alcohol by volume.

(n) A retailer shall not fail to make the reports or keep the records required by this article of the division's regulations.

(o) A retailer shall not refill a package of cereal malt beverage or beer containing not more than six percent alcohol by volume and shall not sell cereal malt beverage or beer containing not more than six percent alcohol by volume in anything other than the original package. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

#### **Article 26.—ON-PREMISES CEREAL MALT BEVERAGE RETAILERS**

**14-26-1. Definitions.** As used in this article of the division's regulations, unless the context clearly requires otherwise, each of the following terms shall have the meaning specified in this regulation:

(a) "Alcoholic liquor" has the meaning specified in K.S.A. 41-102, and amendments thereto.

(b) "Beer" has the meaning specified in K.S.A. 41-102, and amendments thereto.

(c) "Cereal malt beverage" has the meaning specified in K.S.A. 41-2701, and amendments thereto.

(d) “Director” means the director of the division of alcoholic beverage control in the department of revenue.

(e) “Distributor” has the meaning specified in K.S.A. 41-102, and amendments thereto.

(f) “Food establishment” has the meaning specified in K.S.A. 65-656, and amendments thereto.

(g) “Inventory” means a retailer’s entire or partial stock of cereal malt beverage or beer containing not more than six percent alcohol by volume.

(h) “Licensed premises” means those areas described in an application for a cereal malt beverage retailer license issued pursuant to K.S.A. 41-2702, and amendments thereto, that are under the control of the applicant and that are intended as the area in which cereal malt beverage or beer containing not more than six percent alcohol by volume is to be served pursuant to the applicant’s license.

(i) “Person” means any natural person, corporation, partnership, trust, or association.

(j) “Retailer” means any person who is licensed under the Kansas cereal malt beverage act and who sells or offers for sale any cereal malt beverage or beer containing not more than six percent alcohol by volume for use or consumption on the licensed premises. For the purposes of this article of the division’s regulations, this term shall not include any cereal malt beverage retailer also licensed as a drinking establishment, pursuant to the Kansas club and drinking establishment act. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

#### **14-26-2. Trade practices; applicability.**

(a) Each action taken by an industry member or retailer in accordance with interpretive memoranda issued by the alcohol and tobacco tax and trade bureau of the department of the treasury shall be considered good faith compliance with this article of the division’s regulations, unless the director has issued a contrary interpretation pertaining to the subject of the memoranda.

(b) The trade practice regulations of the alcohol and tobacco tax and trade bureau of the department of the treasury, as adopted by reference in K.A.R. 14-10-17, shall apply to each retailer, as defined in K.A.R. 14-26-1. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

**14-26-3. Retailer’s responsibility for conduct of business and employees.** Each retailer shall be responsible for the conduct of the retail-

er’s business. Each retailer shall be responsible for all violations of the cereal malt beverage act and this article of the division’s regulations by the following people while on the licensed premises:

(a) Any employee of the retailer;

(b) the employee of any person contracting with the retailer to provide services or food; and

(c) any individual mixing, serving, selling, or dispensing cereal malt beverage or beer containing not more than six percent alcohol by volume. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

**14-26-4. Refusal of right to enter or inspect licensed premises prohibited.** No retailer shall refuse to permit the director, any agent or employee of the director, or any law enforcement officer to perform the following:

(a) Enter or inspect the licensed premises; and

(b) inspect any cereal malt beverage or beer containing not more than six percent alcohol by volume in the retailer’s possession or under the retailer’s control on the licensed premises or on any other premises where the retailer has stored any cereal malt beverage or beer containing not more than six percent alcohol by volume. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

**14-26-5. Minimum prices for drinks; acquisition cost.** (a) A retailer shall not sell any drink to any person for less than the acquisition cost of that drink to the retailer.

(b) In determining the minimum price of each drink, a retailer shall not include any applicable tax. All tax shall be collected in addition to the minimum price for the drink itself.

(c) The cost of each of the following items shall be included in the acquisition cost of each drink:

(1) All cereal malt beverage or beer containing not more than six percent alcohol by volume; and

(2) any nonalcoholic liquid. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

**14-26-6. Recordkeeping.** (a) Each retailer purchasing cereal malt beverage or beer containing not more than six percent alcohol by volume from a licensed distributor shall obtain a numbered invoice or purchase order that contains the following information:

(1) The date of purchase;

(2) the name, address, and license number of the retailer;

(3) the name, address, and license number of the distributor;

(4) the name of the individual making the purchase for the retailer;

(5) the brand, size, and amount of each brand purchased;

(6) the unit cost and total price for each brand and size; and

(7) the subtotal of the cost of the cereal malt beverage or beer containing not more than six percent alcohol by volume purchased and the total cost of the order including delivery charge, if any.

(b) The retailer shall keep a copy of each sales receipt for the sale of cereal malt beverage or beer containing not more than six percent alcohol by volume made to a customer.

(c) The retailer shall keep a copy of each invoice, purchase order, or sales ticket required by this regulation for at least three years from the date on which the cereal malt beverage or beer containing not more than six percent alcohol by volume was sold.

(d) The retailer shall keep a copy of the diagram of the licensed premises, as submitted with the initial application, on the licensed premises and shall make a copy available for inspection upon request.

(e) The records required by this regulation shall be available for inspection by the director, any agent or employee of the director, the secretary, or any law enforcement officer upon request.

(1) Each record required by this regulation shall be maintained on the retailer's licensed premises for at least 90 days after the sale. These records may be maintained in electronic format and shall be capable of being printed immediately upon request.

(2) After 90 days, all records required by this regulation may be stored and maintained off the licensed premises and shall be provided in electronic or paper format within seven business days upon request. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

**14-26-7. Storage of cereal malt beverage or beer containing not more than six percent alcohol by volume; removal from licensed premises.** (a) Each retailer shall store its cereal malt beverage and beer containing not more than six percent alcohol by volume only on the licensed premises of the retailer, unless the retailer has received prior approval in writing from the director to do otherwise.

(b) No retailer, and no owner, employee, or agent of the retailer, shall sell any cereal malt beverage or beer containing not more than six percent alcohol by volume for consumption off the licensed premises, unless the retailer also has a valid license to sell or offer for sale cereal malt beverage and beer containing not more than six percent alcohol by volume for consumption off the licensed premises.

(c) No cereal malt beverage or beer containing not more than six percent alcohol by volume that has been purchased on the licensed premises and has been opened and sold for consumption on the licensed premises shall be removed from the licensed premises. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

**14-26-8. Transfer of retailer's inventory; application for permission; seizure and sale of abandoned inventory.** (a) If a retailer's license has expired or been surrendered or revoked, that retailer may apply to the director for permission to transfer the retailer's inventory to another licensee.

(b) The application to transfer the retailer's inventory shall be submitted on forms prescribed by the director and shall contain the following:

- (1) The retailer's name and license number;
- (2) the purchaser's name and license number;
- (3) the gross sale price of the transferred inventory; and

(4) the quantity, brand, and type of each container or package of cereal malt beverage or beer containing not more than six percent alcohol by volume to be transferred.

(c) No cereal malt beverage or beer containing not more than six percent alcohol by volume in the possession of a retailer shall be transferred under the provisions of subsection (a) unless the director has granted written permission.

(d) The director may deny an application to transfer inventory under the provisions of subsection (a) if the retailer owes either of the following:

- (1) Any applicable tax; or
- (2) any fines imposed pursuant to applicable law.

(e) The director or any employee or agent of the director may seize and sell any inventory located on the premises subject to a retailer's license if the director determines that the inventory has been abandoned by the licensee. The director may consider any of the following criteria in making a determination that the inventory has been abandoned:

(1) The licensee no longer occupies the building and has left inventory in the building.

(2) The licensee has been evicted and has made no attempt to collect the inventory.

(3) Attempts to contact the licensee to determine the licensee's plans for the inventory have been unsuccessful.

(4) The presence of the inventory in the building poses a threat to the public health, safety, and welfare or to the orderly regulation of the market.

(f) Upon the director's determination that the inventory has been abandoned, the director shall

notify the retailer, in writing, of the director's intent to seize and sell the inventory. If, within seven calendar days after the date of the director's notice, the retailer has not notified the director that the retailer intends to maintain possession of the inventory, the director may seize and sell the inventory.

(g) The proceeds from the sale of any inventory specified in subsection (e) shall be deposited into the state general fund. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)



# Agency 16

## Attorney General

### Articles

- 16-8. ROOFING CONTRACTORS.
- 16-9. COLLECTION OF DEBTS OWED TO DISTRICT COURTS AND RESTITUTION.
- 16-11. PERSONAL AND FAMILY PROTECTION ACT.
- 16-12. BATTERER INTERVENTION PROGRAM REQUIREMENTS AND CERTIFICATION.
- 16-13. OPEN CARRY SIGNS.
- 16-14. SCRAP METAL DEALERS' REGISTRATION AND HEARING PROCEDURE.
- 16-15. BAIL ENFORCEMENT AGENT LICENSING.
- 16-16. SKILL DEVELOPMENT TRAINING COURSE.
- 16-17. COMMERCIAL DRIVER'S LICENSE: TRAINING IN HUMAN TRAFFICKING IDENTIFICATION AND PREVENTION
- 16-18. ELDER AND DEPENDENT ADULT ABUSE PREVENTION COUNCIL.
- 16-19. VICTIM INFORMATION AND NOTIFICATION EVERYDAY ADVISORY BOARD.
- 16-20. KANSAS OPEN MEETINGS ACT.

### Article 8.—ROOFING CONTRACTORS

**16-8-1. Definitions.** For the purpose of the act and this article, each of the following terms shall have the meaning specified in this regulation:

(a) "Act" means Kansas roofing registration act.

(b) "Applicant" means a person applying for an initial registration certificate or the renewal or reinstatement of a registration certificate.

(c) "Conviction" shall include the following, whether the penalty has been imposed, reduced, or suspended, unless the conviction has been legally expunged:

- (1) An unvacated adjudication of guilt;
- (2) a plea of guilty or nolo contendere accepted by the court; and
- (3) a deferred judgment, diversion, or probation agreement.

(d) "Direct supervision" means that the registered roofing contractor is overseeing the person being supervised and is physically present at the work site.

(e) "Roofing material" shall include cedar, cement, metal, and composition shingles; wood shakes; cement and clay tile; built-up roofing; single-ply roofing materials; fluid-type roofing systems; spray urethane foam; asphalt; protective or reflective materials; deck coatings; sheet metal; and tar.

(f) "Roofing services" shall include the following services on any type of roof:

(1) Installation or repair of any roofing material;

(2) installation or repair of roof sheathing;

(3) installation, application, or repair of roof dampproofing or weatherproofing, roof insulation panels, or other roof insulation systems, including work incidental to the installation or application;

(4) repair of structural damage to an existing roof-support system; and

(5) installation or repair of skylights.

(g) "Valid registration certificate" means a roofing contractor registration certificate issued by the attorney general that has not been suspended or revoked. (Authorized by K.S.A. 2013 Supp. 50-6,124; implementing K.S.A. 2013 Supp. 50-6,124 and 50-6,124; effective, T-16-6-28-13, July 1, 2013; effective Oct. 25, 2013.)

**16-8-2. Initial application.** Each person seeking an initial registration certificate shall submit an application that includes the following:

(a) An initial application form provided by the attorney general and fully completed by the applicant;

(b)(1) If the applicant is a natural person, a copy of a current state or federal government-issued photographic identification that demonstrates that the applicant is at least 18 years old; or

(2) if the applicant is a business entity, a copy of a current state or federal government-issued photograph identification for each designated agent who will act as a roofing contractor for the entity

that demonstrates that each designated agent is at least 18 years old;

(c) a copy of the applicant's current and valid certificate of liability insurance in an amount of at least \$500,000 from an insurance company authorized by the Kansas insurance department to do business in Kansas or a nonadmitted insurer eligible to write excess coverage on Kansas risks as permitted by Kansas law;

(d) a copy of the applicant's current and valid certificate of workers' compensation insurance under the Kansas workers' compensation act, an affidavit of exemption, or a copy of a valid self-insurance permit issued by the Kansas department of labor;

(e) a current and valid tax clearance certificate from the Kansas department of revenue;

(f) if the applicant is a nonresident contractor, a current and valid appointment of the Kansas secretary of state as legal agent for service of process;

(g) payment of the initial registration certificate fee specified K.A.R. 16-8-6; and

(h) if the applicant holds or has held a registration, certificate, permit, or license as a roofing contractor issued by any other state, current and certified documentation from the appropriate state agency in each such state showing whether the applicant is in good standing, has pending disciplinary proceedings, or has had disciplinary action taken against the registration, certificate, permit, or license. (Authorized by K.S.A. 2013 Supp. 50-6,124; implementing K.S.A. 2013 50-6,125; effective, T-16-6-28-13, July 1, 2013; effective Oct. 25, 2013.)

**16-8-3. Renewal application.** Each person seeking renewal of a registration certificate shall submit a renewal application that includes the following:

(a) A renewal form provided by the attorney general and fully completed by the applicant;

(b) a copy of the applicant's current and valid certificate of liability insurance in an amount of at least \$500,000 from an insurance company authorized by the Kansas insurance department to do business in Kansas or a nonadmitted insurer eligible to write excess coverage on Kansas risks as permitted by Kansas law;

(c) a copy of the applicant's current and valid certificate of workers' compensation insurance under the Kansas workers' compensation act, an affidavit of exemption, or a copy of a valid self-insurance permit issued by the Kansas department of labor;

(d) a current and valid tax clearance certificate from the Kansas department of revenue;

(e) payment of the applicable fee or fees specified in K.A.R. 16-8-6; and

(f) if the applicant holds or has held a registration, certificate, permit, or license as a roofing contractor issued by any other state, current and certified documentation from the appropriate state agency in each such state showing whether applicant is in good standing, has pending disciplinary proceedings, or has had disciplinary action taken against the registration, certificate, permit, or license. (Authorized by K.S.A. 2013 Supp. 50-6,124; implementing K.S.A. 2013 Supp. 50-6,132; effective, T-16-6-28-13, July 1, 2013; effective Oct. 25, 2013.)

**16-8-4. Suspension, revocation, and reinstatement.** (a) Any registration certificate may be revoked or suspended by the attorney general upon finding that the registered roofing contractor has violated any provision of the act or this article.

(b) Each roofing contractor seeking to reinstate a revoked registration certificate shall submit a reinstatement application that includes the following:

(1) A reinstatement application form provided by the attorney general and fully completed by the applicant;

(2) a copy of the applicant's current and valid certificate of liability insurance in an amount of at least \$500,000 from an insurance company authorized by the Kansas insurance department to do business in Kansas or a nonadmitted insurer eligible to write excess coverage on Kansas risks as permitted by Kansas law;

(3) a copy of the applicant's current and valid certificate of workers' compensation insurance under the Kansas workers' compensation act, an affidavit of exemption, or a copy of a current and valid self-insurance permit issued by the Kansas department of labor;

(4) a current and valid tax clearance certificate from the Kansas department of revenue;

(5) payment of the reinstatement fee specified in K.A.R. 16-8-6; and

(6) if the applicant holds or has held a registration, certificate, permit, or license as a roofing contractor issued by any other state, current and certified documentation from the appropriate state agency in each such state showing whether applicant is in good standing, has pending disciplinary proceedings, or has had disciplinary action

taken against the registration, certificate, permit, or license.

(c) A reinstatement application shall not be submitted until all terms and conditions specified in the revocation order have been fulfilled.

(d) A roofing contractor shall not be required to apply for annual renewal while that roofing contractor's registration certificate is suspended.

(1) If the suspension is lifted in the same fiscal year as that in which the suspension was ordered, the roofing contractor shall pay the renewal fee for a suspended registration certificate specified in K.A.R. 16-8-6 at the time of the next renewal.

(2) If the suspension was ordered in a previous fiscal year, the suspension shall not be lifted until the roofing contractor submits an application for renewal in accordance with K.A.R. 16-8-3, accompanied by payment of the renewal fee for a suspended registration certificate specified in K.A.R. 16-8-6, and the attorney general approves the application. (Authorized by K.S.A. 2013 Supp. 50-6,124; implementing K.S.A. 2013 Supp. 50-6,132 and 50-6,133; effective, T-16-6-28-13, July 1, 2013; effective Oct. 25, 2013.)

**16-8-5. Incomplete applications.** (a) If an incomplete application for an initial registration certificate or for renewal or reinstatement of a registration certificate is submitted to the attorney general, the applicant may be notified by the attorney general that the application will be held in abeyance for 30 days. If the applicant fails to provide all missing information, documents, and fees within 30 days of this notification, the application shall be deemed abandoned, and all fees accompanying the application shall be retained by the attorney general and shall not be refunded to the applicant.

(b) The timeline specified in the act for issuance of a registration certificate shall not begin until the date on which a complete application is received in the office of the attorney general. (Authorized by K.S.A. 2013 Supp. 50-6,124; implementing K.S.A. 2013 Supp. 50-6,125, 50-6,130, and 50-6,132; effective, T-16-6-28-13, July 1, 2013; effective Oct. 25, 2013.)

**16-8-6. Fees.** (a) Each applicant shall pay the following fee or fees, as applicable:

- (1) Initial registration certificate ..... \$250
- (2) Renewal of a registration certificate..... \$250
- (3) Renewal of a suspended registration certificate ..... \$500

- (4) Reinstatement of a revoked registration certificate ..... \$750
- (5) Late renewal fee..... \$250
- (6) Change of name or address ..... \$25

(b) The renewal fee for a suspended registration certificate shall be paid at the time specified in K.A.R. 16-8-4.

(c) If a person submits a complete application for an initial registration certificate to the attorney general on or after January 1 and the attorney general issues the registration certificate on or before April 30 of that year, the applicant shall pay a prorated initial registration certificate fee of \$125 instead of the initial registration certificate fee specified in subsection (a). (Authorized by K.S.A. 2013 Supp. 50-6,124; implementing K.S.A. 2013 Supp. 50-6,128, 50-6,130, 50-6,131, and 50-6,132; effective, T-16-6-28-13, July 1, 2013; effective Oct. 25, 2013.)

**16-8-7. Status of registration.** (a) If a registered roofing contractor ceases to be active as a roofing contractor, the roofing contractor shall notify the office of the attorney general within 10 days, and the roofing contractor's registration certificate shall be suspended by the attorney general pursuant to K.S.A. 2013 Supp. 50-6,131, and amendments thereto. This suspension shall not constitute a suspension for cause requiring payment of additional renewal fees. The suspended registration certificate shall be classified as "inactive." The roofing contractor shall not engage in business as a roofing contractor while that person's registration certificate is inactive. Any registration certificate may be returned to active status as follows:

(1) In the same fiscal year as that in which the registration certificate was initially classified as inactive, if the roofing contractor notifies the office of the attorney general at least 10 days before resuming business as a roofing contractor; or

(2) in a subsequent fiscal year, if the roofing contractor submits a complete renewal application to the office of the attorney general as specified in K.A.R. 16-8-3. However, the certificate shall not be deemed active until the renewal application is approved by the attorney general.

(b) If a roofing contractor's registration certificate is lost or stolen, the roofing contractor shall notify the office of the attorney general within 10 days after discovery of the fact.

(c) Each change in ownership of at least 50 percent of a business entity shall constitute a change

in the legal status of the business requiring a new registration certificate pursuant to the act.

(d) If a registration certificate has been issued to a business entity for use by a group of designated roofing contractors and any designated roofing contractor in that group ceases to be an agent or employee of the entity, the entity shall notify the office of the attorney general within 10 days.

(e) Any business entity may designate new employees to act as roofing contractors under the entity's existing registration certificate by submitting an addendum to the entity's application, on a form provided by the attorney general, to the attorney general. (Authorized by K.S.A. 2013 Supp. 50-6,124; implementing K.S.A. 2013 Supp. 50-6,127 and 50-6,131; effective, T-16-6-28-13, July 1, 2013; effective Oct. 25, 2013.)

### **Article 9.—COLLECTION OF DEBTS OWED TO DISTRICT COURTS AND RESTITUTION**

**16-9-1.** (Authorized by and implementing K.S.A. 1996 Supp. 75-719; effective July 11, 1997; revoked Dec. 16, 2016.)

### **Article 11.—PERSONAL AND FAMILY PROTECTION ACT**

**16-11-1. Definitions.** As used in this article and in the act, the following terms shall have the meanings specified in this regulation:

(a) "Act" means the personal and family protection act, K.S.A. 75-7c01 et seq. and amendments thereto.

(b) "Completed application" means a current application for a license to carry a concealed handgun, as required by the act, that meets the following requirements:

(1) Contains the following:

(A) All necessary signatures; and

(B) a legible and fully responsive reply to every question and request for information; and

(2) is accompanied by all required attachments.

(c) "Full frontal-view photograph" means a passport photograph or other color photograph that is equivalent to a passport photograph in the following respects:

(1) Fairly represents the physical appearance of the applicant's head and shoulders;

(2) is taken with the applicant directly facing the camera; and

(3) shows the applicant's head and shoulders in

an area of the picture that is at least two inches square.

(d) "Intimate partner" means any of the following:

(1) The spouse of a licensee;

(2) a former spouse of a licensee;

(3) an individual who is a parent of a licensee's child; or

(4) an individual who cohabitates or has cohabitated with a licensee.

(e) "Place of worship" means any building owned or leased by a religious organization and used primarily as a place for religious worship and other activities ordinarily conducted by a religious organization, whether that building is called a church, temple, mosque, synagogue, or chapel, or a similar name.

(f) "State office" means the interior of any of the following buildings:

(1) Those buildings named in K.S.A. 21-4218 and amendments thereto;

(2) the following buildings located in Topeka, Kansas:

(A) The memorial building, 120 SW 10th;

(B) the Forbes office building #740;

(C) the division of printing plant, 201 NW MacVicar;

(D) the state office building located at 3440 SE 10th Street;

(E) the Dillon house, 404 SW 9th Street;

(F) the Curtis state office building, 1000 SW Jackson; and

(G) the state office building located at 700 SW Harrison; and

(3) all other state-owned or state-leased buildings in which firearm possession is prohibited by posting as provided in K.A.R. 1-49-11. (Authorized by K.S.A. 2009 Supp. 75-7c16; implementing K.S.A. 2009 Supp. 75-7c05, as amended by L. 2010, Ch. 140, §5, 75-7c07, as amended by L. 2010, Ch. 140, §7, 75-7c10, as amended by L. 2010, Ch. 140, §9, and 75-7c16; effective, T-16-7-5-06, July 5, 2006; effective Nov. 27, 2006; amended Jan. 14, 2011.)

**16-11-2. Instructor certification standards.** (a) Each applicant for certification by the attorney general as an instructor of handgun safety and training courses shall apply on a form prescribed by the attorney general.

(b) Except as provided in subsection (e), each applicant shall meet all of the following requirements:

(1) Meet all of the concealed carry license requirements of K.S.A. 75-7c04(a) and amendments thereto, except for those requirements in paragraph (a)(1);

(2) except for individuals certified before the effective date of this regulation, complete an attorney general instructor orientation course within six months of certification; and

(3) agree to teach at least one class during each 12-month period commencing on the date of certification.

(c) In addition to meeting the requirements of subsection (b) and except as provided in subsection (h), each applicant shall meet one of the following certification requirements:

(1) Be currently certified as a firearms trainer or firearms instructor by any of the following organizations:

(A) The attorney general, pursuant to K.S.A. 75-7b21 and amendments thereto;

(B) any city, county, state, or federal law enforcement agency;

(C) the United States armed services;

(D) the Kansas law enforcement training center; or

(E) any organization that certifies firearms instructors, if the organization's certification program is determined by the attorney general to be substantially equivalent to any of the instructor certification programs identified in paragraph (c)(1); or

(2) be currently certified by the national rifle association in any of the following firearms instructor certification categories:

(A) "Pistol instructor";

(B) "personal protection instructor";

(C) "police firearms instructor";

(D) "law enforcement security firearms instructor";

(E) "law enforcement tactical handgun instructor"; or

(F) "law enforcement handgun/shotgun instructor."

Each applicant shall submit a copy of one of the certification documents identified in this subsection with the completed application form. Each certification document shall contain a certification expiration date.

(d) Each applicant shall pay a certification application fee in the amount of \$100.

(e) Each applicant who holds a license issued by the attorney general to carry a concealed handgun pursuant to the act shall be certified by the

attorney general to instruct handgun safety and training courses if the applicant has satisfied the requirements of subsections (b) through (d).

(f) Any applicant who is currently certified as an instructor by the national rifle association to teach a handgun safety and training course described in K.S.A. 75-7c04(b)(1)(D)(ii), and amendments thereto, may be approved by the attorney general to instruct that course if a determination is made by the attorney general that the requirements for instructor certification established by the national rifle association meet or exceed the requirements of paragraph (b)(1) and subsection (c). Approval granted pursuant to this provision shall be conditioned upon the instructor's compliance with the requirements of K.A.R. 16-11-3.

(g) Subject to notice and an opportunity for a hearing, certification or approval may be withdrawn by the attorney general for either of the following reasons:

(1) Failure to comply with the eligibility requirements specified in subsection (b) or (c); or

(2) failure to remain in compliance with K.A.R. 16-11-3.

(h) Each law enforcement officer certified by the commission on peace officers' standards and training who was certified by the attorney general as an instructor of handgun safety and training on or before the effective date of this regulation shall be exempt from compliance with the certification requirement in subsection (c). (Authorized by and implementing K.S.A. 2009 Supp. 75-7c04, as amended by L. 2010, Ch. 140, §4, and 75-7c16; effective, T-16-7-5-06, July 5, 2006; effective Nov. 27, 2006; amended Jan. 14, 2011.)

**16-11-3. Handgun safety and training course; instructors.** (a) Each instructor certified by the attorney general, or approved by the attorney general pursuant to K.A.R. 16-11-2(f), to instruct handgun safety and training courses shall comply with the following standards:

(1) Use only the handgun safety and training courses approved by the attorney general as provided in K.A.R. 16-11-4;

(2) use only examinations approved by the attorney general; and

(3) require trainees to display firing proficiency by successfully completing the shooting requirement established in K.A.R. 16-11-4.

(b) Upon the conclusion of each handgun safety and training course, the instructor of that

course shall provide each trainee who successfully completes the course with one of the following documents:

(1) An affidavit signed by the instructor that attests to the successful completion of the course by the applicant; or

(2) a certificate of completion on a form approved by the attorney general.

(c) Each instructor shall forward a list of each trainee who successfully completed a training course taught by that instructor to the office of the attorney general within 10 days of the date on which the training course concludes. Each list shall meet all of the following requirements:

(1) Identify the instructor by name and driver's license number;

(2) contain the date of the training course; and

(3) identify each trainee by name and by any state-issued identification card number specified in K.S.A. 75-7c03, and amendments thereto.

(d) For each course an instructor teaches, the instructor shall retain the following records for at least five years from the date on which the course concludes:

(1) A record of the date, the time, and the location of the course;

(2) a record of the name of each trainee enrolled in the course and of each trainee's state-issued identification card number, as specified in K.S.A. 75-7c03 and amendments thereto;

(3) for each trainee, documentation showing whether the trainee completed the training course specified in K.A.R. 16-11-4; and

(4) a record of the examination results for each trainee, including the results of the firing proficiency test.

(e) Each instructor shall notify the attorney general, in writing, within 10 days of any of the following occurrences:

(1) Changes in the instructor's mailing address;

(2) the expiration, suspension, or revocation of the certification used to meet the certification standard in K.A.R. 16-11-2(c); and

(3) any other circumstance that would make the instructor ineligible for certification pursuant to the standards required in K.A.R. 16-11-2.

(f) If an instructor certified by the attorney general, or approved by the attorney general pursuant to K.A.R. 16-11-2(f), fails to comply with the requirements of this regulation, the instructor's certification or approval may be withdrawn by the attorney general upon notice and an opportunity for a hearing. (Authorized and implementing

K.S.A. 2009 Supp. 75-7c04, as amended by L. 2010, Ch. 140, §4, and 75-7c16; effective, T-16-7-5-06, July 5, 2006; effective Nov. 27, 2006; amended Jan. 14, 2011.)

**16-11-4. Handgun safety and training course.** (a) Except as provided in K.S.A. 75-7c03(d) and amendments thereto and subsection (d) of this regulation, each applicant for a license to carry a concealed handgun shall successfully complete either of the following handgun safety and training courses that have been approved by the attorney general when taught by one or more instructors certified by the attorney general, or approved by the attorney general pursuant to K.A.R. 16-11-2(f):

(1) The attorney general's "concealed carry handgun license program lesson plan," dated July 1, 2006 and amended on October 19, 2006, which is hereby adopted by reference; or

(2) any handgun course described in K.S.A. 75-7c04(b)(1)(D)(ii), and amendments thereto, that is determined by the attorney general to be substantially equivalent to the course identified in paragraph (a)(1). Internet, online, correspondence, and self-study courses shall not be approved.

(b) To "successfully complete" means to obtain a passing score of 100% on an examination approved by the attorney general and to display proficiency with a handgun by shooting at least 18 hits out of 25 rounds on a designated portion of a target approved by either the Kansas commission on peace officers' standards and training or an equivalent body as determined by the attorney general.

(c) Each applicant shall provide to the sheriff of the county in which the applicant resides the documentation of completion of the handgun safety and training course provided to the applicant by the certified instructor as required by K.A.R. 16-11-3(b).

(d) A retired law enforcement officer as defined in K.S.A. 21-3110, and amendments thereto, shall not be subject to this regulation if the retired law enforcement officer was certified by the Kansas commission on peace officers' standards and training or similar body from another jurisdiction not more than eight years before the retired officer submits the application for licensure. (Authorized by K.S.A. 2009 Supp. 75-7c04, as amended by L. 2010, Ch. 140, §4, and 75-7c16; implementing K.S.A. 2009 Supp. 75-7c04, as amended by

L. 2010, Ch. 140, §4, 75-7c05, as amended by L. 2010, Ch. 140, §5, and 75-7c16 ; effective, T-16-7-5-06, July 5, 2006; effective Nov. 27, 2006; amended Jan. 14, 2011.)

**16-11-5. Application procedure.** (a) Each applicant for a license to carry a concealed handgun pursuant to the act shall submit to the sheriff of the county in which the applicant resides a completed application in accordance with K.S.A. 75-7c05, and amendments thereto, and these regulations.

(b) Except for military applicants and their dependents, an applicant shall be considered to be a resident of the state only if the applicant possesses either a valid Kansas driver's license or a valid Kansas nondriver's identification card.

(c) Within seven days of receiving an application, each sheriff shall submit the following to the attorney general:

(1) A copy of the applicant's completed application for licensure; and

(2) the application fee established by K.S.A. 75-7c05, and amendments thereto.

(d)(1) Within seven days of receiving an application, each sheriff shall submit one full set of the fingerprints of the applicant as follows:

(A) To the Kansas bureau of investigation (KBI), electronically; or

(B) to the attorney general on an applicant card provided by the federal bureau of investigation (FBI).

(2) Each fingerprint submission, whether submitted electronically or using the applicant card, shall contain the originating agency identifier (ORI) assigned to the office of attorney general by the FBI and shall indicate that the fingerprinting is for concealed carry licensing pursuant to the act.

(e) A state and national criminal history records check shall be promptly completed by the KBI.

(f) The 90-day timeline specified in K.S.A. 75-7c05, and amendments thereto, for issuance or denial of a license shall begin on the date when all of the following items are received by the attorney general:

(1) A completed application;

(2) the cashier's check, personal check, or money order submitted in accordance with K.S.A. 75-7c05(b), and amendments thereto;

(3) a photocopy of the appropriate documentation described in K.S.A. 75-7c05(b), and amendments thereto; and

(4) a full frontal-view photograph of the applicant as described in K.S.A. 75-7c05(b), and amendments thereto.

(g) The document titled "concealed handgun license sheriff's or chief's voluntary report pursuant to personal and family protection act," dated July 1, 2006, is hereby adopted by reference. In accordance with the voluntary report, within 45 days of the date on which a sheriff receives any application from a resident of that county, the sheriff or the chief law enforcement officer of any other law enforcement agency in that county may provide information that, when corroborated through public records and combined with another enumerated factor, establishes that the applicant poses a significantly greater threat to law enforcement or the public at large than the average citizen. (Authorized by K.S.A. 2009 Supp. 75-7c16; implementing K.S.A. 2009 Supp. 75-7c04, as amended by L. 2010, Ch. 140, §4, 75-7c05, as amended by L. 2010, Ch. 140, §5, and 75-7c16; effective, T-16-7-5-06, July 5, 2006; effective Nov. 27, 2006; amended Jan. 14, 2011.)

**16-11-6.** (Authorized by L. 2006, Ch. 32, §4, as amended by L. 2006, Ch. 210, §2, and L. 2006, Ch. 32, §16; implementing L. 2006, Ch. 32, §4, as amended by L. 2006, Ch. 210, §2; effective, T-16-7-5-06, July 5, 2006; effective Nov. 27, 2006; revoked Jan. 14, 2011.)

**16-11-7. Concealed carry signs.** (a) For the purposes of this regulation, the terms "state or municipal building," "state," and "municipal" shall have the meaning specified in K.S.A. 2013 Supp. 75-7c20, and amendments thereto.

(b) No license issued pursuant to or recognized under the personal and family protection act shall authorize the licensee to carry a concealed handgun into any building other than a state or municipal building if the building is conspicuously posted with one of the following:

(1) Signs that include the graphic in the document titled "buildings other than state and municipal buildings: signage adopted by the Kansas attorney general," dated June 20, 2013, which is hereby adopted by reference; or

(2) signs posted in accordance with K.A.R. 16-13-1(d).

(c) No license issued pursuant to or recognized under the personal and family protection act shall authorize the licensee to carry a concealed handgun into any state or municipal building if the governing body or, if no governing body exists, the chief administrative officer for that state or municipal building has performed the following:

(1) Either installed adequate security measures or temporarily exempted the state or municipal building from K.S.A. 2013 Supp. 75-7c20, and amendments thereto; and

(2) either posted signs in accordance with K.A.R. 16-13-1(d) or conspicuously posted signs that include the graphic and text in any of the following documents, which are hereby adopted by reference:

(A) “State and municipal buildings: signage adopted by the Kansas attorney general,” dated June 20, 2013;

(B) “state and municipal buildings: signage adopted by the Kansas attorney general,” dated July 10, 2013; or

(C) “state and municipal buildings: signage adopted by the Kansas attorney general,” dated September 26, 2013.

The top of the text shall be at least one inch but no more than two inches below the graphic. The text shall be in black letters and shall be no smaller than the text below the graphic in any of the documents adopted in this subsection. The text “State or Municipal Building, 2013 HB 2052 EXEMPT” or “State or Municipal Building, EXEMPT” shall be printed in boldface.

(d) “Conspicuously posted,” when used to describe any sign adopted in this regulation, shall mean that the sign meets the following requirements:

- (1) Has a white background;
- (2) includes the graphic design that is contained in the documents adopted in this regulation and that meets the following requirements:
  - (A) Depicts the handgun in black ink;
  - (B) depicts the circle with a diagonal slash across the handgun in red ink; and
  - (C) is at least six inches in diameter;
- (3) contains no text or other markings within the one-inch area surrounding the graphic design;
- (4) contains no text other than the text specified in the documents adopted in paragraph (c)(2) or in K.A.R. 16-13-1(d);
- (5) is visible from the exterior of the building and is not obstructed by doors, sliding doorways, displays, or other postings;
- (6) is posted at the eye level of an adult, which shall mean that the entire sign is between four feet and six feet from the ground;
- (7) is posted not more than 12 inches to the right or left of each exterior public and nonpublic entrance to the building; and
- (8) is legible. Each sign that becomes illegible shall be replaced immediately.

(e) Except as provided in K.A.R. 16-13-1, signs posted in accordance with subsections (b) through (d) of this regulation shall also prohibit the unconcealed carry of firearms within a building to the extent allowed by law.

(f) Signs that meet the requirements of this regulation may be obtained by contacting the office of the attorney general or may be reproduced from the web site of the office of the attorney general. (Authorized by K.S.A. 2013 Supp. 75-7c10 and 2014 HB 2578, § 5; implementing 2014 HB 2578, § 5, K.S.A. 2013 Supp. 75-7c10, and K.S.A. 2013 Supp. 75-7c20, as amended by 2014 Sen. Sub. for HB 2140, § 5; effective Nov. 27, 2006; amended Jan. 14, 2011; amended, T-16-6-28-13, July 1, 2013; amended, T-16-7-16-13, July 16, 2013; amended Nov. 8, 2013; amended, T-16-6-30-14, June 30, 2014; amended Oct. 24, 2014.)

**16-11-8. Restraining order; effect of; procedure.** (a) For purposes of this regulation, the terms in this subsection shall be defined as follows:

(1) “Director” means the director of the concealed carry unit of the attorney general’s office.

(2) “Restraining order” means a court order that meets all of the following requirements:

(A) Is issued by a Kansas district court or a court in another state or jurisdiction that is entitled to full faith and credit in this state;

(B) is issued after a hearing at which the licensee received actual notice and had an opportunity to participate;

(C) restrains the licensee from harassing, stalking, or threatening an intimate partner or the child of the licensee or intimate partner or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(D)(i) Includes a finding that the licensee represents a credible threat to the physical safety of the intimate partner or child; or

(ii) explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

(b) Within 24 hours of a sheriff’s receipt of any restraining order, the sheriff shall determine whether the restraining order has been issued against a person who holds a concealed carry license.

(c) Whenever a sheriff determines that a restraining order has been issued against a person

who holds a concealed carry license, the sheriff shall immediately notify the director by faxing or e-mailing the restraining order to the director.

(d) Within eight working hours of the director's receipt of the restraining order from a sheriff, the following actions shall be taken by the director:

(1) Verification of whether the restraining order meets the requirements of paragraph(a)(2); and

(2) if the director verifies that the restraining order has been issued against a person who holds a concealed carry license, issuance of a written order suspending the concealed carry license of the person named as the subject of the restraining order. The order shall be effective immediately upon issuance.

(e) The order of suspension shall be served by the director on the concealed carry license holder by United States mail at the address on record at the concealed carry unit. In addition, the subject of the restraining order may be notified by telephone or e-mail, or both, by the director that the individual's concealed carry license has been suspended.

(f) The order of suspension shall include a notice that the concealed carry license holder may, within 10 calendar days of receipt of the written order of suspension, submit a written request for a hearing to the director.

(g) Upon the director's receipt of a written request for a hearing, a hearing shall be arranged by the director to occur within 30 calendar days. However, for good cause shown, the hearing may be continued to a later date.

(h) The presiding officer at the hearing shall be the attorney general or a designee of the attorney general.

(i) The licensee shall have the burden of proving that the licensee is not the subject of the restraining order or that the order does not meet the requirements of paragraph (a)(2).

(j) Notification of each license suspension shall be provided electronically to the Kansas department of revenue.

(k) Each concealed carry license that was suspended pursuant to this regulation shall be reinstated by the director upon the director's receipt of a certified copy of a court order that dissolves the restraining order, if the person remains otherwise eligible for the concealed carry license. (Authorized by and implementing K.S.A. 2009 Supp. 75-7c07, as amended by L. 2010, Ch. 140, §7; effective Dec. 29, 2006; amended Jan. 14, 2011.)

## **Article 12.—BATTERER INTERVENTION PROGRAM REQUIREMENTS AND CERTIFICATION**

**16-12-1. Scope.** The regulations in this article shall provide for the certification of, and shall set the standards for the services and programs required of, certified batterer intervention programs, including the following: (a) Any certified batterer intervention program providing the domestic violence offender assessment pursuant to K.S.A. 12-4509, K.S.A. 21-5414, K.S.A. 21-6604, or K.S.A. 22-2909, and amendments thereto; and

(b) any program operating or providing services as a batterer intervention program, domestic violence or abuse intervention program, or domestic violence educational program for those convicted of a domestic violence-designated offense or as part of a diversion agreement in a complaint alleging a domestic violence offense, as defined in K.S.A. 21-5111 and amendments thereto. (Authorized by L. 2012, ch. 162, sec. 11; implementing L. 2012, ch. 162, secs. 1 and 11; effective, T-16-6-28-12, June 28, 2012; effective, T-16-10-25-12, Oct. 26, 2012; effective Jan. 25, 2013.)

**16-12-2. Definitions.** Words or phrases used in this article or in the batterer intervention program certification act but not defined in this regulation shall have the same definition as specified in the batterer intervention program certification act or in K.S.A. 21-5111, and amendments thereto. Each of the following terms, as used in this article, shall have the meaning specified in this regulation: (a) "Batterer" means any person who uses a pattern of abusive and coercive behavior to dominate and control an intimate partner, a former intimate partner, a household member, or a family member.

(b) "Continuing education" means formally organized programs or activities that are designed for and have content intended to enhance the knowledge, skill, values, ethics, and ability to practice as an "agent or employee thereof," as defined by L. 2012, ch. 162, sec. 13 and amendments thereto.

(c) "Controlled substance" means any drug, substance, or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111, and 65-4113, and amendments thereto.

(d) "Remedial or other requirements" means either of the following:

(1) Completion of additional education or training for agents or employees to address the concerns identified by the attorney general; or

(2) changes to the structure of the program to address the concerns identified by the attorney general.

(e) "Supervisee" means an agent or employee of a certified batterer intervention program who receives instruction or direction for the purpose of development of responsibility, skill, knowledge, attitudes, and ethical standards of practice in batterer intervention services from a batterer intervention program director, program supervisor, or program coordinator.

(f) "Unprofessional conduct," for an agent or employee who is not licensed by the behavioral sciences regulatory board, means any of the following acts:

(1) Obtaining or attempting to obtain a certification or temporary permit by means of fraud, bribery, deceit, misrepresentation, or concealment of a material fact;

(2) failing to notify the attorney general within 10 days, unless the person shows good cause, that any one of the following conditions applies to an agent or employee:

(A) Had a professional license, credential, permit, registration, or certification limited, conditioned, qualified, restricted, suspended, revoked, refused by the proper regulatory authority in Kansas or of another state, territory, or the District of Columbia. A certified copy of the action taken by the jurisdiction shall be conclusive evidence of this action;

(B) has voluntarily surrendered a professional license, credential, permit, registration, or certification while a complaint or investigation is pending by the proper regulatory authority;

(C) has been demoted, terminated, suspended, reassigned, or asked to resign from employment, or has resigned from employment, for misfeasance, malfeasance, or nonfeasance; or

(D) has been convicted of a felony;

(3) knowingly allowing another individual to use one's permit or certification unlawfully;

(4) impersonating another individual holding a permit or certification;

(5) having been convicted of a crime resulting from or relating to the provision of certified batterer intervention services;

(6) furthering the certification or permit application of another person who is known to be unqualified with respect to character, education, or

other relevant eligibility requirements according to K.A.R. 16-12-4;

(7) knowingly aiding or abetting anyone who does not have certification or a permit to represent that individual as a person who does have certification or a permit;

(8) failing or refusing to cooperate in a timely manner with any request from the attorney general for a response or assistance with respect to the attorney general's investigation of any report of an alleged violation of the batterer intervention program certification act or any law filed against any agent or employee or any other applicant. It shall be prima facie evidence of failing or refusing to cooperate within this subsection if a person takes longer than 30 days to provide the requested response, information, or assistance, unless the person shows good cause;

(9) offering to perform or performing services outside the scope of one's training, education, and competency;

(10) treating any offender, victim, or supervisee in a cruel manner, including the intentional infliction of pain or suffering;

(11) discriminating against any offender, victim, or supervisee on the basis of color, race, gender, religion, national origin, age, or disability;

(12) failing to provide each offender with a description of services, consultation, reports, fees, billing, intervention regimen, or schedule, or failing to reasonably comply with these descriptions;

(13) failing to inform each offender or supervisee of any financial interests that might accrue to the provider from referral to any other service or from the use of any tests, books, or apparatus;

(14) failing to inform each offender, victim, and supervisee of the purposes for which information is obtained, the manner in which the information may be used, and the limits of confidentiality regarding the provision of batterer intervention services;

(15) revealing information, a confidence, or secret of any victim, or failing to protect the confidences, secrets, or information contained in a victim's records, except when at least one of the following conditions is met:

(A) Disclosure is required by law;

(B) disclosure is authorized by law because the confidential information shows that the person could seriously harm an individual or the public; or

(C) the provider, or the provider's employee or agent, is a party to a civil, criminal, or disciplinary

investigation or action arising from the batterer intervention program practice, in which case disclosure shall be limited to that action;

(16) failing to protect the confidences of, secrets of, or information concerning other persons when providing an offender with access to that offender's records;

(17) engaging in professional activities, including billing practices and advertising, involving dishonesty, fraud, deceit, or misrepresentation;

(18) using alcohol or illegally using any controlled substance while performing duties or services as a batterer intervention provider;

(19) making sexual advances toward, engaging in physical intimacies or sexual activities with, or exercising undue influence over any person who, within the past 24 months, has been a victim or offender receiving batterer intervention services, or a victim or offender's known family members;

(20) exercising undue influence over any victim, offender, or supervisee, including promoting sales of services or goods, in a manner that will exploit the person or persons for the purpose of financial gain, personal gratification, or advantage of oneself or a third party;

(21) directly or indirectly offering or giving to a third party or soliciting, receiving, or agreeing to receive from a third party any fee or other consideration for the referral of the victim or offender;

(22) permitting any person to share in the fees for professional services, other than a partner, employee, an associate in a professional firm, or a consultant providing batterer intervention services;

(23) soliciting or assuming professional responsibility for offenders served by another batterer intervention program without informing and attempting to coordinate continuity of offender services with that program;

(24) making claims of professional superiority that one cannot substantiate;

(25) guaranteeing that satisfaction or a cure will result from the performance of professional services;

(26) claiming or using any secret or special method of intervention or techniques that one refuses to divulge to the attorney general;

(27) continuing or ordering tests, procedures, interventions, or services not warranted by the condition or best interests of the offender;

(28) failing to maintain for each offender and victim a record that conforms to the following minimal standards:

(A) Contains a unique identifying number or other method for specific identification of the offender and victim;

(B) indicates the offender's initial reason for seeking the provider's services;

(C) contains specific information concerning the offender's condition, including the Kansas attorney general domestic violence offender assessment, affidavits, police reports, and other documents related to criminal activity as allowed by law and available to the provider;

(D) summarizes the intervention, tests, procedures, and services that were obtained, performed, ordered, or recommended and the findings and results of each;

(E) documents the offender's progress during the course of intervention;

(F) contains only those terms and abbreviations that are comprehensible to similar professional practitioners;

(G) indicates the date and nature of any professional service that was provided; and

(H) describes the manner and process by which the professional relationship terminated;

(29) taking credit for work not performed personally, whether by giving inaccurate or misleading information or by failing to disclose accurate or material information;

(30) making or filing a report that one knows to be erroneous, incomplete, or misleading;

(31) failing to retain offender's records for at least two years after the date of termination of the professional relationship, unless otherwise provided by law;

(32) failing to exercise supervision over any supervisee;

(33) failing to inform an offender if services are provided or delivered under supervision or direction;

(34) engaging in, or attempting to engage in, any relationship in which the objectivity or competency of the provider may become impaired or compromised due to any of the following present, previous, or future relationships with a victim, offender, or supervisee:

(A) Familial;

(B) sexual;

(C) emotional; or

(D) financial; or

(35) using without a temporary permit or certification, or continuing to use after the expiration of a permit or certification, any title or abbreviation prescribed by the attorney general for use

only by those with a current temporary permit or certification.

(g) “Unprofessional conduct,” for an agent or employee who is licensed by the behavioral sciences regulatory board, means any of the following acts:

(1) Any determination by the behavioral sciences regulatory board of a violation of laws or regulations related to one’s licensure. A certified copy of the action taken by the behavioral sciences regulatory board shall be sufficient evidence of this action;

(2) obtaining or attempting to obtain a certification or temporary permit by means of fraud, bribery, deceit, misrepresentation, or concealment of a material fact;

(3) failing to notify the attorney general of any complaint, investigation, or finding regarding the licensee within 10 days, unless the person shows good cause;

(4) failing to notify the attorney general within 10 days, unless the person shows good cause, that any one of the following conditions applies to the licensee:

(A) Has been demoted, terminated, suspended, reassigned, or asked to resign from employment, or has resigned from employment, for misfeasance, malfeasance, or nonfeasance; or

(B) has been convicted of a felony;

(5) knowingly allowing another individual to use one’s temporary permit or certification unlawfully;

(6) impersonating another individual holding a temporary permit or certification;

(7) having been convicted of a crime resulting from or relating to the provision of certified batterer intervention program services;

(8) furthering the certification or permit application of another person who is known to be unqualified with respect to character, education, or other relevant eligibility requirements;

(9) knowingly aiding or abetting anyone who does not have certification or a permit to represent that individual as a person who does have certification or a permit;

(10) failing or refusing to cooperate in a timely manner with any request from the attorney general for a response or assistance with respect to the attorney general’s investigation of any report of an alleged violation of the batterer intervention program certification act or any law filed against any agent or employee or any other applicant. It shall be prima facie evidence of failing or refusing to cooperate within this subsection if a person

takes longer than 30 days to provide the requested response, information, or assistance, unless the person shows good cause or receives an extension by the attorney general;

(11) revealing information, a confidence, or secret of any victim, or failing to protect the confidences, secrets, or information contained in a victim’s records, unless one of these conditions is met:

(A) Disclosure is required by law;

(B) disclosure is authorized by law because the confidential information shows that the person could seriously harm an individual or the public; or

(C) the provider, or the agent or employee of the provider, is a party to a civil, criminal, or disciplinary investigation or action arising from the batterer intervention program practice, in which case disclosure shall be limited to that action;

(12) claiming or using any secret or special method of intervention or techniques that one refuses to divulge to the attorney general;

(13) failing to maintain for each offender and victim a record that conforms to the following minimal standards:

(A) Contains a unique identifying number or other method for specific identification of the offender and victim;

(B) indicates the offender’s initial reason for seeking the provider’s services;

(C) contains specific information concerning the offender’s condition, including the “Kansas attorney general domestic violence offender assessment form,” affidavits, police reports, and other documents related to criminal activity as allowed by law and available to the provider;

(D) summarizes the intervention, tests, procedures, and services that were obtained, performed, ordered, or recommended and the findings and results of each;

(E) documents the offender’s progress during the course of intervention;

(F) contains only those terms and abbreviations that are comprehensible to similar professional practitioners;

(G) indicates the date and nature of any professional service that was provided; and

(H) describes the manner and process by which the professional relationship terminated; or

(14) using without a temporary permit or certification, or continuing to use after the expiration of a permit or certification, any title or abbreviation prescribed by the attorney general for use only by those with a current permit or certification. (Au-

thorized by L. 2012, ch. 162, secs. 5, 11; implementing L. 2012, ch. 162, secs. 5, 6, 11; effective, T-16-6-28-12, June 28, 2012; effective, T-16-10-25-12, Oct. 26, 2012; effective Jan. 25, 2013.)

**16-12-3. Training and continuing education.** Each holder of a temporary permit or certificate shall submit proof of training and continuing education hours to the attorney general for approval. (a) Each batterer intervention program agent or employee thereof shall meet the following requirements:

(1) Complete the training as required in “the essential elements and standards of batterer intervention programs in Kansas,” which is adopted in K.A.R. 16-12-4; and

(2) complete 12 hours of documented and approved continuing education as required in “the essential elements and standards of batterer intervention programs in Kansas,” during each two-year certification period. Continuing education hours accumulated in excess of the requirement shall not be carried over to the next renewal period.

(b) One hour of training or continuing education credit shall consist of at least 50 minutes of classroom instruction or at least one clock-hour of other types of acceptable training or continuing education experiences listed in subsection (c). One-half hour of training or continuing education credit may be granted for each 30 minutes of acceptable training or continuing education. Credit shall not be granted for less than 30 minutes.

(c) Acceptable training and continuing education, subject to approval, whether taken within the state or outside the state, shall include the following:

(1) An academic course at an institution that is nationally or regionally accredited for education or training, if the content is clearly related to the enhancement of a batterer intervention program agent’s or employee’s practice, values, ethics, skills, or knowledge and the course is taken for academic credit. Each agent or employee shall be granted 15 training or continuing education hours for each academic credit hour that is successfully completed. The maximum number of allowable training or continuing education hours shall be 15;

(2) an academic course at an institution that is nationally or regionally accredited for education or training, if the content is clearly related to the enhancement of a batterer intervention program agent’s or employee’s practice, values, ethics, skills, or knowledge and the course is audited.

Each agent or employee shall receive training or continuing education credit on the basis of the actual contact time that the agent or employee spends attending the course, up to a maximum of 15 hours per academic credit hour. The maximum number of allowable training or continuing education hours shall be 15;

(3) a seminar, institute, conference, workshop, or nonacademic course oriented to the enhancement of a batterer intervention program agent’s or employee’s practice, values, ethics, skills, or knowledge; and

(4) an activity oriented to the enhancement of a batterer intervention program agent’s or employee’s practice, values, ethics, skills, or knowledge, consisting of completing a computerized interactive learning module, viewing a telecast or videotape, listening to an audiotape, or reading, if a posttest is successfully completed. The maximum number of allowable training or continuing education hours shall be 15.

(d) Approval of training or continuing education credit shall not be granted for the second or any subsequent identical program if the programs are completed within the same renewal period.

(e) Training or continuing education credit shall not be granted for the following:

(1) In-service training, if the training is for job orientation or job training or is specific to the employing agency; and

(2) any activity for which the agent or employee cannot demonstrate that the program’s goals and objectives are to enhance the practice, values, ethics, skills, or knowledge in batterer intervention.

(f) Each agent or employee shall maintain individual, original training or continuing education records for at least two years. These records shall document the agent’s or employee’s attendance at, participation in, or completion of each training or continuing education activity.

(g) Each of the following forms of documentation may be submitted as proof that an agent or employee has completed that training or continuing education activity:

(1) An official transcript or other document indicating the agent’s or employee’s passing grade for an academic course taken at an institution that is nationally or regionally accredited;

(2) a statement signed by the instructor of an academic course indicating the number of actual contact hours that the agent or employee attended for an audited academic course from an institution that is nationally or regionally accredited;

(3) a signed statement from the provider of a seminar, institute, conference, workshop, or course indicating that the agent or employee attended the training or continuing education program; and

(4) for each videotape, audiotape, computerized interactive learning module, or telecast that the agent or employee utilized for training or continuing education purposes, a written statement from the agent or employee specifying the media format, content title, presenter or sponsor, content description, length, activity date, and copy of the agent's or employee's completed posttest or score. (Authorized by and implementing L. 2012, ch. 162, secs. 5, 11; effective, T-16-6-28-12, June 28, 2012; effective, T-16-10-25-12, Oct. 26, 2012; effective Jan. 25, 2013.)

**16-12-4. Program requirements.** Each holder of a temporary permit, initial certification, renewal certification, or certification reinstatement shall perform the following: (a) Adopt and follow the standards, elements, and other program requirements described in the document titled "the essential elements and standards of batterer intervention programs in Kansas," dated December 17, 2012, by the Kansas attorney general's office, which is hereby adopted by reference except for the acknowledgements, table of contents, philosophy and purpose, and theoretical overview of batterer intervention programs; and

(b) submit the attorney general's document titled "certified batterer intervention program statistical report" with the required information. This document, dated June 13, 2012, is hereby adopted by reference. The "certified batterer intervention program statistical report" shall be completed and submitted to the attorney general on or before January 5 and July 5 in each year of certification or the first business day following these deadlines if the deadlines fall on a weekend or state or federal holiday. (Authorized by and implementing L. 2012, ch. 162, secs. 5, 11; effective, T-16-6-28-12, June 28, 2012; effective, T-16-10-25-12, Oct. 26, 2012; effective Jan. 25, 2013.)

**16-12-5. Domestic violence offender assessment.** (a) The document titled "Kansas attorney general domestic violence offender assessment form," dated March 3, 2011, by the Kansas attorney general is hereby adopted by reference. This document is also known as "KDVOA."

(b) Except as specified in subsection (c), the KDVOA shall be completed by one of the following: an individual who is licensed to practice in Kansas as a psychologist, baccalaureate social worker, master social worker, specialist clinical social worker, marriage and family therapist, addiction counselor, clinical addiction counselor, clinical marriage and family therapist, professional counselor, clinical professional counselor, master's level psychologist, or clinical psychotherapist.

(c) Any person who is not licensed as provided in subsection (b) and who is completing the KDVOA as an employee of or volunteer for a batterer intervention program before January 1, 2013 may continue to complete these assessments on and after January 1, 2013 if the person remains an employee of or volunteer for the same program and the program remains a certified batterer intervention program. Whenever the person is no longer an employee of or volunteer for the program in which the person was employed or volunteering before January 1, 2013, the person shall not be allowed to complete the KDVOA for any certified batterer intervention program without meeting the license requirements in subsection (b). (Authorized by K.S.A. 2011 Supp. 75-755 and L. 2012, ch. 162, sec. 11; implementing K.S.A. 2011 Supp. 21-6604, as amended by L. 2012, ch. 162, sec. 16, and L. 2012, ch. 162, secs. 1, 5; effective, T-16-6-28-12, June 28, 2012; effective, T-16-10-25-12, Oct. 26, 2012; effective Jan. 25, 2013.)

**16-12-6. Temporary permit; application.** Each applicant seeking a temporary permit shall submit an application, on a form provided by the attorney general, to the attorney general. The completed application for a temporary permit shall include the following: (a) The applicant's full name and residential address;

(b) the name under which the applicant intends to do business and the business address;

(c) a statement of the general nature of the business in which the applicant intends to engage;

(d) a statement of the education and work experience of the applicant and any agent or employee thereof;

(e) a statement that the applicant has met any other qualifications specified in "the essential elements and standards of batterer intervention programs in Kansas," which is adopted in K.A.R. 16-12-4;

(f) payment of the temporary permit application fee of \$50.00; and

(g) any other information, evidence, statements, or documents necessary to determine the qualifications of an applicant for temporary permit, including the following:

(1) A copy of completed certificates documenting domestic violence-specific training hours for each agent or employee thereof;

(2) proof of current licensure for each agent or employee required to be licensed by the behavioral sciences regulatory board; and

(3) a copy of the core curriculum to be used in batterer intervention services. (Authorized by L. 2012, ch. 162, sec. 11; implementing L. 2012, ch. 162, secs. 2, 4; effective, T-16-6-28-12, June 28, 2012; effective, T-16-10-25-12, Oct. 26, 2012; effective Jan. 25, 2013.)

**16-12-7. Initial certification; application.** Each applicant seeking initial certification shall submit an application, on a form provided by the attorney general, to the attorney general. The completed application for initial certification shall include the following: (a) The applicant's full name and residential address;

(b) the name under which the applicant intends to do business and the business address;

(c) a statement of the general nature of the business in which the applicant intends to engage;

(d) a statement of the education and work experience of the applicant and any agent or employee thereof;

(e) a statement that the applicant has met any other qualifications specified in "the essential elements and standards of batterer intervention programs in Kansas," which is adopted in K.A.R. 16-12-4;

(f) payment of the initial application fee of \$100.00; and

(g) any other information, evidence, statements, or documents necessary to determine the qualifications of an applicant for initial certification, including the following:

(1) A copy of completed certificates documenting training hours as required by "the essential elements and standards of batterer intervention programs in Kansas" for each agent or employee thereof;

(2) proof of current licensure for each agent or employee required to be licensed by the behavioral sciences regulatory board;

(3) a copy of the core curriculum to be used in batterer intervention services;

(4) demonstration by the applicant of attempts

to establish a cooperative relationship with key agencies, as described in "the essential elements and standards of batterer intervention programs in Kansas," which is adopted in K.A.R. 16-12-4; and

(5) a copy of release of information and offender agreement forms. (Authorized by L. 2012, ch. 162, sec. 11; implementing L. 2012, ch. 162, secs. 2, 4; effective, T-16-6-28-12, June 28, 2012; effective, T-16-10-25-12, Oct. 26, 2012; effective Jan. 25, 2013.)

**16-12-8. Renewal certification; application.** Each applicant seeking renewal certification shall submit an application, on a form provided by the attorney general, to the attorney general. The completed application for renewal certification shall include the following: (a) The applicant's full name and residential address;

(b) the name under which the applicant intends to do business and the business address;

(c) a statement of the general nature of the business in which the applicant intends to engage;

(d) a statement of the educational and work experience of the applicant and any agent or employee thereof;

(e) a statement that the applicant has met any other qualifications described in "the essential elements and standards of batterer intervention programs in Kansas," which is adopted in K.A.R. 16-12-4;

(f) payment of the renewal application fee of \$100.00; and

(g) any other information, evidence, statements, or documents necessary to determine the qualifications of an applicant for renewal certification that are required by the attorney general, including the following:

(1) A copy of completed certificates documenting continuing education hours as required by "the essential elements and standards of batterer intervention programs in Kansas" for each agent or employee thereof;

(2) a copy of completed certificates documenting training hours as required in "the essential elements and standards of batterer intervention programs in Kansas" for any new agent or employee not included in a previous application for certification;

(3) proof of current licensure for each agent or employee required to be licensed by the behavioral sciences regulatory board; and

(4) demonstration by the applicant of attempts to establish a cooperative relationship with key

agencies, as described in “the essential elements and standards of batterer intervention programs in Kansas,” which is adopted in K.A.R. 16-12-4. (Authorized by L. 2012, ch. 162, sec. 11; implementing L. 2012, ch. 162, secs. 2, 4; effective, T-16-6-28-12, June 28, 2012; effective, T-16-10-25-12, Oct. 26, 2012; effective Jan. 25, 2013.)

**16-12-9. Certification reinstatement; application.** Each applicant seeking certification reinstatement shall submit an application, on a form provided by the attorney general, to the attorney general. The completed application for certification reinstatement shall include the following: (a) The applicant’s full name and residential address;

(b) the name under which the applicant intends to do business and the business address;

(c) a statement of the general nature of the business in which the applicant intends to engage;

(d) a statement of the education and work experience of the applicant and any agent or employee thereof;

(e) a statement that the applicant has met any other qualifications described in “the essential elements and standards of batterer intervention programs in Kansas,” which is adopted in K.A.R. 16-12-4;

(f) payment of the reinstatement application fee of \$100.00;

(g) a statement regarding the reason requiring reinstatement of certification; and

(h) any other information, evidence, statements, or documents necessary to determine the qualifications of an applicant for reinstatement, including the following:

(1) A copy of completed certificates documenting continuing education hours as required by “the essential elements and standards of batterer intervention programs in Kansas” for each agent or employee thereof;

(2) a copy of completed certificates documenting training hours as required in “the essential elements and standards of batterer intervention programs in Kansas” for any new agent or employee not included in a previous application for certification;

(3) proof of current licensure for each agent or employee required to be licensed by the behavioral sciences regulatory board; and

(4) demonstration by the applicant of attempts to establish a cooperative relationship with key agencies, as described in “the essential elements and standards of batterer intervention programs

in Kansas,” which is adopted in K.A.R. 16-12-4. (Authorized by L. 2012, ch. 162, sec. 11; implementing L. 2012, ch. 162, secs. 2, 4; effective, T-16-6-28-12, June 28, 2012; effective, T-16-10-25-12, Oct. 26, 2012; effective Jan. 25, 2013.)

**16-12-10. Evaluating and monitoring certified batterer intervention programs.** For the purposes of evaluating and monitoring certified batterer intervention programs, the applicant, holder of a temporary permit, or holder of a certificate shall give the attorney general access to the following:

(a) The applicant’s or holder’s program;

(b) observation of groups or assessment services;

(c) offender and victim files, records, or documents related to the provision of batterer intervention services;

(d) contact information of community members or third parties who could provide information related to services provided in the capacity of a batterer intervention program;

(e) offenders who are receiving or have received services from the program;

(f) contact information for victims or family members, with their written permission, associated with the offenders who are receiving or have received services from the batterer intervention program; and

(g) any other information identified as necessary in evaluating and monitoring the program. (Authorized by L. 2012, ch. 162, sec. 11; implementing L. 2012, ch. 162, secs. 8, 11; effective, T-16-6-28-12, June 28, 2012; effective, T-16-10-25-12, Oct. 26, 2012; effective Jan. 25, 2013.)

## Article 13.—OPEN CARRY SIGNS

**16-13-1. Open carry signs.** (a) For the purposes of this regulation, the terms “state or municipal building,” “state,” and “municipal” shall have the meaning specified in K.S.A. 2013 Supp. 75-7c20, and amendments thereto.

(b) Signs posted in accordance with K.A.R. 16-11-7 shall also prohibit the unconcealed carry of firearms within a building to the extent allowed by law.

(c) Except as otherwise provided by law, it shall be unlawful to carry an unconcealed firearm into a building that is posted at each exterior entrance with a sign that meets the following requirements:

(1) Contains the sentence “The open carrying of firearms in this building is prohibited” with the

word "prohibited" printed in underlined boldface. The text shall be in black ink and no smaller than the text in the document titled "open carry prohibited: signage adopted by the Kansas attorney general," dated June 16, 2014, which is hereby adopted by reference;

(2) has a white background;

(3) has a red border in the shape of an octagon that encloses the text specified in paragraph (c)(1) and is no smaller than the border in the document titled "open carry prohibited: signage adopted by the Kansas attorney general";

(4) contains no text or markings other than the text and markings specified in this subsection;

(5) is visible from the exterior of the building and is not obstructed by doors, sliding doorways, displays, or other postings;

(6) is posted "at the eye level of an adult," which shall mean that each sign is entirely between four feet and six feet from the ground;

(7) is posted not more than 12 inches to the right or left of all entrances to the building; and

(8) is legible. Each sign that becomes illegible shall be replaced immediately.

(d)(1) Except as otherwise provided by law, it shall be unlawful to carry a concealed handgun into a building that allows the unconcealed carry of firearms if the building is posted at each exterior entrance with a sign that meets the following requirements:

(A) Contains the text and graphic contained in one of the following:

(i) The document titled "buildings other than state or municipal buildings: signage to allow open carry but prohibit concealed carry," adopted by the Kansas attorney general and dated June 16, 2014, which is hereby adopted by reference;

(ii) the document titled "K.S.A. 2013 Supp. 75-7c20-exempt state or municipal buildings: signage to allow open carry but prohibit concealed carry," adopted by the Kansas attorney general and dated June 16, 2014, which is hereby adopted by reference; or

(iii) the document titled "all buildings: supplemental signage to allow open carry but prohibit concealed carry," adopted by the Kansas attorney general and dated June 17, 2014, which is hereby adopted by reference and shall be posted immediately above appropriate signs posted pursuant to K.A.R. 16-11-7;

(B) has a white background;

(C) depicts the graphic in accordance with K.A.R. 16-11-7(d)(2);

(D) contains no text or markings other than the text and markings specified in this subsection;

(E) is visible from the exterior of the building and is not obstructed by doors, sliding doorways, displays, or other postings;

(F) is posted "at the eye level of an adult," which shall mean that each sign is entirely between four feet and six feet from the ground;

(G) is posted not more than 12 inches to the right or left of all entrances to the building; and

(H) is legible. Each sign that becomes illegible shall be replaced immediately.

(2) The text of each sign shall be in black letters and shall be no smaller than the text contained in the applicable document adopted in this subsection. The text "OPEN CARRY ALLOWED, CONCEALED CARRY PROHIBITED" shall be in capital letters, and the top of the text shall be at least one inch but no more than two inches above the graphic. The word "allowed" in the phrase "open carry allowed" and the word "prohibited" in the phrase "concealed carry prohibited" shall be printed in underlined boldface. The text "State or Municipal Building, 2013 HB 2052 EXEMPT" or "State or Municipal Building, EXEMPT" shall be printed in boldface and shall be at least one inch but no more than two inches below the graphic.

(e) Signs that meet the requirements of this regulation may be obtained by contacting the office of the attorney general or may be reproduced from the web site of the office of the attorney general. (Authorized by K.S.A. 2014 Supp. 75-7c10 and 75-7c24; implementing K.S.A. 2014 Supp. 75-7c10, 75-7c20 and 75-7c24; effective, T-16-6-30-14, July 1, 2014; effective Oct. 24, 2014.)

**Article 14.—SCRAP METAL DEALERS' REGISTRATION AND HEARING PROCEDURE**

**16-14-1. Fees.** Each applicant or registrant shall pay one of the following nonrefundable fees, as applicable, for registration of each place of business for which a registration is sought:

- (a) Scrap metal dealer's initial registration certificate ..... \$350
- (b) Annual renewal of a scrap metal dealer's registration certificate ..... \$350

(Authorized by K.S.A. 2018 Supp. 50-6,109a, as amended by L. 2019, ch. 66, sec. 2; implementing K.S.A. 2019 Supp. 50-6,112a, as amended by L.

2019, ch. 66, sec. 10; effective, T-16-8-10-15, Aug. 10, 2015; effective Dec. 4, 2015; amended Oct. 2, 2020.)

**16-14-2. Initial application.** (a) Each person seeking an initial registration certificate shall submit an application that consists of the following:

(1) An initial application form provided by the attorney general and fully completed by the applicant;

(2) payment of the initial registration certificate fee specified in K.A.R. 16-14-1; and

(3) a copy of the applicant's current state or federal government-issued photographic identification.

(b) An application for an initial registration certificate shall be deemed incomplete if the application fails to include all information required by the application form and if the applicant fails to submit the items required in paragraphs (a)(2) and (3). If the applicant fails to provide all missing information, documents, and the applicable fee within 30 days of notification by the attorney general that the application is incomplete, the application shall be deemed abandoned, and all fees accompanying the application shall be retained by the attorney general and shall not be refunded to the applicant. (Authorized by L. 2015, ch. 96, sec. 1; implementing K.S.A. 2014 Supp. 50-6,112a, as amended by L. 2015, ch. 96, sec. 15; effective, T-16-8-10-15, Aug. 10, 2015; effective Dec. 4, 2015.)

**16-14-3. Computation of time.** (a) In computing any period of time prescribed by the scrap metal theft reduction act or this article concerning registration, the day of the action or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless that day is a Saturday, Sunday, or legal holiday, in which event the period shall include the end of the next day that is not a Saturday, Sunday, or legal holiday.

(b) Unless otherwise specified in this article, each of the following terms shall have the meaning specified in this subsection:

(1) "Day" means calendar day and not business day. Intermediate Saturdays, Sundays, and legal holidays shall be included in the computation.

(2) "Business day" means any day that is not a Saturday, Sunday, or legal holiday.

(3) "Legal holiday" shall include any day designated as a holiday by any Kansas statute or regulation.

(c) If the attorney general's office is not open to the public on the last day of any time period prescribed by this article, the time period shall be extended until the next business day on which the attorney general's office is open for business. (Authorized by L. 2015, ch. 96, sec. 1; implementing K.S.A. 2014 Supp. 50-6,112c, as amended by L. 2015, ch. 96, sec. 17; effective, T-16-8-10-15, Aug. 10, 2015; effective Dec. 4, 2015.)

**16-14-4. Hearings.** Any applicant or registered scrap metal dealer may request a hearing on an order denying, suspending, or revoking that individual's application or registration by submitting a written request for a hearing to the attorney general's office within 15 days of the date of service of the order denying, suspending, or revoking the registration. (Authorized by L. 2015, ch. 96, sec. 1; implementing K.S.A. 2014 Supp. 50-6,112c, as amended by L. 2015, ch. 96, sec. 17; effective, T-16-8-10-15, Aug. 10, 2015; effective Dec. 4, 2015.)

**16-14-5. Notice of hearing.** The time and place of each hearing shall be set at least 10 days before the hearing. Notice of the hearing shall be provided to all parties. (Authorized by L. 2015, ch. 96, sec. 1; implementing K.S.A. 2014 Supp. 50-6,112c, as amended by L. 2015, ch. 96, sec. 17; effective, T-16-8-10-15, Aug. 10, 2015; effective Dec. 4, 2015.)

**16-14-6. Service of order or notice.** (a) Service of an order or notice shall be made upon each party and, if any, each party's attorney of record by delivering a copy of the order or notice to the person to be served or by mailing a copy of the order or notice by first-class mail to the person at the person's last known address. Service shall be presumed if the attorney general, or the attorney general's designee, delivers a written certificate of service. Delivery of a copy of an order or notice to a person shall mean handing the order or notice to the person or leaving the order or notice at the person's principal place of business or residence with a responsible person who works or resides there. Service by mail shall be complete upon mailing.

(b) Whenever a party has the right or is required to perform an action within a prescribed period after service of a notice or order and the notice or order is served by mail, three days shall be added to the prescribed period. (Authorized by L. 2015, ch. 96, sec. 1; implementing K.S.A. 2014

Supp. 50-6,112c, as amended by L. 2015, ch. 96, sec. 17; effective, T-16-8-10-15, Aug. 10, 2015; effective Dec. 4, 2015.)

**16-14-7. Hearing procedure.** The following provisions shall apply at each hearing:

(a) The proceedings shall be conducted by the attorney general or the attorney general's designee.

(b) To the extent necessary for full disclosure of all relevant facts and issues, each party shall have the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a limited grant of intervention or by the prehearing order.

(c) Nonparties may be given an opportunity by the attorney general or the attorney general's designee to present oral or written statements. Each party shall be given an opportunity to challenge or rebut these statements. On motion of any party, the statements shall be required by the attorney general or the attorney general's designee to be given under oath or affirmation.

(d) The hearing may occur by telephone or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place.

(e) The hearing shall be recorded at the expense of the attorney general's office. The attorney general's office shall not be required at its own expense to prepare a transcript, unless required to do so by a provision of law. Any party, at the party's expense and subject to any reasonable conditions that the attorney general's office may establish, may cause a person other than the attorney general's office to prepare a transcript from the record or cause additional recordings to be made during the hearing.

(f) Each hearing shall be open to public observation, except to the limited extent as determined by the attorney general or the attorney general's designee, that it is necessary to close parts of the hearing pursuant to any provision of law requiring confidentiality or expressly authorizing closure. (Authorized by L. 2015, ch. 96, sec. 1; implementing K.S.A. 2014 Supp. 50-6,112c, as amended by L. 2015, ch. 96, sec. 17; effective, T-16-8-10-15, Aug. 10, 2015; effective Dec. 4, 2015.)

**16-14-8. Evidence.** (a) At each hearing, the parties shall not be bound by technical rules of evidence, and the parties shall have reasonable opportunity to be heard and to present evidence. The attorney general or the attorney general's designee

shall act reasonably and without partiality. The rules of privilege recognized by law shall be followed by the attorney general or the attorney general's designee. Evidence shall not be required to be excluded solely because the evidence is hearsay.

(b) All testimony of parties and witnesses shall be given under oath or affirmation. The power to administer an oath or affirmation for that purpose shall reside with the attorney general or the attorney general's designee.

(c) Any statements presented by nonparties in accordance with this article may be received as evidence.

(d) Any part of the evidence may be received in written form if doing so will expedite the hearing without substantial prejudice to the interests of any party.

(e) Documentary evidence may be received in the form of a copy or excerpt. Upon request, the parties shall be given an opportunity to compare the copy with the original if the original is available.

(f) Official notice may be taken of the following:

(1) Any matter that could be judicially noticed in Kansas courts;

(2) the record of other proceedings before the attorney general or the attorney general's designee;

(3) technical or scientific matters within the specialized knowledge of the attorney general's office; and

(4) codes or standards that have been adopted by an agency of the United States, of Kansas, or of another state or by a nationally recognized organization or association.

(g) The parties shall be notified before or during the hearing, or before the issuance of any order that is based in whole or in part on matters or material noticed, of the specific matters or material noticed and the source thereof, including any staff memoranda and data. The parties shall be afforded an opportunity to contest and rebut the matters or material so noticed. (Authorized by L. 2015, ch. 96, sec. 1; implementing K.S.A. 2014 Supp. 50-6,112c, as amended by L. 2015, ch. 96, sec. 17; effective, T-16-8-10-15, Aug. 10, 2015; effective Dec. 4, 2015.)

**16-14-9. Default.** If the party requesting a hearing defaults by failing to attend or participate in a hearing or any other stage of an adjudicative proceeding, the request for a hearing shall be dismissed and the order denying, suspending, or revoking the registration shall become final. (Authorized by L. 2015, ch. 96, sec. 1; implementing

K.S.A. 2014 Supp. 50-6,112c, as amended by L. 2015, ch. 96, sec. 17; effective, T-16-8-10-15, Aug. 10, 2015; effective Dec. 4, 2015.)

**16-14-10. Submission of required information.** (a) Each scrap metal dealer shall submit the information required by K.S.A. 2019 Supp. 50-6,110, and amendments thereto, by entering the required information into the database.

(b) Failure to timely submit the information required by K.S.A. 2019 Supp. 50-6,110 and amendments thereto, shall be grounds for suspension of the scrap metal dealer's registration pursuant to K.S.A. 2019 Supp. 50-6,112c, and amendments thereto.

(c) Any scrap metal dealer may submit a written application to the attorney general to request additional time to comply with subsection (a). Each application shall include documentation of one of the following:

(1) No satellite-based or land-based internet service providers offer internet service to either the scrap metal dealer's residence or the scrap metal dealer's place of business.

(2) Compliance with subsection (a) would result in extreme hardship. (Authorized by K.S.A. 2018 Supp. 50-6,109a, as amended by L. 2019, ch. 66, sec. 2; implementing K.S.A. 2018 Supp. 50-6,109a, as amended by L. 2019, ch. 66, sec. 2, and 50-6,110, as amended by 2020 S Sub for HB 2137, sec. 4; effective, T-16-6-29-16, July 1, 2016; effective Oct. 21, 2016; amended Oct. 2, 2020.)

**16-14-11. Definitions.** As used in this article of the attorney general's regulations and in the scrap metal theft reduction act, K.S.A. 2019 Supp. 50-6,109 et seq. and amendments thereto, each of the following terms shall have the meaning specified in this regulation:

(a) "Database" means the online central repository approved by the Kansas bureau of investigation to be used by each scrap metal dealer to submit the information required by K.S.A. 2019 Supp. 50-6,110, and amendments thereto.

(b) "Licensed business" means a sole proprietorship, general partnership, limited partnership, limited liability partnership, corporation, or limited liability company that lawfully operates out of a fixed business location and that is reasonably expected to generate regulated scrap metal at the fixed business location in the ordinary course of business due to the nature of the products or services offered. (Authorized by K.S.A. 2018 Supp.

50-6,109a, as amended by L. 2019, ch. 66, sec. 2; implementing K.S.A. 2018 Supp. 50-6,109a, as amended by L. 2019, ch. 66, sec. 2, and 50-6,110, as amended by 2020 S Sub for HB 2137, sec. 4; effective, T-16-6-29-16, July 1, 2016; effective Oct. 21, 2016; amended Oct. 2, 2020.)

## Article 15.—BAIL ENFORCEMENT AGENT LICENSING

**16-15-1. Definitions.** For purposes of these regulations, each of the following terms shall have the meaning specified in this regulation:

(a) "Attorney general" means the Kansas attorney general and the attorney general's designees.

(b) "Authorization" means a registration, certificate, permit, licensure, or other documented approval that allows an applicant or a licensee to act as a bail enforcement agent or bounty hunter in another jurisdiction.

(c) "Conviction" means any of the following, whether the penalty has been imposed, reduced, suspended, deferred, or otherwise withheld, unless the conviction has been expunged:

(1) An unvacated adjudication of guilt;

(2) a plea of guilty or nolo contendere accepted by the court; or

(3) a deferred judgment or probation agreement.

(d) "Encumbered" means that the issuing authority for an authorization has fined, censured, limited, conditioned, suspended, revoked, or taken any other similar action or penalty against the authorization, whether done publicly or privately.

(e) "Expunged" shall have the meaning consistent with the definition of "expungement" in K.S.A. 21-5111, and amendments thereto, which shall include substantially similar processes from other jurisdictions.

(f) "Jurisdiction" means any of the following:

(1) Kansas, or any other state of the United States, and any department or branch of that state's government, or any agency, authority, institution, or other instrumentality thereof;

(2) municipality, which shall mean any county, township, city, school district, or other political or taxing subdivision of Kansas, or any other state of the United States, or any agency, authority, institution, or other instrumentality thereof;

(3) the District of Columbia;

(4) any territory of the United States; or

(5) any district, province, territory, or state of any foreign country.

(g) “License” means a bail enforcement agent license issued by Kansas.

(h) “Licensee” means a person who holds a license. (Authorized by K.S.A. 2016 Supp. 75-7e07; implementing K.S.A. 2016 Supp. 75-7e03, 75-7e06; effective, T-16-6-29-16, July 1, 2016; effective Oct. 21, 2016.)

**16-15-2. Application for license.** (a) Except as otherwise provided by law, each person wanting to engage in activities as a bail enforcement agent, which is commonly known as a bounty hunter, shall submit an application to the attorney general on the form prescribed by the attorney general.

(b) The application shall be available electronically on the attorney general’s web site. A printed copy of the application, the bail enforcement agent licensing act, and these regulations may be obtained from the attorney general for a fee of \$15.

(c) Each applicant shall meet the following requirements:

(1) Complete the entire application under penalty of perjury;

(2) have notarized those portions of the application required to be notarized; and

(3) make complete and correct statements in the application.

(d) The applicant’s fingerprints shall be taken at a law enforcement agency. The fingerprint card shall include the name of the person who took the applicant’s fingerprints.

(e) An application shall be deemed incomplete and shall not be considered for approval by the attorney general if the application fails to include any of the following:

(1) All signatures and information required by the application;

(2) payment of all required fees as specified in K.A.R. 16-15-3; or

(3) all attachments required by the application.

(f) Each application that remains incomplete for at least 30 days following the attorney general’s request for the applicant to provide any missing information shall be deemed abandoned and shall be withdrawn from consideration.

(g) Each applicant shall include the following with the application:

(1) The applicant’s full name, date of birth, residential address, business address, and name of the applicant’s current employer or employers;

(2) in accordance with K.A.R. 16-15-3, payment of the following:

(A) The initial licensure fee; and

(B) the fee for the criminal history records check;

(3) a photocopy of the applicant’s driver’s license or other government-issued identification card from the applicant’s state of residence;

(4) two color, passport-size photographs of the applicant taken within the preceding 30 days. Each photograph shall depict a full-frontal view of the applicant’s head;

(5) a statement of the applicant’s employment history;

(6) one classifiable set of the applicant’s fingerprints taken by a federal, state, or municipal law enforcement agency;

(7) if the applicant has a criminal history, a statement of the applicant’s entire criminal history including, pursuant to K.S.A. 12-4516 and K.S.A. 2016 Supp. 21-6614 and amendments thereto, any criminal history that has been expunged;

(8) a copy of the criminal history waiver form that was completed by the applicant before getting the applicant’s fingerprints taken by a law enforcement agency;

(9)(A) If the applicant holds or has held an authorization to act as a bail enforcement agent in a jurisdiction other than Kansas, a copy of any current or prior authorizations held by the applicant or, if the prior authorization is no longer in the possession of the applicant, a description of who the authorizing entity was and a date as to when the authorization was last valid; and

(B) if any current or prior authorization has been encumbered by the authorizing entity, an explanation as to why that authorization was encumbered and a certified copy of any document ordering or establishing that encumbrance. The certified copy shall be submitted by the authorizing entity directly to the attorney general; and

(10) a statement that the applicant does not meet the criteria for denial of licensure under K.S.A. 2016 Supp. 75-7e03, and amendments thereto, and does not meet the criteria for any encumbrance pursuant to K.S.A. 2016 Supp. 75-7e06, and amendments thereto.

(h) Each applicant shall be responsible for the payment of any other expenses required in order to complete the application requirements specified in this regulation. (Authorized by K.S.A. 2016 Supp. 75-7e07; implementing K.S.A. 2016 Supp. 75-7e03, 75-7e06, and 75-7e08; effective, T-16-6-29-16, July 1, 2016; effective Oct. 21, 2016.)

**16-15-3. Fees.** (a) The following fees shall be submitted in full to the attorney general when required:

(1) An initial licensure fee of \$200, less the materials fee if that fee was previously paid;

(2) a renewal of licensure fee of \$175, less the materials fee if that fee was previously paid;

(3) in accordance with K.A.R. 16-15-2 or 16-15-4, a fee of \$57 for the criminal history records check; and

(4) a materials fee of \$15 if the applicant or licensee requests a printed copy of any of the application or renewal application materials before submitting an application.

(b) All fees, whether paid in full or part, associated with any complete or incomplete application shall be nonrefundable.

(c) Payment of application fees and renewal application fees shall be submitted by personal check, cashier's check, or money order and shall be payable to the attorney general. An applicant or licensee who has previously had a personal check submitted to the attorney general that was returned unpaid for any reason shall not be allowed to pay any required fees with a personal check.

(d) A fee of \$15 shall be charged to any licensee for a duplicate license. Each licensee requesting a duplicate license shall submit a notarized affidavit attesting to the circumstances surrounding the license being lost or stolen. (Authorized by K.S.A. 2016 Supp. 75-7e07; implementing K.S.A. 2016 Supp. 75-7e03, 75-7e05, and 75-7e08; effective, T-16-6-29-16, July 1, 2016; effective Oct. 21, 2016.)

**16-15-4. License renewal.** (a) Any license issued under the bail enforcement agent licensing act may be renewed every two years from the license issuance date.

(b) Fingerprints and the photographs of a licensee shall not be required in a renewal application, unless these items have already been on file with the attorney general for more than four years.

(c)(1) Each renewal application shall be submitted on the form prescribed by the attorney general and shall be complete before the license shall be eligible for renewal by the attorney general.

(2) A renewal application shall be deemed incomplete and shall not be considered for approval if the applicant fails to include any of the following:

(A) All signatures and information required by the renewal application;

(B) payment of all required fees as provided in K.A.R. 16-15-3; or

(C) all attachments required by the renewal application.

(3) A complete renewal application shall be deemed submitted according to either of the following:

(A) If mailed, the date of the last postmark on the complete renewal application; or

(B) if filed in person, the last file-stamped date applied to the complete renewal application by the attorney general.

(d) If a licensee has not submitted a complete renewal application within 30 days of the license expiration date, that license shall be considered abandoned and shall not be renewed. Any abandoned license may be reissued only after the individual successfully completes the initial application process specified in K.A.R. 16-15-2.

(e) Upon submitting a renewal application, each licensee shall notify the attorney general of the following:

(1) Any new authorizations that have been obtained by that licensee;

(2) any authorizations that have lapsed or otherwise expired; and

(3) if not already submitted to the attorney general, any authorization that has been encumbered by the issuing jurisdiction. (Authorized by K.S.A. 2016 Supp. 75-7e07; implementing K.S.A. 2016 Supp. 75-7e05, 75-7e08; effective, T-16-6-29-16, July 1, 2016; effective Oct. 21, 2016.)

## Article 16.—SKILL DEVELOPMENT TRAINING COURSE

**16-16-1. Definitions.** (a) “Campus police officer” shall mean a school security officer designated by the board of education of any school district pursuant to K.S.A. 72-8222, and amendments thereto.

(b) “Law enforcement officer” and “police officer” shall mean a full-time or part-time salaried officer or employee of the state, a county, or a city whose duties include the prevention or detection of crime and the enforcement of criminal or traffic law of Kansas or of any Kansas municipality. These terms shall include a campus police officer.

(c) “Law enforcement officer primarily assigned to a school” shall mean any of the following:

(1) A campus police officer;

(2) a school resource officer; or

(3) a law enforcement officer jointly designat-

ed by a superintendent and the head of a law enforcement agency.

(d) "School district" shall mean a unified school district organized under the laws of Kansas.

(e) "School resource officer" shall mean a law enforcement officer or police officer who is employed by a local law enforcement agency and is assigned to a school district through an agreement between the local law enforcement agency and the school district.

(f) "Superintendent" shall mean the superintendent of schools appointed by the board of education of a school district.

(g) "Superintendent's designee" shall mean a person who is appointed by the superintendent and who is licensed by the Kansas state board of education and employed by the superintendent's school district but is not a law enforcement officer. (Authorized by and implementing L. 2016, ch. 46, §14; effective Dec. 16, 2016.)

**16-16-2. Curriculum.** There is hereby created a skill development training course, which shall include the following curriculum:

- (a) Information on adolescent development;
- (b) risk and needs assessments;
- (c) mental health;
- (d) diversity;
- (e) youth crisis intervention;
- (f) substance abuse prevention;
- (g) trauma-informed responses; and
- (h) other evidence-based practices in school policing to mitigate student juvenile justice exposure. (Authorized by and implementing L. 2016, ch. 46, §14; effective Dec. 16, 2016.)

**16-16-3. Training requirement.** (a) Each law enforcement officer primarily assigned to a school and each superintendent or superintendent's designee shall be required to successfully complete a skill development training course, pursuant to K.A.R. 16-16-2, that has been developed and either provided or authorized by the Kansas law enforcement training center according to the following, whichever is later:

- (1) On or before June 30, 2018; or
- (2) within one year of being designated as a law enforcement officer primarily assigned to a school or employed by a school district as a superintendent or superintendent's designee.

(b) Nothing in this regulation shall require a law enforcement officer primarily assigned to a school or a superintendent or superintendent's designee

to complete more than one skill development training course.

(c) Each law enforcement officer primarily assigned to a school and each superintendent or superintendent's designee shall submit proof of successful completion of a skill development training course, pursuant to K.A.R. 16-16-2, that was developed and either provided or authorized by the Kansas law enforcement training center to that individual's respective certification or licensing agency. (Authorized by and implementing L. 2016, ch. 46, §14; effective Dec. 16, 2016.)

### **Article 17.—COMMERCIAL DRIVER'S LICENSE: TRAINING IN HUMAN TRAFFICKING IDENTIFICATION AND PREVENTION**

**16-17-1. Training course approval for providers.** (a) For purposes of this regulation, "human trafficking" shall have the meaning specified in K.S.A. 2017 Supp. 21-5426, and amendments thereto, and shall include "commercial sexual exploitation of a child" as specified in K.S.A. 2017 Supp. 21-6422, and amendments thereto.

(b) No person or entity shall provide a training course on human trafficking identification and prevention pursuant to K.S.A. 2017 Supp. 8-2,157, and amendments thereto, unless the office of the attorney general has issued a letter of approval for that training course.

(c) Each person or entity seeking approval of a training course on human trafficking identification and prevention shall submit an application to the office of the attorney general, human trafficking identification and prevention training approval, in Topeka, Kansas. The application shall include at least the following information:

- (1) (A) The name and address of the person or entity;
- (B) the name and title of the person submitting the application on behalf of the person or entity, with the person's signature and a statement certifying that the information and materials submitted will be used in the training course for which approval is being sought; and
- (C) the name, title, and telephone number of the contact person for course approval matters; and
- (2) a copy of all training materials. The training materials shall include at least the following:
  - (A) Written materials or video materials, or both;
  - (B) a definition of "human trafficking" consistent with subsection (a);

(C) strategies on what to look for and how to identify potential victims of human trafficking; and

(D) information on how and to whom to report suspected human trafficking.

(d) After a training course on human trafficking identification and prevention has been approved, new or revised written or video training materials shall not be used until an application for approval of the new or revised training materials has been submitted to and approved by the office of the attorney general pursuant to this regulation. (Authorized by and implementing K.S.A. 2017 Supp. 8-2,157; effective March 9, 2018.)

### **Article 18.—ELDER AND DEPENDENT ADULT ABUSE PREVENTION COUNCIL**

**16-18-1. Definitions.** Each of the following terms, as used in this article of the attorney general's regulations, shall have the meaning specified in this regulation:

(a) "ANE unit" means the abuse, neglect, and exploitation of persons unit created in the office of the attorney general pursuant to K.S.A. 75-723, and amendments thereto.

(b) "Chairperson" means the person from the ANE unit who serves as the council's chairperson.

(c) "Council" means the elder and dependent adult abuse prevention council, which shall advise and may make recommendations to the ANE unit and the attorney general.

(d) "Multidisciplinary team" and "MDT" mean a group of individuals who have background, education, or experience in one or more disciplines or fields of study in preventing, detecting, and investigating abuse, neglect, or exploitation of elder or dependent adults. (Authorized by and implementing K.S.A. 2018 Supp. 75-723; effective July 19, 2019.)

**16-18-2. Membership; meetings.** (a) The elder and dependent adult abuse prevention council is hereby established by this regulation. The council shall consist of the following members appointed by the attorney general:

(1) A representative from the ANE unit, who shall serve as the chairperson;

(2) a representative from the medicaid fraud and abuse division of the attorney general's office;

(3) a representative from the consumer protection division of the attorney general's office;

(4) a representative of the attorney general, who

shall serve as the prevention and education outreach coordinator;

(5) a representative of the attorney general, who shall serve as the MDT and elder or dependent adult victim coordinator;

(6) a representative from the Kansas department for aging and disability services (KDADS), who shall be appointed in consultation with and agreement of the secretary of KDADS;

(7) a representative from the Kansas department for children and families (DCF), who shall be appointed in consultation with and agreement of the secretary of DCF;

(8) a representative from the Kansas department of health and environment (KDHE), who shall be appointed in consultation with and agreement of the secretary of KDHE;

(9) a representative of the governor, who shall be appointed in consultation with and agreement of the governor;

(10) a prosecutor from a district attorney's office, who shall be appointed in consultation with the Kansas county and district attorneys association;

(11) a county attorney, who shall be appointed in consultation with the Kansas county and district attorneys association;

(12) a law enforcement officer or police officer certified by the Kansas commission on peace officers' standards and training, who shall be appointed in consultation with the Kansas sheriffs' association, the Kansas association of chiefs of police, or the Kansas peace officers association;

(13) a representative from the medical services industry who is experienced in matters involving elder or dependent adult abuse;

(14) a representative from the financial services industry who is experienced in matters involving elder or dependent adult abuse;

(15) two representatives from advocacy organizations who are experienced in the prevention of elder or dependent adult abuse; and

(16) other individuals as deemed necessary by the attorney general to serve on the council.

(b) The council shall meet at least quarterly upon call of the chairperson and shall maintain minutes of each meeting. (Authorized by and implementing K.S.A. 2018 Supp. 75-723; effective July 19, 2019.)

**16-18-3. Duties.** (a) The council shall advise and may make recommendations to the ANE unit and the attorney general to assist the ANE unit with the statutory duty of the ANE unit pursuant

to K.S.A. 2018 Supp. 75-723, and amendments thereto.

(b) To fulfill its duties, the council may perform the following:

(1) Take testimony or gather and receive information;

(2) establish subcommittees or working groups on particular topics, which may be composed exclusively of members of the council or may, at the discretion of the chairperson, include persons who are not members of the council;

(3) assist in developing local or regional MDTs to prevent, detect, and investigate abuse, neglect, or exploitation of elder or dependent adults;

(4) coordinate and engage in prevention activities for education, outreach, and awareness, including the development of a publicly available clearinghouse of information on elder or dependent adult abuse prevention; and

(5) undertake any other tasks as may be requested by the attorney general.

(c) The council shall comply with the Kansas open meetings act and the Kansas open records act.

(d) The council shall have the authority to request legal counsel and any other staff for its support from the attorney general.

(e) The council shall submit to the ANE unit and the attorney general an annual report on the council's work, recommendations, and anticipated activities. (Authorized by and implementing K.S.A. 2018 Supp. 75-723; effective July 19, 2019.)

**Article 19.—VICTIM INFORMATION AND NOTIFICATION EVERYDAY ADVISORY BOARD**

**16-19-1. Definitions.** Each of the following terms, as used in this article of the attorney general's regulations, shall have the meaning specified in this regulation:

(a) "Board" means the advisory board appointed by the attorney general.

(b) "Chairperson" means the VINE coordinator.

(c) "VINE coordinator" means the person appointed by the attorney general to oversee the implementation and operation of the VINE system throughout the state.

"VINE system" means the Kansas victim information and notification everyday system, which allows victims of crime and the general public to use the telephone, a mobile application, or the internet to search for information regarding the

custody status of an offender housed in a Kansas county jail and to register to receive notification by telephone, text message, or electronic mail, or any combination of these, whenever the offender's custody status changes. (Authorized by and implementing K.S.A. 75-771; effective March 6, 2020.)

**16-19-2. Membership; meetings.** (a) The board is hereby established by this regulation. The board shall consist of the following members appointed by the attorney general:

(1) The VINE coordinator, who shall serve as the chairperson;

(2) a representative of the Kansas sheriffs' association, who shall be appointed in consultation with and agreement of the Kansas sheriffs' association;

(3) a representative from a victim advocacy organization; and

(4) up to two other individuals as deemed necessary by the attorney general.

The board shall meet upon the call of the chairperson and shall maintain minutes of each meeting. (Authorized by and implementing K.S.A. 75-771; effective March 6, 2020.)

**16-19-3. Duties.** (a) The board shall make recommendations for the implementation and operation of the VINE system to the attorney general.

(b) To fulfill its duties, the board shall have the authority to perform the following:

(1) Take testimony or gather and receive information;

(2) establish subcommittees or working groups on particular topics, which may be composed exclusively of members of the board or may, at the discretion of the chairperson, include persons who are not members of the board;

(3) coordinate and engage in activities for education, outreach, and awareness of the services provided through the VINE system; and

(4) undertake any other tasks as may be requested by the attorney general.

(c) The board and members of established subcommittees or working groups shall comply with the Kansas open meetings act and the Kansas open records act.

(d) The board shall have the authority to request legal counsel and any other staff for its support from the office of the attorney general. (Authorized by and implementing K.S.A. 75-771; effective March 6, 2020.)

**Article 20.—KANSAS OPEN  
MEETINGS ACT**

**16-20-1. Compliance with the Kansas open meetings act during an emergency declaration.** (a) This regulation shall be in effect only as follows:

(1) During a state of disaster emergency lawfully declared by the governor pursuant to K.S.A. 48-924(a) through (c), and amendments thereto, or other emergency declaration lawfully declared pursuant to applicable emergency-powers provisions of local, state, or federal law;

(2) in the territory affected by any such declaration; and

(3) to the extent that emergency responses required pursuant to any such declaration prevent or impede the ability of any of the following:

(A) Members of a public body or agency subject to the Kansas open meetings act, K.S.A. 75-4317 et seq. and amendments thereto, to conduct meetings by physically gathering in person;

(B) members of the public to attend or observe public meetings by physically attending the meetings; or

(C) a combination of both paragraph (a)(3)(A) and paragraph (a)(3)(B).

(b) All requirements of the Kansas open meetings act, K.S.A. 75-4317 et seq. and amendments thereto, shall remain in force and effect during any emergency declared as described in paragraph (a)(1) unless expressly suspended by order of the governor pursuant to K.S.A. 48-925(c)(1), and amendments thereto, or other applicable provision of K.S.A. 48-925, and amendments thereto. No order of the governor shall be construed to suspend any requirement of the Kansas open meetings act, unless the order meets the following conditions:

(1) Expressly cites and invokes K.S.A. 48-925(c)(1), and amendments thereto, and any other specific provision of K.S.A. 48-925, and amendments thereto, from which the order draws authority;

(2) expressly references the Kansas open meetings act and the specific provisions thereof that the governor intends to suspend during the state of disaster emergency; and

(3) makes plain and unequivocal the intent of the governor to suspend any such requirement.

(c) Any public body or agency may comply with the requirement of K.S.A. 75-4318(a), and amendments thereto, that a meeting be “open to the public” through the use of a telephone or oth-

er medium for interactive communication if the requirements of subsection (e) are met.

(d) As used in this regulation, “medium for interactive communication” shall include teleconference, videoconference, internet conference, television broadcast, or any other method that permits the public to listen to the meeting and also to observe the meeting if the method allows for visual observation.

(e) Each public body or agency conducting an open meeting utilizing solely a telephone or another medium for interactive communication rather than by members of the body or agency gathering in person at a physical location shall meet the following requirements:

(1) Use a medium for interactive communication that, at a minimum, allows members of the public, without cost, to listen to the meeting and, if available, also allows video observation of the meeting;

(2) comply with all requirements of the Kansas open meetings act, except any temporarily suspended by the governor as provided by subsection (b), including requirements for notice;

(3) if the medium for interactive communication allows, provide an alternative means to access the meeting for members of the public who do not have internet access that also complies with the requirements issued pursuant to any emergency declaration;

(4) provide directions describing how members of the public will be able to electronically access, listen to, or observe the open meeting;

(5) if the medium for interactive communication does not permit easy identification of the individual speaker, require each member of the public body or agency, staff, or presenter to state the individual’s name and title, if any, each time the individual begins speaking or voting so that the individual can be readily identified by remote listeners or observers;

(6) require all participants to ensure that microphones, phones, or other electronic devices are muted when the participants are not speaking so that the ability of remote listeners or observers to hear the proceedings is not unnecessarily impeded;

(7) describe at the beginning of the meeting whether public comment will be allowed and what process will be used to identify any individual who wishes to comment, if permitted;

(8) describe at the beginning of the meeting the process that will be used for a closed or executive

meeting pursuant to K.S.A. 75-4319, and amendments thereto;

(9) before any meeting, provide electronic or paper copies of an agenda, if any, to any individual requesting the agenda;

(10) clearly state each motion before the public body votes and announce the results of the final vote; and

(11) when not otherwise established by the agency or by ordinance or resolution of the public body, pass a motion that clearly identifies and authorizes by delegation each member of the public body or staff who will be permitted to sign any binding document for the public body or agency.

(f) To the extent that emergency responses required pursuant to the emergency declaration prevent or impede the ability of the public to physically attend a public meeting, any public body or agency may comply with the requirement of K.S.A. 75-4318(a), and amendments thereto, by meeting in person but limiting physical access of the public to the place where the meeting occurs if the public body or agency meets the following requirements:

(1) Complies with all requirements of the Kansas open meetings act, except any requirements suspended by the governor as provided by subsection (b), including requirements for notice;

(2)(A)(i) Broadcasts the meeting live on television or the internet; and

(ii) provides members of the public with the ability to access the meeting by telephone without cost; or

(B) uses any other method other than the methods specified in paragraphs (f)(2)(A)(i) and (ii) that permits the public to listen to or observe the meeting without cost;

(3) provides directions describing how mem-

bers of the public will be able to electronically access, listen to, or observe the open meeting;

(4) if the medium for interactive communication does not permit easy identification of the individual speaker, requires each member of the public body or agency, staff, or presenter to state the individual's name and title, if any, each time the individual begins speaking or voting so that the individual can be readily identified by remote listeners or observers;

(5) describes at the beginning of the meeting whether public comment will be allowed and what process will be used to identify any individual who wishes to comment, if permitted;

(6) describes at the beginning of the meeting the process that will be used for a closed or executive meeting pursuant to K.S.A. 75-4319, and amendments thereto;

(7) before any meeting, provides electronic or paper copies of an agenda, if any, to any individual requesting the agenda;

(8) states each motion before the public body votes and announces the results of the final vote; and

(9) when not otherwise established by the agency or by ordinance or resolution of the public body, passes a motion that clearly identifies and authorizes by delegation each member of the public body or staff who will be permitted to sign any binding document for any public body or agency.

(g) Nothing in this regulation shall require any public body or agency to provide members of the public with the opportunity for public comment.

(h) Nothing in this regulation shall require any public body or agency to take action to prevent any member of the public from physically attending any public meeting. (Authorized by K.S.A. 75-762; implementing K.S.A. 75-4317 and 75-4318; effective, T-16-3-25-20, March 25, 2020; effective Sept. 11, 2020.)



## Agency 17

# Office of the State Bank Commissioner

### Articles

- 17-11. DOCUMENTATION REQUIREMENTS.
- 17-23. TRUST SUPERVISION.
- 17-24. MORTGAGE BUSINESS.
- 17-25. CREDIT SERVICES ORGANIZATIONS.

### Article 11.—DOCUMENTATION REQUIREMENTS

**17-11-18. Loans; documentation requirements.** (a) Except as specified in this subsection, each bank shall maintain complete and current credit information, not older than 15 months, for each borrower for whom the total amount of the following exceeds \$100,000:

- (1) All loans made to the borrower; and
- (2) all loans attributable to the borrower pursuant to K.S.A. 9-1104, and amendments thereto. This requirement shall not apply if all loans made or attributable to the borrower are adequately secured.

(b) Unless loan repayment is guaranteed by a governmental program or private insurance company, the following requirements shall be met:

(1) For each real estate loan in excess of \$25,000 but less than \$50,000, the bank shall complete one of the following tasks:

(A) The bank shall verify in writing that a lien search of the records of the county register of deed's office was conducted and the bank's lien position was determined. This verification of a lien search shall be on file with the bank.

(B) The bank shall obtain and maintain on file either an attorney's written title opinion or a title insurance policy.

(C) For a non-purchase-money mortgage that is not a refinancing of an existing first mortgage, the bank shall obtain an insurance policy fully insuring the bank against loss of the mortgage priority position. The bank shall maintain a copy of the policy and any other supporting information on file.

(2) For each real estate loan of \$50,000 or more, an attorney's written title opinion or a title insurance policy shall be on file with the bank.

(c) If the value of the improvements on any real estate is necessary for adequate protection of the loan, an insurance policy covering these improve-

ments against fire and windstorm shall be on file with the bank for any loan in excess of \$25,000.

(d) A real estate mortgage or deed of trust, showing the filing information with the county register of deeds, shall be on file with the bank for each loan collateralized by real estate.

(e) For any loan collateralized by personal property, if the bank is required by law to file a financing statement to perfect a security interest, the bank shall retain a copy of the filed financing statement. In other cases, the bank shall maintain all documents related to the loan. (Authorized by K.S.A. 2013 Supp. 9-1713; implementing K.S.A. 2013 Supp. 9-1101, K.S.A. 9-1130, and K.S.A. 2013 Supp. 9-1713; effective Jan. 1, 1966; amended May 1, 1983; amended Jan. 27, 1992; amended Aug. 9, 1996; amended Jan. 18, 2002; amended May 30, 2003; amended May 3, 2013; amended July 11, 2014.)

**17-11-21. Appraisals and evaluations.** (a) Except for those transactions that meet the requirements of subsection (b) or (c), an accurate appraisal of all real estate mortgaged to secure principal debt of \$25,000 or more to a bank shall be made by an appraiser who is licensed or certified by the state in which the property is located and who is independent of the transaction.

(b) Two officers or directors, or a qualified individual who is independent of the transaction, may complete an accurate evaluation of real estate mortgaged in the following types of real estate-related transactions:

(1) Real estate mortgaged to secure principal debt of \$250,000 or less;

(2) business loans of \$1 million or less secured by real estate, if the primary source of repayment is not dependent upon the sale of, or rental income from, the real estate; or

(3) renewals or refinancing of loans, in any amount, secured by real estate, if either of the following conditions is met:

(A) There is no advancement of new monies other than funds necessary to cover reasonable closing costs; or

(B) there has been no obvious and material change in market conditions or physical aspects of the property that affects the adequacy of the real estate collateral or the validity of an existing appraisal, even with the advancement of new monies.

(c) Neither an appraisal nor an evaluation shall be required for the following types of real estate-related transactions:

(1) Loans that are well supported by income or other collateral if real estate is taken as additional collateral solely in an abundance of caution;

(2) loans to acquire or invest in real estate if a security interest is not taken in real estate;

(3) liens taken on real estate to protect rights to, or control over, collateral other than real estate;

(4) real estate operating leases that are not the equivalent of a purchase or sale; or

(5) real estate-related loans that have met all appraisal requirements necessary to be sold to, or insured by, a United States government agency or a United States government-sponsored agency.

(d) Each individual who conducts an appraisal or evaluation shall view the premises, make a written statement of value, and sign and file the statement with the bank.

(e) Despite any other provisions of this regulation, an appraisal or evaluation may be required by the commissioner if it is deemed necessary to address safety and soundness concerns. (Authorized by K.S.A. 2013 Supp. 9-1713; implementing K.S.A. 2013 Supp. 9-1101 and 9-1713; effective Jan. 1, 1966; amended May 1, 1978; amended Jan. 27, 1992; amended Oct. 19, 1992; amended Jan. 25, 1993; amended Sept. 20, 1993; amended Sept. 19, 1994; amended Aug. 9, 1996; amended Jan. 18, 2002; amended July 11, 2014.)

**Article 23.—TRUST SUPERVISION**

**17-23-9.** (Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-1603, K.S.A. 9-1607, K.S.A. 9-1608, and K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, §1; effective Feb. 28, 1994; amended Jan. 18, 2002; revoked Feb. 21, 2020.)

**Article 24.—MORTGAGE BUSINESS**

**17-24-2. Mortgage business fees.** At the time of filing any application pursuant to the Kansas mortgage business act, K.S.A. 9-2201 et seq.

and amendments thereto, each applicant, licensee, or registrant shall remit to the office of the state bank commissioner the following applicable nonrefundable fees:

- (a) New or renewal application for each principal place of business ..... \$400
- (b) New or renewal application for each branch office ..... \$300
- (c) Application for new registration as a loan originator ..... \$100
- (d) Renewal registration as a loan originator ..... \$50

(Authorized by K.S.A. 2013 Supp. 9-2209; implementing K.S.A. 9-2204, K.S.A. 2013 Supp. 9-2205, and K.S.A. 9-2215; effective, T-17-4-9-99, April 9, 1999; amended Dec. 21, 2001; amended Oct. 2, 2009; amended Sept. 26, 2014.)

**17-24-3. Prelicensing and continuing education; requirements.** (a) Each individual required to register as a loan originator pursuant to the Kansas mortgage business act, K.S.A. 9-2201 et seq. and amendments thereto, shall complete at least 20 hours of prelicensing professional education (PPE) approved in accordance with subsection (c), which shall include at least the following:

- (1) Three hours of federal law and regulations;
- (2) three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and
- (3) two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) Each individual required to register as a loan originator pursuant to the Kansas mortgage business act, K.S.A. 9-2201 et seq. and amendments thereto, shall annually complete at least eight hours of approved continuing professional education (CPE) as a condition of registration renewal, which shall include at least the following:

- (1) Three hours of federal law and regulations;
- (2) two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and
- (3) two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(c) Each PPE and each CPE course shall first be approved by the office of the state bank commissioner (OSBC), or its designee, before granting credit.

(d) In addition to the specific topic require-

ments in subsections (a) and (b), PPE and CPE courses shall focus on issues of mortgage business, as defined by K.S.A. 9-2201 and amendments thereto, or related industry topics.

(e) One PPE or CPE hour shall consist of at least 50 minutes of approved instruction.

(f) Each request for PPE or CPE course approval shall be submitted on a form approved by the OSBC. A request for PPE or CPE course approval may be submitted by any person, as defined by K.S.A. 9-2201 and amendments thereto.

(g) Evidence of satisfactory completion of approved PPE or CPE courses shall be submitted in the manner prescribed by the commissioner. Each registrant shall ensure that PPE or CPE credit has been properly submitted to the OSBC and shall maintain verification records in the form of completion certificates or other documentation of attendance at approved PPE or CPE courses.

(h) Each CPE year shall begin on the first day of January and shall end on the 31st day of December each year.

(i) A registrant may receive credit for a CPE course only in the year in which the course is taken. A registrant shall not take the same approved course in the same or successive years to meet the annual requirements for CPE.

(j) Each registrant who fails to renew the registrant's certificate of registration, in accordance with K.S.A. 9-2205 and amendments thereto, shall obtain all delinquent CPE before receiving a new certificate of registration.

(k) A registrant who is an instructor of an approved continuing education course may receive credit for the registrant's own annual continuing education requirement at the rate of two hours of credit for every one hour taught. (Authorized by and implementing K.S.A. 2008 Supp. 9-2209, as amended by 2009 SB 240, §9; effective March 1, 2002; amended Oct. 2, 2009.)

**17-24-4. Record retention.** (a) In any mortgage transaction in which the licensee does not close the mortgage loan in the licensee's name, the licensee shall retain the following documents, as applicable, for at least 36 months following the loan closing date, or if the loan is not closed, the loan application date:

- (1) The application;
- (2) the good faith estimate;
- (3) the early truth-in-lending disclosure statement;

(4) any written agreements with the borrower that describe rates, fees, broker compensation, and any other similar fees;

(5) an appraisal performed by a Kansas-licensed or Kansas-certified appraiser completed within 12 months before the loan closing date, the total appraised value of the real estate as reflected in the most recent records of the tax assessor of the county in which the real estate is located, or, for a nonpurchase money real estate transaction, the estimated market value as determined through an acceptable automated valuation model, pursuant to K.S.A. 16a-1-301(6) and amendments thereto;

(6) the signed Kansas acknowledgment as required by K.S.A. 9-2208(b), and amendments thereto;

(7) the adjustable rate mortgage (ARM) disclosure;

(8) the home equity line of credit (HELOC) disclosure statement;

(9) the affiliated business arrangement disclosure;

(10) evidence that the special information booklet, consumer handbook on adjustable rate mortgages, home equity brochure, reverse mortgage booklet, or any suitable substitute was delivered in a timely manner;

(11) the certificate of counseling for home equity conversion mortgages (HECMs);

(12) the loan cost disclosure statement for HECMs;

(13) the notice to the borrower for HECMs;

(14) phone log or any correspondence with associated notes detailing each contact with the consumer;

(15) any documentation that aided the licensee in making a credit decision, including a credit report, title work, verification of employment, verification of income, bank statements, payroll records, and tax returns;

(16) the settlement statement; and

(17) all paid invoices for appraisal, title work, credit report, and any other closing costs.

(b) In any mortgage transaction in which the licensee provides any money to fund the loan or closes the mortgage loan in the licensee's name, the licensee shall retain both the documents required in subsection (a) and the following documents, as applicable, for at least 36 months from the mortgage loan closing date:

(1) The high loan-to-value notice required by K.S.A. 16a-3-207 and amendments thereto;

(2) the final truth-in-lending disclosure statement, including an itemization of the amount fi-

nanced and an itemization of any prepaid finance charges;

(3) any credit insurance requests and insurance certificates;

(4) the note and any other applicable contract addendum or rider;

(5) a copy of the filed mortgage or deed;

(6) a copy of the title policy or search;

(7) the assignment of the mortgage and note;

(8) the initial escrow account statement or escrow account waiver;

(9) the notice of the right to rescind or waiver of the right to rescind, if applicable;

(10) the special home ownership and equity protection act disclosures required by regulation Z in 12 CFR 226.32(c) and 226.34(a)(2), as amended and in effect on October 1, 2009, if applicable;

(11) the mortgage servicing disclosure statement and applicant acknowledgement;

(12) the notice of transfer of mortgage servicing;

(13) any interest rate lock-in agreement or float agreement; and

(14) any other disclosures or statements required by law.

(c) In any mortgage transaction in which the licensee owns the mortgage loan or the servicing rights of the mortgage loan and directly or indirectly undertakes collection of payments or enforcement of rights against debtors, the licensee shall retain the documents required in subsections (a) and (b) and the following documents, as applicable, for at least 36 months from the final entry to each account:

(1) A complete payment history, including the following:

(A) An explanation of transaction codes, if used;

(B) the principal balance;

(C) the payment amount;

(D) the payment date;

(E) the distribution of the payment amount to the following:

(i) Interest;

(ii) principal;

(iii) late fees or other fees; and

(iv) escrow; and

(F) any other amounts that have been added to, or deducted from, a consumer's account;

(2) any other statements, disclosures, invoices, or information for each account, including the following:

(A) Documentation supporting any amounts added to a consumer's account or evidence that a

service was actually performed in connection with these amounts, or both, including costs of collection, attorney's fees, property inspections, property preservations, and broker price opinions;

(B) annual escrow account statements and related escrow account analyses;

(C) notice of shortage or deficiency in escrow account;

(D) loan modification agreements;

(E) forbearance or any other repayment agreements;

(F) subordination agreements;

(G) foreclosure notices;

(H) evidence of sale of foreclosed homes;

(I) surplus or deficiency balance statements;

(J) default-related correspondence or documents;

(K) the notice of the consumer's right to cure;

(L) any property insurance advance disclosure;

(M) force-placed property insurance;

(N) notice and evidence of credit insurance premium refunds;

(O) deferred interest;

(P) suspense accounts;

(Q) phone log or any correspondence with associated notes detailing each contact between the servicer and the consumer; and

(R) any other product or service agreements; and

(3) documents related to the general servicing activities of the licensee, including the following:

(A) Historical records for all adjustable rate mortgage indices used;

(B) a log of all accounts sold, transferred, or assigned that details to whom the accounts were sold, transferred, or assigned;

(C) a log of all accounts in which foreclosure activity has been initiated;

(D) a log of all credit insurance claims and accounts paid by credit insurance; and

(E) a schedule of servicing fees and charges imposed by the licensee or a third party.

(d) In addition to meeting the requirements specified in subsections (a), (b), and (c), each licensee shall retain for at least the previous 36 months the documents related to the general business activities of the licensee, which shall include the following:

(1) The business account check ledger or register;

(2) all financial statements, balance sheets, or statements of condition;

(3) all escrow account ledgers and related deposit statements as required by K.S.A. 9-2213, and amendments thereto;

(4) a journal of mortgage transactions as required by K.S.A. 9-2216a and amendments thereto;

(5) all lease agreements for Kansas locations; and

(6) a schedule of the licensee's fees and charges. (Authorized by K.S.A. 9-2209, as amended by 2009 SB 240, §9; implementing K.S.A. 2008 Supp. 9-2208, K.S.A. 9-2213, and K.S.A. 2008 Supp. 9-2216, as amended by 2009 SB 240, §12; effective Oct. 31, 2003; amended Oct. 2, 2009.)

**17-24-5. Preclicensure testing.** (a) On and after July 31, 2010, each individual required to register as a loan originator pursuant to the Kansas mortgage business act, K.S.A. 9-2201 et seq. and amendments thereto, shall pass a qualified written test. For purposes of this regulation, the commissioner's designee for developing and administering the qualified written test shall be the nationwide mortgage licensing system and registry.

(b) A written test shall not be treated as a qualified written test for purposes of subsection (a) unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including the following:

(1) Ethics;

(2) federal laws and regulations pertaining to mortgage origination;

(3) state laws and regulations pertaining to mortgage origination; and

(4) federal and state laws and regulations, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(c)(1) An applicant shall not be considered to have passed a qualified written test unless the applicant achieves a test score of at least 75 percent.

(2) An applicant may retake a test three consecutive times, with each consecutive taking occurring at least 30 days after the preceding test.

(3) After failing three consecutive tests, an applicant shall wait at least six months before taking the test again.

(4) A registrant who fails to maintain a valid license for five years or longer shall retake the test, not including any time during which the individual is a registered loan originator, as defined in section 1503 of title V, S.A.F.E. mortgage licensing act of 2008, P.L. 110-289. (Authorized by and implementing K.S.A. 2008 Supp. 9-2209, as amended by 2009 SB 240, §9; effective Oct. 2, 2009.)

**17-24-6. Bond requirements.** Each applicant for a new or renewal Kansas mortgage business act license shall submit a bond in the following amounts: (a) For any applicant who maintains a bona fide office, \$50,000.00 or, if the applicant or licensee originated or made more than \$50,000,000.00 in Kansas mortgage loans during the previous calendar year, \$75,000.00; or

(b) for each applicant or licensee who does not maintain a bona fide office, \$100,000.00 or, if the applicant or licensee originated more than \$50,000,000.00 in Kansas mortgage loans during the previous calendar year, \$125,000.00. (Authorized by K.S.A. 2008 Supp. 9-2209, as amended by 2009 SB 240, §9, and K.S.A. 2008 Supp. 9-2211, as amended by 2009 SB 240, §10; implementing K.S.A. 2008 Supp. 9-2211, as amended by 2009 SB 240, §10; effective Oct. 2, 2009.)

## Article 25.—CREDIT SERVICES ORGANIZATIONS

### 17-25-1. Registration and renewal fees.

When filing any application or renewal pursuant to the Kansas credit services organization act, K.S.A. 50-1116 et seq. and amendments thereto, each applicant or registrant shall remit to the office of the state bank commissioner the applicable nonrefundable fee, as follows:

(a) Application for initial registration..... \$400

(b) Renewal application for registration .... \$150

(Authorized by K.S.A. 50-1118 and K.S.A. 50-1128; implementing K.S.A. 50-1118; effective April 4, 2008; amended Sept. 26, 2014.)



# Agency 19

## Governmental Ethics Commission

**Editor's Note:**

Effective July 1, 1998, the Kansas Commission on Governmental Standards and Conduct was redesignated as the Governmental Ethics Commission. Rules and regulations of the Kansas Commission on Governmental Standards and Conduct were by law specifically retained in force and effect and became the rules and regulations of the Governmental Ethics Commission until amended or revoked by the successor commission.

**Editor's Note:**

Effective July 1, 1991, the Kansas Commission on Governmental Standards and Conduct was created to replace the Kansas Public Disclosure Commission. Rules and regulations of the Kansas Public Disclosure Commission were by law specifically retained in force and effect and became the rules and regulations of the Kansas Commission on Governmental Standards and Conduct until amended or revoked by the successor commission.

*Articles*

- 19-6. DISCLOSURE AND CONFIDENTIAL PROCEDURES.
- 19-22. CONTRIBUTIONS AND OTHER RECEIPTS.
- 19-23. EXPENDITURES AND OTHER DISBURSEMENTS.
- 19-30. CONTRIBUTION LIMITATIONS.

### Article 6.—DISCLOSURE AND CONFIDENTIAL PROCEDURES

**19-6-1. Nondisclosure and public record.**

(a) (1) Except as otherwise provided by relevant law and as provided in K.A.R. 19-5-5, the following shall be confidential:

(A) All records, complaints, and documents of the commission and all reports filed with, submitted to, or made by the commission; and

(B) all records and transcripts of investigations, inquiries, and hearings of the commission under K.S.A. 46-215 et seq. and K.S.A. 25-4142 et seq. and amendments thereto.

(2) The items specified in this subsection shall not be open to inspection by any individual other than a member of the commission, an employee of the commission, or a state officer or employee designated to assist the commission.

(b) Nothing contained in this regulation shall prohibit any disclosure that is reasonable and necessary to investigate any matter. The following shall be public records and open to public inspection:

(1) Each complaint and any amendments after a determination that probable cause exists;

(2) each answer and any amendments with the consent of the respondent;

(3) any matter presented at a public meeting or public hearing; and

(4) each report of the commission stating a final finding of fact.

(c) Any person subject to an investigation and any respondent may release any report or order issued pursuant to K.A.R. 19-3-1 or K.A.R. 19-5-9 and may comment on the report or order. The confidentiality requirements of relevant law shall be met by all members of the commission and its staff. (Authorized by K.S.A. 2008 Supp. 25-4119a, K.S.A. 46-253; implementing K.S.A. 25-4161, 25-4165, 46-256, and 46-259; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended Feb. 12, 2010.)

### Article 22.—CONTRIBUTIONS AND OTHER RECEIPTS

**19-22-1. Contributions.** (a) General. None of the following shall constitute a contribution if the transaction is made in the ordinary course of business or complies with common trade practices and the transaction does not have as its purpose the nomination, election, or defeat of a clearly identified candidate for state office:

(1) A transfer of goods and services;

(2) the forgiving of a debt; or

(3) the rendering of a discount.

The carryover of funds or inventory by a candidate, candidate committee, party committee, or

political committee from one election period to another shall not constitute a contribution.

(b) Candidate contributions. The transfer of a candidate's personal funds to the candidate's treasurer for use by the treasurer in the candidate's campaign shall constitute a contribution made by the candidate. (c) In-kind contributions. An in-kind contribution shall constitute a contribution. Those transactions that are excluded from the definition of in-kind contribution shall also be excluded from the definition of contribution. (Authorized by K.S.A. 2009 Supp. 25-4119a; implementing K.S.A. 2009 Supp. 25-4143 (e)(1); effective, E-76-56, Nov. 26, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; effective May 1, 1980; amended Feb. 18, 2011.)

**Article 23.—EXPENDITURES AND  
OTHER DISBURSEMENTS**

**19-23-1. Expenditures.** Costs associated with attending informational meetings of the commission or otherwise obtaining information

from the commission shall not constitute expenditures. Costs associated with defending actions brought pursuant to the act shall not constitute expenditures. Costs associated with employing accountants, attorneys, or other persons for advice concerning the requirements of the act or for keeping accounts and records shall constitute expenditures. (Authorized by K.S.A. 2009 Supp. 25-4119a; implementing K.S.A. 2009 Supp. 25-4143 (g)(1); effective, E-76-56, Nov. 26, 1975; effective, E-77-20, May 1, 1976; amended, E-77-47, Sept. 30, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended Feb. 18, 2011.)

**Article 30.—CONTRIBUTION  
LIMITATIONS**

**19-30-4.** (Authorized by K.S.A. 1991 Supp. 25-4119a; implementing K.S.A. 25-4153; effective, E-77-20, May 1, 1976; amended, E-77-47, Sept. 30, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1982; amended June 22, 1992; revoked Feb. 18, 2011.)

## Agency 20

# Crime Victims Compensation Board

### Editor's Note:

Effective July 1, 1989, the Crime Victims Reparations Board shall be and is hereby officially designated as the Crime Victims Compensation Board. On and after July 1, 1989, whenever the Crime Victims Reparations Board, or words of like effect, is referred to or designated by the statute, contract or other document, such reference shall mean and apply to the Crime Victims Compensation Board.

### Articles

- 20-1. DEFINITIONS.
- 20-2. CLAIMS.
- 20-3. HEARINGS.
- 20-6. DEFINITIONS.
- 20-15. NOTORIETY FOR PROFIT CONTRACTS.

### Article 1.—DEFINITIONS

**20-1-1. Definitions.** For the purpose of the act and the board's regulations, each of the following terms shall have the meaning specified in this regulation:

(a) "Accomplice" means one who unites with another in a crime, by aiding or abetting in the crime, by advising or encouraging the crime, or by inciting the criminal conduct causing the claimant's injury.

(b) "Act" means K.S.A. 74-7301 et seq., and amendments thereto.

(c) "Allowable expense" means "allowance expense" as defined in K.S.A. 74-7301, and amendments thereto.

(d) "Extenuating circumstances" means facts that cause reasonable charges for reasonably needed mental health counseling to exceed the presumptive limits specified in K.A.R. 20-2-3.

(e) "Grief therapy" means the counseling or treatment of a victim by reason of family grief.

(f) "Mental health counseling" means a confidential service that provides problem solving and support concerning emotional issues that result from criminal victimization. Mental health counseling has as its primary purpose the enhancement, protection, and restoration of the victim's sense of well-being and social functioning skills. This term shall not include any of the following:

- (1) Efforts to verify or validate claims or reports of criminally injurious conduct;
- (2) advocacy functions, including attendance at

medical or law enforcement procedures or criminal justice proceedings; or

- (3) crisis telephone counseling.

(g) "Victim by reason of family grief" means the spouse, children, siblings, parents, legal guardian, stepparents, and grandparents of a homicide victim. (Authorized by and implementing K.S.A. 74-7304; effective May 1, 1980; amended May 1, 1984; amended Nov. 15, 1993; amended Jan. 10, 2014.)

**20-1-2.** (Authorized by K.S.A. 1979 Supp. 74-7304; effective May 1, 1980; revoked Jan. 10, 2014.)

### Article 2.—CLAIMS

**20-2-1.** (Authorized by and implementing K.S.A. 74-7304; effective May 1, 1980; amended May 1, 1984; revoked Jan. 10, 2014.)

**20-2-2. Cooperation with the board.** (a) All claimants and claimants' attorneys shall fully cooperate with the board and the board's investigators, agents, and representatives. If a claimant or a claimant's attorney fails to fully cooperate, the claim may be reduced or denied by the board.

(b) Failure to fully cooperate shall include the following:

- (1) Failing to fully complete the application for compensation provided by the board;
- (2) not responding to requests for information or evidence; and
- (3) knowingly making false statements to the board or the board's investigators, agents, and

representatives. (Authorized by K.S.A. 74-7304; implementing K.S.A. 74-7304 and 74-7309; effective May 1, 1980; amended May 1, 1984; amended Jan. 10, 2014.)

**20-2-3. Mental health counseling award.**

Each mental health counseling award shall be subject to the limitations specified in this regulation.

(a) Any victim of a crime may be considered for up to a \$5,000 mental health counseling award.

(1) A standard treatment plan based on this limit shall be approved by the board.

(2) Compensation beyond the \$5,000 maximum for mental health counseling may be awarded if the board finds that extenuating circumstances justify this action and this action is supported by information, reports, or a mental health treatment plan and by recommendations of a mental health counseling provider or physician.

(3) The award for a mental health evaluation shall not exceed \$350, which may be in addition to the \$5,000 maximum. For purposes of this paragraph, mental health evaluation shall mean a diagnostic interview examination, including history, mental status, or disposition, that is administered in order to determine a plan of mental health treatment.

(b) Each victim by reason of family grief may be considered for up to a \$1,500 grief therapy award. Compensation beyond the \$1,500 maximum may be awarded if the board finds that extenuating circumstances justify this action and this action is supported by information, reports, or a mental health treatment plan and by recommendations of a mental health counseling provider or physician.

(c) If the mental health treatment plan for a victim requires that others, not including the offender, be involved in treatment, costs for third-party mental health counseling may be compensable up to the \$5,000 maximum, if the third-party mental health counseling is directly and beneficially related to the plan for treatment of the victim. Mental health counseling involving a third party shall not be compensable unless both of the following conditions are met:

(1) The primary victim is present in the mental health counseling sessions, or the focus of the treatment is to assist in the victim's recovery.

(2) The mental health treatment plan addresses the need for third-party mental health counseling.

(d) Compensable mental health counseling may be provided in either of the following:

(1) A medical or psychiatric setting under the supervision of a medical doctor or a psychiatrist licensed or registered by the Kansas board of healing arts or comparable governmental agencies in other jurisdictions having similar licensure or registration requirements. The costs of this mental health counseling incurred during inpatient treatment shall be applied toward the maximum claim for inpatient treatment; or

(2) a nonmedical setting by an individual licensed or registered by the Kansas behavioral sciences regulatory board, the Kansas board of healing arts, or comparable governmental agencies in other jurisdictions having similar licensure or registration requirements, if the mental health counseling falls within the professional parameters of the provider's license or registration.

(e) Compensation for inpatient hospitalization shall be considered only if the condition is life-threatening and the hospitalization has been recommended by the victim's physician or mental health counseling provider. Reimbursement for each instance of inpatient treatment and care shall not exceed the cost of treatment for a period of 10 days or \$10,000, whichever is less. Compensation beyond the \$10,000 maximum may be awarded if the board finds that extenuating circumstances justify this action and this action is supported by information, reports, or a mental health treatment plan and by recommendations of a mental health counseling provider or physician.

(f) The following limits on mental health counseling rates shall apply to outpatient mental health counseling:

- (1) Individual and family mental health counseling in a nonmedical setting .....\$90 per hour
- (2) Group therapy .....\$60 per hour

These rates shall apply to individuals performing treatment. Compensation shall not be awarded to pay the costs of persons supervising treatment.

(g) If it is apparent from the treatment plan that the treatment is addressing issues not directly related to the crime, only that portion of the treatment that is addressing the victimization shall be compensable.

(h) Compensation for mental health counseling shall be based on the version of this regulation that was in effect when the service was provided. (Authorized by K.S.A. 74-7304; implementing K.S.A. 2012 Supp. 74-7301; effective Nov. 15, 1993; amended Jan. 10, 2014.)

**20-2-4.** (Authorized by K.S.A. 74-7304; implementing K.S.A. 74-7314; effective May 1, 1980; amended May 1, 1984; revoked Jan. 10, 2014.)

**20-2-5.** (Authorized by K.S.A. 74-7304; implementing K.S.A. 74-7315; effective May 1, 1980; amended May 1, 1984; revoked Aug. 10, 2012.)

**20-2-7. Cooperation with law enforcement.** (a) For the purpose of K.S.A. 74-7305 and amendments thereto, full cooperation with appropriate law enforcement agencies shall include the following:

(1) Reporting the crime in a timely manner to permit law enforcement agencies to investigate, identify, and charge those responsible for the crime;

(2) providing information, upon request, to law enforcement officers and prosecutors investigating the crime;

(3) cooperating with law enforcement procedures;

(4) appearing in court to testify as required, unless just cause is shown for any failure to appear; and

(5) requesting that the offender be prosecuted, which is commonly known as “pressing charges.”

(b) The term “law enforcement agencies” shall include the offices and agencies responsible for investigating the crime or prosecuting the offender. (Authorized by K.S.A. 74-7304; implementing K.S.A. 2013 Supp. 74-7305; effective Nov. 15, 1993; amended Jan. 10, 2014.)

**20-2-8. Contributory misconduct.** (a) For the purpose of K.S.A. 74-7305 and amendments thereto, “contributory misconduct” may include the following:

(1) Consent, provocation, or incitement, which may consist of the use of fighting words or obscene gestures;

(2) willing presence in a vehicle operated by a person who is known to be under the influence of alcohol or an illegal substance;

(3) abuse of alcohol or an illegal substance;

(4) failure to retreat or withdraw from a threatening situation if an option to do so is readily available;

(5) failure to act as a prudent person; and

(6) unlawful activity.

(b) The acts and behaviors listed in subsection (a) may be excused in cases involving domestic abuse or sexual assault. (Authorized by K.S.A. 74-

7304; implementing K.S.A. 2012 Supp. 74-7305; effective Nov. 15, 1993; amended Jan. 10, 2014.)

**20-2-9. Allowable expenses.** (a) Reasonable charges for medical care shall be deemed allowable expenses only if the medical care provider is registered or licensed by the appropriate governmental licensing entity.

(b) Moving costs may be deemed allowable expenses if one of the following individuals has recommended the move in writing for reasons related to the crime:

(1) A law enforcement officer;

(2) a prosecutor; or

(3) a victims’ advocate working for a law enforcement agency or prosecutor’s office.

(c) Mileage costs may be deemed allowable expenses for medically necessary travel. These costs shall be computed at a rate that does not exceed the rate established by the secretary of administration pursuant to K.S.A. 75-3203a, and amendments thereto.

(d) Meal costs shall not be deemed allowable expenses. (Authorized by K.S.A. 74-7304; implementing K.S.A. 2012 Supp. 74-7301; effective Nov. 15, 1993; amended Jan. 10, 2014.)

### Article 3.—HEARINGS

**20-3-1.** (Authorized by K.S.A. 74-7304; implementing K.S.A. 74-7307; effective May 1, 1980; amended May 1, 1984; revoked Aug. 10, 2012.)

**20-3-2.** (Authorized by K.S.A. 74-7304; implementing K.S.A. 74-7307, 74-7308; effective May 1, 1980; amended May 1, 1984; revoked Aug. 10, 2012.)

### Article 6.—DEFINITIONS

**20-6-1.** (Authorized by and implementing K.S.A. 1984 Supp. 74-7325; effective, T-85-27, Nov. 14, 1984; effective May 1, 1985; amended, T-86-14, June 17, 1985; amended, T-86-45, Dec. 18, 1985; amended May 1, 1986; revoked Jan. 10, 2014.)

### Article 15.—NOTORIETY FOR PROFIT CONTRACTS

**20-15-1, 20-15-2.** (Authorized by L. 1986, ch. 306, sec. 4; implementing L. 1986, ch. 306, sec. 2, 3, 4; effective May 1, 1987; revoked Jan. 10, 2014.)



# Agency 21

## Kansas Human Rights Commission

**Editor's Note:**

Effective July 1, 1991, the Commission on Civil Rights became the Kansas Human Rights Commission. All properties, moneys, appropriations, rights and authorities vested in the Commission on Civil rights were vested in the Kansas Human Rights Commission. See K.S.A. 44-1003.

*Articles*

- 21-30. EMPLOYEE SELECTION PROCEDURES AND RECRUITMENT.
- 21-40. GENERAL PROVISIONS.
- 21-41. COMPLAINTS AND RESPONSES.
- 21-45. PROCEEDINGS.
- 21-46. MISCELLANEOUS SUBSTANTIVE PROVISIONS.

**Article 30.—EMPLOYEE SELECTION PROCEDURES AND RECRUITMENT**

**21-30-18.** (Authorized by K.S.A. 1974 Supp. 44-1003, 1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975; revoked Nov. 16, 2018.)

**Article 40.—GENERAL PROVISIONS**

**21-40-5.** (Authorized by K.S.A. 1974 Supp. 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975; revoked Nov. 16, 2018.)

**Article 41.—COMPLAINTS AND RESPONSES**

**21-41-5. Manner of filing.** A complaint may be submitted for filing by delivery, mail, facsimile, or electronic mail to a commission office. If a complaint is received when the commission offices are closed, the complaint shall be considered received on the next business day that the commission offices are open. (Authorized by K.S.A. 44-1004, 44-1034, 44-1121; implementing K.S.A. 44-1004, 44-1115; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975; amended Nov. 17, 2017.)

**Article 45.—PROCEEDINGS**

**21-45-1, 21-45-2, 21-45-3, 21-45-4, 21-45-5, 21-45-6, 21-45-7, 21-45-8, 21-45-9, 21-45-10, 21-45-11, 21-45-12, 21-45-13, 21-45-14, 21-45-15, 21-45-16, 21-45-17, and 21-45-18.** (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975; revoked Nov. 16, 2018.)

**21-45-21, 21-45-22, 21-45-23, 21-45-24, and 21-45-25.** (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975; revoked Nov. 16, 2018.)

**Article 46.—MISCELLANEOUS SUBSTANTIVE PROVISIONS**

**21-46-2 and 21-46-3.** (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975; revoked Nov. 16, 2018.)



## Agency 22

# State Fire Marshal

### Articles

- 22-1. KANSAS FIRE PREVENTION CODE.
- 22-4. EXPLOSIVE MATERIALS.
- 22-6. FIREWORKS.
- 22-8. LIQUEFIED PETROLEUM GASES.
- 22-10. INSTALLATION AND CERTIFICATION STANDARDS FOR EXTINGUISHING DEVICES.
- 22-11. ADULT CARE HOMES, HOSPITALS, RESIDENTIAL CARE FACILITIES AND MATERNITY CENTERS.
- 22-15. CHILD CARE FACILITIES.
- 22-18. EDUCATIONAL OCCUPANCIES.
- 22-19. CERTIFICATION OF FIRE INVESTIGATORS.
- 22-24. REGIONAL HAZARDOUS MATERIALS RESPONSE.
- 22-25. REDUCED CIGARETTE IGNITION PROPENSITY.

### Article 1.—KANSAS FIRE PREVENTION CODE

**22-1-1. Municipal compliance with Kansas fire prevention code.** (a) When a municipality adopts one of the nationally recognized fire codes or the fire protection segment of a nationally recognized building code and modifies a section of that code, a summary of the modifications shall be submitted to the state fire marshal's office. The modifications shall be reviewed and either approved or rejected by the state fire marshal. The municipality shall be notified of the action within 30 days from receipt of the summary.

(b) Each alternate method of fire protection that has been approved by a local board of appeals as a substitute for strict compliance with code requirements shall be deemed to be in compliance with the Kansas fire prevention code.

(c) Each question arising as to whether another state statute or an enactment of a municipality is inconsistent with the provisions of the fire prevention code shall be resolved by the state fire marshal after a hearing with all interested parties. Each decision of the state fire marshal made under authority of this subsection shall be appealable in accordance with the provisions of K.S.A. 31-142 and amendments thereto. (Authorized by and implementing K.S.A. 2008 Supp. 31-133 and 31-134; effective May 1, 1981; amended May 1, 1985; amended Aug. 28, 1989; amended Sept. 17, 1990; amended Feb. 4, 2011.)

**22-1-2. Compliance with certain building codes.** A building shall be deemed to comply with the Kansas fire prevention code if the building conforms to one of the following building codes and to any additional special requirements of the Kansas fire prevention code and if the building has been issued a certificate of occupancy:

(a) The 1997 edition of the uniform building code (UBC); or

(b) the 2006 edition of the international building code (IBC). (Authorized by and implementing K.S.A. 31-134a; effective May 1, 1985; amended Aug. 28, 1989; amended May 10, 1993; amended July 9, 2004; amended Feb. 4, 2011.)

**22-1-3. Adopted codes and standards.** The following codes and national fire protection association (NFPA) standards are adopted by reference:

(a) International building code (IBC), international code council, 2006 edition, including the appendices but excluding the references in chapter 35 to NFPA 13, 13D, 13R, 14, 30, 72, 101, and 110;

(b) international fire code (IFC), international code council, 2006 edition, including the appendices but excluding the following:

- (1) Chapters 22, 30, 33, 34, 35, 36, and 38; and
- (2) the references in chapter 45 to NFPA 10, 13, 13D, 13R, 14, 25, 30, 30A, 52, 72, 101, 110, and 385;

(c) portable fire extinguishers. NFPA standard no. 10, including annexes A, B, C, D, E, F, G, H,

I, J, and K, 2007 edition. The provisions of section 4.4.1 shall be effective only on and after January 1, 2014;

(d) installation of sprinkler systems. NFPA standard no. 13, including annexes A, B, C, and E, 2007 edition;

(e) installation of sprinkler systems in one- and two-family dwellings and manufactured homes. NFPA standard no. 13D, including annexes A and B, 2007 edition;

(f) installation of sprinkler systems in residential occupancies up to and including four stories in height. NFPA standard no. 13R, including annexes A and B, 2007 edition;

(g) installation of standpipe and hose systems. NFPA standard no. 14, including annexes A and B, 2007 edition;

(h) dry chemical extinguishing systems. NFPA standard no. 17, including annexes A and B, 2002 edition;

(i) wet chemical extinguishing systems. NFPA standard no. 17A, including annexes A and B, 2002 edition;

(j) water-based fire protection systems. NFPA standard no. 25, including annexes A, B, C, D, and E, 2008 edition.;

(k) flammable and combustible liquids. NFPA standard no. 30, including annexes A, B, C, D, E, F, and H, 2008 edition;

(l) motor fuel-dispensing facilities. NFPA standard no. 30A, including annexes A, B, and D, 2008 edition;

(m) vehicular fuel systems. NFPA standard no. 52, including annexes A, C, D, and E, 2006 edition;

(n) national electric code. NFPA standard no. 70, including annexes A, B, C, D, E, F, G, and H, 2008 edition;

(o) fire alarms. NFPA standard no. 72, including annexes A, B, C, E, F, G, and H, 2007 edition;

(p) vapor removal from cooking equipment. NFPA standard no. 96, including annexes A and B, 2008 edition;

(q) life safety code. NFPA standard no. 101, including annexes A and B, 2006 edition;

(r) alternative approaches to life safety. NFPA standard no. 101A, including annexes A and B, 2007 edition;

(s) assembly seating, tents, and membrane structures. NFPA standard no. 102, including annexes A and B, 2006 edition;

(t) emergency and standby power systems. NFPA standard no. 110, including annexes A, B, and C, 2005 edition;

(u) fire safety symbols. NFPA standard no. 170, including annexes A, B, C, and D, 2006 edition; and

(v) tank vehicles for flammable and combustible liquids. NFPA standard no. 385, including annexes A, B, and C 2007 edition. (Authorized by and implementing K.S.A. 2008 Supp. 31-133; effective May 10, 1993; amended Feb. 4, 2011.)

#### Article 4.—EXPLOSIVE MATERIALS

**22-4-2.** (Authorized by and implementing K.S.A. 1988 Supp. 31-133; effective Nov. 27, 1989; revoked Oct. 18, 2013.)

**22-4-3.** (Authorized by and implementing K.S.A. 1988 Supp. 31-133; effective Nov. 27, 1989; revoked Oct. 18, 2013.)

**22-4-4.** (Authorized by and implementing K.S.A. 1989 Supp. 31-133; effective Sept. 17, 1990; revoked Oct. 18, 2013.)

**22-4-5. Adoption by reference.** (a) The 2013 edition of NFPA 495, “explosive materials code,” published by the national fire protection association (NFPA), is hereby adopted by reference, with the alterations specified in subsections (b) through (d).

(b) The following provisions shall be excluded from adoption:

- (1) All material before chapter 1 and all annexes;
- (2) chapters 2, 8, and 12;
- (3)(A) The last sentence of section 1.3.1;
- (B) sections 1.4 through 1.4.3; and
- (C) section 1.6;
- (4)(A) The last sentence of section 3.1;
- (B) section 3.2.1; and
- (C) sections 3.2.3 through 3.2.7;
- (5)(A) Section 4.1.7;
- (B) sections 4.2.3.1 through 4.2.3.3;
- (C) sections 4.7.2 through 4.7.4;
- (D) section 4.8.2; and
- (E) section 4.10.2;
- (6) section 5.2.13.2;
- (7)(A) Sections 6.3 through 6.3.5; and
- (B) sections 6.6 through 6.6.8;
- (8) sections 7.3 through 7.3.2;
- (9) section 10.3.8.1;
- (10) section 11.4.3;
- (11) section 13.1.2; and
- (12)(A) Sections 14.1 through 14.3.8;
- (B) sections 14.4.1 through 14.4.4; and
- (C) sections 14.4.8 through 14.5.9.

(c) The following modifications shall be made to NFPA 495:

(1) Section 1.3.2 shall be replaced with the following: “This code shall not apply to the transportation and use of military explosives by federal or state military agencies, nor shall this code apply to the use of explosive materials by federal, state, or municipal agencies while engaged in public safety functions, except that state and municipal agencies shall be subject to the storage, recordkeeping, and permitting requirements of this code.”

(2) In section 1.3.5, the phrase “as defined in NFPA 1122, Code for Model Rocketry; NFPA 1125, Code for the Manufacture of Model Rocket and High Power Rocket Motors; and NFPA 1127, Code for High Power Rocketry” shall be deleted.

(3) The following text shall be added after section 1.3.6:

“This code shall not apply to small arms ammunition and components of small arms ammunition, but this code shall apply to the manufacture of smokeless propellants and black powder substitutes and to smokeless propellants and black powder substitutes not designed for use in small arms ammunition.

“This code shall not apply to commercially manufactured black powder in quantities not to exceed fifty pounds, percussion caps, safety and pyrotechnical fuses, quills, quick and slow matches, and friction primers, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms as defined in 18 U.S.C. §921(a)(16) or in antique devices exempted from the term ‘destructive device’ in 18 U.S.C. §921(a)(4).

“This code shall not apply to the use, storage, or transportation of precursor chemicals used for agricultural purposes other than blasting, or to fertilizers and fertilizer materials regulated by the Kansas department of agriculture pursuant to K.S.A. 2-1201 et seq., and amendments thereto, except that thefts of ammonium nitrate shall be reported to the office of the state fire marshal and to a local law enforcement authority within 24 hours of discovering the theft.”

(4) In section 3.2.2, the definition of “Authority Having Jurisdiction (AHJ)” shall be replaced with the following: “The state fire marshal or designee, except when the context indicates that the term is referring to a local fire department or law enforcement agency.”

(5) In section 3.3.8, the definition of blasting agent shall be replaced with the following: “Any material or mixture, consisting of fuel and oxidizer, intended

for blasting, not otherwise defined as an explosive, provided that the finished product, as mixed for use or shipment, cannot be detonated by means of a numbered 8 test blasting cap when unconfined.”

(6) Section 3.3.20 shall be replaced with the following: “Explosive. Any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. The term shall also include two or more precursor chemicals sold or possessed together that if mixed or combined would constitute a binary explosive.”

(7) Section 3.3.49 shall be replaced with the following: “Small arms ammunition and components of small arms ammunition. Small arms ammunition or cartridge cases, primers, or smokeless propellants designed for use in small arms, including percussion caps, and  $\frac{3}{32}$  inch and other external burning pyrotechnic hobby fuses. The term shall not include black powder, but shall include black powder substitutes provided the propellant is a component of small arms ammunition.”

(8) Section 4.2.1 shall be replaced with the following: “No person shall be in possession of explosive materials, or conduct an operation or activity requiring the use of explosive materials, or perform or supervise the loading and firing of explosive materials without first obtaining the correct permit or permits from the state fire marshal.”

(9) Section 4.2.4 shall be replaced with the following: “Each permitted manufacturer, distributor, and user in the state shall maintain continuous general liability coverage that includes coverage for intentional blasting of not less than \$1,000,000 from an insurance company authorized by the Kansas insurance department to do business in Kansas and shall annually provide proof of this insurance to the state fire marshal.”

(10) Section 4.3.1 shall be replaced with the following sentence: “Before a person conducts an operation or activity that uses explosive materials in the state, the person shall obtain a user permit from the state fire marshal.”

(11) Section 4.3.2 shall be replaced with the following sentence: “Before an individual performs or supervises the loading and firing of explosive materials in the state, that individual shall obtain the appropriate permit to blast, as specified in Table 4.3.2, from the state fire marshal, except that this requirement shall not apply to a trainee who is acting under the direct supervision of and is being trained by the holder of a blaster permit.”

(12) The following classes of blasting permits shall be added to table 4.3.2:

(A) Class P1 permit. The category name for this permit shall be “Public Safety, Bomb Technician.” The permit shall allow “blasting by a bomb technician acting on behalf of the state or a political or taxing subdivision in a public safety capacity.”

(B) Class P2 permit. The category name for this permit shall be “Public Safety, Explosive Breacher.” The permit shall allow “explosive breaching by a person acting on behalf of the state or a political or taxing subdivision in a public safety capacity.”

(13) The following text shall be added after section 4.3.2:

“Permit to Manufacture. Before a person manufactures explosive materials in the state, that person shall obtain a manufacturer permit from the state fire marshal. A holder of a manufacturer permit shall not be required to obtain a distributor or user permit.

“Permit to Distribute. Before a person engages in the business of distributing explosive materials within the state, that person shall obtain a distributor permit from the state fire marshal, except that this requirement shall not apply to common carriers or to an out-of-state person who distributes explosive materials to the holder of a manufacturer or distributor permit. ‘Distributing’ shall mean the selling, issuing, giving, transferring, or other disposing of. A holder of a distributor permit shall not be required to obtain a user permit.

“Handler Permit. Before an individual, other than the holder of a blaster permit, actually or constructively possesses explosive materials in the state, that individual shall obtain a handler permit from the state fire marshal, except that a handler permit shall not be required to handle explosive materials under the direct supervision of the holder of a blaster permit. ‘Direct supervision’ shall mean that the holder of the blaster permit is physically present and overseeing the actions of the employee. Actual possession shall include the physical handling of explosive materials. Permitted handlers may include individuals who load or unload vehicles, trainees, magazine keepers, drillers, stemmers and sales staff.

“Storage Permit. Before a person stores explosive materials in the state, that person shall obtain a site-specific storage permit. The storage permit may be temporary or permanent. A permanent storage permit shall be valid for no longer than three years. A temporary storage permit shall be valid for no longer than 90 days, but the permit holder may apply to the office of the state fire marshal to renew the permit one time for no lon-

ger than an additional 90 days. Before either storage permit will be issued, the person shall obtain a manufacturer, distributor, or user permit from the state fire marshal, any explosive permit required by the bureau of alcohol, tobacco, firearms and explosives, and a certification from the fire department with jurisdiction over the area where the storage site will be located that the proposed storage of explosive materials will not violate any local laws.”

(14) Section 4.4.2.1 shall be replaced with the following: “Each applicant shall complete a blaster training program and pass a qualifying examination in the category of blasting for which application is made. The blaster training program and qualifying examination shall be approved in advance by the office of the state fire marshal. To be approved by the office of the state fire marshal, a blaster training program or blaster refresher course shall provide training on the following topics, as applicable to the category of blasting for which application is made: the requirements of this code; federal explosives law and regulations; and industry standards related to the safe use, storage, and transportation of explosive materials.”

(15) Section 4.4.2.2 shall be replaced with the following: “To be approved by the office of the state fire marshal, a qualifying examination shall test the applicant’s knowledge of the following topics, as applicable to the category of blasting for which application is made: the requirements of this code; federal explosives law and regulations; and industry standards related to the safe use, storage, and transportation of explosive materials.”

(16) Section 4.4.5 shall be replaced with the following: “Each person whose permit to blast has been revoked shall be required to complete a blaster training program and pass a qualifying examination of a condition of reinstatement of the permit. The blaster training program and qualifying examination shall be approved in advance by the office of the state fire marshal.”

(17) Section 4.4.6 shall be replaced with the following: “Each person whose permit to blast has lapsed for a period of one year or longer shall be required to complete a blaster training program and pass a qualifying examination as a condition of renewal of the permit. The blaster training program and qualifying examination shall be approved in advance by the office of the state fire marshal.”

(18) The following text shall be added after section 4.4.6:

“If the holder of a blaster or handler permit ceases to be employed by a permitted manufacturer, distributor, or user, the blaster or handler shall notify the office of the state fire marshal within five business days, and the individual’s permit shall be placed on inactive status. The individual shall not blast or handle explosive materials while the permit is on inactive status. Before resuming work with a permitted manufacturer, distributor, or user, the blaster or handler shall notify the office of the state fire marshal, and the permit shall be returned to active status. However, if the permit has been on inactive status for at least one year, the holder shall complete an approved blaster refresher class for a blaster permit or an approved explosive safety course for a handler permit before the permit is returned to active status.

“Requirement for a Handler Permit. Before applying for or renewing a handler permit, an individual shall complete an explosive safety course approved by the state fire marshal. The explosive safety course shall provide training on the safe handling, storage, and transportation of explosive materials.”

(19) Sections 4.5.1 and 4.5.2 shall be replaced with the following sentence: “The holder of any permit or permits issued pursuant to this code shall maintain a copy of the permit or permits at all sites where explosive materials are stored or used and in any vehicle used to transport explosive materials.”

(20) Section 4.6.2 shall be replaced with the following sentence: “An individual shall be at least 18 years old before applying for a handler permit and at least 21 years old before applying for a blaster permit.”

(21) In section 4.7.1(3), “is a fugitive from justice” shall be replaced with “has fled from any state to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.”

(22) Section 4.8.1.1 shall be replaced with the following sentence: “Permit holders shall keep records in accordance with 27 C.F.R. Part 555, Subpart G, as adopted by reference in K.A.R. 22-4-5.”

(23) Section 4.10.1 shall be replaced with the following: “When an application for renewal is filed with the office of the state fire marshal before expiration of the current permit, the existing permit shall not expire until the state fire marshal has taken final action upon the application for renewal or, if the state fire marshal’s action is unfavorable,

until the last day for seeking judicial review of the state fire marshal’s action or a later date fixed by the reviewing court.”

(24) The following sentence shall be added after section 4.10.3: “Before applying for renewal, the holder of a blaster permit shall complete a blaster refresher course approved by the state fire marshal and the holder of a handler permit shall complete an explosive safety course approved by the state fire marshal.”

(25) Section 5.4.4.1.2 shall be replaced with the following: “The integrity of the fences and gates shall be checked at least annually.”

(26) In section 5.4.7, the phrase “and the IAPMO Uniform Mechanical Code” shall be deleted.

(27) Section 9.7.2 shall be replaced with the following: “All magazines containing explosive materials shall be opened and inspected at maximum intervals of seven days to determine whether there has been unauthorized or attempted entry into the magazines or whether there has been unauthorized removal of the magazines or their contents.”

(28) The following sentence shall be added before section 10.1: “A holder of a user permit shall notify the office of the state fire marshal at least 48 hours before beginning blasting operations at a site and before resuming blasting operations at a site if those operations have been suspended or discontinued for more than six months.”

(29) Section 10.1.19.1(2) shall be replaced with the following: “Compliance with the safe distances in safety library publication 20, ‘safety guide for the prevention of radio frequency radiation hazards in the use of commercial electric detonators (blasting caps),’ published by the institute of makers of explosives (IME) and dated December 2011, parts II and III of which are hereby adopted by reference, with the exception of all text before table 1 and pages 36 through 38.”

(30) Section 11.1.1 shall be replaced with the following: “This chapter shall apply to buildings and other structures. As used in this chapter, ‘buildings and other structures’ shall mean dwellings, public buildings, schools, places of worship, and commercial or institutional buildings.”

(31) In section 11.1.3, all text after “with” shall be replaced with “the international society of explosives engineers’ ‘ISEE performance specifications for blasting seismographs,’ 2011 edition.”

(32) In section 11.1.4, the phrase “2009 edition” shall be added at the end of the sentence.

(33) The following text shall be added after section 11.1.4:

“The blaster-in-charge or designee shall conduct a preblast survey of all buildings and structures within a scaled distance of 35 ft/lbs<sup>1/2</sup> from the blast site, except that a preblast survey shall not be required for a building or structure if the owner refuses permission or if the owner does not respond after three documented attempts to obtain permission.

“Where blasting seismographs are used, the permitted user shall maintain the seismograph recording and accompanying records for at least three years. These records shall include the maximum ground vibration and acoustics levels recorded, the specific location of the seismograph equipment, its distance from the detonation of the explosives, the date and time of the recording, the name of the individual responsible for operation of the seismograph equipment, the type of seismograph instrument, its sensitivity, and the calibration signal or certification date of the last calibration.”

(34) Section 11.2.3 shall be replaced with the following sentence: “The ground vibration limit for underground utilities, pipelines, fiber optic lines, and similar buried engineered structures shall be five inches per second.”

(35) Section 11.4.2 shall be replaced with the following: “Reasonable precautions shall be taken to prevent flyrock from being propelled from the blast site onto property not contracted by the blasting operation or onto property for which the owner has not provided a written waiver to the blasting operation.”

(36) The following text shall be added at the end of chapter 11: “The blaster-in-charge shall ensure that a record of each use of explosives is made, and this record shall be retained for at least three years by the permitted user. The record shall include:

“(A) The name and permit number of the permitted user;

“(B) the location, date, and time of the detonation;

“(C) the name and permit number of the blaster-in-charge;

“(D) the type of materials blasted;

“(E) the type of explosives used;

“(F) the weight of each explosive product used and the total weight of explosives used;

“(G) the maximum weight of explosives detonated within any eight-millisecond period;

“(H) the initiation system, including the number of circuits and the timer interval, if a sequential timer is used;

“(I) the type of detonator and delay periods used, in milliseconds;

“(J) the sketch of delay pattern, including decking;

“(K) the distance and scaled distance, if applicable, to the nearest building or structure;

“(L) the location of the nearest building or structure, using the best available information; and

“(M) if bore holes are used, the number of bore holes, burden, and spacing; the diameter and depth of bore holes; and the type and length of stemming.”

(37) Section 13.1.1 shall be replaced with the following sentence: “Two or more precursor chemicals that would constitute a binary explosive if mixed or combined shall be stored and used in the same manner as other explosive materials.”

(38) Section 13.4.2 shall be replaced with the following: “Thefts of precursor chemicals during transportation, storage, and use shall be reported to the office of the state fire marshal, the bureau of alcohol, tobacco, firearms and explosives, and a local law enforcement agency.”

(d)(1) Each citation in NFPA 495 to the following codes shall mean the edition adopted by reference in K.A.R. 22-1-3:

(A) NFPA 13, “standard for the installation of sprinkler systems”; and

(B) NFPA 70, “national electric code.”

(2) Each citation in NFPA 495 to the following codes shall mean the edition adopted by reference in K.A.R. 22-6-20:

(A) NFPA 1123, “code for fireworks display”; and

(B) NFPA 1124, “code for the manufacture, transportation, storage, and retail sales of fireworks and pyrotechnic articles”; and

(C) NFPA 1126, “standard for the use of pyrotechnics before a proximate audience.”

(3) Each citation of NFPA 1, “fire code,” shall be replaced by “the international fire code (IFC) as adopted by reference in K.A.R. 22-1-3.”

(4) Each citation of NFPA 5000, “building construction and safety code,” shall be replaced by “the international building code (IBC) as adopted by reference in K.A.R. 22-1-3.”

(e) 27 C.F.R. part 555, subpart G, as in effect on April 27, 2012, is hereby adopted by reference, with the following modifications:

(1) 27 C.F.R. 555.121(b), 555.122, 555.123(f), 555.124(f), 555.125(a), (b)(2), and (b)(6), 555.126, and 555.129 are not adopted.

(2) In 27 C.F.R. 555.121(c), the last sentence shall be deleted.

(3) In 27 C.F.R. 555.127, all text after “end of the day” shall be deleted.

(4) In 27 C.F.R. 555.128, the last sentence shall be replaced with the following sentence: “Copies of the records shall be delivered to the office of the state fire marshal within 30 days following the discontinuance of the business or operations.”

(5) Wherever the term “Director, Industry Operations” appears in subpart G, this term shall be replaced with “state fire marshal.”

(6) Each reference to a “licensed manufacturer” shall mean a “person with a state manufacturer permit.” Each reference to a “licensed dealer” shall mean a “person with a state distributor permit.”

(7) Each reference to a “limited permit” shall be deleted.

(f) Each existing user permit and each existing blaster permit issued by the state fire marshal shall be deemed valid and shall remain effective until the permit’s expiration date, unless the permit is revoked or suspended before then. (Authorized by and implementing K.S.A. 2012 Supp. 31-133; effective, T-22-6-28-13, June 28, 2013; effective Oct. 18, 2013.)

## Article 6.—FIREWORKS

**22-6-12.** (Authorized by and implementing K.S.A. 2007 Supp. 31-133; effective Jan. 1, 1973; amended May 1, 1986; amended Dec. 29, 2008; revoked April 6, 2018.)

**22-6-16.** (Authorized by and implementing K.S.A. 31-133, 31-155, 31-156; effective May 1, 1982; amended May 1, 1983; revoked April 6, 2018.)

**22-6-20. Adoptions by reference.** (a) The following national fire protection association codes and standards are hereby adopted by reference, with the following modifications and the modifications specified in subsection (b):

(1) No. 160, “standard for the use of flame effects before an audience,” 2011 edition, with the following modifications:

(A) Section 1.3.5 shall be deleted; and

(B) section 8.1.2 shall be deleted and replaced with the following: “Each operator shall be li-

censed in accordance with K.S.A. 2015 Supp. 31-503, and amendments thereto, and K.A.R. 22-6-25.”;

(2) no. 1123, “code for fireworks display,” 2014 edition, except that sections 10.1.1 through 10.1.3 shall be deleted and replaced with the following: “Each operator shall be licensed in accordance with K.S.A. 2015 Supp. 31-503, and amendments thereto, and K.A.R. 22-6-24.”;

(3) no. 1124, “code for the manufacture, transportation, storage, and retail sales of fireworks and pyrotechnic articles,” 2006 edition, with the following modifications:

(A) In section 4.3.3.1, the words “to the Office of the State Fire Marshal” shall be added before the words “and to local law enforcement authorities”;

(B) in section 5.1.1.2(1), the words “that are not bullet sensitive” shall be deleted;

(C) in section 6.2.7.1, the words “using an approved test sampling plan” shall be deleted and replaced by the following: “or a CPSC-approved test sampling plan shall be used”;

(D) sections 6.5.2.3, 6.5.2.4, 6.14.4, 7.3.19.4, and 7.4.6.3 shall be deleted;

(E) in section 7.3.14.1.1, the text “three or as determined in accordance with NFPA 101, Life Safety Code, whichever number is greater” shall be deleted and replaced by the following: “two, or as determined in accordance with the international fire code, which is adopted by reference in K.A.R. 22-1-3, whichever number is greater”; and

(F) in section 7.3.15.6, the word “horizontally” shall be inserted before “ejected pyrotechnic components”; and

(4) no. 1126, “standard for the use of pyrotechnics before a proximate audience,” 2011 edition, with the following modifications:

(A) Section 1.3.5.2 shall be deleted; and

(B) sections 6.5.1 through 6.5.1.2 shall be deleted and replaced with the following: “Each operator shall be licensed in accordance with K.S.A. 2015 Supp. 31-503, and amendments thereto, and K.A.R. 22-6-25.”

(b) The following modifications shall be made to the codes and standards adopted in subsection (a):

(1) All material before the first chapter shall be excluded from adoption.

(2) All annexes shall be excluded from adoption.

(3) Chapter 2, “referenced publications,” shall be excluded from adoption.

(4) All indexes and all material after the indexes shall be excluded from adoption.

(5) The last sentence of section 3.1 in each code or standard shall be excluded from adoption.

(6) Each reference to a code or standard adopted in article 1 shall mean the edition of that code or standard adopted in that article.

(7) Each reference to a code or standard adopted in this regulation shall mean the edition of that code or standard adopted in this regulation.

(8) The definition of “authority having jurisdiction (AHJ)” in section 3.2.2 shall be replaced with the following: “the state fire marshal or designee,” except when the context indicates that the term is referring to a local fire department or a local law enforcement agency.

(c) Chapter three in American pyrotechnics association standard 87-1, “standard for construction and approval for transportation of fireworks, novelties, and theatrical pyrotechnics,” 2001 edition, is hereby adopted by reference, except for the following:

(1) Section 3.8;

(2) section 3.9; and

(3) section 3.10. (Authorized by and implementing K.S.A. 2016 Supp. 31-133 and K.S.A. 2016 Supp. 31-506; effective Dec. 29, 2008; amended April 6, 2018.)

**22-6-24. Display operator license.** (a) Each person who operates an outdoor display of display fireworks, as defined in K.A.R. 22-6-1, shall obtain a license from the office of the state fire marshal.

(b) Each applicant shall meet all of the following requirements:

(1) The applicant shall provide proof of experience in the performance of at least three outdoor displays of display fireworks in the last four years.

(A) For each of the three required displays, each applicant for a new display operator license shall include documentation of participation as an assistant under a display operator who has a valid Kansas license at the time of the displays. The licensed display operator shall provide written verification of the applicant’s participation in the display.

(B) For each of the three required displays, each applicant for renewal of the display operator license shall provide a signature from the local jurisdiction, organization sponsoring the display, Kansas licensed distributor who produced the display, or another Kansas licensed operator assisting with the display.

(2) The applicant shall complete a written examination, administered by the state fire marshal,

and shall be required to achieve a passing score of at least 80 percent.

(c) The display fireworks operator license shall be valid for four years from the date of issuance.

(d) Each licensee shall keep the original license on the licensee’s person at all times while performing duties as a display operator. A copy of the license shall not be accepted as valid proof of licensure if the licensee is questioned by law enforcement, the fire department, or the local authority.

(e) No fee shall be charged for a display operator license for any person who is an officer or employee of the state or any political or taxing subdivision of the state if that person is acting on behalf of the state or political or taxing subdivision.

(f) Each licensee shall comply with national fire protection association standard no. 1123, which is adopted by reference in K.A.R. 22-6-20, and all local, state, and federal regulations, statutes, and laws. (Authorized by K.S.A. 2016 Supp. 31-506; implementing K.S.A. 2016 Supp. 31-503; effective Dec. 29, 2008; amended April 6, 2018.)

**22-6-25. Proximate pyrotechnic operator license.** (a) Each person who operates any indoor or outdoor pyrotechnic article, as defined in K.A.R. 22-6-1, shall obtain a license from the state fire marshal.

(b) Each applicant shall indicate which of the following classes the applicant is requesting a license for on the application:

(1) Indoor proximate pyrotechnic operator license;

(2) outdoor proximate pyrotechnic operator license;

(3) flame effect pyrotechnic operator license; or

(4) unlimited proximate pyrotechnic operator license.

(c) Each applicant shall meet all of the following requirements:

(1) The applicant shall provide proof of experience in the performance of at least three pyrotechnic displays in the last four years as follows:

(A) Each display shall be in the class for which licensure is sought. Each applicant for an unlimited proximate pyrotechnic operator license shall demonstrate proficiency in each of the three classes listed in paragraphs (b)(1) through (b)(3) and shall provide proof of experience in the performance of at least two displays in each class.

(B) The use of at least four individual devices of pyrotechnic articles shall be used to qualify as a display.

(C) For each of the displays required for a new proximate pyrotechnic license, the applicant shall acquire a signature from a proximate pyrotechnic operator who had a valid Kansas license for that type of display at the time of the display, verifying that the applicant assisted in the operation of the display.

(D) For each of the displays required for renewal of the proximate pyrotechnic license, the applicant shall acquire a signature from the local jurisdiction, organization sponsoring the display, Kansas licensed distributor who produced the display, or another Kansas licensed proximate pyrotechnic operator licensee assisting with the display.

(2) The applicant shall complete a written examination, administered by the state fire marshal, and shall be required to achieve a passing score of at least 80 percent.

(d) The proximate pyrotechnic operator license shall be valid for four years from the date of issuance.

(e) Each licensee shall keep the original license on the licensee's person at all times while performing duties as a proximate pyrotechnic operator. A copy of the license shall not be accepted as valid proof of licensure if the licensee is questioned by law enforcement, the fire department, or the local authority.

(f) No fee shall be charged for a proximate pyrotechnic operator license for any person who is an officer or employee of the state or any political or taxing subdivision of the state if that person is acting on behalf of the state or political or taxing subdivision.

(g) Each licensee shall comply with national fire protection association standard nos. 160 and 1126, which are adopted by reference in K.A.R. 22-6-20, and all local, state, and federal regulations, statutes, and laws. (Authorized by K.S.A. 2016 Supp. 31-506; implementing K.S.A. 2016 Supp. 31-503; effective Dec. 29, 2008; amended April 6, 2018.)

## Article 8.—LIQUEFIED PETROLEUM GASES

**22-8-4.** (Authorized by and implementing K.S.A. 31-133; effective, E-82-28, Dec. 22, 1981; effective May 1, 1982; amended May 1, 1983; revoked May 2, 2014.)

**22-8-7.** (Authorized by and implementing K.S.A. 1985 Supp. 31-133; effective May 1, 1986; amended May 1, 1987; revoked May 2, 2014.)

**22-8-10. Licensing requirements; classes; renewals.** (a) To obtain a license under the Kansas propane safety and licensing act, each applicant shall submit the following to the state fire marshal's office:

(1) An application for each desired license;

(2) proof that the training requirements in K.A.R. 22-8-11 for each desired license have been met; and

(3) proof of continuous general liability insurance coverage of at least \$1,000,000.

(b) The classes of licenses shall be as follows:

(1) A class one dealer license shall be required for the retail distribution of liquefied petroleum gas.

(2) A class two bulk storage site license shall be required for the bulk storage of liquefied petroleum gas.

(3) A class three cylinder transport license shall be required to operate a cylinder delivery service.

(4) A class four cylinder filling license shall be required to operate a cylinder filling facility. For the purpose of this paragraph, "cylinder filling facility" shall include any facility that fills cylinders or sells cylinder valves.

(5) A class five recreational vehicle fueling license shall be required to fuel recreational vehicles or mobile fuel containers.

(6) A class six cylinder exchange cabinet license shall be required to establish a cylinder exchange cabinet or participate in a cylinder program. Each cabinet shall be required to have a new sticker applied to the cabinet annually. Each sticker shall be provided by the state fire marshal's office.

(7) A class seven self-serve liquefied petroleum gas dispensing license shall be required to operate a liquefied petroleum gas fueling facility.

(8) A class eight installation and service of liquefied petroleum gas systems license shall be required to install, maintain, or modify a residential or commercial liquefied petroleum gas distribution and utilization system.

(c) Each license shall expire on September 30 each year.

(d) Any LP gas license may be renewed annually. Each applicant for renewal shall submit the following to the state fire marshal's office on or before July 15:

(1) The renewal form;

(2) proof that the continuing education requirements have been met; and

(3) proof of continuous general liability insurance coverage of at least \$1,000,000. (Authorized

by K.S.A. 2016 Supp. 55-1812; implementing K.S.A. 55-1809 and K.S.A. 2016 Supp. 55-1812; effective March 31, 2006; amended April 6, 2018.)

**22-8-11. Initial training; instructor and class approval.** (a) For each type of initial license sought, each applicant or, if the applicant is not an individual, an agent or employee of the applicant shall complete the required training specified in this regulation.

(b) If the individual who completed the required training specified in this regulation ceases to be an agent or employee of the licensee, another agent or employee of the licensee shall complete the training specified in this regulation within six months of the date the individual who previously completed the training ceased to be an agent or employee of the licensee.

(c) Each instructor and each class shall be approved in advance by the state fire marshal.

(d) Each applicant shall submit proof of successful completion of the following certified employee training program (CETP) or propane education and research council (PERC) courses or equivalent courses approved by the state fire marshal, as applicable, to the state fire marshal's office:

(1) For a class one dealer license, the basic principles and practices class, except that this requirement shall not apply to any applicant seeking a class four or class five license who will not otherwise engage in the retail distribution of liquefied petroleum gas;

(2) for a class two bulk storage site license, the basic plant operations class;

(3) for a class three cylinder transport license, the propane delivery operations and cylinder delivery class or the bobtail delivery operations class;

(4) for a class four cylinder filling license, the dispensing propane safely class;

(5) for a class five recreational vehicle fueling license, the dispensing propane safely class;

(6) for a class six cylinder exchange cabinet license, one of the following:

(A) If the applicant is a cylinder exchange company, the basic principles and practices class; or

(B) if the applicant owns or operates an individual cylinder exchange location, no required training;

(7) for a class seven self-serve liquefied petroleum gas dispensing license, the dispensing propane safely class; and

(8) for a class eight installation and service of liquefied petroleum gas systems license, the ba-

sic principles and practices class and one of the following:

(A) The installing appliances and interior vapor distribution systems class;

(B) the designing and installing exterior vapor distribution systems class; or

(C) systems testing training. (Authorized by and implementing K.S.A. 2013 Supp. 55-1812; effective March 31, 2006; amended May 2, 2014.)

**22-8-12. Refresher training.** (a) Each licensee shall ensure that one of the following occurs at least every three years:

(1) The individual who completed the initial training required by K.A.R. 22-8-11 completes the corresponding refresher training.

(2) An agent or employee of the licensee other than the individual specified in paragraph (a)(1) completes the initial training specified in K.A.R. 22-8-11.

(b) Each instructor and each refresher course shall be approved in advance by the state fire marshal.

(c) Each licensee shall submit proof of compliance with this regulation to renew the license. (Authorized by and implementing K.S.A. 2013 Supp. 55-1812; effective March 31, 2006; amended May 2, 2014.)

**22-8-13. Adoption of national codes.** The following national fire protection association standards, including the annexes, are hereby adopted by reference: (a) Standard no. 54, "national fuel gas code," 2006 edition; and

(b) standard no. 58, "liquefied petroleum gas code," 2008 edition, except that the provisions of chapter 6.25 shall be effective only on and after January 1, 2012. (Authorized by and implementing K.S.A. 2008 Supp. 55-1812; effective March 31, 2006; amended Feb. 4, 2011.)

#### **Article 10.—INSTALLATION AND CERTIFICATION STANDARDS FOR EXTINGUISHING DEVICES**

**22-10-3. Registration certificate.** (a) Each business that services, recharges, installs, or inspects portable fire extinguishers or fixed extinguishing systems or hydrostatically tests these cylinders or any combination of them shall obtain a registration certificate issued by the state fire marshal unless otherwise exempted by these regulations. The registration certificate shall indicate the class or classes that are authorized. A certified

business shall provide only the classes listed under its own registration number. A certified business may take orders for a class or classes that are not authorized by its registration certificate if these orders are consigned to a business that is certified to perform the class or classes indicated.

(b) The registration certificate shall indicate one or more of the following classes:

(1) Class RA, which permits servicing, recharging, installing, or inspecting fixed extinguishing systems by a currently certified manufacturer's distributor;

(2) class RB, which permits servicing, recharging, installing, or inspecting portable fire extinguishers;

(3) class RC, which permits hydrostatic testing of non-DOT cylinders, including wet chemical or dry chemical containers; or

(4) class RD, which permits servicing, recharging, and inspecting fixed extinguishing systems.

(c) Each business that desires a registration certificate shall submit a written application on forms prescribed by the state fire marshal and signed by the sole proprietor, each partner, or an officer of the corporation, as appropriate.

(d) Each applicant shall provide proof that an employee meets one of the following requirements:

(1) Received training from the manufacturer of each fixed extinguishing system whose products are used by the business indicating the type or types of systems the employee has been trained to service; or

(2) meets the following requirements:

(A) Has a notarized affidavit filed with the state fire marshal's office attesting that the employee has at least two years of experience in servicing, recharging, and inspecting fixed extinguishing systems and has access to the tools and service manuals for each fixed extinguishing system that the business services; and

(B) has current certification through the international code council and the national association of fire equipment distributors (ICC/NAFED).

(e) A nonrefundable application fee of \$200 shall accompany each application. No fee shall be charged for any person who is an officer or employee of the state or any political or taxing subdivision if that person is acting on behalf of the state or political or taxing subdivision.

(f)(1) Each applicant for a class RA registration certificate shall provide proof of at least \$500,000 of insurance covering comprehensive general li-

ability, bodily injury, property damage, and completed operations.

Written authorization shall be included from each fixed extinguishing system manufacturer whose products are used by the business including the types of systems the business is authorized and has been trained to install or service. The manufacturer's authorization shall remain valid until the employee's training certificate expires or is cancelled for misconduct.

(2) Each applicant for a class RB or RC registration certificate shall provide proof of at least \$100,000 of insurance covering comprehensive general liability, bodily injury, property damage, and completed operations.

(3) Each applicant for a class RD registration certificate shall provide proof of at least \$1,000,000 of insurance covering comprehensive general liability, bodily injury, property damage, and completed operations.

(g) If, after reviewing the application, insurance information, record of services, servicing and shop facilities, and methods and procedures of operations, the state fire marshal finds that granting or renewing a registration certificate would be in the interest of public safety and welfare, a certificate for the appropriate classes of registration requested by the business shall be issued or renewed by the state fire marshal. An identifying number shall be assigned by the state fire marshal to each registration certificate.

(h) Each registration certificate shall be valid for one calendar year. Renewal applications shall be submitted to the state fire marshal on or before November 30 of the year of expiration and shall meet the requirements of subsections (d), (e), and (f), as applicable.

(i) Evidence that a registration certificate has been altered shall render the certificate invalid. The altered certificate shall be surrendered to the state fire marshal.

(j) Each change in the location or ownership of a certified business shall be reported in writing to the state fire marshal at least 14 days before the change. Failure to notify the state fire marshal may render the registration certificate invalid. Each change in location or ownership shall be verified by the state fire marshal or an authorized deputy.

(k) Each registration certificate issued by the state fire marshal shall be posted at the certified location and be available for inspection during normal business hours.

(l) A duplicate registration certificate may be issued by the state fire marshal to replace one that has been lost or destroyed if a written statement attesting to the loss or destruction of the original certificate is submitted.

(m) A registration certificate shall not constitute authorization for a registration certificate holder or the holder's employees to perform either of the following:

- (1) To enter any property or building; or
- (2) to enforce any provision of these regulations. (Authorized by and implementing K.S.A. 2008 Supp. 31-133, 31-133a; effective, E-82-3, Jan. 21, 1981, effective May 1, 1981; amended May 1, 1982; amended, T-83-31, Oct. 25, 1982; amended May 1, 1983; amended Aug. 28, 1989; amended Sept. 17, 1990; amended Jan. 21, 1991; amended Feb. 4, 2011.)

#### **Article 11.—ADULT CARE HOMES, HOSPITALS, RESIDENTIAL CARE FACILITIES AND MATERNITY CENTERS**

**22-11-6.** (Authorized by and implementing K.S.A. 1989 Supp. 31-133; effective May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended Sept. 17, 1990; revoked Feb. 4, 2011.)

##### **22-11-8. Adult and boarding care homes.**

(a) The requirements of NFPA standard no. 101, which is adopted in K.A.R. 22-1-3, shall apply to one- and two-bed adult care homes, one- and two-bed adult family homes, three- and four-bed boarding care adult care homes, and boarding care homes for the mentally retarded.

(b) A life safety code inspection of a home shall be performed by the state fire marshal or an authorized representative under K.S.A. 31-137, and amendments thereto, upon request from the Kansas department of health and environment.

(c) As used in this subsection, "ambulatory" shall mean having the physical and mental capability of getting in and out of bed and walking in a normal path to safety in a reasonable period of time without the aid of another person. "Nonambulatory" shall mean not having the physical or mental capability of getting in and out of bed and walking a normal path to safety without the aid of another person.

(1) Ambulatory residents who are able to walk without the aid of another person but are unable to move from place to place without the use of a device including a walker, crutches, wheelchair, or

wheeled platform shall be housed on the ground level of a home if handicap accommodations for exiting are present.

(2) Fully ambulatory residents who do not require the use of a device including a walker, crutches, wheelchair, or wheeled platform may be housed on any level of a home.

(3) Nonambulatory persons shall not be allowed as residents.

(d) The following requirements shall apply to all one- and two-bed adult care homes, one- and two-bed adult family homes, three- and four-bed boarding care adult care homes, and boarding care homes for the mentally retarded, in addition to NFPA standard no. 101, which is adopted in K.A.R. 22-1-3:

(1) Emergency lighting shall be provided to ensure illumination for evacuation in case of a power failure.

(2) Fire alarms, smoke detectors, and fire extinguishers shall be maintained in an operable condition at all times.

(3) Fire drills shall be conducted as frequently as necessary, and at least once every three months, to ensure orderly egress in case of an emergency.

(4) Each exit and each route to each exit shall be clearly marked so that all residents will readily know the direction of egress from any point within the building.

(5) Each exit shall be arranged and maintained to provide free, unobstructed egress. Locks or fastening devices shall not be installed to prevent free escape from inside the building.

(6) Each building shall be constructed, arranged, equipped, maintained, and operated to avoid danger to the lives and safety of its residents from fire, smoke, fumes, and panic during emergency situations. (Authorized by and implementing K.S.A. 2008 Supp. 31-133 and K.S.A. 31-147; effective May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended Sept. 17, 1990; amended Feb. 4, 2011.)

#### **Article 15.—CHILD CARE FACILITIES**

**22-15-7.** (Authorized by and implementing K.S.A. 1989 Supp. 31-133; effective May 1, 1979; amended May 1, 1986; amended Sept. 17, 1990; revoked Feb. 4, 2011.)

#### **Article 18.—EDUCATIONAL OCCUPANCIES**

**22-18-3. Construction requirements for school buildings.** (a) The construction of school

buildings shall meet the requirements of the international building code, 2006 edition, as specified in K.S.A. 31-134a and amendments thereto. All electric wiring shall conform to the requirements of the national electric code of the national fire protection association adopted by K.A.R. 22-1-3.

(b) The construction of mobile, modular, portable, or relocatable school buildings shall meet the requirements of the life safety code adopted by K.A.R. 22-1-3. (Authorized by and implementing K.S.A. 2008 Supp. 31-133, 31-150; effective Sept. 17, 1990; amended May 10, 1993; amended Feb. 4, 2011.)

### Article 19.—CERTIFICATION OF FIRE INVESTIGATORS

**22-19-2. Certification of fire investigators.** Certification may be granted at one of two levels: certified fire investigator I or certified fire investigator II. (a) Each individual seeking certification at either level shall apply on a form approved by the state fire marshal. Any individual that meets and demonstrates the following criteria may be certified by the state fire marshal:

- (1) Is a United States citizen;
- (2) has been fingerprinted, with a search of local, state, and national fingerprint files to determine whether the applicant has a criminal record;
- (3) has not been convicted, does not have an expunged conviction, and on and after July 1, 1995, has not been placed on diversion by any state or the federal government for a crime that is a felony or its equivalent under the uniform code of military justice;
- (4) has not been convicted, does not have an expunged conviction, and has not been placed on diversion by any state or the federal government for a misdemeanor crime of domestic violence or its equivalent under the uniform code of military justice, if the misdemeanor crime of domestic violence was committed on or after the effective date of this regulation;
- (5) is the holder of a high school diploma or furnishes evidence of successful completion of an examination indicating an equivalent achievement;
- (6) is of good moral character;
- (7) is free of any physical or mental condition that could adversely affect the applicant's performance of a fire investigator's duties;
- (8) is at least 21 years of age;
- (9) is recommended by the agency head of the applicant's jurisdiction;

(10)(A) Provides proof of successful completion of a fire investigation course, within the past five calendar years, that meets or exceeds the "standard for professional qualifications for fire investigator" established by the national fire protection association in publication number 1033, 2009 edition, which is hereby adopted by reference, and all law enforcement training required under K.S.A. 74-5607a et seq., and amendments thereto, and applicable regulations. Each applicant who completed an approved fire investigation course more than five years before the date of application shall submit proof of the applicant's successful completion of the course and proof of the applicant's fire investigation responsibilities within the past five calendar years; or

(B) achieves a score of at least 80 percent on the fire investigation graded examination. Any applicant may take this examination only once. If an applicant scores less than 80 percent, the applicant shall meet the requirement in paragraph (a) (10)(A); and

(11) submits a completed criminal history form. Each applicant shall also provide proof that the applicant has submitted fingerprints to the Kansas bureau of investigation.

(b) Each applicant for certified fire investigator II shall, in addition to meeting all of the requirements in subsection (a), successfully complete a firearms training course approved for law enforcement officers and be employed full-time by a fire department or law enforcement agency. Each applicant for a certified fire investigator II shall maintain firearms qualifications annually and shall provide documentation of this to the state fire marshal.

(c) Any applicant who is a part-time or volunteer certified fire investigator I may apply for certification as a fire investigator II with a written recommendation from the local law enforcement agency.

(d) Comparable qualifications from another state or jurisdiction may be recognized by the state fire marshal.

(e) Certification as a fire investigator I or II shall be valid for three years.

(f) Any certification issued under this regulation may be suspended or revoked by the state fire marshal if the state fire marshal finds that the certification holder has not accumulated and documented at least 60 points in each three-year period following initial certification and has not provided this documentation to the state fire marshal as follows:

(1) Training points shall be earned at the rate of one point for every clock-hour of department-approved training attended or taught, and 10 points shall be earned for every college-level course of three or more credit hours for which the applicant achieves a grade of C or higher if the course content directly relates to fire investigation skills. No more than 10 points shall be applied from instructing. At least 30 points shall be earned in this category, and a maximum of 40 points may be applied towards recertification.

(2) Experience points shall be earned for performing fire scene investigation and reporting or for the supervision of fire scene investigation and reporting. Points shall be earned at the rate of one point per fire investigation performed or supervised. At least 10 points shall be earned in this category, and a maximum of 20 points may be earned.

(3) Each individual shall be required to accumulate and document at least 10 points of training in law enforcement-related courses.

(g) Points shall not be carried over from one three-year period into another. A fire investigator who is certified before the effective date of this regulation shall not be required to meet the requirements in paragraph (f)(3) until the individual's next three-year certification period following the effective date of this regulation.

(h) For each subsequent three-year certification, each individual shall provide the following to the state fire marshal no later than 60 days before the expiration of the individual's current certification:

(1) A completed certification form approved by the state fire marshal;

(2) originals or legible copies of all documents establishing the points earned; and

(3) a notarized statement of eligibility for the subsequent three-year certification.

(i) If an individual's certification lapses for more than six months, the individual shall complete all applicable requirements in subsections (a) through (e). (Authorized by and implementing K.S.A. 31-157; effective, T-84-43, Dec. 21, 1983; effective May 1, 1984; amended May 10, 1993; amended Aug. 27, 1999; amended Aug. 5, 2011.)

**22-19-3.** (Authorized by and implementing K.S.A. 31-157; effective, T-84-43, Dec. 21, 1983; effective May 1, 1984; amended May 10, 1993; amended Aug. 27, 1999; revoked Aug. 5, 2011.)

**22-19-5. Reports to be filed; required notification in certain circumstances.** (a) Each person certified as a fire investigator I or II shall file a report of every fire investigation conducted by that individual with the state fire marshal within 30 days. The report shall be submitted through the investigative database used by the state fire marshal's investigations division and shall include the following:

(1) The name and birthdate of the owner;

(2) the name and birthdate of each suspect, if any, and either the driver's license or other identification number of each suspect;

(3) the name, the birthdate, and either the driver's license or other identification number of each witness; and

(4) the name of the insurance company, policy number, and amount of insurance coverage.

(b) A supplemental report indicating disposition of each case shall be filed within 30 days of disposition.

(c) Each certified fire investigator shall notify the state fire marshal immediately of each fire death or fire injury likely to result in death that the fire investigator has been assigned to investigate.

(d) Failure to file the reports or notify the state fire marshal as specified in this regulation shall be grounds for suspension or revocation of the certificate pursuant to K.A.R. 22-1-5. (Authorized by K.S.A. 2016 Supp. 31-133; implementing K.S.A. 2016 Supp. 31-137; effective May 10, 1993; amended Aug. 5, 2011; amended April 6, 2018.)

## **Article 24.—REGIONAL HAZARDOUS MATERIALS RESPONSE**

**22-24-1. Definitions.** (a) "Local authority" means the local unit of government's public safety agency that is in overall command at the scene of a hazardous materials incident.

(b) "Regional hazardous materials response team" means an emergency response team that has contracted with the state fire marshal to provide a response to hazardous materials incidents. (Authorized by and implementing K.S.A. 2016 Supp. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002; amended April 6, 2018.)

**22-24-2.** (Authorized by and implementing K.S.A. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002; revoked April 6, 2018.)

**22-24-3.** (Authorized by and implementing K.S.A. 2008 Supp. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002; amended Oct. 2, 2009; revoked April 6, 2018.)

**22-24-4, 22-24-5, and 22-24-6.** (Authorized by and implementing K.S.A. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002; revoked April 6, 2018.)

**22-24-7. Notification of incidents.** Each local jurisdiction requesting assistance from a regional hazardous materials response team shall notify the Kansas division of emergency management and the Kansas department of health and environment that an incident has occurred. (Authorized by and implementing K.S.A. 2016 Supp. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002; amended April 6, 2018.)

**22-24-8, 22-24-9, 22-24-10, 22-24-11, 22-24-12, and 22-24-13.** (Authorized by and implementing K.S.A. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002; revoked April 6, 2018.)

**22-24-15. Assisting with emergency response activities.** The local authority that has jurisdiction and that requested the emergency response shall provide all necessary assistance to the regional hazardous materials response team. (Authorized by and implementing K.S.A. 2016 Supp. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002; amended April 6, 2018.)

**22-24-16 and 22-24-17.** (Authorized by and implementing K.S.A. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002; revoked April 6, 2018.)

**22-24-18.** (Authorized by and implementing K.S.A. 31-133 and 31-135; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002; revoked April 6, 2018.)

## Article 25.—REDUCED CIGARETTE IGNITION PROPENSITY

**22-25-1. Definitions.** (a) “ASTM” shall mean the American society for testing and materials or its successor organization.

(b) “Attorney general” shall mean the attorney general of the state of Kansas.

(c) “Consumer testing” shall mean an assessment of cigarettes that is conducted by, or under the control and direction of, a manufacturer for the purpose of evaluating consumer acceptance of the cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for the testing. Consumer testing shall not be construed as the “sale” of cigarettes for the purposes of this article.

(d) “Person” shall mean an individual, partnership, corporation, or other association.

(e) “Sale” shall mean any transfer of title or possession, or both, or exchange or barter, conditional or otherwise, in any manner or by any means or any agreement. In addition to cash and credit sales, the giving of cigarettes as samples, prizes, or gifts and the exchanging of cigarettes for any consideration other than money shall be considered sales of cigarettes.

(f) “State fire marshal” shall mean the fire marshal of the state of Kansas.

(g) “UPC symbol” shall mean the symbol signifying the universal product code. (Authorized by K.S.A. 2011 Supp. 31-611; implementing K.S.A. 2011 Supp. 31-602; effective July 27, 2012.)

**22-25-2. Certification forms and requirements; recertification.** (a) Certification forms may be requested from the state fire marshal’s office.

(b) If any certification form, including all required documentation, is incomplete, the state fire marshal or designee shall notify the manufacturer in writing that the submission is incomplete. All missing information and documentation shall be submitted to the state fire marshal’s office within 30 days of notification. If the submission is still incomplete after 30 days, the fees shall not be refunded or considered part of that submission or any other request.

(c) Each cigarette shall be retested in accordance with K.S.A. 31-603, and amendments thereto, within one year before the submission of an application for recertification as required by K.S.A. 31-604, and amendments thereto. (Authorized by K.S.A. 2011 Supp. 31-611; implementing K.S.A. 2011 Supp. 31-604; effective July 27, 2012.)



## Agency 26

# Kansas Department for Aging and Disability Services

**Editor's Note:**

Pursuant to Executive Reorganization Order (ERO) No. 41, the Kansas Department on Aging was renamed the Kansas Department for Aging and Disability Services. See L. 2012, Ch. 185.

*Articles*

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- 26-2. GRANTS AND CONTRACTS.
- 26-3. PROCUREMENT.
- 26-4. NON-MEDICAID HEARING AND APPEALS.
- 26-4a. CUSTOMER AND PROVIDER APPEALS IN MEDICAID PROGRAMS.
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- 26-42. HOMES PLUS.
- 26-43. ADULT DAY CARE FACILITIES.
- 26-50. UNLICENSED EMPLOYEES IN ADULT CARE HOMES.

**Article 1.—GENERAL PROVISIONS**

**26-1-1. Definitions.** (a) “Area agency” and “area agency on aging” mean the agency or organization within a planning and service area that has been designated by the secretary to develop, implement, and administer a plan for the delivery of a comprehensive and coordinated system of services to individuals in the planning and service area.

(b) “Area plan” means the document developed by an area agency that describes the comprehensive and coordinated system of services to be provided to individuals in a planning and service area.

(c) “Comprehensive and coordinated system of services” means a program of interrelated supportive and nutrition services designed to meet the needs of individuals in a planning and service area.

(d) “Contract” means a procurement agreement.

(e) “Contractor” means the party or parties who are under contract with the department or an area

agency to provide services to individuals in a planning and service area.

(f) “Contribution” means a donation of money or vision card units that is given by a customer to pay to the provider a portion or the total cost of services received.

(g) “Department” has the meaning specified in K.S.A. 75-5902(a), and amendments thereto.

(h) “Federal act” means the older Americans act of 1965, codified at 42 U.S.C. 3001 et seq. on October 17, 2006, as amended.

(i) “Final financial report” means a contractor-prepared or grantee-prepared document that contains an accurate and complete disclosure of the financial results of the contract, grant, subcontract, or subgrant.

(j) “Grant” means an award of financial assistance in the form of money, or property in lieu of money, by the department.

(k) “Grantee” means any legal entity to which a grant is awarded and that is accountable to the

department for the use of the grant. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant.

(l) “Granting agency” means Kansas department on aging.

(m) “Greatest economic need” means the need for services resulting from an annual income level at or below the poverty threshold established annually by the U.S. department of health and human services.

(n) “Greatest social need” means the need for services caused by noneconomic factors that restricts an individual’s ability to perform normal daily tasks or that threatens the capacity to live independently. Noneconomic factors shall include physical and mental disabilities, language barriers, and cultural, social, or geographic isolation including isolation caused by racial or ethnic status.

(o) “Indian tribal organization” means the recognized governing body of any Indian tribe or any legally established organization of Indians that is controlled, sanctioned, or chartered by the governing body of an Indian tribe.

(p) “In-home service” means the provision of health, medical, or social services to a private individual in the individual’s noninstitutional place of residence.

(q) “Kansan” means any individual who currently resides within the state of Kansas.

(r) “Metropolitan area” means a standard metropolitan statistical area as defined by the census bureau.

(s) “Modification of a grant or contract” means a change in an area plan or other grant or a contract that would result in any of the following:

(1) Alteration of the program scope, planned objectives, or manner in which services are delivered;

(2) provision of financial assistance or payments to any entity not authorized by the original grant or contract; or

(3) alteration of the approved budget of the original grant or contract.

(t) “Notification of grant award” and “NGA” mean the document, issued by the department, awarding financial assistance for the provision of services and specifying the terms of the grant.

(u) “Obligation” means the dollar amount of the orders placed, contracts and subgrants awarded, services received, and similar transactions during the grant period that will require payment within 75 days following the last day in which the grant is active.

(v) “Older individual” and “older person” has the meaning specified in K.S.A. 75-5902(d), and amendments thereto, for “aged” and “senior citizen.”

(w) “Planning and service area” and “PSA” mean a geographic area of the state designated by the department for the purpose of planning, development, delivery, and overall administration of services under an area plan.

(x) “Program income” and “project income” mean gross income received by the grantee or subgrantee and directly generated by a grant-supported activity or earned only as a result of the grant agreement during the period.

(y) “Qualified assessor” means any individual who meets the department’s education, licensure, certification, and training requirements that are required to perform a customer assessment for a program funded by the department.

(z) “Redesignation” means a change in the geographic boundaries of a planning and service area or selection of an area agency that is different from the area agency previously designated for a particular planning and service area.

(aa) “Request for proposal” and “RFP” mean the document containing criteria that is used to solicit applications for a contract or grant from potential service providers.

(bb) “Secretary” has the meaning specified in K.S.A. 75-5902(b), and amendments thereto.

(cc) “Self-employment” means work for income performed by an individual engaged on that individual’s own account in a business, farm, or other enterprise.

(dd) “Service provider” means any legal entity that is obligated to provide services in any planning and service area.

(ee) “State act” means Kansas act on aging, K.S.A. 75-5901 et seq. and amendments thereto.

(ff) “State advisory council” means the advisory council on aging created by K.S.A. 75-5911, and amendments thereto.

(gg) “State plan” means the document submitted to the U.S. department of health and human services by the department in order to receive its allotment of funds under the older Americans act.

(hh) “Subcontractor” means any legal entity to which a subcontract has been awarded and that is accountable to the contractor to provide services to individuals in a planning and service area.

(ii) “Subgrant” means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to a subgrantee.

(jj) “Subgrantee” means any legal entity to which a subgrant is awarded and that is accountable to the grantee for the use of the grant funds.

(kk) “Unit of local government” means either of the following:

(1) Any county, city, township, school district, or other similar political subdivision of the state, or any agency, bureau, office, or department thereof; or

(2) any Indian tribal organization. (Authorized by K.S.A. 2010 Supp. 75-5908; implementing K.S.A. 75-5902 and K.S.A. 2010 Supp. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; amended May 31, 2002; amended July 15, 2011.)

**26-1-5. Area plan development.** (a) Each area agency’s executive director shall ensure that an area plan is developed and submitted to the department for approval. An area agency shall not receive any funds from the department until the area agency’s area plan has been approved.

(b) Each area plan shall be submitted on forms prescribed by the secretary and shall contain all of the assurances required in section 306 of the federal act, and all other relevant information requested on the forms.

(c) Each area agency’s executive director shall ensure that units of local government, local advisory councils, potential service providers, and older individuals, family caregivers, and other representatives of these older individuals have an opportunity for involvement in the development of the area plan.

(d) Each area agency’s area plan shall describe the rationale for the proposed allocation of funds for services in the planning and service area. The rationale shall identify the manner in which the proposed distribution of funds will meet identified nutrition and supportive service needs.

(e) The area plan shall provide assurances that the area agency will expend for services to older individuals residing in rural areas in the area agency’s planning and service area an amount not less than the amount expended for these services in federal fiscal year 2000. (Authorized by and implementing K.S.A. 2010 Supp. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; amended May 31, 2002; amended July 15, 2011.)

**26-1-6. Operating policies and procedures of area agencies.** (a) Each area agency receiving funding under an area plan shall have written policies and procedures to govern the conduct of its operations and functions. These policies and procedures shall meet the following requirements:

(1) Describe the administrative and policy structure of the area agency; and

(2) describe the policies and procedures that are applicable to recipients of services provided with funds from the department and include any policies and procedures mandated by the department.

(b) Each area agency’s written policies and procedures that are applicable to recipients of services provided with funds from the department shall be officially adopted by action of the entity’s governing body. Before adoption, the area agency shall provide an opportunity for comment on the proposed operating policies and procedures by units of local government, local advisory councils, potential service providers, and older individuals. Notice of the opportunity for comment shall be published in a newspaper or newspapers of general circulation within the planning and service area at least 14 days before the policies and procedures are adopted by the area agency.

(c) Each area agency’s executive director shall ensure that the area agency’s policies and procedures are submitted to the department within 10 days of receipt of the department’s written request.

(d) Each area agency’s executive director shall ensure that each of the area agency’s subgrantees and contractors that receive department funds is provided with a copy of the area agency’s written policies and procedures, at no cost to the subgrantee or contractor. Other parties may obtain a copy of the written policies and procedures by submitting a written request to the area agency. The area agency shall provide the requested policies or procedures, or both, within three business days after the date the request is received, subject to prepayment of reasonable costs. (Authorized by and implementing K.S.A. 2010 Supp. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; amended May 21, 1999; amended July 15, 2011.)

**26-1-7.** (Authorized by and implementing K.S.A. 75-5908 and K.S.A. 1996 Supp. 75-5945; effective, T-89-14, April 26, 1988; effective Oct.

1, 1988; amended Nov. 14, 1997; revoked July 15, 2011.)

**26-1-8. Confidentiality; policies and procedures to protect information; sanctions.** (a) Personal information collected in the application for or delivery of services funded, in whole or in part, by the department shall remain confidential unless the disclosure meets any of the following conditions:

(1) Prior written consent to disclose an individual's personal information is obtained from the individual or the individual's legal representative.

(2) Disclosure is required to enable the delivery of services for which the individual or the individual's representative has requested or applied.

(3) Disclosure is required for program monitoring purposes by authorized federal, state, or local agencies.

(4) Disclosure is required by court order, administrative tribunal, or law.

(b) Personal information shall include any of the following:

(1) Street address, city, county, zip code, or equivalent geocodes;

(2) telephone number, fax number, or electronic mail address;

(3) social security, medical record, health plan beneficiary, and account numbers, and any other unique identifying number, characteristic, or code;

(4) certificate or license number;

(5) web universal resource locators (URLs) and internet protocol (IP) address numbers;

(6) biometric identifiers, including fingerprints and voiceprints;

(7) full-face photographic images and any comparable images;

(8) validation of past and present receipt of any local, state, or federal program services;

(9) validation of family, social, and economic circumstances;

(10) medical data, including diagnoses and history of disease or disability;

(11) income and other financial information;

(12) department evaluation of personal or medical information;

(13) validation of program eligibility; and

(14) validation of third-party liability for payment for program services to any individual or entity.

(c) Each department grantee, subgrantee, contractor, and subcontractor shall adopt and adhere

to written policies and procedures to safeguard against the unauthorized disclosure of personal information about individuals collected in the delivery of services and shall identify sanctions to be imposed against an individual or organization that discloses confidential information in violation of the policies and procedures.

(1) Access to confidential information shall be restricted to those individuals who specifically require access in order to perform their assigned duties.

(2) All staff engaged in the collection, handling, and dissemination of personal information shall be informed of the responsibility to safeguard the information in their possession and shall be held accountable for the appropriate use and disclosure of confidential information.

(d) If, after an investigation, notice, and the opportunity for a hearing, the secretary finds that any individual or organization identified in subsection (c) has disclosed or permitted the disclosure of any confidential information the disclosure of which is prohibited by this regulation or by any other state or federal law restricting or prohibiting the disclosure of information about individuals requesting or receiving services through any of the department's programs, the individual or organization shall have imposed against that individual or organization those sanctions that the secretary decides are commensurate with the disclosure under all the circumstances. Sanctions may include any of the following:

(1) Denial, termination, or suspension of performance of any grant, subgrant, contract, sub-contract, or other agreement;

(2) denial, termination, or suspension of participation in any or all department programs;

(3) referral for criminal prosecution or civil penalty assessments when provided for by law;

(4) petitioning for temporary or permanent injunctive relief without prior notice;

(5) exclusion from department data bases; or

(6) any other sanctions permitted by any state or federal law.

(e) No attorney paid through any program administered by the department to provide legal assistance to an individual shall be required by the department or the area agency to disclose the identity of any individual to whom the attorney provides or has provided legal assistance or any information protected by the attorney-client privilege. (Authorized by and implementing K.S.A.

2010 Supp. 75-5908 and 75-5945; effective July 15, 2011.)

## Article 2.—GRANTS AND CONTRACTS

### 26-2-3. Reporting and unearned funds requirements. (a) General reporting requirements.

(1) Each grantee and contractor shall submit program and financial reports to comply with federal and state program requirements. Each grantee and each contractor shall be responsible for the following:

(A) Gathering accurate information necessary to complete its reports;

(B) completing reports on forms or in a format prescribed by the secretary, including entering data in the management information system; and

(C) submitting reports or data to the secretary or designee on or before the due dates.

(2) Each grantee and each contractor shall be solely responsible for obtaining and reporting necessary information from subgrantees, contractors, and subcontractors with whom the grantee or contractor has subgrants, contracts, or subcontracts.

(3) A waiver of deadline for submitting a report may be authorized by the secretary if the grantee or contractor meets the following requirements:

(A) Submits a written waiver request that is received by the secretary at least eight business days before the due date for the report for which the waiver is being requested;

(B) identifies in the written waiver request the reason for the reporting delay, which shall be legitimately beyond the grantee's or contractor's control;

(C) provides an acceptable remedy to rectify the delay; and

(D) submits a report acceptable to the secretary on or before the revised due date indicated in the request.

(4) Within five business days after receipt of the written waiver request, a written notice of denial or approval of the request shall be issued by the secretary. The deadline for submitting a program or financial report shall not be deemed changed merely because the grantee or contractor submitted a written waiver request for an extension of the report's due date.

(5) Failure to submit complete and accurate program or financial reports by the due dates, even if a waiver is granted, may be remedied by departmental action, including one or more of the following:

(A) Termination or suspension of the grant or contract;

(B) termination or suspension of grant or contract payments;

(C) withholding of all administrative funds;

(D) reducing a percentage of administrative funds;

(E) exclusion from consideration for future grants or contracts; and

(F) exclusion from participation in the redistribution of the older Americans act carryover or unearned funds, as specified in the state plan on aging.

(b) Final financial report requirements for older Americans act (OAA) title III.

(1) Before submitting its final financial report, each area agency shall liquidate all obligations for goods and services purchased for the report period.

(2) Each area agency shall submit an accurate consolidated final financial report to the department for each program component no later than December 15 following the end of the grant period.

(3) An area agency may submit a revised final financial report if the report is accompanied by the supporting final financial report for each of the area agency's OAA title III subgrantees, contractors, and subcontractors and if either of the following conditions is met:

(A) The revised report is received either on or before December 31 after the end of the grant period.

(B) The revised report is received after December 31 following the end of the grant period, but on or before April 15, and the report is delivered simultaneously with the audit report performed in accordance with K.A.R. 26-2-10 confirming that the revised report is an accurate report.

(c) Older Americans act title III unearned funds requirements.

(1) Unearned funds shall be those funds that have been awarded to a grantee or contractor that have not been expended by the grantee or contractor or that have been expended for an unallowable cost due to the grantee's or contractor's failure to comply with specific policies, regulations, or grant or contract conditions governing the award or contract.

(2) Each area agency's unearned funds calculation shall be based on the area agency's final or revised final financial report submitted on or before December 31. The area agency shall be notified by the department of the amount of un-

earned funds by issuance of revised notifications of grant award.

(3) Unearned older Americans act funds that have been calculated and issued shall be adjusted only if the revised final financial report accompanied by an audit report is received by the department on or before April 15 and if the revised calculated unearned funds increased by one-half percent or more. If an area agency has an increase in older Americans act unearned funds of one-half percent or more, the area agency shall perform one of the following adjustments:

(A) Submit a check payable to the Kansas department on aging for the amount of the increased unearned funds;

(B) submit a written request to the department for a reduction in its allocation for the next grant year in an amount equal to the amount of the increased unearned funds; or

(C) make arrangements approved by the secretary, in writing, to pay the increased unearned funds to the department in two or more installments.

(d) Final report requirements for all programs except older Americans act title III programs.

(1) Each recipient of state or federal funds for aging program grants or contracts not identified in subsection (b) shall submit an accurate and complete final financial report in the format prescribed by the secretary for each program for which the recipient has received funds.

(2) The complete final financial report shall be received by the department no later than the deadline stated in the notification of grant award or contract.

(3) (A) If funds advanced by the department to a recipient of a grant award are unearned or disallowed, the recipient shall perform one of the following adjustments upon submission of the grant's final financial report or upon the entity becoming aware of the overpayment following submission of the final financial report:

(i) Submit a check payable to the department for the amount of the unearned or disallowed funds; or

(ii) make arrangements approved by the secretary in writing to pay the unearned or disallowed funds to the department in two or more installments.

(B) If funds advanced by the department to a contractor are unearned or disallowed, the contractor shall return the funds to the department as prescribed by the terms of the contract or as

requested by the secretary. (Authorized by and implementing K.S.A. 2010 Supp. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; amended Aug. 1, 2003; amended July 15, 2011.)

**26-2-9.** (Authorized by and implementing K.S.A. 2002 Supp. 75-5908; effective, T-89-14, April 26, 1988; effective Oct. 1, 1988; amended Jan. 7, 2000; amended Aug. 1, 2003; revoked July 15, 2011.)

**26-2-10. Audits.** (a) Definitions.

(1) "Federal funds" means federal financial assistance and federal cost-reimbursement contracts that non-federal entities receive directly from federal awarding agencies or indirectly from the department, other state agencies, or pass-through entities.

(2) "Limited-scope audit" means agreed-upon procedures conducted in accordance with the American institute of certified public accountants' generally accepted auditing standards or attestation standards that address one or more of the following types of compliance requirements:

(A) Activities allowed or unallowed;

(B) allowable costs and cost principles;

(C) eligibility;

(D) matching, level of effort, and earmarking; and

(E) reporting.

(3) "Pass-through entity" and "entity" mean a non-state organization that provides a state award to a subrecipient to carry out a federal or state program.

(4) "Recipient" means an entity that expends a state award received directly from the department to carry out a federal or state program.

(5) "Single audit" means an audit that includes both the entity's financial statements and the funds awarded by the department and expended during the entity's fiscal year.

(6) "State award" means state financial assistance and state cost-reimbursement contracts that entities receive directly from the department or indirectly from pass-through entities. This term shall not include procurement contracts used to buy goods or services from vendors.

(7) "Subrecipient" means an entity that expends department funds received from a pass-through entity to carry out a federal or state program and

shall not include an individual that is a beneficiary of the program.

(8) "Vendor" means a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a federal or state program. These goods or services may be for the entity's own use or for the use of beneficiaries of the federal or state program.

(b) Audit requirements.

(1) Office of management and budget circular no. A-133 (OMB circular A-133), "audits of states, local governments, and non-profit organizations," revised to show changes published in the federal registers of June 27, 2003 and June 26, 2007, excluding the introduction, subparts D and E, and the appendices, is hereby adopted by reference, except that in subpart B, section .200(a), "Federal awards" shall be replaced with "state awards in combination with federal funds received from other sources."

(2) Each recipient, subrecipient, or pass-through entity that expends a state award shall ensure the entity's related financial and program records are available to the secretary or the secretary's designee for audit or review.

(3) Each recipient, subrecipient, or pass-through entity that expends \$500,000 or more in state awards in combination with federal funds received from other sources during the entity's fiscal year shall have a single audit conducted in accordance with generally accepted government auditing standards and OMB circular A-133.

(4) Each area agency on aging that is required to have a single audit in accordance with paragraph (b)(3) shall include all funds received from department grants and contracts in the single audit, including payments from medicaid programs.

(5) Each recipient, subrecipient, or pass-through entity that expends less than \$500,000 in state awards in combination with federal funds received from other sources during the entity's fiscal year may be subject to the following:

(A) A limited-scope audit; or

(B) an independent audit, which shall be completed at the department's expense.

(6) Each audit shall be conducted by an independent auditor.

(7) Each audit report shall be submitted to the department within six months after the end of the entity's fiscal year and shall include a reconciliation of the audited financial statements to the financial reports submitted by the entity to the department for programs funded by the department.

(8) Each audit report submitted to the secretary after the audit report's deadline shall be considered late unless the audited entity has received an extension of the deadline, in writing, from the secretary. A written request for an extension may be granted by the secretary if the request meets all of the following conditions:

(A) The entity's written request is signed by the entity's chair of the board of directors.

(B) The request is received by the secretary at least seven working days before the date the report is due to the department.

(C) The written request provides the reason for the delay which shall be legitimately beyond the entity's control.

(D) The entity submits an audit report acceptable to the department by the revised due date indicated in the request.

(9) Penalties for failing to submit an audit report on or before the due date or submitting an audit report that does not meet the requirements specified in this regulation shall be determined by the secretary and may include one or more of the following:

(A) Disallowance of audit costs when audits required by paragraph (b)(3) have not been made or have been made but not in accordance with OMB circular A-133;

(B) withholding a percentage of state awards until the audit is completed satisfactorily;

(C) withholding or disallowing overhead costs;

(D) suspending state awards until the audit is conducted; or

(E) terminating the state award.

(c) Monitoring requirements. Each recipient, subrecipient, pass-through entity, and vendor shall be subject to monitoring performed by the secretary's designee, which shall include one or more of the following:

(1) A review of reports submitted by the recipient, subrecipient, pass-through entity, or vendor to the department;

(2) one or more site visits to the recipient, subrecipient, pass-through entity, or vendor to review financial and program records and observe operations; and

(3) procedures agreed upon by the recipient, subrecipient, pass-through entity, or vendor's executive director or other individual authorized by the entity's board of directors and the secretary or secretary's designee to review activities or documentation related to programs funded by the department, including eligibility determinations.

(Authorized by and implementing K.S.A. 2010 Supp. 75-5908; effective July 15, 2011.)

### Article 3.—PROCUREMENT

**26-3-1. Contracting and granting practices and requirements.** (a) Department approval of funding. No grantee or contractor shall make a subgrant or contract involving funds made available by the department until an area plan or other document detailing the proposed use or uses of the funds has been approved by the secretary for a specific time period and the secretary has issued a notification of grant award or contract to the grantee or contractor.

(b) Allowable use of funds. In making a subgrant or contract, each grantee or contractor shall use the funds awarded under a secretary-approved area plan for those services that are consistent with service definitions issued and provided by the department and the identified priority service needs within the PSA.

(c) Competitive bids. Each entity that receives funding through a program administered by the secretary, except a medicaid program, shall be selected on a competitive basis, unless a noncompetitive selection basis is permitted by some other provision of law. For purposes of this subsection, “entity” shall include any grantee or contractor, a subgrantee or subcontractor of a grantee or contractor, and any entity providing services under any arrangement with a subgrantee or subcontractor.

(d) Provider selection standards. The service provider selection process for grants, contracts, subgrants, and subcontracts required by subsection (c) shall meet the following requirements:

(1) For services provided under a state-funded program, the provider selection process used shall encourage free and open competition among qualified, responsible providers by meeting, at a minimum, the following requirements:

(A) Providing potential providers with a notice of service needs describing the required services, the service standards, the minimum vendor qualifications, and the process for submitting a bid or an offer to provide the services; and

(B) identifying and avoiding both potential and actual conflicts of interest. A “conflict of interest” shall mean a situation in which an employee, officer, or agent or any member of the employee’s, officer’s, or agent’s immediate family or partner, or an organization that employs or is about to em-

ploy any of these parties, has a financial or other interest in the firm selected for a grant award or contract.

(2) For services provided under a program funded with federal funds or a combination of federal and state funds, the provider selection process shall satisfy the competition and procurement standards and procedures by meeting, at a minimum, either of the following requirements:

(A) For each grantee or contractor that is a part of a local government, the requirements of 45 C.F.R. 92.36(b) through (i), as in effect on October 1, 2009 and hereby adopted by reference; or

(B) for each grantee or contractor that is not a part of a local government, the requirements of 45 C.F.R. 74.40 through 74.48, as in effect on October 1, 2009 and hereby adopted by reference.

(e) Older Americans act services. When the department enters into a contract with or awards a grant to an area agency under the older Americans act to provide services to older persons within a PSA, the following provisions shall apply:

(1) The area agency shall enter into a subgrant or contract for services within 90 days after the effective date of the notification of grant award issued by the department, unless the area agency requests and receives prior written approval for an extension of time from the secretary.

(2) The area agency may enter into a contract with a unit of local government or with a non-profit organization to provide services without the prior written approval of the secretary. For purposes of this regulation, a “nonprofit” organization is an organization that has received a determination letter from the internal revenue service that qualifies it for tax-exempt status under the internal revenue code.

(3) The area agency shall not enter into a contract with an individual or a for-profit organization to provide services until the area agency has requested and received written approval from the secretary to enter into the contract. Requests for contract approvals shall be approved if accompanied by a notarized statement from the area agency’s executive director that the contract was procured according to competition and procurement standards and procedures required by the older Americans act and does not involve a conflict of interest as defined in paragraph (d)(1)(B). Within 30 days after the date on which the request was received, the area agency shall be notified by the department if the request is approved or disapproved.

(4) An area agency whose older Americans act for-profit service provider terminates the service contract before the end of the contract's term for any reason may enter into a replacement contract with a different for-profit provider for the same services without using the area agency's normal competitive process and without requesting the prior approval of the secretary required by this regulation if the area agency, within 30 days after the effective date of the replacement contract, sends the secretary a written notice describing the following:

(A) The circumstances of the contract termination;

(B) the efforts made to obtain replacement services; and

(C) an assurance that the replacement contract does not involve a conflict of interest, as defined in paragraph (d)(1)(B).

(5) An area agency shall not alter a subgrant or contract during the final 60 days of any grant or contract period, unless the area agency requests and receives written approval for the alteration from the secretary.

(f) Record retention. Each area agency shall retain its grants, subgrants, contracts, and subcontracts with service providers in retrievable form for at least six years after the date on which the grant, subgrant, contract, or subcontract ended or at least three calendar years from the date of the area agency's final financial report, whichever date is later, unless otherwise stated in the department's grant or contract.

(1) If any litigation, claim, financial management review, or audit begins before the expiration of the retention period, the area agency shall retain its records pertaining to the litigation, claim, financial management review, or audit until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(2) Upon request made during the retention period, an area agency shall make its grants, contracts, and subcontracts available for review by representatives of the department or its auditors, the division of legislative post audit, or the United States department of health and human services. (Authorized by and implementing K.S.A. 2010 Supp. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; amended Jan. 7, 2000; amended July 15, 2011.)

**26-3-4.** (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended May 1, 1986; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; amended Nov. 14, 1997; revoked July 15, 2011.)

#### **Article 4.—NON-MEDICAID HEARING AND APPEALS**

**26-4-1. Notice of actions; appeals by written requests; time to file written requests.** (a) When an action is taken or proposed by any of the following parties in any program administered by the secretary, other than a medicaid program administered pursuant to K.S.A. 39-968, 75-5321a, and 75-5945 and amendments thereto, the procedures in this article 4 shall apply:

(1) By the secretary or the secretary's designee when the action affects any area agency on aging, a service provider, a customer, or an applicant to become a service provider or customer;

(2) by the secretary or the secretary's designee, an area agency on aging, or any of their agents when the action affects a service provider, a customer, or an applicant to become a service provider or customer; or

(3) by a service provider or its agent when the action affects a customer or an applicant to become a customer.

(b)(1) If the secretary or other authority described in subsection (a) proposes to take action, that authority shall mail written notice of the proposed action and the basis for the proposed action to the affected party or parties at least 10 days before the effective date of the action identified in the written notice, unless a different notice period is specifically required by some other provision of federal or state law.

(2) In situations involving an immediate danger to the public health, safety, or welfare, action may be taken by the secretary or other authority without giving prior written notice of proposed action described in this subsection. When action is taken without prior written notice of proposed action prescribed in paragraph (b)(1), written notice of the action shall be mailed by the secretary or other authority to the affected party or parties as soon as practical.

(c) Unless prohibited by some other provision of law, the proposed action may be taken, without any additional notice to the affected party, on the effective date described in the written notice.

(d) Each written notice of proposed action shall identify the reasons for and effective date of the proposed action and include a statement informing the affected party of the right to appeal the action by filing a written request for a hearing with the office of administrative hearings within time limits described in subsection (e).

(e) Unless preempted by federal or state law, a party receiving notice of action may appeal the action by filing a written request for a hearing with the office of administrative hearings within 30 days after the date of the notice of action. An additional three days shall be allowed if the notice of action is mailed. If no written notice of action is given, an affected party may appeal the action by filing a written request for a hearing with the office of administrative hearings within 30 days after the date on which the affected party knew or reasonably should have known of the action.

(f) Each request for a hearing shall state clearly the proposed action or the action upon which a hearing is requested. The written request for a hearing shall be included in the department's official record of agency action and record of a hearing as evidence received by it.

(g) Each hearing shall be conducted in accordance with the Kansas administrative procedures act, K.S.A. 77-501 et seq. and amendments thereto. (Authorized by and implementing K.S.A. 2010 Supp. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; amended Nov. 14, 1997; amended July 15, 2011.)

**26-4-6.** (Authorized by and implementing K.S.A. 75-5908 and K.S.A. 1996 Supp. 75-5928 and 75-5931; effective Nov. 14, 1997; revoked July 15, 2011.)

**26-4-7 through 26-4-15.** (Authorized by and implementing K.S.A. 75-5908 and K.S.A. 1996 Supp. 75-5928 and 75-5931; effective Nov. 14, 1997; revoked July 15, 2011.)

#### **Article 4a.—CUSTOMER AND PROVIDER APPEALS IN MEDICAID PROGRAMS**

**26-4a-1.** (Authorized by and implementing K.S.A. 1996 Supp. 75-5908 and K.S.A. 1996 Supp. 75-5945; effective, T-26-7-1-97, July 1, 1997; effective Nov. 14, 1997; revoked July 15, 2011.)

**26-4a-2. Appeals and fair hearings.** (a) This regulation shall apply only to the medicaid

long-term care programs and services administered by the secretary of aging, in accordance with K.S.A. 39-968, 75-5321a, and 75-5945 and amendments thereto.

(b) A fair hearing program to process and decide appeals involving the medicaid long-term care programs and services and the customers and providers of those services shall be administered through the office of administrative hearings in accordance with the Kansas administrative procedures act, K.S.A. 77-501 et seq. and amendments thereto, and K.A.R. 30-7-64 through K.A.R. 30-7-79.

(c) An individual may submit a written request for a fair hearing to appeal a written decision, notice of action, or order made by the secretary of aging or any of the department on aging's employees or agents involving a medicaid program or service. The request shall be received by the office of administrative hearings within 30 days after the date of the written decision, notice of action, or order, except as otherwise provided in applicable federal or state law. An additional three days shall be allowed if the written decision, notice of action, or order is mailed. (Authorized by and implementing K.S.A. 2010 Supp. 75-5908; effective July 15, 2011.)

#### **Article 5.—IN-HOME NUTRITION PROGRAM**

**26-5-2.** (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; revoked July 15, 2011.)

**26-5-3.** (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; amended Nov. 14, 1997; revoked July 15, 2011.)

**26-5-4.** (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; revoked July 15, 2011.)

**26-5-5.** (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; amended Sept. 7, 1993; revoked July 15, 2011.)

**26-5-6.** (Authorized by and implementing K.S.A. 2001 Supp. 75-5908; effective, T-86-48, Dec. 12, 1985; effective May 1, 1986; amended Sept. 7, 1993; amended, T-26-7-1-96, July 1,

1996; amended Nov. 8, 1996; amended Nov. 14, 1997; amended May 31, 2002; revoked July 15, 2011.)

**26-5-7.** (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1988; effective May 1, 1986; revoked July 15, 2011.)

**26-5-8.** (Authorized by and implementing K.S.A. 75-5908; effective, T-89-14, April 26, 1988; effective Oct. 1, 1988; revoked July 15, 2011.)

**26-5-9 and 26-5-10.** (Authorized by and implementing K.S.A. 75-5908; effective, T-26-7-1-96, July 1, 1996; effective Nov. 8, 1996; revoked July 15, 2011.)

### Article 8.—SENIOR CARE ACT

**26-8-2. Eligibility criteria.** (a) All customers shall be residents of Kansas who are 60 years of age or older.

(b) Each applicant shall be assessed using the department's approved uniform assessment instrument and shall meet the department's long-term care threshold requirement for senior care act services. Applicants who receive only an assessment shall not be subject to the department's long-term care threshold requirement.

(c) Medicaid home- and community-based services customers shall be eligible to receive only senior care act services that are not funded through the medicaid program. (Authorized by and implementing K.S.A. 2010 Supp. 75-5931; effective, T-26-10-17-89, Oct. 17, 1989; effective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; amended, T-26-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended July 15, 2011.)

**26-8-5. Assessment.** (a) To determine eligibility for services under the senior care act, a qualified assessor employed by or under contract with the area agency on aging shall complete a customer assessment according to the following:

- (1) Before implementation of services;
- (2) upon any significant change in the customer's condition; and
- (3) at least once every 365 days from the date of the last assessment.

(b) The assessment instrument shall be a form prescribed by the secretary. (Authorized by K.S.A. 2010 Supp. 75-5931; implementing K.S.A. 2010 Supp. 75-5930; effective, T-26-10-17-89, Oct. 17, 1989; effective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; amended Nov. 7, 1994; amend-

ed, T-26-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended July 15, 2011.)

**26-8-8. Termination.** Services provided under this act shall be terminated by the area agency on aging for any of the following reasons:

- (a) The customer moved to an adult care home.
- (b) The customer died.
- (c) The customer moved out of the service area.
- (d) The customer chose to terminate services.
- (e) The customer no longer meets the eligibility criteria.

(f) The customer has not paid the fees, and 60 days have passed since the original billing date.

(g) The customer did not accurately report the customer's income and liquid assets and chooses not to pay the applicable fees.

(h) The service provided was a one-time service as defined in K.A.R. 26-8-1.

(i) The program or service ended or was terminated.

(j) The service was discontinued due to the lack of service provider or staff.

(k) The customer is determined to be no longer safe in the customer's own home.

(l) The customer's whereabouts are unknown.

(m) The customer is a participant in the "program of all-inclusive care for the elderly" (PACE). (Authorized by and implementing K.S.A. 2010 Supp. 75-5931; effective, T-26-10-17-89, Oct. 17, 1989; effective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; amended July 28, 1995; amended Nov. 14, 1997; amended, T-26-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended July 15, 2011.)

### Article 9.—CLIENT ASSESSMENT, REFERRAL, AND EVALUATION PROGRAM

**26-9-1. Client assessment, referral, and evaluation (CARE) for nursing facilities.** (a)

Each individual seeking admission to a nursing facility or nursing facility for mental health shall, before admission, receive and complete a preadmission assessment, evaluation, and referral to all available community resources, including nursing facilities, unless one of the following conditions is met:

(1) The individual entered an acute care facility from a nursing facility and is returning to a nursing facility.

(2) The individual is transferring from one nursing facility to another nursing facility.

(3) The individual is entering a nursing facility operated by and for the adherents of a recognized church or religious denomination for the purpose of providing care and services for those who depend upon spiritual means, through prayer alone, for healing.

(4) The individual has been diagnosed as having a terminal illness and has obtained a physician's statement documenting that the individual's life expectancy is six months or less.

(5) The individual is entering a nursing facility from a hospital and the length of stay is expected to be 30 days or less based on a physician's certification.

(b) Each individual entering a nursing facility from the community whose stay is expected to be 30 days or less, based on a physician's certification, shall have sections I and II of the CARE assessment completed, before admission, by a qualified assessor.

(c) Each qualified assessor shall evaluate and refer the individual using the data collection form approved by the secretary.

(d) The preadmission assessment shall be valid for one year from the date of the initial assessment and reimbursement for the assessment shall be limited to one annual assessment per individual unless, in the judgment of a qualified assessor, the individual's physical, emotional, social, or cognitive status has changed to the extent that another assessment is warranted. (Authorized by and implementing K.S.A. 2010 Supp. 39-968; effective, T-26-6-28-95, June 28, 1995; effective Aug. 7, 1995; amended July 15, 2011.)

#### **Article 11.—KANSAS SENIOR PHARMACY ASSISTANCE PROGRAM**

**26-11-1 through 26-11-3.** (Authorized by and implementing K.S.A. 2001 Supp. 75-5961; effective, T-26-9-5-01, Oct. 1, 2001; effective, T-26-12-11-01, March 1, 2002; effective Sept. 6, 2002; revoked July 15, 2011.)

#### **Article 38.—LICENSURE OF ADULT CARE HOME ADMINISTRATORS**

**26-38-1. Definitions.** Each of the following terms, as used in this article of the department's regulations, shall have the meaning specified in this regulation:

(a) "Accredited college or university" means a college or university that is accredited by an ac-

crediting body recognized by the council on post-secondary accreditation or by the secretary of the U.S. department of education.

(b) "Administrator of record" means the licensed adult care home administrator on record with the Kansas department for aging and disability services as the administrator of the facility in which a trainee completes a practicum.

(c) "Clock-hour" means at least 50 minutes of direct instruction, exclusive of registration, breaks, and meals.

(d) "Continuing education" means a formally organized learning experience that has education as its explicit, principal intent and that is oriented toward the enhancement of adult care home administration values, skills, knowledge, and ethics.

(e) "Core of knowledge" means the educational training content for the field of adult care home administration, as established in section 252.20 (b)(2) and (i), excluding the phrase "as recommendations for appropriate use by State agencies and boards," published at 37 fed. reg. 6451-6452 (1972) and hereby adopted by reference.

(f) "Direct supervision" means the process by which an on-site preceptor directs and monitors the day-to-day activities of a trainee to ensure that these activities are performed without risk or harm to residents.

(g) "Disciplinary action" means any final action taken by the board, or by a board or agency in another jurisdiction that is responsible for licensing adult care home administrators, that affects or relates to professional licensing.

(h) "Domains of practice" means the knowledge, skills, and abilities listed in table 1, "domains of nursing home administrator practice," on page 4 and outlined in exhibit 1 on pages 7 through 13 of the "summary report of the job analysis of nursing home administrators," prepared for the national association of boards of examiners of long term care administrators and by the professional examination service, department of research and development, dated November 2007, and hereby adopted by reference.

(i) "Good character" means the moral standards and fitness that are required in an applicant for a license as an adult care home administrator. This term shall include good judgment, integrity, honesty, fairness, credibility, reliability, respect for others, respect for the laws of the state and nation, self-discipline, self-evaluation, initiative, and commitment to the profession of adult care home administration and its values and ethics.

(j) “Licensure period” means the period of time between the date on which a license is issued and the date it expires. All licenses shall expire biennially on June 30. Each license shall be valid for a period of not less than 12 months and not more than 24 months.

(k) “Preceptor” means a person who meets the following qualifications:

(1) Holds a current license in Kansas as an adult care home administrator that is not under suspension or limited; and

(2) within the preceding five years, has had either three years of full-time experience or a total of 5,000 hours of experience as a licensed adult care home administrator of a nursing facility, a nursing facility for mental health, or an intermediate care facility for people with intellectual disability. This experience shall have consisted of direct responsibility for, or active assistance and advising on, the general administration of the facility, including responsibility for planning, organizing, directing, and controlling the operation of the facility.

(l) “Relative” means an individual’s family member or a member of an individual’s household. For the purposes of this definition, “a member of an individual’s household” shall mean any person sharing the individual’s place of residence, and “family member” shall mean any of the following:

- (1) A spouse, parent, child, or sibling;
- (2) a sibling as denoted by the prefix “half”;
- (3) a parent, child, or sibling as denoted by the prefix “step”;
- (4) a foster child;
- (5) an uncle, an aunt, a nephew, or a niece;
- (6) any parent or child of a preceding or subsequent generation as denoted by the prefix “grand” or “great-”; or
- (7) a parent, child, or sibling related by marriage as denoted by the suffix “-in-law.”

(m) “Sponsorship” means an approved, long-term provision of programs for the purpose of fulfilling the continuing education requirements for license renewal or reinstatement.

(n) “Trainee” means an individual who has enrolled in a long-term care administration practicum conducted by an accredited college or university or an equivalent educational training program. (Authorized by and implementing K.S.A. 65-3503 and 65-3504; effective Oct. 2, 2020.)

**26-38-2. Educational requirements for licensure.** (a)(1) Each individual seeking initial

licensure as an adult care home administrator shall meet the following requirements:

(A) Hold a baccalaureate or higher degree from an accredited college or university; and

(B) successfully complete a long-term care administration practicum that is conducted by an accredited college or university or an equivalent educational training practicum.

(2) Successful completion of a long-term care administration practicum that is conducted by an accredited college or university and terminates with a baccalaureate degree or postbaccalaureate degree shall satisfy the requirements of paragraphs (a)(1)(A) and (B).

(b) Before participating in a practicum, each individual seeking initial licensure shall meet the following requirements:

(1) Be at least 18 years of age; and

(2) request that the college, university, or provider of the equivalent educational training practicum submit the practicum curriculum and preceptor qualifications for the board’s approval.

(c) Each practicum shall meet the following requirements:

(1) Consist cumulatively of at least 480 hours and be completed in not more than three practice settings;

(2) incorporate the core of knowledge, as defined in K.A.R. 26-38-1, or the domains of practice, as defined in K.A.R. 26-38-1;

(3) provide the training in either a licensed adult care home or long-term care unit of a licensed hospital, or both, but excluding assisted-living and residential health care facilities;

(4) pair each trainee with a preceptor in the adult care home or in the hospital long-term care unit;

(5) use each trainee’s preceptor to provide additional training and supervision during the practicum; and

(6) ensure that the preceptor meets the following requirements:

(A) Is responsible for the training, knowledge, and professional activities within the facility and for the development and refinement of the trainee as a prospective adult care home administrator;

(B) does not supervise more than two trainees at a time;

(C) is a full-time administrator of record or a licensed administrator who directly supervises the administrator of record; and

(D) maintains direct supervision of the trainee in the facility in which the training is to be provided.

(d) Any trainee may substitute a portion of the 480 practicum hours as follows:

(1) Completion of an adult care home operator course shall count for 20 hours.

(2) Each year of work experience, not to exceed six years, shall count for 40 hours if the experience meets either of the following conditions:

(A) The experience was obtained as an administrator of a Kansas-licensed hospital who also served as the administrator of the hospital's long-term care unit.

(B) The experience was obtained as an adult care home administrator while licensed in another state. (Authorized by and implementing K.S.A. 65-3503 and 65-3504; effective Oct. 2, 2020.)

**26-38-3. Application for initial licensure.**

(a) Each applicant for initial licensure shall submit an application on forms provided by the board and shall furnish the fee specified in K.A.R. 26-38-11 and evidence satisfactory to the board of having met the requirements specified in K.A.R. 26-38-2. Documents verifying that the applicant successfully completed the educational requirements shall be submitted no later than 30 days following the date of the national examination specified in K.A.R. 26-38-4.

(b) Each applicant shall submit, on forms provided by the board, one letter of reference from a licensed adult care home administrator, in state or out of state, and one letter of reference from another person who is not a relative of the applicant.

(c) Each applicant shall provide the board with academic transcripts and proof of receipt of a baccalaureate or a postbaccalaureate degree. The applicant shall arrange for transcripts to be provided directly to the board by the accredited college or university.

(d) Each applicant who has received a baccalaureate or postbaccalaureate degree outside the United States or its territories and whose transcript is not in English shall submit an officially translated English copy of the applicant's transcript and, if necessary, supporting documents. The transcript shall be translated by a source and in a manner acceptable to the board. Each applicant shall pay all transcription fees directly to the transcriber.

(e) Each applicant who has received a baccalaureate or postbaccalaureate degree outside the United States or its territories shall obtain an equivalency validation from a board-approved agency that specializes in educational credential

evaluations. Each applicant shall pay the required equivalency validation fee directly to the validation agency. (Authorized by K.S.A. 65-3503; implementing K.S.A. 65-3503 and 65-3504; effective Oct. 2, 2020.)

**26-38-4. Licensure examinations.** (a) Each applicant for initial licensure as an adult care home administrator shall be required to pass a national examination and a state law examination for adult care home administration approved by the board.

(1) Each applicant shall take the national examination within 12 months of completing an administrator-in-training practicum, unless for good cause the board grants an extension. For the purpose of this subsection, "good cause" shall mean any reason that does not reflect unfavorably on the applicant's good character, qualifications, or ability to comply with the board's regulations.

(2) Each applicant shall pay the required examination fee for the national examination directly to the testing agency. An examination fee shall be required each time an applicant takes the national examination.

(b) The national association of long term care administrator boards (NAB) examination shall be the approved national examination for licensure.

(c) The minimum passing scaled score for each portion of the national examination shall be 113. The minimum passing raw score for the state law examination shall be 75 percent.

(d) Each applicant who has been disqualified for failing any portion of the national examination shall have the right to receive written notification by the board of the disqualification and each reason for failing, including a breakdown of the subject areas passed and failed.

(e) An applicant who has failed a portion of the national examination three times shall not submit a new application to take that portion of the examination until the applicant has received board approval for a course of additional education or training, or both, signed by the applicant, the preceptor, and the applicant's practicum coordinator and has completed the approved course of additional education or training, or both. The course of additional education or training, or both, shall include the following at a minimum:

(1) A specific number of additional hours of administrator-in-training instruction, proposed by the applicant and agreed to by the board, in each of the domains of practice, as defined in K.A.R. 26-38-1; and

(2)(A) At least 100 hours of administrator-in-training instruction targeting the subjects of the line of service exam, if the applicant failed that portion of the national examination; and

(B) at least 100 hours of administrator-in-training instruction in the core of knowledge, as defined in K.A.R. 26-38-1, if the applicant failed that portion of the national examination.

(f) Each applicant who completes the required hours of additional administrator-in-training education or training, or both, shall be eligible to submit a new application for the portion of the national examination that the applicant previously failed three times. If the applicant fails the fourth attempt, the applicant shall remain eligible to submit an application for a fifth attempt to pass the national examination.

(g) An applicant who has failed a portion of the national examination five times shall not submit a new application to take that portion of the examination until the applicant has completed an additional 480-hour administrator-in-training practicum that is conducted by an accredited college or university or an equivalent educational training practicum, as specified in K.A.R. 26-38-2.

(h) Each applicant who has completed a second 480-hour administrator-in-training practicum shall be given three additional attempts to pass the portion of the national examination that the applicant previously failed five times. An applicant who has failed a portion of the national examination three times after completing a second 480-hour administrator-in-training practicum shall not be allowed to submit an additional application for examination.

(i) Each applicant shall be given 36 months from the date the applicant completed an initial administrator-in-training practicum or a second practicum under subsection (g) to take and pass the national examination.

(j) Any applicant who fails the state law examination may retake the state law examination until the applicant passes this examination. (Authorized by K.S.A. 65-3503; implementing K.S.A. 65-3503 and 65-3504; effective Oct. 2, 2020.)

**26-38-5. Potentially disqualifying civil and criminal records; advisory opinion; fee.**

(a) Each applicant shall provide, and shall authorize the board to request, disciplinary action information and criminal history records. If adverse information is received from the applicant or from any other source, the applicant shall provide all

necessary records, sworn affidavits, or other documentation required by the board concerning the disciplinary action or criminal conviction, including any evidence that all sentencing requirements have been completed. The applicant shall pay all costs for the acquisition of these documents.

(b) The following criminal records may disqualify an applicant from receiving a license:

(1) Conviction of any felony;

(2) conviction of any class A misdemeanor that includes any of the following:

(A) A crime involving violation of any state or federal drug, narcotic, or controlled substances law;

(B) a crime against persons, as defined in K.S.A. 2018 Supp. 21-5401 et seq. and amendments thereto;

(C) a sex offense, as defined in K.S.A. 2018 Supp. 21-5501 et seq. and amendments thereto;

(D) a crime affecting family relationships and children, as defined in K.S.A. 2018 Supp. 21-5601 et seq. and amendments thereto, excluding criminal nonsupport, as defined in K.S.A. 2018 Supp. 21-5606 and amendments thereto;

(E) a crime promoting the sale of sexual relations, as defined in K.S.A. 2018 Supp. 21-6420 and amendments thereto;

(F) a crime of theft, as defined in K.S.A. 2018 Supp. 21-5801 and amendments thereto;

(G) an attempt, conspiracy, or solicitation to commit any offense described in this subsection; or

(H) any similar criminal offense defined by another state or by the federal government; and

(3) conviction of any other misdemeanor that meets both of the following conditions:

(A) The crime involved at least one of the circumstances described in paragraph (b)(2); and

(B)(i) Fewer than five years have passed since the applicant completed that individual's sentence, including any term of incarceration, probation, or community supervision; or

(ii) the applicant has been convicted of another crime in the five years immediately preceding the date of application for license.

(c) If an applicant has been subject to disciplinary action or has been convicted of any crime described in this regulation, the applicant shall have the burden of proving that the applicant has been rehabilitated and warrants the public trust.

(d) Civil records that may disqualify an applicant from receiving a license shall be the records of any court judgment or settlement in which the

applicant admitted or was found to have engaged in conduct that would constitute a violation of K.S.A. 65-3501 et seq., and amendments thereto, or any of the board's regulations. Those records may disqualify an applicant from receiving a license for no more than five years after the applicant satisfied any judgment or restitution ordered by the court or agreed to in the settlement.

(e) Any individual with a criminal or civil record described in this regulation may submit a petition to the board for an informal, written advisory opinion concerning whether the individual's civil or criminal record may disqualify the individual from licensure. Each petition shall include the following:

(1) The details of the individual's civil or criminal record, including at least one copy of the court records or the settlement agreement;

(2) an explanation of the circumstances that resulted in the civil or criminal record; and

(3) a check or money order in the amount of \$50.00. (Authorized by K.S.A. 65-3503 and 74-120; implementing K.S.A. 65-3503, 65-3508, and 74-120; effective Oct. 2, 2020.)

**26-38-6. Temporary license.** (a) Each applicant for a 60-day temporary license shall identify the facility seeking to hire the applicant on a temporary basis and shall arrange for that facility to provide the board with written documentation that a current licensee is not available to serve as administrator in the facility. Each applicant shall also meet each of the following requirements:

(1) Submit an application on board-approved forms accompanied by the applicable fee specified in K.A.R. 26-38-11;

(2) be endorsed in writing to be the most qualified person available to be employed by the facility. The endorsement shall be made by an authorized representative of the governing body of the facility where the applicant is to be employed; and

(3)(A) Have a baccalaureate or postbaccalaureate degree from an accredited college or university and have passed an examination on state law pursuant to K.A.R. 26-38-4;

(B) have completed a degree-conferring program from an accredited college or university and either be participating or will participate in a long-term care administration or educational training practicum in compliance with K.A.R. 26-38-2;

(C) have been previously licensed in Kansas as an adult care home administrator and otherwise

be eligible for reinstatement pursuant to K.A.R. 26-38-8; or

(D) hold a license as an adult care home administrator in another state and otherwise be eligible for reciprocity pursuant to K.A.R. 26-38-7.

(b) Any applicant granted a temporary license may request not more than two 60-day extensions of that license.

(c) If an applicant for initial licensure has been issued a temporary license and fails the national examination, the applicant's temporary license shall expire on the date indicated on the license. The applicant shall not be eligible for an extension of the temporary license and shall not be eligible to reapply for a temporary license. (Authorized by and implementing K.S.A. 65-3502; effective Oct. 2, 2020.)

**26-38-7. Licensure by reciprocity.** (a) Each applicant for licensure by reciprocity shall submit an application on board-approved forms accompanied by the application fee for licensure by reciprocity and the license application fee specified in K.A.R. 26-38-11. Each applicant for licensure by reciprocity shall authorize the board to submit the application to the Kansas bureau of investigation for the purpose of obtaining criminal history records information to be considered by the board in its determination of the applicant's eligibility for licensing.

(b) Each applicant for licensure by reciprocity whose license was issued by another jurisdiction shall provide documentation to the board of both of the following:

(1) The applicant is favorably recommended by the state in which the applicant is licensed. To meet this requirement, the applicant shall arrange for that state to provide the board with a written affirmation that the applicant is in good standing. The applicant shall ensure that the letter of good standing is sent directly to the board from the issuing agency and shall not take possession of or tamper with the letter. For the purposes of this paragraph, "good standing," in reference to an applicant, shall mean that the individual's license has not been limited, suspended, or revoked.

(2)(A) The licensing criteria of the license-issuing jurisdiction are substantially equivalent to the current Kansas examination, education, training, and experience requirements in K.A.R. 26-38-2 and K.A.R. 26-38-4; or

(B) the applicant has been continuously licensed during the preceding five years, during

which time the applicant annually attained at least 2,080 hours of experience as an administrator of record of a licensed adult care home or a licensed long-term care unit of a hospital.

(c) Each applicant for licensure by reciprocity who has a current health services executive certification shall provide documentation to the board of both of the following:

(1) The applicant has a current health services executive certification.

(2) The applicant has not had any disciplinary action of a serious nature brought by a licensing board or agency against the candidate. (Authorized by K.S.A. 65-3503; implementing K.S.A. 65-3503 and 65-3505; effective Oct. 2, 2020.)

**26-38-8. Licensure renewal and license reinstatement; continuing education; sponsorship.**

(a) Each application for renewal of a license shall be submitted on or before June 30 of the year in which the license expires.

(b) Each licensee shall submit an application on forms provided by the board and accompanied by the license renewal fee specified in K.A.R. 26-38-11. Each licensee whose application is received with a postmark later than June 30 of the year in which the license expires shall also pay the late renewal fee specified in K.A.R. 26-38-11. The application and all applicable fees shall be received within the 30-day period following the license expiration date. If the application and all applicable fees are not received within that 30-day period, the license shall lapse and the individual shall be required to apply for reinstatement.

(c)(1) Except as provided in paragraph (c)(2), each application for renewal shall include an attestation verifying that the licensee has completed at least 50 clock-hours of board-approved continuing education pertaining to the core of knowledge or the domains of practice, as defined in K.A.R. 26-38-1, during the licensure period immediately preceding renewal of the license.

(2) If a licensee's initial licensure period is less than 24 months, the application shall include an attestation verifying that the licensee has completed at least two clock-hours of board-approved continuing education for each month in the initial licensure period.

(d)(1) Any licensee may claim up to five clock-hours of continuing education credit for attendance at a state or national annual convention that pertains to long-term care. Each licensee claiming continuing education credit under this paragraph

shall require the sponsor to verify the licensee's attendance. The licensee may claim this allowance in addition to claiming continuing education credit approved for individual sessions at a state or national annual convention, but the licensee shall not claim more than 10 clock-hours of continuing education credit for attending a state or national annual convention during any licensure period.

(2) Any licensee may claim 15 clock-hours of continuing education credit for each college credit semester hour earned within the renewal period if the subject matter of the course pertains to the domains of practice or to the core of knowledge.

(3) Any licensee may claim two clock-hours of continuing education credit for each clock-hour spent at an approved continuing education program. Licensees shall not claim credit for repeat presentations.

(e) Any preceptor may claim 15 clock-hours for each trainee.

(f) If a licensee's application is selected for audit, the licensee shall provide the board with sufficient documentation to verify that the licensee completed the continuing education requirement.

(g) Licensees shall not claim either of the following as continuing education for the purpose of license renewal:

(1) In-service education; or

(2) attending a food show or viewing exhibits at vendor booths at a food show designed to introduce food products to licensees or to others in the health care industry.

(h) Each application for reinstatement shall be submitted on forms provided by the board, documenting completion of 50 clock-hours of continuing education during the preceding 24 months, and shall be accompanied by the renewal fee and the reinstatement fee specified in K.A.R. 26-38-11.

(i) Any licensee or nonapproved provider of continuing education may apply for approval of a continuing education program by submitting a request for prior approval to the board at least three weeks before the program is scheduled to be presented. The request shall provide information about the proposed program, including objectives, course content, and an agenda, and shall be submitted on a form provided by the board.

(j) Each sponsor shall meet the following requirements:

(1) Offer at least six continuing education activities, including workshops, seminars, academic courses, self-study courses, teleconferences, and educational sessions, over a two-year period;

(2) designate one person, who shall be referred to as the coordinator, to be responsible for administering all requirements and outcomes of the sponsorship. The board shall be notified in advance of any staff change involving the coordinator, including proof of that person's credentials to be the coordinator. Each coordinator shall meet one of the following requirements:

(A) Have a current license in the field of adult care home administration;

(B) have sufficient experience in a field related to adult care home administration to qualify that person to coordinate continuing education activities for licensees;

(C) serve as a staff member of a professional organization related to the field of adult care home administration; or

(D) have experience or academic preparation in adult education or training;

(3) submit an application on forms provided by the board and accompanied by the sponsorship application fee specified in K.A.R. 26-38-11. The application documents shall be received by the board at least 30 days before the initial continuing education offering. The application fee shall be required for each new or reinstated sponsorship application, and the terms of sponsorship renewal and reinstatement shall be the same as the terms for licenses;

(4) ensure that the educational offerings pertain to the domains of practice or the core of knowledge; and

(5) submit an annual report on board-approved forms no later than January 31 each year for the preceding calendar year. This report shall describe the approved continuing education activities provided and the quality improvement methods used, including how evaluation data is incorporated in planning future educational activities.

(k) If a sponsor fails to meet the requirements in this regulation after receiving approval or if there is a material misrepresentation of any fact with the information submitted to the board by a sponsor, approval may be withdrawn or conditions relating to the sponsorship may be applied by the board after giving the sponsor notice and an opportunity to be heard. (Authorized by K.S.A. 65-3503 and 65-3505; implementing K.S.A. 65-3501 and 65-3505; effective Oct. 2, 2020.)

**26-38-9. Display of license.** Each person licensed as an adult care home administrator shall display that person's wall license in a conspicuous

place in the licensee's office or place of business or employment. Each licensee serving as administrator in more than one facility shall display one wall license in each facility. Each request for an additional wall license shall be submitted in writing and accompanied by the fee specified in K.A.R. 26-38-11 for a duplicate wall license. (Authorized by and implementing K.S.A. 65-3503; effective Oct. 2, 2020.)

**26-38-10. Change of name or address; replacement licenses.** (a) Each licensee shall notify the board of any name or address change within 30 days of the change. Each licensee who is found to have knowingly or repeatedly failed to comply with this regulation shall be subject to disciplinary action by the board pursuant to K.S.A. 65-3508, and amendments thereto.

(b)(1) Notice of each address change shall be submitted in writing and shall include each of the following:

- (A) The licensee's full legal name;
- (B) the licensee's license number;
- (C) the licensee's previous mailing address; and
- (D) the licensee's new mailing address.

(2) Notice of each name change shall be submitted in writing and shall include each of the following:

- (A) The licensee's previous legal name;
- (B) the licensee's new legal name;
- (C) the licensee's license number; and
- (D) a copy of a marriage certificate, court decree evidencing the change of name, or social security card or driver's license reflecting the new name.

(c) Each licensee seeking a replacement wall or wallet card license shall submit a completed board-approved form for each license, payment of the applicable replacement fee, and, if possible, the most recently issued license. (Authorized by and implementing K.S.A. 65-3503; effective Oct. 2, 2020.)

**26-38-11. Fees.** (a)(1) The license application fee shall be \$100.00. The license application fee for an initial licensure period of less than 24 months shall be prorated at \$4.00 per month for each full or partial month.

(2) The license renewal fee shall be \$100.00.

(3) The temporary license application fee shall be \$100.00.

(4) The application fee for reinstatement of a lapsed or revoked license shall be \$120.00, in ad-

dition to the license renewal fee specified in paragraph (a)(2).

(5) The application fee for licensure by reciprocity shall be \$120.00, in addition to the application fee specified in paragraph (a)(1).

(6) The late renewal fee shall be \$50.00.

(7) The wall or wallet card license replacement fee shall be \$10.00.

(8) The fee for providing a duplicate wall license shall be \$10.00.

(9) The sponsorship application fee shall be \$150.00.

(b) All fees shall be nonrefundable. (Authorized by and implementing K.S.A. 65-3503 and 65-3505; effective Oct. 2, 2020.)

### Article 39.—ADULT CARE HOMES

**26-39-100. Definitions.** The following terms and definitions shall apply to all of the department's regulations governing adult care homes and their employees: (a) "Activities director" means an individual who meets at least one of the following requirements:

(1) Has a degree in therapeutic recreation;

(2) is licensed in Kansas as an occupational therapist or occupational therapy assistant;

(3) has a bachelor's degree in a therapeutic activity field in art therapy, horticultural therapy, music therapy, special education, or a related therapeutic activity field;

(4) is certified as a therapeutic recreation specialist or as an activities professional by a recognized accrediting body;

(5) has two years of experience in a social or recreational program within the last five years, one of which was full-time in an activities program in a health care setting; or

(6) has completed a course approved by the department in resident activities coordination and receives consultation from a therapeutic recreation specialist, an occupational therapist, an occupational therapy assistant, or an individual with a bachelor's degree in art therapy, music therapy, or horticultural therapy.

(b) "Addition" means an increase in the building area, aggregate floor area, or number of stories of an adult care home.

(c) "Administrator" means an individual who is responsible for the general administration of an adult care home, whether or not the individual has an ownership interest in the adult care home. Each administrator of an adult care home shall

be licensed in accordance with K.S.A. 65-3501 et seq., and amendments thereto.

(d) "Adult care home" has the meaning specified in K.S.A. 39-923, and amendments thereto.

(e) "Adult day care" has the meaning specified in K.S.A. 39-923, and amendments thereto.

(f) "Advanced practice registered nurse" and "APRN" mean an RN who holds a license from the Kansas board of nursing to function as a professional nurse in an advanced role as defined by regulations adopted by the Kansas board of nursing.

(g) "Ambulatory resident" means any resident who is physically and mentally capable of performing the following without the assistance of another person:

(1) Getting in and out of bed; and

(2) walking between locations in the living environment.

(h) "Applicant" means any individual, firm, partnership, corporation, company, association, or joint stock association requesting a license to operate an adult care home.

(i) "Assisted living facility" has the meaning specified in K.S.A. 39-923, and amendments thereto.

(j) "Audiologist" means an individual who is licensed by the department as an audiologist.

(k) "Basement" means the part of a building that is below grade.

(l) "Biologicals" means medicinal preparations made from living organisms and their products, including serums, vaccines, antigens, and antitoxins.

(m) "Boarding care home" has the meaning specified in K.S.A. 39-923, and amendments thereto.

(n) "Case manager" means an individual assigned to a resident to provide assistance in access and coordination of information and services in a program authorized by the Kansas department for aging and disability services, the Kansas department for children and families, or the division of health care finance in the Kansas department of health and environment.

(o) "Change of ownership" means any transaction that results in a change of control over the capital assets of an adult care home.

(p) "Chemical restraint" means a medication or biological that meets the following conditions:

(1) Is used to control a resident's behavior or restrict a resident's freedom of movement; and

(2) is not a standard treatment for a resident's medical or psychiatric condition.

(q) "Clinical record" means the record that includes all the information and entries reflecting each resident's course of stay in an adult care home.

(r) "Concentrated livestock operation" means confined feeding facility, as defined in K.S.A. 65-171d, and amendments thereto.

(s) "Contaminated laundry" means any clothes or linens that have been soiled with body substances including blood, stool, urine, vomitus, or other potentially infectious material.

(t) "Controlled substance" means any medication, substance, or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, K.S.A. 65-4107, K.S.A. 65-4109, K.S.A. 65-4111, and K.S.A. 65-4113, and amendments thereto.

(u) "Day shift" means any eight-hour to 12-hour work period that occurs between the hours of 6 a.m. and 9 p.m.

(v) "Department" means Kansas department for aging and disability services.

(w) "Dietetic services supervisor" means an individual who meets one of the following requirements:

(1) Is licensed in Kansas as a dietitian;

(2) has an associate's degree in dietetic technology from a program approved by the American dietetic association;

(3) is a dietary manager who is certified by the certifying board for dietary managers of the association of nutrition and foodservice professionals; or

(4) has training and experience in dietetic services supervision and management that are determined by the Kansas department for aging and disability services to be equivalent in content to the requirement specified in paragraph (2) or (3) of this subsection.

(x) "Dietitian" means an individual who is licensed by the department as a dietitian.

(y) "Direct care staff" means the individuals employed by or working under contract for an adult care home who assist residents in activities of daily living. These activities may include the following:

(1) Ambulating;

(2) bathing;

(3) bed mobility;

(4) dressing;

(5) eating;

(6) personal hygiene;

(7) toileting; and

(8) transferring.

(z) "Director of nursing" means a position in a nursing facility or a nursing facility for mental

health that is held by one or more individuals who meet the following requirements:

(1) Each individual shall be licensed as an RN.

(2) If only one individual serves in this position, the individual shall be employed at least 35 hours each week.

(3) If more than one individual serves in this position, the individuals shall be employed collectively for a total of at least 40 hours each week.

(4) Each individual shall have the responsibility, administrative authority, and accountability for the supervision of nursing care provided to residents in the nursing facility or the nursing facility for mental health.

(aa) "Full-time" means 35 or more hours each week.

(bb) "Health information management practitioner" means an individual who is certified as a registered health information administrator or a registered health information technician by the American health information management association.

(cc) "Home plus" has the meaning specified in K.S.A. 39-923, and amendments thereto.

(dd) "Interdisciplinary team" means the following group of individuals:

(1) An RN with responsibility for the care of the residents; and

(2) other appropriate staff, as identified by resident comprehensive assessments, who are responsible for the development of care plans for residents.

(ee) "Intermediate care facility for people with intellectual disability" has the meaning specified in K.S.A. 39-923, and amendments thereto.

(ff) "Legal representative" means an agent acting within the bounds of the agent's legal authority who meets any of the following criteria:

(1) Has been designated by a resident to serve as the resident's trustee, power of attorney, durable power of attorney, or power of attorney for health care decisions;

(2) is a court-appointed guardian or conservator authorized to act on behalf of the resident in accordance with K.S.A. 59-3051 et seq., and amendments thereto; or

(3) if the resident is a minor, is either of the following:

(A) A natural guardian, as defined in K.S.A. 59-3051 and amendments thereto; or

(B) a court-appointed guardian, conservator, trustee, or an individual or agency vested with custody of the minor pursuant to the revised Kan-

sas code for care of children, K.S.A. 2012 Supp. 38-2201 through 38-2283 and amendments thereto, or the revised Kansas juvenile justice code, K.S.A. 2012 Supp. 38-2301 through 38-2387 and amendments thereto.

(gg) “Licensed mental health technician” means an individual licensed by the Kansas board of nursing as a licensed mental health technician.

(hh) “Licensed nurse” means an individual licensed by the Kansas board of nursing as a registered professional nurse or licensed practical nurse.

(ii) “Licensed practical nurse” and “LPN” mean an individual who is licensed by the Kansas board of nursing as a licensed practical nurse and is supervised by a registered professional nurse, in accordance with K.S.A. 65-1113 and amendments thereto.

(jj) “Licensee” means an individual, firm, partnership, association, company, corporation, or joint stock association authorized by a license obtained from the secretary to operate an adult care home.

(kk) “Medical care provider” means any of the following individuals:

(1) A physician licensed by the Kansas board of healing arts to practice medicine and surgery, in accordance with K.S.A. 65-2801 et seq. and amendments thereto;

(2) a physician assistant (PA) who is licensed by the Kansas board of healing arts, in accordance with K.S.A. 65-28a02 and amendments thereto, and who provides health care services under the direction and supervision of a responsible physician; or

(3) an APRN.

(ll) “Medication” means any “drug,” as defined by K.S.A. 65-1626 and amendments thereto.

(mm) “Medication administration” means an act in which a single dose of a prescribed medication or biological is given by application, injection, inhalation, ingestion, or any other means to a resident by an authorized person in accordance with all laws and regulations governing the administration of medications and biologicals. Medication administration shall consist of the following:

(1) Removing a single dose from a labeled container, including a unit-dose container;

(2) verifying the medication and dose with the medical care provider’s orders;

(3) administering the dose to the resident; and

(4) documenting the dose in the resident’s clinical record.

(nn) “Medication aide” means an individual who is certified by the department as a medication aide according to K.A.R. 26-50-30 and is supervised by a licensed nurse.

(oo) “Medication dispensing” means the delivery of one or more doses of a medication by a licensed pharmacist or physician. The medication shall be dispensed in a container and labeled in compliance with state and federal laws and regulations.

(pp) “Non-ambulatory resident” means any resident who is not physically or mentally capable of performing the following without the assistance of another person:

(1) Getting in and out of bed; and

(2) walking between locations in the living environment.

(qq) “Nurse aide” means an individual who meets the following requirements:

(1) Is certified as a nurse aide by the department and is listed on the Kansas nurse aide registry according to K.A.R. 26-50-20; and

(2) is supervised by a licensed nurse.

(rr) “Nurse aide trainee” means an individual who is in the process of completing a nurse aide training program as specified in K.A.R. 26-50-20 or K.A.R. 26-50-24, is not certified by the department as a nurse aide, and is not listed on the Kansas nurse aide registry. There are two types of nurse aide trainee: nurse aide trainee I and nurse aide trainee II. These two terms are defined in K.A.R. 26-50-10.

(ss) “Nursing facility” has the meaning specified in K.S.A. 39-923, and amendments thereto.

(tt) “Nursing facility for mental health” has the meaning specified in K.S.A. 39-923, and amendments thereto.

(uu) “Nursing personnel” means all of the following:

(1) RNs;

(2) LPNs;

(3) licensed mental health technicians in nursing facilities for mental health;

(4) medication aides;

(5) nurse aides;

(6) nurse aide trainees II; and

(7) paid nutrition assistants.

(vv) “Nursing unit” means a distinct area of a nursing facility serving not more than 60 residents and including the service areas and rooms described in K.A.R. 26-40-302 and K.A.R. 26-40-303.

(ww) “Occupational therapist” means an individual who is licensed with the Kansas board of healing arts as an occupational therapist.

(xx) “Occupational therapy assistant” means an individual who is licensed by the Kansas board of healing arts as an occupational therapy assistant.

(yy) “Operator” has the meaning specified in K.S.A. 39-923, and amendments thereto.

(zz) “Paid nutrition assistant” has the meaning specified in K.S.A. 39-923, and amendments thereto. In addition, each paid nutrition assistant shall meet the following requirements:

(1) Have successfully completed a nutrition assistant course approved by the department;

(2) provide assistance with eating to residents of an adult care home based on an assessment by the supervising licensed nurse, the resident’s most recent minimum data set assessment or functional capacity screening, and the resident’s current care plan or negotiated service agreement;

(3) provide assistance with eating to residents who do not have complicated eating problems, including difficulty swallowing, recurrent lung aspirations, and tube, parenteral, or intravenous feedings;

(4) be supervised by a licensed nurse on duty in the facility; and

(5) be able to contact the supervising licensed nurse verbally or on the resident call system for help in case of an emergency.

(aaa) “Personal care” means assistance provided to a resident to enable the resident to perform activities of daily living, including ambulating, bathing, bed mobility, dressing, eating, personal hygiene, toileting, and transferring.

(bbb) “Pharmacist” has the meaning specified in K.S.A. 65-1626, and amendments thereto.

(ccc) “Physical restraint” means any method or any physical device, material, or equipment attached or adjacent to the resident’s body and meeting the following criteria:

(1) Cannot be easily removed by the resident; and

(2) restricts freedom of movement or normal access to the resident’s body.

(ddd) “Physical therapist” means an individual who is licensed by the Kansas board of healing arts as a physical therapist.

(eee) “Physical therapy assistant” means an individual who is certified by the Kansas board of healing arts as a physical therapy assistant.

(fff) “Physician” means a person licensed to practice medicine and surgery by the state board of healing arts.

(ggg) “Psychopharmacologic drug” means any medication prescribed with the intent of controlling mood, mental status, or behavior.

(hhh) “Registered professional nurse” and “RN” mean an individual who is licensed by the Kansas board of nursing as a registered professional nurse.

(iii) “Renovation” means a change to an adult care home that affects the building’s structural integrity or life safety system.

(jjj) “Resident” has the meaning specified in K.S.A. 39-923, and amendments thereto.

(kkk) “Resident capacity” means the number of an adult care home’s beds or adult day care slots, as licensed by the department.

(lll) “Residential health care facility” has the meaning specified in K.S.A. 39-923, and amendments thereto.

(mmm) “Respite care” means the provision of services to a resident on an intermittent basis for periods of fewer than 30 days at any one time.

(nnn) “Restraint” means the control and limitation of a resident’s movement by physical, mechanical, or chemical means.

(ooo) “Sanitization” means effective bactericidal treatment by a process that reduces the bacterial count, including pathogens, to a safe level on utensils and equipment.

(ppp) “Secretary” means secretary of the Kansas department for aging and disability services.

(qqq) “Self-administration of medication” means the determination by a resident of when to take a medication or biological and how to apply, inject, inhale, ingest, or take a medication or biological by any other means, without assistance from nursing staff.

(rrr) “Significant change in condition” means a decline or improvement in a resident’s mental, psychosocial, or physical functioning that requires a change in the resident’s comprehensive plan of care or negotiated service agreement.

(sss) “Social services designee” means an individual who meets at least one of the following qualifications:

(1) Is licensed by the Kansas behavioral sciences regulatory board as a social worker;

(2) has a bachelor’s degree in a human service field, including social work, sociology, special education, rehabilitation counseling, or psychology, and receives supervision from a licensed social worker; or

(3) has completed a course in social services coordination approved by the department and receives supervision from a licensed social worker on a regular basis.

(ttt) “Social worker” means an individual who is

licensed by the Kansas behavioral sciences regulatory board as a social worker.

(uuu) “Speech-language pathologist” means an individual who is licensed by the department as a speech-language pathologist.

(vvv) “Working day” means any day other than a Saturday, Sunday, or day designated as a holiday by the United States congress or the Kansas legislature or governor. (Authorized by K.S.A. 39-932 and K.S.A. 2012 Supp. 39-1901 and 39-1908; implementing K.S.A. 2012 Supp. 39-923, K.S.A. 39-932, and K.S.A. 2012 Supp. 39-1908; effective May 22, 2009; amended Jan. 7, 2011; amended, T-26-6-28-13, June 28, 2013; amended Oct. 25, 2013.)

**26-39-101. Licensure of adult care homes.** (a) Initiation of application process.

(1) Each applicant for a license to operate an adult care home shall submit a letter of intent to the department.

(2) The letter of intent shall include all of the following information:

(A) The type of adult care home license being requested;

(B) the name, address, and telephone number of the applicant; and

(C) the street address or legal description of the proposed site.

(b) Initial licensure application.

(1) Each applicant for an initial license shall submit the following to the department:

(A) A completed application on a form prescribed by the department;

(B) a copy of each legal document identifying ownership and control, including applicable deeds, leases, and management agreements;

(C) any required approval of other owners or mortgagors;

(D) curriculum vitae or resumes of all facility and corporate staff responsible for the operation and supervision of the business affairs of the facility;

(E) a complete list of names and addresses of facilities that the applicant operates in states other than Kansas; and

(F) a financial statement projecting the first month’s operating income and expenses with a current balance sheet showing at least one month’s operating expenses in cash or owner’s equity. All financial statements shall be prepared according to generally accepted accounting principles and certified by the applicant to be accurate.

(2) A license shall be issued by the department if all of the following requirements are met:

(A) A licensure application has been completed by the applicant.

(B) Construction of the facility or phase is completed.

(C) The facility is found to meet all applicable requirements of the law.

(D) The applicant is found to qualify for a license under K.S.A. 39-928 and amendments thereto.

(c) Change of ownership or licensee.

(1) The current licensee shall notify the department, in writing, of any anticipated change in the information that is recorded on the current license at least 60 days before the proposed effective date of change.

(2) Each applicant proposing to purchase, lease, or manage an adult care home shall submit the following information, if applicable, to the department:

(A) A completed application form prescribed by the department;

(B) a copy of each legal document transferring ownership or control, including sales contracts, leases, deeds, and management agreements;

(C) any required approval of other owners or mortgagors;

(D) curriculum vitae or resumes of all facility and corporate staff responsible for the operation and supervision of the business affairs of the facility;

(E) a complete list of names and addresses of facilities the applicant operates in states other than Kansas; and

(F) a financial statement projecting the first month’s operating income and expenses with a current balance sheet showing at least one month’s operating expenses in cash or owner’s equity. All financial statements shall be prepared according to generally accepted accounting principles and certified by the applicant as accurate.

(3) A new license shall be issued by the department if a complete application and the required forms have been received and the applicant is found to qualify for a license under K.S.A. 39-928 and amendments thereto.

(d) New construction or conversion of an existing unlicensed building to an adult care home.

(1) Each applicant for a nursing facility, intermediate care facility for the mentally retarded, assisted living facility, or residential health care facility shall request approval of the site at least 30 days before construction begins. The written request for site approval shall include all of the following information:

(A) The name and telephone number of the individual to be contacted by evaluation personnel;

(B) the dimensions and boundaries of the site; and

(C) the name of the public utility or municipality that provides services to the site, including water, sewer, electricity, and natural gas.

(2) Intermediate care facilities for the mentally retarded shall not have more than one residential building with 16 beds or less located on one site or on contiguous sites. The residential buildings shall be dispersed geographically to achieve integration and harmony with the community or neighborhoods in which the buildings are located.

(3) The applicant shall submit one copy of the final plans for new construction or conversion of an existing unlicensed building, for the entire project or phase to be completed, which shall be sealed, signed, and certified by a licensed architect to be in compliance with the following regulations:

(A) For a nursing facility, K.A.R. 26-40-301 through K.A.R. 26-40-305;

(B) for an intermediate care facility for the mentally retarded with 16 beds or less, K.A.R. 28-39-225;

(C) for an intermediate care facility for the mentally retarded with 17 or more beds, K.A.R. 26-40-301 through K.A.R. 26-40-305 governing the physical environment of nursing facilities; and

(D) for an assisted living facility or a residential health care facility, K.A.R. 28-39-254 through K.A.R. 28-39-256.

(4) The applicant shall provide the department with a 30-day notice of each of the following:

(A) The date on which the architect estimates that 50 percent of the construction will be completed; and

(B) the date on which the architect estimates that all construction will be completed.

(5) The applicant for new construction or conversion of an existing unlicensed building to a home plus, boarding care home, or adult day care facility shall submit a drawing of the proposed facility that includes identification and dimensions of rooms or areas as required in the following regulations:

(A) For a home plus, K.A.R. 28-39-437;

(B) for a boarding care home, K.A.R. 28-39-411; and

(C) for an adult day care facility, K.A.R. 28-39-289 through K.A.R. 28-39-291.

(6) The applicant shall submit to the department any changes from the plans, specifications, or drawings on file at the department.

(e) Additions and renovations.

(1) The licensee shall submit one copy of final plans, which shall be sealed, signed, and certified by a licensed architect to be in compliance with the following regulations:

(A) For a nursing facility, K.A.R. 26-40-301 through K.A.R. 26-40-305;

(B) for an intermediate care facility for the mentally retarded with 16 beds or less, K.A.R. 28-39-225;

(C) for an intermediate care facility for the mentally retarded with 17 or more beds, K.A.R. 26-40-301 through K.A.R. 26-40-305 governing the physical environment of nursing facilities;

(D) for an assisted living facility or a residential health care facility, K.A.R. 28-39-254 through K.A.R. 28-39-256; and

(E) for a nursing facility for mental health, K.A.R. 28-39-227.

(2) The licensee shall submit to the department a 30-day notice for each of the following:

(A) The date on which the architect estimates that 50 percent of the construction will be completed;

(B) the date on which the architect estimates all construction will be completed; and

(C) any changes in the plans or specifications information for the addition or renovation.

(f) Change in use of a required room or area. If an administrator or operator changes resident bedrooms, individual living units, and apartments used for an alternative purpose back to resident bedrooms, individual living units, and apartments, the administrator or operator shall obtain the secretary's approval before the change is made.

(g) Change of resident capacity. Each licensee shall submit a written request for any proposed change in resident capacity to the department. The effective date of a change in resident capacity shall be the first day of the month following department approval.

(h) Change of administrator, director of nursing, or operator. Each licensee of an adult care home shall notify the department within two working days if there is a change in administrator, director of nursing, or operator. When a new administrator or director of nursing is employed, the licensee shall notify the department of the name, address, and Kansas license number of the new administrator or director of nursing. When a new operator is employed, the licensee shall notify the department of the name and address of the new operator and provide evidence that the individual

has completed the operator course as specified by the secretary of the Kansas department of health and environment pursuant to K.S.A. 39-923 and amendments thereto.

(i) Administrator or operator supervision of multiple homes. An administrator or operator may supervise more than one separately licensed adult care home if the following requirements are met:

(1) Each licensee shall request prior authorization from the department for a licensed administrator or an operator to supervise more than one separately licensed adult care home. The request shall be submitted on the appropriate form and include assurance that the lack of full-time, onsite supervision of the adult care homes will not adversely affect the health and welfare of residents.

(2) All of the adult care homes shall be located within a geographic area that allows for daily onsite supervision of all of the adult care homes by the administrator or operator.

(3) The combined resident capacities of separately licensed nursing facilities, assisted living facilities, residential health care facilities, homes plus, and adult day care facilities shall not exceed 120 for a licensed administrator.

(4) The combined resident capacities of separately licensed assisted living facilities, residential health care facilities, homes plus, and adult day care facilities shall not exceed 60 for an operator.

(5) The combined number of homes plus shall not exceed four homes for a licensed administrator or an operator.

(j) Reports. Each licensee shall file reports with the department on forms and at times prescribed by the department.

(k) Fees. Each initial application for a license and each annual report filed with the department shall be accompanied by a fee of \$30.00 for each resident in the stated resident capacity plus \$100.00. Each requested change in resident capacity shall be accompanied by a fee of \$30.00 for each resident increase or decrease in the stated resident capacity plus \$100.00. No refund of the fee shall be made if a license application is denied. (Authorized by K.S.A. 2009 Supp. 39-930, K.S.A. 39-932, and K.S.A. 39-933; implementing K.S.A. 39-927, K.S.A. 2009 Supp. 39-930, K.S.A. 39-932, and K.S.A. 39-933; effective May 22, 2009; amended Jan. 7, 2011.)

**26-39-102. Admission, transfer, and discharge rights of residents in adult care homes.** (a) Each licensee, administrator, or oper-

ator shall develop written admission policies regarding the admission of residents. The admission policy shall meet the following requirements:

(1) The administrator or operator shall ensure the admission of only those individuals whose physical, mental, and psychosocial needs can be met within the accommodations and services available in the adult care home.

(A) Each resident in a nursing facility or nursing facility for mental health shall be admitted under the care of a physician licensed to practice in Kansas.

(B) The administrator or operator shall ensure that no children under the age of 16 are admitted to the adult care home.

(C) The administrator or operator shall allow the admission of an individual in need of specialized services for mental illness to the adult care home only if accommodations and treatment that will assist that individual to achieve and maintain the highest practicable level of physical, mental, and psychosocial functioning are available.

(2) Before admission, the administrator or operator, or the designee, shall inform the prospective resident or the resident's legal representative in writing of the rates and charges for the adult care home's services and of the resident's obligations regarding payment. This information shall include the refund policy of the adult care home.

(3) At the time of admission, the administrator or operator, or the designee, shall execute with the resident or the resident's legal representative a written agreement that describes in detail the services and goods the resident will receive and specifies the obligations that the resident has toward the adult care home.

(4) An admission agreement shall not include a general waiver of liability for the health and safety of residents.

(5) Each admission agreement shall be written in clear and unambiguous language and printed clearly in black type that is 12-point type or larger.

(b) At the time of admission, adult care home staff shall inform the resident or the resident's legal representative, in writing, of the state statutes related to advance medical directives.

(1) If a resident has an advance medical directive currently in effect, the facility shall keep a copy on file in the resident's clinical record.

(2) The administrator or operator, or the designee, shall ensure the development and implementation of policies and procedures related to advance medical directives.

(c) The administrator or operator, or the designee, shall provide a copy of resident rights, the adult care home's policies and procedures for advance medical directives, and the adult care home's grievance policy to each resident or the resident's legal representative before the prospective resident signs any admission agreement.

(d) The administrator or operator of each adult care home shall ensure that each resident is permitted to remain in the adult care home and is not transferred or discharged from the adult care home unless one of the following conditions is met:

(1) The transfer or discharge is necessary for the resident's welfare, and the resident's needs cannot be met in the current adult care home.

(2) The safety of other individuals in the adult care home is endangered.

(3) The health of other individuals in the adult care home is endangered.

(4) The resident has failed, after reasonable and appropriate notice, to pay the rates and charges imposed by the adult care home.

(5) The adult care home ceases to operate.

(e) Before a resident is transferred or discharged involuntarily, the administrator or operator, or the designee, shall perform the following:

(1) Notify the resident, the resident's legal representative, and if known, a designated family member of the transfer or discharge and the reasons; and

(2) record the reason for the transfer or discharge under any of the circumstances specified in paragraphs (d) (1) through (4) in the resident's clinical record, which shall be substantiated as follows:

(A) The resident's physician shall document the rationale for transfer or discharge in the resident's clinical record if the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met by the adult care home;

(B) the resident's physician shall document the rationale for transfer or discharge in the resident's clinical record if the transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the adult care home; and

(C) a physician shall document the rationale for transfer or discharge in the resident's clinical record if the transfer or discharge is necessary because the health or safety of other individuals in the adult care home is endangered.

(f) The administrator or operator, or the designee, shall provide a notice of transfer or discharge in writing to the resident or resident's legal rep-

resentative at least 30 days before the resident is transferred or discharged involuntarily, unless one of the following conditions is met:

(1) The safety of other individuals in the adult care home would be endangered.

(2) The resident's urgent medical needs require an immediate transfer to another health care facility.

(g) Each written transfer or discharge notice shall include the following:

(1) The reason for the transfer or discharge;

(2) the effective date of the transfer or discharge;

(3) the address and telephone number of the complaint program of the Kansas department on aging where a complaint related to involuntary transfer or discharge can be registered;

(4) the address and telephone number of the state long-term care ombudsman; and

(5) for residents who have developmental disabilities or who are mentally ill, the address and telephone number of the Kansas advocacy and protection organization.

(h) The administrator or operator, or the designee, shall provide sufficient preparation and orientation to each resident before discharge to ensure a safe and orderly transfer and discharge from the adult care home.

(i) The administrator or operator, or the designee, shall ensure the development of a discharge plan, with the involvement of the resident, the resident's legal representative, and designated family when practicable.

(j) If the resident is transferred or discharged to another health care facility, the administrator or operator, or the designee, shall ensure that sufficient information accompanies the resident to ensure continuity of care in the new facility.

(k) Before a resident in a nursing facility, nursing facility for mental health, intermediate care facility for the mentally retarded, assisted living facility, residential health care facility, or home plus is transferred to a hospital or goes on therapeutic leave, the administrator or operator, or the designee, shall provide written information to the resident or the resident's legal representative and, if agreed to by the resident or the resident's legal representative, the resident's family, that specifies the following:

(1) The period of time during which the resident is permitted to return and resume residence in the facility;

(2) the cost to the resident, if any, to hold the resident's bedroom, apartment, individual living

unit, or adult day care slot until the resident's return; and

(3) a provision that when the resident's hospitalization or therapeutic leave exceeds the period identified in the policy of a nursing facility, the resident will be readmitted to the nursing facility upon the first availability of a comparable room if the resident requires the services provided by the nursing facility. (Authorized by and implementing K.S.A. 39-932; effective May 22, 2009.)

**26-39-103. Resident rights in adult care homes.** (a) Protection and promotion of resident rights. Each administrator or operator shall ensure the protection and promotion of the rights of each resident as set forth in this regulation. Each resident shall have a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the adult care home.

(b) Exercise of rights.

(1) The administrator or operator shall ensure that each resident is afforded the right to exercise the resident's rights as a resident of the adult care home and as a citizen.

(2) The administrator or operator shall ensure that each resident is afforded the right to be free from interference, coercion, discrimination, or reprisal from adult care home staff in exercising the resident's rights.

(3) If a resident is adjudged incompetent under the laws of the state of Kansas, the resident's legal representative shall have the power to exercise rights on behalf of the resident.

(4) In the case of a resident who has executed a durable power of attorney for health care decisions, the agent may exercise the rights of the resident to the extent provided by K.S.A. 58-625 et seq. and amendments thereto.

(c) Notice of rights and services.

(1) Before admission, the administrator or operator shall ensure that each resident or the resident's legal representative is informed, both orally and in writing, of the following in a language the resident or the resident's legal representative understands:

(A) The rights of the resident;

(B) the rules governing resident conduct and responsibility;

(C) the current rate for the level of care and services to be provided; and

(D) if applicable, any additional fees that will be charged for optional services.

(2) The administrator or operator shall ensure that each resident or the resident's legal representative is notified in writing of any changes in charges or services that occur after admission and at least 30 days before the effective date of the change. The changes shall not take place until notice is given, unless the change is due to a change in level of care.

(d) Inspection of records.

(1) The administrator or operator shall ensure that each resident or resident's legal representative is afforded the right to inspect records pertaining to the resident. The administrator or operator, or the designee, shall provide a photocopy of the resident's record or requested sections of the resident's record to each resident or resident's legal representative within two working days of the request. If a fee is charged for the copy, the fee shall be reasonable and not exceed actual cost, including staff time.

(2) The administrator or operator shall ensure access to each resident's records for inspection and photocopying by any representative of the department.

(e) Informed of health status. The administrator or operator shall ensure that each resident and the resident's legal representative are afforded the right to be fully informed of the resident's total health status, including the resident's medical condition.

(f) Free choice. The administrator or operator shall ensure that each resident, or resident's legal representative on behalf of the resident, is afforded the right to perform the following:

(1) Choose a personal attending physician;

(2) participate in the development of an individual care plan or negotiated service agreement;

(3) refuse treatment;

(4) refuse to participate in experimental research; and

(5) choose the pharmacy where prescribed medications are purchased. If the adult care home uses a unit-dose or similar medication distribution system, the resident shall have the right to choose among pharmacies that offer or are willing to offer the same or a compatible system.

(g) Management of financial affairs. The administrator or operator shall ensure that each resident is afforded the right to manage personal financial affairs and is not required to deposit personal funds with the adult care home.

(h) Notification of changes.

(1) The administrator or operator shall ensure that designated facility staff inform the resident,

consult with the resident's physician, and notify the resident's legal representative or designated family member, if known, upon occurrence of any of the following:

(A) An accident involving the resident that results in injury and has the potential for requiring a physician's intervention;

(B) A significant change in the resident's physical, mental, or psychosocial status;

(C) a need to alter treatment significantly; or

(D) a decision to transfer or discharge the resident from the adult care home.

(2) The administrator or operator shall ensure that a designated staff member informs the resident, the resident's legal representative, or authorized family members whenever the designated staff member learns that the resident will have a change in room or roommate assignment.

(i) Privacy and confidentiality. The administrator or operator shall ensure that each resident is afforded the right to personal privacy and confidentiality of personal and clinical records.

(1) The administrator or operator shall ensure that each resident is provided privacy during medical and nursing treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups.

(2) The administrator or operator shall ensure that the personal and clinical records of the resident are maintained in a confidential manner.

(3) The administrator or operator shall ensure that a release signed by the resident or the resident's legal representative is obtained before records are released to anyone outside the adult care home, except in the case of transfer to another health care institution or as required by law.

(j) Grievances. The administrator or operator shall ensure that each resident is afforded the right to the following:

(1) Voice grievances with respect to treatment or care that was or was not furnished;

(2) be free from discrimination or reprisal for voicing the grievances; and

(3) receive prompt efforts by the administrator or operator, or the designee, to resolve any grievances that the resident could have, including any grievance with respect to the behavior of other residents.

(k) Work.

(1) The administrator or operator shall ensure that each resident is afforded the right to refuse to perform services for the adult care home.

(2) A resident may perform services for the adult care home, if the resident wishes and if all of the following conditions are met:

(A) The administrator or operator, or the designee, has documented the resident's need or desire for work in the plan of care or negotiated service agreement.

(B) The plan of care or negotiated service agreement specifies the nature of the services performed and whether the services are voluntary or paid.

(C) The resident or resident's legal representative has signed a written agreement consenting to the work arrangement described in the plan of care or negotiated service agreement.

(l) Mail. The administrator or operator shall ensure that each resident is afforded the right to privacy in written communications, including the right to the following:

(1) Have unopened mail sent and received promptly; and

(2) have access to stationery, postage, and writing implements at the resident's own expense.

(m) Access and visitation rights.

(1) The administrator or operator shall ensure the provision of immediate access to any resident by the following:

(A) Any representative of the secretary of the Kansas department on aging;

(B) the resident's attending medical care provider;

(C) the state long-term care ombudsman;

(D) any representative of the secretary of the Kansas department of social and rehabilitation services;

(E) immediate family or other relatives of the resident; and

(F) others who are visiting with the consent of the resident subject to reasonable restrictions.

(2) The administrator or operator shall ensure that each resident is afforded the right to deny or withdraw visitation consent for any person at any time.

(n) Telephone. The administrator or operator shall ensure that each resident is afforded the right to reasonable access to a telephone in a place where calls can be made without being overheard.

(o) Personal property. The administrator or operator shall ensure that each resident is afforded the right to retain and use personal possessions, including furnishings and appropriate clothing as space permits, unless doing so would infringe upon the rights or health and safety of other residents.

(p) Married couples. The administrator or operator shall ensure that each resident is afforded the right to share a room with the resident's spouse if married residents live in the same adult care home and both spouses consent.

(q) Self-administration of medication. The administrator shall ensure that each resident in a nursing facility or a nursing facility for mental health is afforded the right to self-administer medications unless the resident's attending physician and the interdisciplinary team have determined that this practice is unsafe. In any assisted living facility, residential health care facility, home plus, or adult day care facility, a resident may self-administer medication if a licensed nurse has determined that the resident can perform this function safely and accurately. (Authorized by and implementing K.S.A. 39-932; effective May 22, 2009.)

**26-39-104. Receivership of adult care homes.** (a) A person may be designated by the secretary to be a receiver if that person meets the following requirements:

(1) Has operated a Kansas adult care home for at least five consecutive years; and

(2) has a history of compliance with licensure standards.

(b) A person designated as a receiver shall not use the designation for any commercial purpose. (Authorized by and implementing K.S.A. 2007 Supp. 39-954; effective May 22, 2009.)

**26-39-105. Adoptions by reference.** (a) The following material shall apply to all adult care homes except nursing facilities for mental health, intermediate care facilities for the mentally retarded, and boarding care homes:

(1) Dietary guidelines. In the "dietary guidelines for Americans," 2005, published by the U.S. department of health and human services and U.S. department of agriculture, appendixes A-1 and A-2 and "notes for appendix A-2" are hereby adopted by reference.

(2) Infection control. The department's document titled "tuberculosis (TB) guidelines for adult care homes," dated July 2008, is hereby adopted by reference.

(b) The document adopted by reference in this subsection shall apply to each applicant for a nursing facility license and to each addition to a nursing facility licensed on or after the effective date of this regulation. The "international build-

ing code" (IBC), 2006 edition, published by the international code council, excluding the appendices, is hereby adopted by reference.

(c) The following material shall apply to all nursing facilities:

(1) Life safety code. Chapters one through 11, 18, 19, 40, and 42 of the national fire protection association's NFPA 101 "life safety code" (LSC), 2000 edition, are hereby adopted by reference.

(2) Americans with disabilities act accessibility guidelines. Chapters one through four and chapter six of the "Americans with disabilities act accessibility guidelines for buildings and facilities" (ADAAG), 28 C.F.R. part 36, appendix A, as in effect on July 1, 1994, are hereby adopted by reference and shall be known as "ADAAG."

(3) Food code. Chapters one through seven of the "food code," 2009, published by the U.S. department of health and human services, are hereby adopted by reference. (Authorized by and implementing K.S.A. 39-932; effective May 22, 2009; amended Jan. 7, 2011.)

**26-39-144.** (Authorized by K.S.A. 39-932; implementing K.S.A. 2004 Supp. 39-923, K.S.A. 2004 Supp. 39-925, and K.S.A. 39-932; effective Nov. 4, 2005; revoked May 22, 2009.)

**26-39-243.** (Authorized by and implementing K.S.A. 2004 Supp. 39-923, K.S.A. 2004 Supp. 39-925, and K.S.A. 39-932; effective Nov. 4, 2005; revoked May 29, 2009.)

**26-39-278.** (Authorized by and implementing K.S.A. 2004 Supp. 39-923, K.S.A. 2004 Supp. 39-925, and K.S.A. 39-932; effective Nov. 4, 2005; revoked May 29, 2009.)

**26-39-427.** (Authorized by and implementing K.S.A. 2004 Supp. 39-923, K.S.A. 2004 Supp. 39-925, and K.S.A. 39-932; effective Nov. 4, 2005; revoked May 29, 2009.)

**26-39-500. Definitions.** Each of the following terms, as used in K.A.R. 26-39-500 through 26-39-506, shall have the meaning specified in this regulation:

(a) "Accredited college or university" means a college or university that is accredited by an accrediting body recognized by the council on post-secondary accreditation or by the secretary of the U.S. department of education.

(b) "Clock-hour" means at least 50 minutes of direct instruction, excluding registration, breaks, and meals.

(c) “Continuing education” means a formally organized learning experience that has education as its explicit, principal intent and is oriented toward the enhancement of adult care home administration values, skills, knowledge, and ethics.

(d) “Core of knowledge” means the educational training content for the field of adult care home administration specified in K.A.R. 28-38-29.

(e) “Disciplinary action” means a final action by the secretary or by a board or agency in this state or another jurisdiction on a professional or occupational health care credential.

(f) “Domains of practice” means the knowledge, skills, and abilities specified in K.A.R. 28-38-29.

(g) “In-service education” means learning activities that are provided to an individual in the work setting and are designed to assist the individual in fulfilling job responsibilities.

(h) “Long-term care provider organization” means any professional association concerned with the care and treatment of chronically ill or infirm elderly patients or any association concerned with the regulation of adult care homes.

(i) “Registration” means the credential issued by the secretary to each applicant who meets the requirements for an operator specified in K.A.R. 26-39-501.

(j) “Relevant experience” shall include work experience in business, hospitality, gerontology, or health and human services, or other fields as approved by the secretary.

(k) “Relevant field” shall include degrees in business, hospitality, gerontology, or health and human services, or other degrees as approved by the secretary.

(l) “Sponsor” means any entity approved by the secretary to provide continuing education programs or courses on a long-term basis.

(m) “Sponsorship” means an approved, long-term provision of programs or courses for the purpose of fulfilling the continuing education requirements for registration renewal or reinstatement. (Authorized by and implementing L. 2014, ch. 94, sec. 4; effective, T-26-9-2-14, Sept. 2, 2014; effective Dec. 1, 2014.)

**26-39-501. Registration.** Each applicant for initial registration as an operator shall meet the following requirements:

(a) Submit an application and meet the requirements specified in K.A.R. 26-39-502;

(b) pay the applicable fee specified in K.A.R. 26-39-505;

(c) be at least 21 years of age;

(d)(1) Have a high school diploma or equivalent, with one year of relevant experience;

(2) have an associate’s degree in a relevant field; or

(3) have a bachelor’s degree; and

(e) have successfully completed an operator course as specified in K.A.R. 26-39-503. (Authorized by and implementing L. 2014, ch. 94, sec. 4; effective, T-26-9-2-14, Sept. 2, 2014; effective Dec. 1, 2014.)

**26-39-502. Application for registration.**

(a) Each applicant for registration shall submit a completed application, pay the applicable fee, and provide evidence satisfactory to the department of having met the requirements in K.A.R. 26-39-501.

(b) Each applicant shall provide the department with one of the following:

(1) Academic transcripts or proof of receipt of an associate’s degree, if qualifying with an associate’s degree in a relevant field;

(2) academic transcripts or proof of receipt of a bachelor’s degree or graduate degree, if qualifying with a bachelor’s degree; or

(3) both a high school diploma or the equivalent and evidence of one year of relevant experience, if qualifying with a high school diploma and one year of relevant experience.

(c) Each applicant shall arrange for transcripts to be provided directly to the department by the school or the accredited college or university.

(d) Each applicant who has received an associate’s degree, bachelor’s degree, or graduate degree outside the United States or its territories and whose transcript is not in English shall submit an officially translated English copy of the applicant’s transcript and, if necessary, supporting documents. The transcript shall be translated by a source and in a manner acceptable to the department. Each applicant shall pay all transcription fees directly to the transcriber.

(e) Each applicant who has received an associate’s degree, bachelor’s degree, or graduate degree outside the United States or its territories shall obtain an equivalency validation from a department-approved entity that specializes in educational credential evaluations. Each applicant shall pay the required equivalency validation fee directly to the validation agency.

(f) If adverse information concerning the applicant is received through criminal history records, abuse, neglect and exploitation information, or

disciplinary action information or from any other source, the applicant shall provide, upon request, all necessary records, affidavits, or other documentation required by the secretary concerning the disciplinary action, the abuse, neglect or exploitation findings, or the criminal conviction, including any evidence that all disciplinary action or sentencing requirements have been completed. All costs for the acquisition of these documents shall be the applicant's responsibility.

(g) If an applicant has been subject to disciplinary action or has been convicted of a felony or misdemeanor, the applicant shall have the burden of proving that the applicant has been rehabilitated and warrants the public trust. (Authorized by L. 2014, ch. 94, sec. 4; implementing L. 2014, ch. 94, secs. 4 and 9; effective, T-26-9-2-14, Sept. 2, 2014; effective Dec. 1, 2014.)

**26-39-503. Operator course.** (a) Each applicant shall have successfully completed an operator course on principles of assisted living that is approved by the secretary.

(b) Each operator course shall be conducted by one of the following training providers:

- (1) A long-term care provider organization;
- (2) a community college;
- (3) an area vocational-technical school;
- (4) a postsecondary school under the jurisdiction of the state board of regents; or
- (5) an equivalent training provider approved by the secretary.

(c) Each training provider shall ensure that each individual responsible for administering the operator course has at least two years of professional experience in long-term care or as an instructor of long-term care and meets one of the following requirements:

- (1) Has a bachelor's degree; or
- (2) is a registered professional nurse.

(d) Each training provider seeking approval to conduct an operator course shall submit the following at least three weeks before the first anticipated start date of the operator course:

(1) A course outline that includes all content areas in the department's document titled "operator course guideline," dated July 31, 2014 and hereby adopted by reference. The operator course shall consist of at least 45 clock-hours of instruction, excluding breaks, lunch, and test time, and a test;

(2) the policy and procedure to be followed to maintain test security, which shall include at least the following:

(A) Securing the tests in a manner that ensures confidentiality;

(B) not providing the test content to any individual before test time; and

(C) notifying the department of any breach in the security of the test;

(3) a list of the printed materials provided to each participant, which shall include at least the following:

(A) The Kansas adult care home statutes and regulations for assisted living facilities and residential health care facilities, home pluses, and adult day cares;

(B) a functional capacity screening manual and form;

(C) the "dietary guidelines for Americans" and "tuberculosis (TB) guidelines for adult care homes," as adopted by reference in K.A.R. 26-39-105; and

(D) an example of a negotiated service agreement; and

(4) after initial approval, submit each proposed change in the operator course to the secretary for approval before the change is implemented.

(e) If the operator course does not meet or continue to meet the requirements for approval or if there is a material misrepresentation of any fact with the information submitted by the training provider to the department, approval may be withheld, made conditional, limited, or withdrawn by the secretary.

(f) Each approved training provider shall meet the following requirements:

(1) Notify the department, electronically or in writing, at least three weeks before each operator course, including course dates, time, and location;

(2) administer and score the test provided by the department after each individual's completion of the operator course. The individual may have access to the applicable statutes and regulations during the test. A score of 80 percent or higher shall constitute a passing score. Any individual who fails the test may retake the test one time. An alternative test version shall be used. Each individual who fails the test a second time shall be required to retake the operator course;

(3) within three weeks after the end of the operator course, provide a certificate of completion to each individual who completed the operator course and passed the test. Each certificate shall contain the following:

(A) A statement that the named individual completed the operator course; and

(B) the course approval number assigned by the department;

(4) maintain a record of the certificates issued to the individuals who have successfully completed the operator course; and

(5) within three weeks after the end of the operator course, submit to the department a copy of each certificate of completion issued and a list of the individuals who successfully completed the operator course. The list shall contain the following:

(A) The course approval number;

(B) the name, address, and date of birth of each individual; and

(C) any other information as required by the secretary. (Authorized by and implementing L. 2014, ch. 94, sec. 4; effective, T-26-9-2-14, Sept. 2, 2014; effective Dec. 1, 2014.)

**26-39-504. Registration renewal and reinstatement; continuing education.** (a) Each registration shall expire biennially on April 30. Each initial registration shall be issued for at least 12 months but not more than 24 months.

(b)(1) On or before April 30 of the calendar year in which the registration expires, each operator shall submit electronically or have postmarked a completed renewal application and the renewal fee specified in K.A.R. 26-39-505.

(2) The registration may be renewed within the 30-day period following the expiration date only if the completed application and the renewal fee and renewal late fee specified in K.A.R. 26-39-505 are received electronically or postmarked on or before May 30 of the calendar year in which the registration expires.

(3) If the completed renewal application and the applicable fee or fees are not received electronically or postmarked within the 30-day period following the expiration date, the registration shall be deemed to have lapsed for failure to renew and shall be reissued only after the registration has been reinstated.

(c) Each individual whose registration has lapsed for not more than 24 months shall submit a completed application, on department-approved forms, showing completion of 30 clock-hours of continuing education. The application shall be accompanied by the renewal fee and the reinstatement fee specified in K.A.R. 26-39-505.

(d) Each individual whose registration has lapsed for more than 24 months shall submit a completed application on department-approved

forms showing successful completion of the operator course within the most recent 24-month period. The application shall be accompanied by the renewal fee and the reinstatement fee specified in K.A.R. 26-39-505.

(e) Continuing education requirements shall be prorated on a monthly basis for each operator whose initial or reinstatement registration period is less than 24 months.

(f)(1) Each application for renewal shall include an attestation verifying that the operator has completed at least 30 clock-hours of continuing education during the period covered by the most recent registration. Continuing education in excess of the required 30 clock-hours shall not be carried over to the next renewal period.

An operator's renewal application may be randomly selected for audit to confirm completion of continuing education requirements. Each operator whose renewal application is selected for audit shall provide all documentation requested by the secretary.

The 30 clock-hours of continuing education shall be earned through participation in or attendance at continuing education offerings pertaining to the core of knowledge or the domains of practice and shall be accumulated within subject areas as follows:

(A) At least 15 clock-hours in administration, which may include the following subjects:

(i) General administration;

(ii) applicable standards of environmental health and safety;

(iii) local health and safety regulations;

(iv) departmental organization and management; and

(v) community interrelationships;

(B) at least 10 clock-hours in resident care, which may include the following subjects:

(i) Psychology of resident care;

(ii) principles of medical care;

(iii) personal and social care; and

(iv) therapeutic and supportive care; and

(C) a maximum of five clock-hours in electives, which shall be in the domains of practice or the core of knowledge or in health-related fields.

(2) Five hours of continuing education credit in electives shall be approved for attendance, if verified by the sponsor, at state or national annual conventions that pertain to long-term care, in addition to continuing education credit approved for individual sessions at the state or national annual conventions.

(g) In-service education shall not be deemed a continuing education activity for the purpose of registration renewal or reinstatement.

(h) Fifteen clock-hours of continuing education credit shall be approved for each college credit hour that pertains to the domains of practice or the core of knowledge and is earned within the renewal period.

(i) Each operator or nonapproved provider of continuing education who seeks approval of a continuing education offering shall submit a request for prior approval to the department at least three weeks before the offering is to be presented. The request shall provide information about the proposed offering, including objectives, content, and agenda, on a form provided by the department.

(j) Each operator who attends a continuing education offering and who also serves as a presenter shall receive two clock-hours for each clock-hour of presentation time. Presenters shall not receive additional credit for repetition of these presentations.

(k) Each sponsor shall meet the following requirements:

(1) Offer at least six continuing education activities, including workshops, seminars, academic courses, self-study courses, teleconferences, and educational sessions, over a two-year period;

(2) designate one person as the coordinator, who shall be responsible for administering all requirements and outcomes of the sponsorship program. The department shall be notified in advance of any staff change involving the coordinator, including proof of that person's credentials to be the coordinator. Each coordinator shall meet one of the following requirements:

(A) Be currently licensed as an administrator, as defined in K.A.R. 26-39-100, or be currently registered as an operator, as defined in K.S.A. 39-923 and amendments thereto;

(B) have relevant experience or have a degree in a relevant field;

(C) serve as staff member of a professional organization related to the field of adult care home administration; or

(D) have a background or academic preparation in adult education or training;

(3) submit a completed application, in a department approved format. The application and all required documentation shall be received by the department at least 30 days before the initial continuing education offering;

(4) ensure that all continuing education offerings pertain to the domains of practice or the core of knowledge; and

(5) submit an annual report on department-approved forms no later than January 31 of each year for the preceding calendar year. This report shall describe the approved continuing education activities provided and the quality improvement methods used, including how evaluation data is incorporated in planning future continuing education activities.

(l) If a sponsor fails to meet the requirements in this regulation after receiving the secretary's approval or if there is a material misrepresentation of any fact with the information submitted to the secretary by a sponsor, approval may be withdrawn or conditions relating to the sponsorship may be applied by the secretary after giving the sponsor notice and an opportunity to be heard. (Authorized by L. 2014, ch. 94, sec. 4; implementing L. 2014, ch. 94, secs. 4 and 7; effective, T-26-9-2-14, Sept. 2, 2014; effective Dec. 1, 2014.)

**26-39-505. Fees.** (a) The registration application fee shall be \$65.00. The registration application fee for an initial registration of less than 24 months shall be prorated for any full or partial month.

(b) The registration renewal fee shall be \$65.00.

(c) The registration renewal late fee shall be \$35.00.

(d) The application fee for reinstatement of a lapsed or revoked registration shall be \$65.00, in addition to the registration renewal fee specified in subsection (b). (Authorized by L. 2014, ch. 94, sec. 4; implementing L. 2014, ch. 94, secs. 4, 7, 8, and 9; effective, T-26-9-2-14, Sept. 2, 2014; effective Dec. 1, 2014.)

**26-39-506. Change of name or address.** Each operator shall notify the department of any change in the operator's name or address within 30 days of the change.

(a) Notice of each address change shall include the operator's name, registration number, previous mailing address, and new mailing address.

(b) Notice of each name change shall meet the following requirements:

(1) Include the operator's previous name, new name, and registration number; and

(2) be accompanied by one of the following:

(A) A certified copy of the operator's marriage certificate or license;

(B) a certified copy of the operator's court decree evidencing the name change; or

(C) a photocopy of the operator's driver's license or Kansas identification card specifying the new name. (Authorized by and implementing L. 2014, ch. 94, sec. 4; effective, T-26-9-2-14, Sept. 2, 2014; effective Dec. 1, 2014.)

#### Article 40.—NURSING FACILITIES

**26-40-301. Nursing facility physical environment; construction and site requirements.** Each nursing facility shall be designed, constructed, equipped, and maintained to protect the health and safety of the residents and personnel and the public.

(a) Codes and standards. Each nursing facility shall meet the requirements of the building codes, standards, and regulations enforced by city, county, or state jurisdictions. The requirements specified in this regulation shall be considered as a minimum. New construction of a nursing facility and each addition to a nursing facility licensed on or after the effective date of this regulation shall meet the requirements of the following, as adopted by reference in K.A.R. 26-39-105:

- (1) The "international building code" (IBC);
  - (2) the national fire protection association's NFPA 101 "life safety code"; and
  - (3) the "Americans with disabilities act accessibility guidelines for buildings and facilities" (ADAAG).
- (b) Site requirements. The site of each nursing facility shall meet the following requirements:
- (1) Be served by all-weather roads or streets;
  - (2) be accessible to physician services, fire and other emergency services, medical facilities, churches, and population centers where employees can be recruited and retained;
  - (3) be located in an area sufficiently remote from noise sources that would cause the day or night average sound levels to exceed 65 decibels;
  - (4) be free from noxious and hazardous fumes;
  - (5) be at least 4,000 feet from concentrated livestock operations, including shipping areas and holding pens;
  - (6) be located above the 100-year flood zone if the property is located in a flood hazard area; and
  - (7) be sufficient in area and configuration to accommodate the nursing facility, drives, parking, sidewalks, recreational area, and community zoning restrictions.

(c) Site development. Development of the site

of each nursing facility shall meet the following requirements:

(1) All buildings comprising a nursing facility shall be located on one site or contiguous sites.

(2) Final grading of the site shall have topography for positive surface drainage away from each occupied building and positive protection and control of surface drainage and freshets from adjacent areas.

(3) Each nursing facility shall have off-street parking located adjacent to the main building and each freestanding building that contains a resident unit, at a rate of one parking space for every two residents, based on resident capacity.

(4) Each nursing facility shall have at least the minimum number of accessible parking spaces required by ADAAG, as adopted by reference in K.A.R. 26-39-105, that are sized and signed as reserved for the physically disabled, on the shortest accessible route of travel from the adjacent parking lot to an accessible entrance.

(5) Each nursing facility shall have convenient access for service vehicles, including ambulances and fire trucks, and for maneuvering, parking, and unloading delivery trucks.

(6) All drives and parking areas shall be surfaced with a smooth, all-weather finish. Unsealed gravel shall not be used.

(7) Except for lawn or shrubbery used in landscape screening, each nursing facility shall have an unencumbered outdoor area of at least 50 square feet per resident, based on resident capacity, for recreational use and shall so designate this area on the plot plan. Equivalent amenities provided by terraces, roof gardens, or similar structures for facilities located in high-density urban areas may be approved by the secretary. If a multistoried building is licensed as a nursing facility after the effective date of this regulation, the nursing facility shall have outdoor space on each level. (Authorized by and implementing K.S.A. 39-932; effective Jan. 7, 2011.)

**26-40-302. Nursing facility physical environment; applicants for initial licensure and new construction.** (a) Applicability. This regulation shall apply to each applicant for a nursing facility license and to any addition to a nursing facility licensed on the effective date of this regulation.

(b) Codes and standards. Each nursing facility shall meet the requirements of the building codes, standards, and regulations enforced by city, county, or state jurisdictions. The requirements

specified in this regulation shall be considered as a minimum. Each applicant for a nursing facility license and each addition to a nursing facility licensed on or after the effective date of this regulation shall meet the following requirements, as adopted by reference in K.A.R. 26-39-105:

- (1) The “international building code” (IBC);
- (2) the national fire protection association’s NFPA 101 “life safety code” (LSC); and
- (3) the “Americans with disabilities act accessibility guidelines for buildings and facilities” (ADAAG).

(c) Nursing facility design. The design and layout of each nursing facility shall differentiate among public, semiprivate, and private space and shall promote the deterrence of unnecessary travel through private space by staff and the public. The resident unit shall be arranged to achieve a home environment, short walking and wheeling distances, localized social areas, and decentralized work areas.

(d) Resident unit. A “resident unit” shall mean a group of resident rooms, care support areas, and common rooms and areas as identified in this subsection and subsections (e) and (f). Each resident unit shall have a resident capacity of no more than 30 residents and shall be located within a single building. If the nursing facility is multilevel, each resident unit shall be located on a single floor.

(1) Resident rooms. At least 20 percent of the residents on each resident unit shall reside in a private resident room. The occupancy of the remaining rooms shall not exceed two residents per room.

(A) Each resident room shall meet the following requirements:

- (i) Be located on a floor at or above ground level;
- (ii) allow direct access to the corridor;
- (iii) allow direct access from the room entry to the toilet room and to the closet or freestanding wardrobe without going through the bed area of another resident;
- (iv) measure at least 120 square feet in single resident rooms and at least 200 square feet in double resident rooms, exclusive of the entrance door and toilet room door swing area, alcoves, vestibules, toilet room, closets or freestanding wardrobes, sinks, and other built-in items; and
- (v) provide each resident with direct access to an operable window that opens for ventilation. The total window area shall not be less than 12 percent of the gross floor area of the resident room.

(B) Each bed area in a double resident room shall have separation from the adjacent bed by a full-height wall, a permanently installed sliding or folding door or partition, or other means to afford complete visual privacy. Use of a ceiling-suspended curtain may cover the entrance to the bed area.

(C) The configuration of each resident room shall be designed to allow at least three feet of clearance along the foot of each bed and along both sides of each bed.

(D) The nursing facility shall have functional furniture to meet each resident’s needs, including a bed of adequate size with a clean, comfortable mattress that fits the bed, and bedding appropriate to the weather and the needs of the resident.

(E) Each resident’s room shall include personal storage space in a fixed closet or freestanding wardrobe with doors. This storage shall have minimum dimensions of one foot 10 inches in depth by two feet six inches in width and shall contain an adjustable clothes rod and shelf installed at a height easily reached by the resident. Accommodations shall be provided for hanging full-length garments.

(2) Resident toilet rooms. Each resident toilet room shall serve no more than one resident room and be accessed directly from the resident’s room. Each resident toilet room shall be accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105.

(A) Each resident toilet room shall have at least a five-foot turning radius to allow maneuverability of a wheelchair. If the shower presents no obstruction to the turning radius, the space occupied by the shower may be included in the minimum dimensions.

(B) The center line of each resident-use toilet shall be at least 18 inches from the nearest wall or partition to allow staff to assist a resident to and from the toilet.

(C) Each toilet room shall contain a hand-washing sink.

(D) At least 40 percent of the residents on each resident unit shall have a shower in the resident’s toilet room.

(i) Each shower shall measure at least three feet by five feet with a threshold of ½ inch or less.

(ii) Showers shall be curtained or in another type of enclosure for privacy.

(e) Resident unit care support rooms and areas. The rooms and areas required in this subsection shall be located in each resident unit and shall be accessed directly from the general corridor

without passage through an intervening room or area, except the medication room as specified in paragraph (e)(2)(A) and housekeeping closets. A care support area shall be located less than 200 feet from each resident room and may serve two resident units if the care support area is centrally located for both resident units.

(1) Nurses' workroom or area. Each resident unit shall have sufficient areas for supervisory work activities arranged to ensure the confidentiality of resident information and communication.

(A) A nurses' workroom or area shall have space for the following:

- (i) Charting;
- (ii) the transmission and reception of resident information;
- (iii) clinical records and other resident information;
- (iv) a telephone and other office equipment; and
- (v) an enunciator panel or monitor screen for the call system. If a resident unit has more than one nurses' workroom or area, space for an enunciator panel or monitor for the call system shall not be required in more than one nurses' workroom or area.

(B) The nurses' workroom or area shall be located so that the corridors outside resident rooms are visible from the nurses' workroom or area. The nursing facility may have cameras and monitors to meet this requirement.

(C) Direct visual access into each nurses' work area shall be provided if the work area is located in an enclosed room.

(2) Medication room or area. Each resident unit shall have a room or area for storage and preparation of medications or biologicals for 24-hour distribution, with a temperature not to exceed 85°F. This requirement shall be met by one or more of the following:

(A) A room with an automatically closing, self-locking door visible from the nurses' workroom or area. The room shall contain a work counter with task lighting, hand-washing sink, refrigerator, and shelf space for separate storage of each resident's medications. The secured medication storage room shall contain separately locked compartments for the storage of controlled medications listed in K.S.A. 65-4107, and amendments thereto, and any other medications that, in the opinion of the consultant pharmacist, are subject to abuse;

(B) a nurses' workroom or area equipped with a work counter with task lighting, hand-washing

sink, locked refrigerator, and locked storage for resident medications. A separately locked compartment shall be located within the locked cabinet, drawer, or refrigerator for the storage of controlled medications listed in K.S.A. 65-4107, and amendments thereto, and any other medications that, in the opinion of the consultant pharmacist, are subject to abuse;

(C) a locked medication cart in addition to a medication room or area if the cart is located in a space convenient for control by nursing personnel who are authorized to administer medication. If controlled medications listed in K.S.A. 65-4107, and amendments thereto, and any other medications that, in the opinion of the consultant pharmacist, are subject to abuse are stored in the medication cart, the cart shall contain a separately locked compartment for the storage of these medications; or

(D) in the resident's room if the room contains space for medication preparation with task lighting, access to a hand-washing sink, and locked cabinets or drawers for separate storage of each resident's medication. Controlled medications listed in K.S.A. 65-4107, and amendments thereto, and any other medications that, in the opinion of the consultant pharmacist, are subject to abuse shall not be stored in a resident's room.

(3) Den or consultation room. Each resident unit shall have a room for residents to use for reading, meditation, solitude, or privacy with family and other visitors and for physician visits, resident conferences, and staff meetings.

(A) The room area shall be at least 120 square feet, with a length or width of at least 10 feet.

(B) The room shall contain a hand-washing sink.

(C) A den or consultation room shall not be required if all resident rooms are private.

(4) Clean workroom. Each resident unit shall have a room for preparation, storage, and distribution of clean or sterile materials and supplies and resident care items.

(A) The room shall contain a work counter with a sink and adequate shelving and cabinets for storage.

(B) The room area shall be at least 80 square feet, with a length or width of at least six feet.

(C) If the resident unit is located in a freestanding building, a clothes dryer for processing resident personal laundry that is not contaminated laundry may be located in the clean workroom if the following requirements are met:

(i) An additional minimum of 40 square feet per dryer shall be provided.

(ii) The soiled workroom shall contain a washing machine positioned over a catch pan piped to a floor drain.

(iii) The clean workroom shall have a door opening directly into the soiled workroom without entering the general corridor. The door opening shall be covered with a plastic-strip door or by other means to prevent interference of ventilation requirements for both workrooms.

(D) Storage and preparation of food and beverages shall not be permitted in the clean workroom.

(5) Clean linen storage. Each resident unit shall have a room or area with adequate shelving, cabinets, or cart space for the storage of clean linen proximate to the point of use. The storage area may be located in the clean workroom.

(6) Soiled workroom. Each resident unit shall have a soiled workroom for the disposal of wastes, collection of contaminated material, and the cleaning and sanitizing of resident care utensils.

(A) The soiled workroom shall contain a work counter, a two-compartment sink, a covered waste receptacle, a covered soiled linen receptacle, and a storage cabinet with a lock for sanitizing solutions and cleaning supplies.

(B) The room area shall be at least 80 square feet, with a length or width of at least six feet.

(C) If the resident unit is located in a freestanding building, a washing machine for processing resident personal laundry that is not contaminated laundry may be located in the soiled workroom if the following requirements are met:

(i) An additional minimum of 40 square feet per washing machine shall be provided.

(ii) The washing machine shall be positioned over a catch pan piped to a floor drain.

(iii) The clean workroom shall contain a clothes dryer.

(iv) The soiled workroom shall have a door opening directly into the clean workroom without entering the general corridor. The door opening shall be covered with a plastic-strip door or by other means to prevent interference of ventilation requirements for both workrooms.

(D) If a housekeeping room is located in the soiled workroom, the housekeeping room shall be enclosed and an additional minimum of 20 square feet shall be provided in the soiled workroom.

(E) Clean supplies, equipment, and materials shall not be stored in the soiled workroom.

(7) Equipment storage rooms or areas. Each resident unit shall have sufficient rooms or enclosed areas for the storage of resident unit equip-

ment. The total space shall be at least 80 square feet plus an additional minimum of one square foot per resident capacity on the unit, with no single room or area less than 40 square feet. The width and length of each room or area shall be at least five feet.

(8) Housekeeping room. Each resident unit shall have at least one room for the storage of housekeeping supplies and equipment needed to maintain a clean and sanitary environment.

(A) Each housekeeping room shall contain a floor receptor or service sink, hot and cold water, adequate shelving, provisions for hanging mops and other cleaning tools, and space for buckets, supplies, and equipment.

(B) If the housekeeping room in the resident unit serves the resident kitchen and any other areas of the unit, the nursing facility shall have separately designated mops and buckets for use in each specific location.

(9) Toilet room. Each resident unit shall have at least one toilet room with a hand-washing sink that is accessible for resident, staff, and visitor use.

(f) Common rooms and areas in resident units. The rooms and areas required in this subsection shall be located in each resident unit, except as specified in this subsection, and shall be accessed directly from the general corridor without passage through an intervening room or area. The required room or area shall be located less than 200 feet from each resident room. A room or area may serve two resident units only if centrally located.

(1) Living, dining, and recreation areas. Each resident unit shall have sufficient space to accommodate separate and distinct resident activities of living, dining, and recreation.

(A) Space for living, dining, and recreation shall be provided at a rate of at least 40 square feet per resident based on each resident unit's capacity, with at least 25 square feet per resident in the dining area.

(B) Window areas in the living, dining, and recreation areas shall be at least 10 percent of the gross floor space of those areas. Each of these areas shall have exposure to natural daylight. The window area requirement shall not be met by the use of skylights.

(C) The dining area shall have adequate space for each resident to access and leave the dining table without disturbing other residents.

(D) Storage of items used for recreation and other activities shall be near the location of their planned use.

(2) Resident kitchen. Any resident unit may have a decentralized resident kitchen if the kitchen meets the following requirements:

(A) Is adequate in relation to the size of the resident unit;

(B) is designed and equipped to meet the needs of the residents; and

(C) meets the requirements in paragraph (g)(5).

(3) Nourishment area. Each resident unit shall have an area available to each resident to ensure the provision of nourishment and beverages, including water, between scheduled meals. The nourishment area shall contain a hand-washing sink, counter, equipment for serving nourishment and beverages, a refrigerator, and storage cabinets and shall be accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105. The nourishment area may be located in the resident unit kitchen if all residents have access to the area between scheduled meals.

(4) Bathing room. Each resident unit shall have at least one bathing room to permit each resident to bathe privately and either independently or with staff assistance. The bathing room shall be accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105, and include the following:

(A) A hand-washing sink;

(B) an area enclosed for privacy that contains a toilet for resident use. The center line of each resident-use toilet shall be at least 18 inches from the nearest wall or partition to allow staff to assist a resident to and from the toilet;

(C) a hydrotherapy bathing unit;

(D) a shower that measures at least four feet by five feet without curbs unless a shower is provided in each resident's toilet room;

(E) a visually enclosed area for privacy during bathing, drying, and dressing, with space for a care provider and wheelchair; and

(F) a locked supply cabinet.

(5) Personal laundry room. Any resident unit may have a resident laundry room for residents to launder personal laundry that is not contaminated laundry, if the requirements in paragraph (g)(6) (C) are met.

(6) Mobility device parking space. Each resident unit shall have parking space for residents' mobility devices. The parking space shall be located in an area that does not interfere with normal resident passage. The parking space shall not be included in determining the minimum required corridor width.

(g) Common rooms and support areas in the nursing facility's main building. The rooms and areas required in this subsection shall be located in the main building of each nursing facility and shall be accessed directly from the general corridor without passage through an intervening room or area. If a resident unit is located in a freestanding building, the nursing facility administrator shall ensure that transportation is provided for each resident to access services and activities that occur in the main building to enhance the resident's physical, mental, and psychosocial wellbeing.

(1) Multipurpose room. Each nursing facility shall have a room for resident use for social gatherings, religious services, entertainment, or crafts, with sufficient space to accommodate separate functions.

(A) The multipurpose room shall have an area of at least 200 square feet for 60 or fewer residents, plus at least two square feet for each additional resident over 60, based on the nursing facility's resident capacity.

(B) The multipurpose room shall contain a work counter with a hand-washing sink that is accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105, and storage space and lockable cabinets for equipment and supplies.

(2) Rehabilitation room. Each nursing facility shall have a room for the administration and implementation of rehabilitation therapy.

(A) The rehabilitation room shall include the following:

(i) Equipment for carrying out each type of therapy prescribed for the residents;

(ii) a hand-washing sink accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105;

(iii) an enclosed storage area for therapeutic devices; and

(iv) provisions for resident privacy.

(B) The rehabilitation room shall have an area of at least 200 square feet for 60 or fewer residents, plus at least two square feet for each additional resident over 60 based on resident capacity, to a maximum requirement of 655 square feet.

(C) If a resident unit is located in a freestanding building, the resident unit may have a designated area for rehabilitation in a bathing room. The combined use of the space shall not limit the residents' bathing opportunities or rehabilitation therapy.

(3) Mobility device parking space. Each nursing facility shall have parking space for residents' mobility devices. The parking space shall be locat-

ed in an area that does not interfere with normal resident passage. The parking space shall not be included in determining the minimum required corridor width.

(4) Beauty and barber shop. Each nursing facility shall have a room for the hair care and grooming of residents appropriate in size for the number of residents served.

(A) The beauty and barber shop shall contain at least one shampoo sink, space for one floor hair dryer, workspace, and a lockable supply cabinet.

(B) If a resident unit is located in a freestanding building, the resident unit may have a designated area for the hair care and grooming of residents in the bathing room if all of the following conditions are met:

- (i) The bathing room does not contain a shower.
- (ii) The area contains at least one shampoo sink, space for one floor hair dryer, and workspace.
- (iii) The combined use of the space does not limit the residents' bathing, hair care, or grooming opportunities.

(5) Dietary areas. Each nursing facility shall have dietary service areas that are adequate in relation to the size of the nursing facility and are designed and equipped to meet the needs of the residents. Each nursing facility shall meet the requirements of the "food code," as adopted by reference in K.A.R. 26-39-105. Dietary service areas shall be located to minimize transportation for meal service unrelated to the resident unit past the resident rooms. The following elements shall be included in each central kitchen and resident unit kitchen:

(A) A control station for receiving food supplies;  
(B) food preparation and serving areas and equipment in accordance with the following requirements:

(i) Conventional food preparation systems shall include space and equipment for preparing, cooking, baking, and serving; and

(ii) convenience food service systems, including systems using frozen prepared meals, bulk-packaged entrees, individual packaged portions, or contractual commissary services, shall include space and equipment for thawing, portioning, cooking, baking, and serving;

(C) space for meal service assembly and distribution equipment;

(D) a two-compartment sink for food preparation;

(E) a hand-washing sink in the food preparation area;

(F) a ware-washing area apart from, and located to prevent contamination of, food preparation and serving areas. The area shall include all of the following:

- (i) Commercial-type dishwashing equipment;
- (ii) a hand-washing sink;
- (iii) space for receiving, scraping, sorting, and stacking soiled tableware and transferring clean tableware to the using area; and

(iv) if in a resident kitchen, a sink and adjacent under-counter commercial or residential dishwasher that meets the national sanitation foundation (NSF) international standards;

(G) a three-compartment deep sink for manual cleaning and sanitizing or, if in a resident kitchen, an alternative means for a three-step process for manual cleaning and sanitizing;

(H) an office in the central kitchen for the dietitian or dietetic services supervisor or, if in a resident kitchen, a workspace for the dietitian or dietetic services supervisor;

(I) a toilet room and a hand-washing sink available for dietary staff, separated by a vestibule from the central kitchen or, if in a resident kitchen, a toilet room with a hand-washing sink located in close proximity to the kitchen;

(J) an enclosed housekeeping room located within the central kitchen that contains a floor receptor with hot and cold water, shelving, and storage space for housekeeping equipment and supplies or, if in a resident kitchen, an enclosed housekeeping room adjacent to the kitchen that contains storage for dietary services cleaning equipment;

(K) an ice machine that, if available to residents for self-serve, shall dispense ice directly into a container and be designed to minimize noise and spillage onto the floor;

(L) sufficient food storage space located adjacent to the central kitchen or resident kitchen to store at least a four-day supply of food to meet residents' needs, including refrigerated, frozen, and dry storage;

(M) sufficient space for the storage and indoor sanitizing of cans, carts, and mobile equipment; and

(N) a waste storage area in a separate room or an outside area that is readily available for direct pickup or disposal.

(6) Laundry services. Each nursing facility shall have the means for receiving, processing, and storing linen needed for resident care in a central laundry or off-site laundry, or both, or a personal laundry room located on a resident unit in

combination with these options. The arrangement of laundry services shall provide for an orderly workflow from dirty to clean, to minimize cross-contamination.

(A) If nursing facility laundry or more than one resident's personal laundry is to be processed, the laundry services area shall have separate rooms, with doors that do not open directly onto the resident unit, that have the following:

(i) A soiled laundry room for receiving, holding, and sorting laundry, equipped with containers with tightly fitting lids for soiled laundry, that is exhausted to the outside;

(ii) a processing room that contains commercial laundry equipment for washing and drying and a sink;

(iii) an enclosed housekeeping room that opens into the laundry processing area and contains a floor receptor with hot and cold water, shelving, and space for storage of housekeeping equipment and supplies;

(iv) a clean laundry room for handling, storing, issuing, mending, and holding laundry with egress that does not require passing through the processing or soiled laundry room; and

(v) storage space for laundry supplies.

(B) If nursing facility laundry or more than one resident's personal laundry is to be processed, the washing machine shall be capable of meeting high-temperature washing or low-temperature washing requirements as follows:

(i) If high-temperature washing is used, the washing machines shall have temperature sensors and gauges capable of monitoring water temperatures of at least 160°F and manufacturer documentation that the machine has a wash cycle of at least 25 minutes at 160°F or higher.

(ii) If low-temperature washing is used, the washing machines shall have temperature sensors and gauges capable of monitoring water temperatures to ensure a wash temperature of at least 71°F and manufacturer documentation of a chlorine bleach rinse of 125 parts per million (ppm) at a wash temperature of at least 71°F. Oxygen-based bleach may be used as an alternative to chlorine bleach if the product is registered by the environmental protection agency.

(C) If each resident's personal laundry is processed separately on a resident unit, the laundry may be handled within one or more rooms if separate, defined areas are provided for handling clean and soiled laundry. The following elements shall be included:

(i) A soiled laundry room or area for receiving, holding, and sorting laundry, equipped with containers with tightly fitting lids for soiled laundry, that is exhausted to the outside;

(ii) at least one washing machine. Each washing machine shall be positioned over a catch pan piped to a floor drain;

(iii) a processing room or area that contains a clothes dryer and a hand-washing sink;

(iv) a clean laundry room or area for handling, storing, issuing, mending, and holding laundry; and

(v) storage space for laundry supplies.

(D) If laundry is processed off-site, the following elements shall be provided:

(i) A soiled laundry room, equipped with containers that have tightly fitted lids for holding laundry, that is exhausted to the outside; and

(ii) a clean laundry room for receiving, holding, inspecting, and storing linen.

(7) Central storage. Each nursing facility shall have at least five square feet per resident capacity in separate rooms or separate space in one room for storage of clean materials or supplies and oxygen.

(8) Housekeeping room. Each nursing facility shall have a sufficient number of rooms for the storage of housekeeping supplies and equipment needed to maintain a clean and sanitary environment. Each housekeeping room shall contain a floor receptor with hot and cold water, adequate shelving, provisions for hanging mops and other cleaning tools, and space for buckets, supplies, and equipment.

(h) Staff and public areas. The rooms and areas required in this subsection shall be located in the main building of each nursing facility and in each freestanding building with a resident unit unless otherwise indicated.

(1) Staff support area. Each nursing facility shall have a staff support area for staff and volunteers that contains the following, at a minimum:

(A) A staff lounge or area;

(B) lockers, drawers, or compartments that lock for safekeeping of each staff member's personal effects; and

(C) a toilet room and hand-washing sink that are accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105. If a resident unit is located in a freestanding building, the toilet room located in the resident unit may meet this requirement.

(2) Public areas. Each nursing facility shall provide the following public areas to accommodate residents, staff, and visitors:

(A) A sheltered entrance at grade level that is accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105;

(B) a lobby or vestibule with communication to the reception area, information desk, or resident unit;

(C) at least one public toilet room with a toilet and sink that are accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105. If a resident unit is located in a freestanding building, the toilet room located in the resident unit may meet this requirement;

(D) a drinking fountain or cooler or other means to obtain fresh water; and

(E) a telephone, located in an area with sufficient space to allow for use by a person in a wheelchair, where calls can be made without being overheard.

(3) Administrative areas. Each nursing facility shall have the following areas for administrative work activities in the main building:

(A) An administrator's office;

(B) a director of nursing office;

(C) general offices as needed for admission, social services, private interviews, and other professional and administrative functions; and

(D) space for office equipment, files, and financial and clinical records.

(i) Nursing facility support systems. Each nursing facility shall have support systems to promote staff responsiveness to each resident's needs and safety.

(1) Call system. Each nursing facility shall have a functional call system that ensures that nursing personnel working in the resident unit and other staff designated to respond to resident calls are notified immediately when a resident has activated the call system.

(A) Each nursing facility shall have a call button or pull cord located at each bed and in each beauty and barber shop that, if activated, will initiate all of the following:

(i) Produce an audible signal at the nurses' workroom or area, or activate the portable electronic device worn by each required staff member with an audible tone or vibration;

(ii) register a visual signal on an enunciator panel or monitor screen at the nurses' workroom or area, indicating the resident room number and bed, or beauty and barber shop;

(iii) produce a visual signal at the resident room corridor door or activate the portable electronic device worn by each required staff member, iden-

tifying the specific resident or room from which the call has been placed; and

(iv) produce visual and audible signals in clean and soiled workrooms and in the medication preparation rooms or activate the portable electronic device worn by each required staff member with an audible tone or vibration.

(B) Each nursing facility shall have an emergency call button or pull cord located next to each resident-use toilet, shower, and bathtub that, if activated, will initiate all of the following:

(i) Produce a repeating audible signal at the nurses' workroom or area, or activate the portable electronic device worn by each required staff member with an audible tone or vibration;

(ii) register a visual signal on an enunciator panel or monitor screen at the nurses' workroom or area, indicating the location or room number of the toilet, shower, or bathtub;

(iii) produce a rapidly flashing light adjacent to the corridor door at the site of the emergency or activate the portable electronic device worn by each required staff member, identifying the specific resident or room from which the call has been placed; and

(iv) produce a rapidly flashing light and a repeating audible signal in the nurses' workroom or area, clean workroom, soiled workroom, and medication preparation rooms or activate the portable electronic device worn by each required staff member with an audible tone or vibration.

(C) The administrator shall implement a policy to ensure that all calls activated from an emergency location receive a high-priority response from staff.

(D) If the nursing facility does not have a wireless call system, the nursing facility shall have additional visible signals at corridor intersections in multicorridor units for all emergency and non-emergency calls.

(E) All emergency and nonemergency call signals shall continue to operate until manually reset at the site of origin.

(F) If call systems include two-way voice communication, staff shall take precautions to protect resident privacy.

(G) If a nursing facility uses a wireless system to meet the requirements of paragraphs (i)(1)(A) through (E), all of the following additional requirements shall be met:

(i) The nursing facility shall be equipped with a system that records activated calls.

(ii) A signal unanswered for a designated period of time, but not more than every three minutes,

shall repeat and also be sent to another workstation or to staff that were not designated to receive the original call.

(iii) Each wireless system shall utilize radio frequencies that do not interfere with or disrupt pacemakers, defibrillators, and any other medical equipment and that receive only signals initiated from the manufacturer's system.

(H) The nursing facility's preventative maintenance program shall include the testing of the call system at least weekly to verify operation of the system.

(2) Door monitoring system. The nursing facility shall have an electrical monitoring system on each door that exits the nursing facility and is available to residents. The monitoring system shall alert staff when the door has been opened by a resident who should not leave the nursing facility unless accompanied by staff or other responsible person.

(A) Each door to the following areas that is available to residents shall be electronically monitored:

(i) The exterior of the nursing facility, including enclosed outdoor areas;

(ii) interior doors of the nursing facility that open into another type of adult care home if the exit doors from that adult care home are not monitored; and

(iii) any area of the building that is not licensed as an adult care home.

(B) The electrical monitoring system on each door shall remain activated until manually reset by nursing facility staff.

(C) The electrical monitoring system on a door may be disabled during daylight hours if nursing facility staff has continuous visual control of the door.

(j) Nursing facility maintenance and waste processing services.

(1) Maintenance, equipment, and storage areas. Each nursing facility shall have areas for repair, service, and maintenance functions that include the following:

(A) A maintenance office;

(B) a storage room for building maintenance supplies;

(C) an equipment room or separate building for boilers, mechanical equipment, and electrical equipment; and

(D) a maintenance storage area that opens to the outside, or is located in a detached building, for the storage of tools, supplies, and equipment used for yard and exterior maintenance.

(2) Waste processing services. Each nursing facility shall have space and equipment for the sanitary storage and disposal of waste by incineration, mechanical destruction, compaction, containerization, or removal, or by a combination of these techniques. (Authorized by and implementing K.S.A. 39-932; effective Jan. 7, 2011.)

**26-40-303. Nursing facility physical environment; existing nursing facilities.** (a) Applicability. This regulation shall apply to all nursing facilities licensed on the effective date of this regulation.

(b) Codes and standards. Each nursing facility shall meet the requirements of the building codes, standards, and regulations enforced by city, county, or state jurisdictions. The requirements specified in this regulation shall be considered as a minimum.

(1) Each nursing facility shall meet the following requirements, as adopted by reference in K.A.R. 26-39-105:

(A) The national fire protection association's NFPA 101 "life safety code" (LSC); and

(B) the "Americans with disabilities act accessibility guidelines for buildings and facilities" (ADAAG).

(2) Each nursing facility and any portion of each nursing facility that was approved under a previous regulation shall, at a minimum, remain in compliance with the regulation or building code in effect at the date of licensure.

(c) Nursing facility design. The design and layout of each nursing facility shall differentiate among public, semiprivate, and private space and shall promote the deterrence of unnecessary travel through private space by staff and the public. The resident unit shall be arranged to achieve a home environment, short walking and wheeling distances, localized social areas, and decentralized work areas.

(d) Resident unit. A "resident unit" shall mean a group of resident rooms, care support areas, and common rooms and areas as identified in this subsection and subsections (e) and (f), unless otherwise indicated. Each resident unit shall have a resident capacity of no more than 60 residents and shall be located within a single building.

(1) Resident rooms. At least five percent of the resident rooms shall have a maximum occupancy of one resident per room. The occupancy of the remaining rooms shall not exceed two residents per room. If a nursing facility has rooms that ac-

commodate three or four residents on the effective date of this regulation, this requirement shall not apply until the nursing facility converts its existing three- and four-resident rooms to private or semiprivate rooms.

(A) Each resident room shall meet the following requirements:

(i) Be located on a floor at or above ground level;

(ii) allow direct access to the corridor;

(iii) measure at least 100 square feet in single resident rooms and at least 160 square feet in double resident rooms, exclusive of alcoves, vestibules, toilet room, closets or freestanding wardrobes, sinks, and other built-in items. If the building was constructed before January 1, 1963 and licensed as a nursing facility on the effective date of this regulation, rooms shall measure at least 90 square feet in single resident rooms and at least 160 square feet in double resident rooms, exclusive of alcoves, vestibules, toilet room, closets or freestanding wardrobes, sinks, and other built-in items; and

(iv) provide at least one operable exterior window that opens for ventilation. The window area shall not be less than 12 percent of the gross floor area of the resident room.

(B) Each bed area in a double resident room shall have separation from the adjacent bed by use of walls, doors, or ceiling suspended curtains to afford complete visual privacy.

(C) The configuration of each resident room shall be designed to allow at least three feet of clearance along the foot of each bed and along both sides of each bed.

(D) The nursing facility shall have functional furniture to meet each resident's needs, including a bed of adequate size with a clean, comfortable mattress that fits the bed, and bedding appropriate to the weather and the needs of the resident.

(E) Each resident's room shall include personal storage space in a fixed closet or freestanding wardrobe with doors. This storage shall have minimum dimensions of one foot 10 inches in depth by two feet six inches in width and shall contain an adjustable clothes rod and shelf installed at a height easily reached by the resident. Accommodations shall be provided for hanging full-length garments. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the minimum dimensions specified in this paragraph shall not apply.

(2) Resident toilet rooms. Each resident toilet room shall serve no more than two resident rooms and be accessed directly from the resident's room. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, resident access to the toilet room may be from the general corridor.

(A) Each toilet room shall contain at least a toilet and hand-washing sink, unless a hand-washing sink is provided in the resident room adjacent to the toilet room.

(B) Each resident toilet room shall have at least 30 square feet to allow maneuverability of a wheelchair. If the room contains a shower that presents no obstruction to the turning radius, the space occupied by the shower may be included in the minimum dimensions.

(C) If a shower is present in a toilet room, the shower shall be curtained or in another type of enclosure for privacy.

(e) Resident unit care support rooms and areas. The rooms and areas required in this subsection shall be located in each resident unit and shall be accessed directly from the general corridor without passage through an intervening room or area, except the medication room as specified in paragraph (e)(2)(A) and housekeeping closets. Each care support area shall be located less than 200 feet from each resident room. If the building was constructed before February 15, 1977 and the nursing facility was licensed on the effective date of this regulation, the distance specified in this paragraph shall not apply.

(1) Nurses' workroom or area. Each resident unit shall have sufficient areas for supervisory work activities arranged to ensure the confidentiality of resident information and communication.

(A) A nurses' workroom or area shall have space for the following:

(i) Charting;

(ii) the transmission and reception of resident information;

(iii) clinical records and other resident information;

(iv) a telephone and other office equipment; and

(v) an enunciator panel or monitor screen for the call system. If a resident unit has more than one nurses' workroom or area, space for an enunciator panel or monitor for the call system shall not be required in more than one nurses' workroom or area.

(B) The nurses' workroom or area shall be located so that the corridors outside resident rooms are

visible from the nurses' workroom or area. The nursing facility may have cameras and monitors to meet this requirement.

(C) Direct visual access into each nurses' work area shall be provided if the work area is located in an enclosed room.

(2) Medication room or area. Each resident unit shall have a room or area for storage and preparation of medications or biologicals for 24-hour distribution, with a temperature not to exceed 85°F. This requirement shall be met by one or more of the following:

(A) A room with an automatically closing, self-locking door visible from the nurses' workroom or area. The room shall contain a work counter with task lighting, hand-washing sink, refrigerator, and shelf space for separate storage of each resident's medications. The secured medication storage room shall contain separately locked compartments for the storage of controlled medications listed in K.S.A. 65-4107, and amendments thereto, and any other medications that, in the opinion of the consultant pharmacist, are subject to abuse;

(B) if the resident unit serves no more than 32 residents, a nurses' workroom or area equipped with a work counter with task lighting, hand-washing sink, locked refrigerator, and locked storage for resident medications. A separately locked compartment shall be located within the locked cabinet, drawer, or refrigerator for the storage of controlled medications listed in K.S.A. 65-4107, and amendments thereto, and any other medications that, in the opinion of the consultant pharmacist, are subject to abuse;

(C) a locked medication cart, in addition to a medication room or area, if the cart is located in a space convenient for control by nursing personnel who are authorized to administer medication. If controlled medications listed in K.S.A. 65-4107, and amendments thereto, and any other medications that, in the opinion of the consultant pharmacist, are subject to abuse are stored in the medication cart, the cart shall contain a separately locked compartment for the storage of these medications; or

(D) in the resident's room if the room contains space for medication preparation with task lighting, access to a hand-washing sink, and locked cabinets or drawers for separate storage of each resident's medication. Controlled medications listed in K.S.A. 65-4107, and amendments thereto, and any other medications that, in the opinion

of the consultant pharmacist, are subject to abuse shall not be stored in a resident's room.

(3) Clean workroom. Each resident unit shall have a room for the preparation, storage, and distribution of clean or sterile materials and supplies and resident care items.

(A) The room shall contain a work counter with a sink and adequate shelving and cabinets for storage.

(B) The room area shall be at least 80 square feet, with a length or width of at least six feet. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the minimum dimensions specified in this paragraph shall not apply.

(C) If the resident unit is located in a freestanding building, a clothes dryer for processing resident personal laundry that is not contaminated laundry may be located in the clean workroom if the following requirements are met:

(i) An additional minimum of 40 square feet per dryer shall be provided.

(ii) The soiled workroom shall contain a washing machine positioned over a catch pan.

(iii) The clean workroom shall have a door opening directly into the soiled workroom without entering the general corridor. The door opening shall be covered with a plastic-strip door or by other means to prevent interference of ventilation requirements for both workrooms.

(D) Storage and preparation of food and beverages shall not be permitted in the clean workroom.

(4) Clean linen storage. Each resident unit shall have a room or area with adequate shelving, cabinets, or cart space for the storage of clean linen. The storage area may be located in the clean workroom.

(5) Soiled workroom. Each resident unit shall have a soiled workroom for the disposal of wastes, collection of contaminated material, and the cleaning and sanitizing of resident care utensils.

(A) The soiled workroom shall contain a work counter, a two-compartment sink, a covered waste receptacle, a covered soiled linen receptacle, and a storage cabinet with a lock for sanitizing solutions and cleaning supplies. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the soiled workroom shall contain these fixtures except that the sink shall be at least a one-compartment sink.

(B) The room area shall be at least 80 square feet, with a length or width of at least six feet. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the minimum dimensions shall not apply.

(C) If the resident unit is located in a freestanding building, a washing machine for processing resident personal laundry that is not contaminated laundry may be located in the soiled workroom if the following requirements are met:

(i) An additional minimum of 40 square feet per washing machine shall be provided.

(ii) The washing machine shall be positioned over a catch pan.

(iii) The clean workroom shall contain a clothes dryer.

(iv) The soiled workroom shall have a door opening directly into the clean workroom without entering the general corridor. The door opening shall be covered with a plastic-strip door or by other means to prevent interference of ventilation requirements for both workrooms.

(D) A housekeeping room may be located in the soiled workroom if the following conditions are met:

(i) The soiled workroom is located in a resident unit in a freestanding building.

(ii) The housekeeping room is enclosed.

(iii) The soiled workroom includes at least 20 square feet in additional space.

(E) Clean supplies, equipment, and materials shall not be stored in the soiled workroom.

(6) Equipment storage rooms or areas. Each resident unit shall have sufficient rooms or enclosed areas for the storage of resident unit equipment.

(A) The total space shall be at least 120 square feet plus an additional minimum of one square foot for each resident based on resident capacity, with no single room or area less than 30 square feet. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the minimum dimensions specified in this paragraph shall not apply.

(B) If mechanical equipment or electrical panel boxes are located in the storage area, the nursing facility shall have additional space for the access to and servicing of equipment.

(7) Housekeeping room. Each resident unit shall have at least one room for the storage of housekeeping supplies and equipment needed to maintain a clean and sanitary environment.

(A) Each housekeeping room shall contain the following:

(i) A floor receptor or service sink, or both;

(ii) hot and cold water;

(iii) adequate shelving;

(iv) provisions for hanging mops and other cleaning tools; and

(v) space for buckets, supplies, and equipment.

(B) If the housekeeping room in the resident unit serves the resident kitchen and any other areas of the unit, the nursing facility shall designate separate mops and buckets for use in each specific location.

(C) If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the nursing facility shall have at least one janitor's closet that contains either a floor receptor or service sink, or both, and storage space for janitorial equipment and supplies.

(8) Toilet room. Each resident unit shall have a staff toilet room with a hand-washing sink. If a resident unit is located in a freestanding building, the resident unit shall have at least one toilet room that contains a hand-washing sink and is accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105, for resident, staff, and visitor use. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, this paragraph shall not apply.

(9) Resident kitchen. Any resident unit may have a decentralized resident kitchen if the resident kitchen meets the following requirements:

(A) Is adequate in relation to the size of the resident unit;

(B) is designed and equipped to meet the needs of the residents; and

(C) meets the requirements in paragraph (f)(7).

(10) Nourishment area. Each resident unit shall have an area available to each resident to ensure the provision of nourishment and beverages, including water, between scheduled meals. The nourishment area may serve more than one resident unit if centrally located for easy access from each of the nursing areas served. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the nursing facility shall not be required to have a nourishment area.

(A) The nourishment area shall contain a hand-washing sink, equipment for serving nourishment and beverages, a refrigerator, and storage cabinets.

(B) The nourishment area may be located in the resident unit kitchen if the kitchen has both a hand-washing sink and counter accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105, and all residents have access to the area between scheduled meals.

(11) Bathing room. Each nursing facility shall have a room or rooms with sufficient bathing units to permit each resident to bathe privately and either independently or with staff assistance.

(A) Each nursing facility shall have at least one hydrotherapy bathing unit. If the building was constructed before November 1, 1993 and licensed as a nursing facility on the effective date of this regulation, this requirement shall not apply.

(B) Each nursing facility shall have bathing units at a rate of one for each 15 residents, based on the number of residents who do not have a toilet room, with a shower accessed directly from the resident's room. A hydrotherapy bathing unit may be counted as two bathing units to meet this ratio.

(C) The bathing room shall contain the following:

- (i) A hand-washing sink;
- (ii) an area enclosed for privacy that contains a toilet for resident use;
- (iii) a shower that measures at least four feet by four feet without curbs and is designed to permit use by a resident in a wheelchair, unless a shower is provided in each resident's toilet room. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the minimum dimensions specified in this paragraph shall not apply;

(iv) a visually enclosed area for privacy during bathing, drying, and dressing, with space for a care provider and wheelchair; and

(v) a locked supply cabinet.

(12) Personal laundry room. Any resident unit may have a laundry room for each resident to launder personal laundry that is not contaminated laundry, if the requirements in paragraph (f) (8) are met.

(13) Mobility device parking space. Each nursing facility shall have parking space for residents' mobility devices. The parking space shall be located in an area that does not interfere with normal resident passage. The parking space shall not be included in determining the minimum required corridor width.

(f) Common rooms and support areas in the nursing facility's main building. The rooms and areas required in this subsection shall be locat-

ed in the main building of each nursing facility, unless otherwise indicated, and shall be accessed directly from the general corridor without passage through an intervening room or area. If a resident unit is located in a freestanding building, the administrator shall ensure that transportation is provided for each resident to access services and activities that occur in the main building to enhance the resident's physical, mental, and psychosocial well-being.

(1) Living, dining, and recreation areas. Each nursing facility shall have sufficient space to accommodate separate and distinct resident activities of living, dining, and recreation. If a resident unit is located in a freestanding building, the resident unit shall include living, dining, and recreation areas.

(A) Space for living, dining, and recreation shall be provided at a rate of at least 27 square feet per resident based on each resident unit's capacity, with at least 14 square feet per resident in the dining area. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the nursing facility shall have space for living, dining, and recreation at a rate of at least 20 square feet per resident based on each resident unit's capacity, with at least 10 square feet per resident in the dining area.

(B) Window areas in each living, dining, and recreation area shall be at least 10 percent of the gross floor space of those areas. The window area requirement shall not be met by the use of skylights.

(2) Multipurpose room. Each nursing facility shall have a room or area for resident use for social gatherings, religious services, entertainment, or crafts, with sufficient space to accommodate separate functions.

(A) The multipurpose room shall have an area of at least 200 square feet for 60 or fewer residents, plus at least two square feet for each additional resident over 60, based on the nursing facility's resident capacity. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the minimum dimensions specified in this paragraph shall not apply.

(B) The multipurpose room or area shall contain a work counter with a hand-washing sink, and storage space and lockable cabinets for equipment and supplies. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the

hand-washing sink may be located in close proximity to the multipurpose room or area.

(3) Den. Each nursing facility shall have a room for residents to use for reading, meditation, solitude, or privacy with family and other visitors unless each resident has a private room. The room area shall be at least 80 square feet. This paragraph shall not apply to facilities that meet the following conditions:

(A) The building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation.

(B) Any decrease to the nursing facility's resident capacity is for the sole purpose of converting semiprivate rooms to private rooms.

(4) Exam room. Each nursing facility shall have a room for a physician to examine and privately consult with a resident.

(A) The exam room shall meet the following requirements:

(i) The room area shall be at least 120 square feet, with a length or width of at least 10 feet.

(ii) The room shall contain a hand-washing sink, an examination table, and a desk or shelf for writing.

(iii) If the examination room is located in the rehabilitation therapy room, the examination room shall be equipped with cubicle curtains.

(B) The requirement for an exam room shall not apply to any nursing facility that meets both of the following conditions:

(i) The building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation.

(ii) Any decrease to the nursing facility's resident capacity on or after the effective date of this regulation is for the sole purpose of converting semiprivate rooms to private rooms.

(5) Rehabilitation room. Each nursing facility shall have a room for the administration and implementation of rehabilitation therapy.

(A) The rehabilitation room shall include the following:

(i) Equipment for carrying out each type of therapy prescribed for the residents;

(ii) a hand-washing sink;

(iii) an enclosed storage area for therapeutic devices; and

(iv) provisions for resident privacy.

(B) The rehabilitation room shall have an area of at least 200 square feet for 60 or fewer residents, plus at least two square feet for each additional resident over 60, based on resident capacity, to a

maximum requirement of 655 square feet. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the minimum dimensions specified in this paragraph shall not apply.

(C) If a resident unit is located in a freestanding building, the resident unit may have a designated area for rehabilitation in a bathing room. The combined use of the space shall not limit the residents' bathing opportunities or rehabilitation therapy.

(6) Beauty and barber shop. Each nursing facility shall have a room or area for the hair care and grooming of residents appropriate in size for the number of residents served.

(A) The beauty and barber shop shall contain at least one shampoo sink, space for one floor hair dryer, workspace, and a lockable supply cabinet.

(B) If a resident unit is located in a freestanding building, the resident unit may have a designated area for the hair care and grooming of residents in the bathing room if all of the following conditions are met:

(i) The bathing room does not contain a shower.

(ii) The area contains at least one shampoo sink, space for one floor hair dryer, and workspace.

(iii) The combined use of the space does not limit the residents' bathing, hair care, or grooming opportunities.

(7) Dietary areas. Each nursing facility shall have dietary service areas that are adequate in relation to the size of the nursing facility and are designed and equipped to meet the needs of the residents. Each nursing facility shall meet the requirements of the "food code," as adopted by reference in K.A.R. 26-39-105, unless otherwise indicated in this subsection. The following elements shall be included in each central kitchen and resident kitchen:

(A) A control station for receiving food supplies;

(B) food preparation and serving areas and equipment in accordance with the following requirements:

(i) Conventional food preparation systems shall include space and equipment for preparing, cooking, baking, and serving; and

(ii) convenience food service systems, including systems using frozen prepared meals, bulk-packaged entrees, individual packaged portions, or contractual commissary services, shall include space and equipment for thawing, portioning, cooking, baking, and serving;

(C) space for meal service assembly and distribution equipment;

(D) a two-compartment sink for food preparation. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the kitchen shall have at least a one-compartment sink for food preparation;

(E) a hand-washing sink in the food preparation area;

(F) a ware-washing area apart from, and located to prevent contamination of, food preparation and serving areas. The area shall include all of the following:

(i) Commercial-type dishwashing equipment;

(ii) space for receiving, scraping, sorting, and stacking soiled tableware and transferring clean tableware to the using area; and

(iii) if in a resident kitchen, an under-counter commercial or residential dishwasher that meets the national sanitation foundation (NSF) international standards;

(G) a three-compartment deep sink for manual cleaning and sanitizing or, if in a resident kitchen, an alternative means for a three-step process for manual cleaning and sanitizing;

(H) an office in the central kitchen for the dietitian or dietetic services supervisor or, if in a resident kitchen, a workspace for the dietitian or dietetic services supervisor;

(I) a toilet room and a hand-washing sink available for dietary staff located within close proximity to the kitchen;

(J) an enclosed housekeeping room located within the central kitchen that contains a floor receptor or service sink with hot and cold water, shelving, and storage space for housekeeping equipment and supplies. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, a housekeeping room shall not be required in the kitchen. If in a resident kitchen, there shall be an enclosed housekeeping room adjacent to the kitchen that contains storage for dietary services cleaning equipment;

(K) an ice machine that, if available to residents for self-serve, shall dispense ice directly into a container and be designed to minimize noise and spillage onto the floor;

(L) sufficient food storage space located adjacent to the central kitchen or resident kitchen to store at least a four-day supply of food to meet residents' needs, including refrigerated, frozen, and dry storage;

(M) sufficient space for the storage and sanitiz-

ing of cans, carts, and mobile equipment; and

(N) a waste storage area in a separate room or an outside area that is readily available for direct pickup or disposal.

(8) Laundry services. Each nursing facility shall have the means for receiving, processing, and storing linen needed for resident care in a central laundry or off-site laundry, or both, or a personal laundry room located on a resident unit in combination with these options. The arrangement of laundry services shall provide for an orderly workflow from dirty to clean, to minimize cross-contamination.

(A) If nursing facility laundry or more than one resident's personal laundry is to be processed, the laundry services area shall have separate rooms, with doors that do not open directly onto the resident unit, that have the following:

(i) A soiled laundry room for receiving, holding, and sorting laundry, equipped with containers with tightly fitting lids for soiled laundry, that is exhausted to the outside;

(ii) a processing room that contains commercial laundry equipment for washing and drying and a hand-washing sink;

(iii) an enclosed housekeeping room that opens into the laundry processing area and contains either a floor receptor or service sink, or both, and shelving and space for storage of housekeeping equipment and supplies;

(iv) a clean laundry room for handling, storing, issuing, mending, and holding laundry with egress that does not require passing through the processing or soiled laundry room; and

(v) storage space for laundry supplies.

(B) If nursing facility laundry or more than one resident's personal laundry is to be processed, the washing machine shall be capable of meeting high-temperature washing or low-temperature washing requirements as follows:

(i) If high-temperature washing is used, the washing machines shall have temperature sensors and gauges capable of monitoring water temperatures of at least 160°F and manufacturer documentation that the machine has a wash cycle of at least 25 minutes at 160°F or higher.

(ii) If low-temperature washing is used, the washing machines shall have temperature sensors and gauges capable of monitoring water temperatures to ensure a wash temperature of at least 71°F and manufacturer documentation of a chlorine bleach rinse of 125 parts per million (ppm) at a wash temperature of at least 71°F.

Oxygen-based bleach may be used as an alternative to chlorine bleach if the product is registered by the environmental protection agency.

(C) If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the following elements shall be included:

(i) A soiled laundry room or area for receiving, holding, and sorting laundry, equipped with containers with tightly fitting lids for soiled laundry, that is exhausted to the outside;

(ii) a processing room or area that contains commercial laundry equipment for washing and drying and a hand-washing sink;

(iii) a clean laundry room or area for handling, storing, issuing, mending, and holding laundry; and

(iv) storage space for laundry supplies.

(D) If each resident's personal laundry is processed separately on a resident unit, the laundry may be handled within one or more rooms if separate, defined areas are provided for handling clean and soiled laundry.

(E) If laundry is processed off-site, the following elements shall be provided:

(i) A soiled laundry room, equipped with containers that have tightly fitted lids for holding laundry, that is exhausted to the outside; and

(ii) a clean laundry room for receiving, holding, inspecting, and storing linen.

(9) Central storage. Each nursing facility shall have at least five square feet per resident capacity in separate rooms or separate space in one room for storage of clean materials or supplies and oxygen. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the minimum dimensions specified in this paragraph shall not apply.

(10) Housekeeping room. Each nursing facility shall have a sufficient number of rooms for the storage of housekeeping supplies and equipment needed to maintain a clean and sanitary environment.

(A) Each housekeeping room shall contain the following:

(i) A floor receptor or service sink;

(ii) hot and cold water;

(iii) adequate shelving;

(iv) provisions for hanging mops and other cleaning tools; and

(v) space for buckets, supplies, and equipment.

(B) If the building was constructed before February 15, 1977 and licensed as a nursing facility on

the effective date of this regulation, the nursing facility shall have at least one housekeeping room with a floor receptor or service sink and with storage space for equipment and supplies.

(g) Staff and public areas. The rooms and areas required in this subsection shall be located in the main building of each nursing facility and in each freestanding building with a resident unit unless otherwise indicated.

(1) Staff support area. Each nursing facility shall have a staff support area for staff and volunteers that contains the following, at a minimum:

(A) A staff lounge or area;

(B) lockers, drawers, or compartments that lock for safekeeping of each staff member's personal effects; and

(C) a toilet room and hand-washing sink. If a resident unit is located in a freestanding building, the toilet room located in the resident unit may meet this requirement. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, this requirement shall not apply.

(2) Public areas. Each nursing facility shall have public areas to accommodate residents, staff, and visitors.

(A) Each building constructed and licensed as a nursing facility before February 15, 1977 shall have the following public areas:

(i) A sheltered entrance at grade level to accommodate persons in wheelchairs;

(ii) one public toilet and hand-washing sink;

(iii) at least one toilet and hand-washing sink accessible to a person in a wheelchair;

(iv) a drinking fountain or cooler, or other means to obtain fresh water; and

(v) a telephone, located in an area with sufficient space to allow for use by a person in a wheelchair, where calls can be made without being overheard.

(B) Each building constructed on or after February 15, 1977 and licensed as a nursing facility on the effective date of this regulation shall have the following public areas:

(i) A sheltered entrance at grade level to accommodate persons in wheelchairs;

(ii) a lobby or vestibule with communication to the reception area, information desk, or resident unit;

(iii) at least one public toilet and hand-washing sink that are accessible to a person in a wheelchair. If a resident unit is located in a freestanding building, the toilet room on the resident unit may meet this requirement;

(iv) if a nursing facility has a resident capacity greater than 60, at least one additional public toilet and hand-washing sink shall be provided;

(v) a drinking fountain or cooler, or other means to obtain fresh water; and

(vi) a telephone, located in an area with sufficient space to allow for use by a person in a wheelchair, where calls can be made without being overheard.

(3) Administrative areas. Each nursing facility shall have the following areas for administrative work activities in the main building:

(A) An administrator's office; and

(B) space for office equipment, files, and financial and clinical records.

(h) Nursing facility support systems. Each nursing facility shall have support systems to promote staff responsiveness to each resident's needs and safety.

(1) Call system. Each nursing facility shall have a functional call system that ensures that nursing personnel working in the resident unit and other staff designated to respond to resident calls are notified immediately when a resident has activated the call system.

(A) Each nursing facility shall have a call button or pull cord located next to each bed that, if activated, will initiate all of the following:

(i) Produce an audible signal at the nurses' workroom or area or activate the portable electronic device worn by each required staff member with an audible tone or vibration;

(ii) register a visual signal on an enunciator panel or monitor screen at the nurses' workroom or area, indicating the resident room number;

(iii) produce a visual signal at the resident room corridor door or activate the portable electronic device worn by each required staff member, identifying the specific resident or room from which the call has been placed; and

(iv) produce visual and audible signals in clean and soiled workrooms and in the medication preparation rooms or activate the portable electronic device worn by each required staff member with an audible tone or vibration.

(B) Each nursing facility shall have an emergency call button or pull cord located next to each resident-use toilet, shower, and bathtub that, if activated, will initiate all of the following:

(i) Produce a repeating audible signal at the nurses' workroom or area or activate the portable electronic device worn by each required staff member with an audible tone or vibration;

(ii) register a visual signal on an enunciator panel or monitor screen at the nurses' workroom or area, indicating the location or room number of the toilet, shower, or bathtub;

(iii) produce a rapidly flashing light adjacent to the corridor door at the site of the emergency or activate an electronic portable device worn by each required staff member, identifying the specific resident or room from which the call has been placed; and

(iv) produce a rapidly flashing light and a repeating audible signal in the nurses' workroom or area, clean workroom, soiled workroom, and medication preparation rooms or activate the portable electronic device worn by each required staff member with an audible tone or vibration.

(C) The administrator shall implement a policy to ensure that all calls activated from an emergency location receive a high-priority response from staff.

(D) If the nursing facility does not have a wireless call system, the nursing facility shall have additional visible signals at corridor intersections in multicorridor units for all emergency and non-emergency calls. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the nursing facility shall not be required to have additional visible signals at corridor intersections for all emergency and nonemergency calls.

(E) All emergency and nonemergency call signals shall continue to operate until manually reset at the site of origin.

(F) If call systems include two-way voice communication, staff shall take precautions to protect resident privacy.

(G) If a nursing facility uses a wireless system to meet the requirements of paragraphs (h)(1)(A) through (E), all of the following additional requirements shall be met:

(i) The nursing facility shall be equipped with a system that records activated calls.

(ii) A signal unanswered for a designated period of time, but not more than every three minutes, shall repeat and also be sent to another workstation or to staff that were not designated to receive the original call.

(iii) Each wireless system shall utilize radio frequencies that do not interfere with or disrupt pacemakers, defibrillators, and any other medical equipment and that receive only signals initiated from the manufacturer's system.

(H) The nursing facility's preventative maintenance program shall include the testing of the call

system at least weekly to verify operation of the system.

(I) If the building was constructed before May 1, 1982 and licensed as a nursing facility on the effective date of this regulation, the call system shall be required to meet the following requirements:

(i) Each resident bed shall have a call button that, when activated, registers at the nurses' work area with an audible and visual signal.

(ii) The call system shall produce a visual signal at the resident room corridor door.

(iii) The nursing facility shall have an emergency call button or pull cord next to each resident-use toilet, shower, and bathtub accessible to residents that, when activated, registers at the nurses' work area with an audible and visual signal.

(iv) All emergency and nonemergency call signals shall continue to operate until manually reset at the site of origin.

(2) Door monitoring system. The nursing facility shall have an electrical monitoring system on each door that exits the nursing facility and is available to residents. The monitoring system shall alert staff when the door has been opened by a resident who should not leave the nursing facility unless accompanied by staff or other responsible person.

(A) Each door to the following areas that is available to residents shall be electronically monitored:

(i) The exterior of the nursing facility, including enclosed outdoor areas;

(ii) interior doors of the nursing facility that open into another type of adult care home if the exit doors from that adult care home are not monitored; and

(iii) any area of the building that is not licensed as an adult care home.

(B) The electrical monitoring system on each door shall remain activated until manually reset by nursing facility staff.

(C) The electrical monitoring system on a door may be disabled during daylight hours if nursing facility staff has continuous visual control of the door.

(i) Nursing facility maintenance and waste processing services.

(1) Maintenance, equipment, and storage areas. Each nursing facility constructed after February 15, 1977 and licensed on the effective date of this regulation shall have areas for repair, service, and maintenance functions that include the following:

(A) A maintenance office and shop;

(B) a storage room for building maintenance supplies. The storage room may be a part of the maintenance shop in nursing facilities with 120 or fewer beds;

(C) an equipment room or separate building for boilers, mechanical equipment, and electrical equipment.

(2) Waste processing services. The nursing facility shall have space and equipment for the sanitary storage and disposal of waste by incineration, mechanical destruction, compaction, containerization, or removal, or by a combination of these techniques. (Authorized by and implementing K.S.A. 39-932; effective Jan. 7, 2011.)

**26-40-304. Nursing facility physical environment; details and finishes.** Each nursing facility shall incorporate details and finishes to create a home environment.

(a) Codes and standards. Nursing facilities may be subject to codes, standards, and regulations of several different jurisdictions, including local, state, and federal authorities. The requirements in this regulation shall be considered as a minimum. Each nursing facility and each portion of a nursing facility that was licensed under a previous regulation shall, at a minimum, remain in compliance with the regulation or building code in effect at the date of licensure. Each applicant for a nursing facility license and each addition to a nursing facility licensed on or after the effective date of this regulation shall meet the following requirements, as adopted by reference in K.A.R. 26-39-105:

(1) The "international building code" (IBC);

(2) the national fire protection association's NFPA 101 "life safety code" (LSC); and

(3) the "Americans with disabilities act accessibility guidelines for buildings and facilities" (ADAAG).

(b) Details.

(1) Corridors.

(A) The width of each corridor shall be at least eight feet in any resident-use area and at least six feet in any nursing facility support area.

(B) Handrails shall not be considered an obstruction when measuring the width of corridors.

(C) Doors shall not swing directly into corridors, with the exception of doors to small closets and spaces that are not subject to occupancy. Walk-in closets shall be considered occupiable spaces.

(2) Ceiling height.

(A) The height of each ceiling shall be at least eight feet above the finished floor with the following exceptions:

(i) Each ceiling in a storage room or other normally unoccupied space shall be at least seven feet eight inches above the finished floor.

(ii) Each ceiling in a room containing ceiling-mounted equipment shall have sufficient height to accommodate the proper functioning, repair, and servicing of the equipment.

(B) Each building component and suspended track, rail, and pipe located in the path of normal traffic shall be at least six feet eight inches above the finished floor.

(C) Each architecturally framed and trimmed doorway or other opening in a corridor or room shall have a height of at least six feet eight inches above the finished floor.

(3) Doors and door hardware.

(A) Each door on any opening between corridors and spaces subject to occupancy, with the exception of elevator doors, shall be swinging-type.

(B) Each door to a room containing at least one resident-use toilet, bathtub, or shower shall be swinging-type, sliding, or folding and shall be capable of opening outward or designed to allow ingress to the room without pushing against a resident who could have collapsed in the room.

(C) The width of the door opening to each room that staff need to access with beds or stretchers shall be at least three feet eight inches. The width of each door to a resident-use toilet room and other rooms that staff and residents need to access with wheelchairs shall be at least three feet.

(D) No more than five percent of the resident rooms may have a Dutch door to the corridor for physician-ordered monitoring of a resident who is disorientated.

(E) Each exterior door that can be left in an open position shall have insect screens.

(F) Each resident-use interior and exterior door shall open with ease and little resistance.

(G) Each resident-use swinging-type door shall have lever hardware or sensors for ease of use by residents with mobility limitations.

(4) Glazing. Safety glazing materials shall be required in all doors with glass panels, sidelights, and any breakable material located within 18 inches of the floor. Safety glass or safety glazing materials shall be used on any breakable material used for a bath enclosure or shower door.

(5) Windows.

(A) Each window in a resident's room or in a resident-use area shall have a sill located no greater than 32 inches above the finished floor and at least two feet six inches above the exterior grade. This paragraph shall not apply if the building was constructed and licensed as a nursing facility before February 15, 1977. If the building was constructed and licensed as a nursing facility on or after February 15, 1977 and before November 1, 1993, the nursing facility shall have a windowsill height three feet or less above the floor in the living and dining areas for at least 50 percent of the total window area.

(B) Each window in a resident's room shall be operable.

(C) Each operable window shall have an insect screen.

(D) Each operable window shall be designed to prevent falls when open or shall be equipped with a security screen.

(E) Blinds, sheers, or other resident-controlled window treatments shall be provided throughout each resident unit to control light levels and glare.

(6) Grab bars.

(A) Grab bars shall be installed at each resident-use toilet and in each shower and tub.

(B) Each wall-mounted grab bar shall have a clearance of 1½ inches from the wall.

(C) Each grab bar, including those molded into a sink counter, shall have strength to sustain a concentrated load of 250 pounds.

(D) Permanent or flip-down grab bars that are 1½ inches in diameter shall be installed on any two sides of each resident-use toilet, or the resident-use toilet shall have at least one permanent grab bar mounted horizontally at least 33 inches and no more than 36 inches above the floor and slanted at an angle.

(E) The ends of each grab bar shall return to the wall or floor.

(F) Each grab bar shall have a finish color that contrasts with that of the adjacent wall surface.

(7) Handrails.

(A) Each handrail shall be accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105. Alternative cross sections and configurations that support senior mobility shall be permitted.

(B) Each stairway and ramp shall have handrails.

(C) A handrail shall be provided for each resident-use corridor with a wall length greater than 12 inches.

(D) Each handrail shall have a clearance of 1½ inches from the wall.

(E) The ends of each handrail shall return to the wall.

(F) Each handrail and fastener shall be completely smooth and free of rough edges.

(8) Heated surfaces.

(A) Each heated surface in excess of 100°F with which a resident may have contact shall be insulated and covered to protect the resident.

(B) If heated surfaces, including cook tops, ovens, and steam tables, are used in resident areas, emergency shutoffs shall be provided.

(9) Hand-washing stations.

(A) The water supply spouts for each sink shall be sensor-operated or operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist.

(B) The water supply spout at each sink located in the resident unit and any other areas available for resident use shall be mounted so that the discharge point is at least five inches above the rim of the fixture.

(C) An enclosed single-issue paper towel dispenser or mechanical hand-drying device shall be provided at each hand-washing sink.

(D) A wastebasket shall be located at each hand-washing sink.

(E) A mirror shall be placed at each hand-washing sink located in a resident room, a resident toilet room, and a bathing room and in each public toilet room. The placement of the mirror shall allow for convenient use by both a person who uses a wheelchair and a person who is ambulatory. The bottom edge of each mirror shall be no more than 40 inches from floor level.

(10) Lighting.

(A) All interior and exterior nursing facility lighting shall be designed to reduce glare.

(B) Each space occupied by persons, machinery, equipment within the nursing facility, and approaches to the nursing facility and parking lots shall have lighting.

(C) Each corridor and stairway shall remain lighted at all times.

(D) Each resident room shall have general lighting and night lighting. The nursing facility shall have a reading light for each resident. At least one light fixture for night lighting shall be switched at the entrance to each resident's room. All switches for the control of lighting in resident areas shall be of the quiet-operating type.

(E) Each light located in a resident-use area

shall be equipped with a shade, globe, grid, or glass panel.

(F) Each light fixture in wet areas, including kitchens and showers, shall be vapor-resistant and shall have cleanable, shatter-resistant lenses and no exposed lamps.

(c) Finishes.

(1) Flooring.

(A) Each floor surface shall be easily cleaned and maintained for the location.

(B) If the area is subject to frequent wet-cleaning methods, the floor surface shall not be physically affected by germicidal or other types of cleaning solutions.

(C) Each floor surface, including tile joints used in areas for food preparation or food assembly, shall be water-resistant, greaseproof, and resistant to food acids. Floor construction in dietary and food preparation areas shall be free of spaces that can harbor rodents and insects.

(D) Each flooring surface, including wet areas in kitchens, showers, and bath areas, entries from exterior to interior spaces, and stairways and ramps, shall have slip-resistant surfaces.

(E) All floor construction and joints of structural elements that have openings for pipes, ducts, and conduits shall be tightly sealed to prevent entry of rodents and insects.

(F) Highly polished flooring or flooring finishes that create glare shall be avoided.

(G) Each flooring surface shall allow for ease of ambulation and movement of all wheeled equipment used by residents or staff and shall provide for smooth transitions between differing floor surfaces.

(H) Each threshold and expansion joint shall be designed to accommodate rolling traffic and prevent tripping.

(I) Each carpet and carpet with padding in all resident-use areas shall be glued down or stretched taut and free of loose edges or wrinkles to avoid hazards or interference with the operation of lifts, wheelchairs, walkers, wheeled carts, and residents utilizing orthotic devices.

(2) Walls, wall bases, and wall protection.

(A) Each wall finish shall be washable and, if located near plumbing fixtures, shall be smooth and moisture-resistant.

(B) Wall protection and corner guards shall be durable and scrubbable.

(C) Each wall base in areas that require frequent wet cleaning, including kitchens, clean and soiled workrooms, and housekeeping rooms, shall

be continuous and coved with the floor, tightly sealed to the wall, and constructed without voids that can harbor rodents and insects.

(D) All wall construction, finish, and trim in dietary and food storage areas shall be free from spaces that can harbor rodents, insects, and moisture.

(E) Each wall opening for pipes, ducts, and conduits and the joints of structural elements shall be tightly sealed to prevent entry of rodents and insects.

(F) Highly polished walls or wall finishes that create glare shall be avoided.

(3) Ceilings.

(A) The finish of each ceiling in resident-use areas and staff work areas shall be easily cleanable.

(B) Each ceiling in dietary, food preparation, food assembly, and food storage areas shall have a finished ceiling covering all overhead pipes and ducts. The ceiling finish shall be washable or easily cleaned by dustless methods, including vacuum cleaning.

(C) Each ceiling opening for pipes, ducts, and conduits and all joints of structural elements shall be tightly sealed to prevent entry of rodents and insects.

(D) Impervious ceiling finishes that are easily cleaned shall be provided in each soiled workroom, housekeeping room, and bathing room.

(E) Finished ceilings may be omitted in mechanical and equipment spaces, shops, general storage areas, and similar spaces unless required for fire protection. (Authorized by and implementing K.S.A. 39-932; effective Jan. 7, 2011.)

**26-40-305. Nursing facility physical environment; mechanical, electrical, and plumbing systems.** (a) Applicability. This regulation shall apply to all nursing facilities.

(b) Codes and standards. Each nursing facility shall meet the requirements of the building codes, standards, and regulations enforced by city, county, or state jurisdictions. The requirements specified in this regulation shall be considered as a minimum.

(1) Each nursing facility shall meet the requirements of the national fire protection association's NFPA 101 "life safety code" (LSC), as adopted by reference in K.A.R. 26-39-105.

(2) Each applicant for a nursing facility license and each addition to a nursing facility licensed on or after the effective date of this regulation shall meet the requirements of the "international

building code" (IBC), as adopted by reference in K.A.R. 26-39-105.

(3) Each nursing facility and each portion of each nursing facility that was approved under a previous regulation shall, at a minimum, remain in compliance with the regulation or building code in effect at the date of licensure, unless otherwise indicated.

(4) Each nursing facility shall have a complete set of manufacturer's operating, maintenance, and preventive maintenance instructions for each piece of building, mechanical, dietary, and laundry equipment.

(c) Heating, ventilation, and air conditioning systems. Each nursing facility's heating, ventilation, and air conditioning systems shall be initially tested, balanced, and operated to ensure that system performance conforms to the requirements of the plans and specifications.

(1) Each nursing facility shall have a test and balance report from a certified member of the national environmental balancing bureau or the associated air balance council and shall maintain a copy of the report for inspection by department personnel.

(2) Each nursing facility shall meet the minimum ventilation rate requirements in table 1a. If the building was licensed as a nursing facility on the effective date of this regulation, the minimum ventilation rate requirements shall be the levels specified in table 1b.

(3) Each nursing facility shall have a heating, ventilation, and air conditioning system designed to maintain a year-round indoor temperature range of 70°F to 85°F in resident care areas.

(d) Insulation. Each nursing facility shall have insulation surrounding the mechanical, electrical, and plumbing equipment to conserve energy, protect residents and personnel, prevent vapor condensation, and reduce noise. Insulation shall be required for the following fixtures within the nursing facility:

(1) All ducts or piping operating at a temperature greater than 100°F; and

(2) all ducts or pipes operating at a temperature below ambient at which condensation could occur.

(e) Plumbing and piping systems. The water supply systems of each nursing facility shall meet the following requirements:

(1) Water service mains, branch mains, risers, and branches to groups of fixtures shall be valved. A stop valve shall be provided at each fixture.

(2) Backflow prevention devices or vacuum breakers shall be installed on hose bibs, janitors'

sinks, bedpan flushing attachments, and fixtures to which hoses or tubing can be attached.

(3) Water distribution systems shall supply water during maximum demand periods at sufficient pressure to operate all fixtures and equipment.

(4) Water distribution systems shall provide hot water at hot water outlets at all times. A maximum variation of 98°F to 120°F shall be acceptable at bathing facilities, at sinks in resident-use areas, and in clinical areas. At least one sink in each dietary services area not designated as a hand-washing sink shall have a maximum water temperature of 120°F.

(5) Water-heating equipment shall have sufficient capacity to supply hot water at temperatures of at least 120°F in dietary and laundry areas. Water temperature shall be measured at the hot water point of use or at the inlet to processing equipment.

(f) Electrical requirements. Each nursing facility shall have an electrical system that ensures the safety, comfort, and convenience of each resident.

(1) Panelboards serving lighting and appliance circuits shall be located on the same floor as the circuits the panelboards serve. This requirement shall not apply to emergency system circuits.

(2) The minimum lighting intensity levels shall be the levels specified in table 2a. Portable lamps shall not be an acceptable light source to meet minimum requirements, unless specified in table 2a. If the building was licensed as a nursing facility on the effective date of this regulation, the minimum lighting intensity levels shall be the levels specified in table 2b.

(3) Each electrical circuit to fixed or portable equipment in hydrotherapy units shall have a ground-fault circuit interrupter.

(4) Each resident bedroom shall have at least one duplex-grounded receptacle on each side of the head of each bed and another duplex-grounded receptacle on another wall. A television convenience outlet shall be located on at least one wall. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, each resident bedroom shall have at least one duplex-grounded receptacle.

(5) Duplex-grounded receptacles for general use shall be installed a maximum of 50 feet apart in all corridors and a maximum of 25 feet from the ends of corridors.

(g) Emergency power. Each nursing facility shall have an emergency electrical power system that can supply adequate power to operate all of the following:

(1) Lighting of all emergency entrances and exits, exit signs, and exit directional lights;

(2) equipment to maintain the fire detection, alarm, and extinguishing systems;

(3) exterior electronic door monitors;

(4) the call system;

(5) a fire pump, if installed;

(6) general illumination and selected receptacles in the vicinity of the generator set;

(7) the paging or speaker system if the system is intended for communication during an emergency; and

(8) if life-support systems are used, an emergency generator. The emergency generator shall be located on the premises and shall meet the requirements of the LSC, as adopted by reference in K.A.R. 26-39-105.

(h) Reserve heating. Each nursing facility's heating system shall remain operational under loss of normal electrical power. Each nursing facility shall have heat sources adequate in number and arrangement to accommodate the nursing facility's needs if one or more heat sources become inoperable due to breakdown or routine maintenance.

(i) Preventive maintenance program. Each nursing facility shall have a preventive maintenance program to ensure that all of the following conditions are met:

(1) All electrical and mechanical equipment is maintained in good operating condition.

(2) The interior and exterior of the building are safe, clean, and orderly.

(3) Resident care equipment is maintained in a safe, operating, and sanitary condition.

(j) Tables.

Table 1a

Pressure Relationships and Ventilation of Certain Areas

Room Name or Area Designation	Pressure Relationship to Adjacent Areas	Minimum Air Changes of Outdoor Air Per Hour Supplied to Room	Minimum Total Air Changes Per Hour Supplied to Room	All Air Exhausted Directly to Outdoors	Recirculated Within Room Units
Resident's room:					
General	°	2	4	Optional	Optional
Bed	°	2	4	Optional	Optional
Toilet room	Negative	Optional	10	Yes	No
Medication room	Positive	2	4	Optional	Optional
Consultation room	°	2	6	Optional	Optional
Clean workroom	Positive	2	4	Optional	Optional
Soiled workroom	Negative	2	10	Yes	No
Housekeeping	Negative	Optional	10	Yes	No
Public restroom	Negative	Optional	10	Yes	No
Living, dining, and recreation room	°	2	4	Optional	Optional
Nourishment area	°	2	4	Optional	Optional
Kitchen and other food preparation and serving areas	°	2	10	Yes	Yes
Warewashing room	Negative	Optional	10	Yes	Yes
Food storage (nonrefrigerated)	°	Optional	2	Yes	No
Den	°	2	4	Optional	Optional
Central bath and showers	Negative	Optional	10	Yes	No
Soiled Linen Sorting and Storage	Negative	Optional	10	Yes	No
Laundry, Processing	°	2	10	Yes	No
Clean Linen Storage	Positive	Optional	2	Yes	No
Multipurpose room	°	2	4	Optional	Optional
Rehabilitation room	Negative	2	6	Optional	Optional
Beauty and barber shop	Negative	2	10	Yes	No
Corridors	°	Optional	2	Optional	Optional
Designated smoking area	Negative	Optional	20	Yes	No

° Continuous directional control not required

Table 1b

Pressure Relationships and Ventilation of Certain Areas

Area Designation	Pressure Relationship to Adjacent Areas	Minimum Air Changes of Outdoor Air Per Hour Supplied to Room	Minimum Total Air Changes Per Hour Supplied to Room	All Air Exhausted Directly to Outdoors	Recirculated Within Room Units
Resident's Room	Equal	2	2	Optional	Optional
Resident Area Corridor	Equal	Optional	2	Optional	Optional
Examination and Treatment Room	Equal	2	6	Optional	Optional
Physical Therapy	Negative	2	6	Optional	Optional
Activities Room	Negative	2	6	Optional	Optional
Soiled Workroom	Negative	2	10	Yes	No
Medicine Preparation and Clean Workroom	Positive	2	4	Optional	Optional
Toilet Room	Negative	Optional	10	Yes	No
Bathroom	Negative	Optional	10	Yes	No
Janitors' Closets	Negative	Optional	10	Yes	No
Linen and Trash Chute Rooms	Negative	Optional	10	Yes	No
Food Preparation Center	Equal	2	10	Yes	No

Warewashing Room	Negative	Optional	10	Yes	No
Dietary Dry Storage	Equal	Optional	2	Yes	No
Laundry, Processing Room	Equal	2	10	Yes	No
Soiled Linen Sorting and Storage	Negative	Optional	10	Yes	No
Clean Linen Storage	Positive	Optional	2	Optional	Optional
Personal Care Room	Negative	2	6	Yes	No
Designated Smoking Area	Negative	Optional	20	Yes	No

**Table 2a****Artificial Light Requirements**

<b>Place</b>	<b>Light Measured in Foot-Candles</b>	<b>Where Measured</b>
Resident's room:		
General	30	Three feet above floor
Bed	30	Mattress top level, at bed wall to three feet out from bed wall
Toilet room	30	Three feet above floor
Medication preparation	30	Counter level
Nurses' work area and office:		
General	30	Three feet above floor
Desk and charts	50	Desk level
Medication room	100	Counter level
Consultation room	30	Three feet above floor
Clean and soiled workrooms	30	Counter level
Storage room	30	Three feet above floor
Housekeeping	30	Three feet above floor
Public restroom	30	Floor level
Living, recreation rooms	30	Three feet above floor
Dining room	50	Table level
Nourishment area	50	Counter level
Kitchen in a resident unit	50	Counter level
Central kitchen (includes food preparation and serving areas)	70	Counter level
Food storage (nonrefrigerated)	30	Three feet above floor
Den	30	Chair or table level
Reading and other specialized areas (may be portable lamp)	70	Chair or table level
Central bath and showers	30	Three feet above floor
Laundry	30	Three feet above floor
Multipurpose room	30	Three feet above floor
Rehabilitation room	30	Three feet above floor
Beauty and barber shop	50	Counter level
Corridors:		
Resident waking hours	30	Floor level
Resident sleeping hours	10	Floor level
Stairways	20	Step level
Exits:		
Resident waking hours	30	Floor level
Resident sleeping hours	10	Floor level
Maintenance service and equipment area	30	Floor level
Heating plant space	30	Floor level

Table 2b

Artificial Light Requirements

Place	Light Measured in Foot-Candles	Where Measured
Kitchen in a resident unit	50	Counter level
Central kitchen (includes food preparation and serving areas)	70	Counter level
Dining Room	25	Table level
Living room or recreation room		
General	15	Three feet above floor
Reading and other specialized areas (may be portable lamp)	50	Chair or table level
Nurses' station and office:		
General	20	Three feet above floor
Desk and charts	50	Desk level
Clean workroom	30	Counter level
Medication room	100	Counter level
Central bath and showers	30	Three feet above floor
Resident's room:		
General	10	Three feet above floor
Bed	30	Mattress top level, at bed wall to three feet out from bed wall
Laundry	30	Three feet above floor
Janitor's closet	15	Three feet above floor
Storage room:		
General	5	Three feet above floor
Disinfectant or cleaning agent storage area	15	Three feet above floor
Corridors	10	Floor level
Stairways	20	Step level
Exits	5	Floor level
Heating plant space	5	Floor level

(Authorized by and implementing K.S.A. 39-932; effective Jan. 7, 2011.)

**Article 41.—ASSISTED LIVING FACILITIES AND RESIDENTIAL HEALTH CARE FACILITIES**

**26-41-101. Administration.** (a) Administrator and operator responsibilities. The administrator or operator of each assisted living facility or residential health care facility ("facility") shall ensure that the facility is operated in a manner so that each resident receives care and services in accordance with each resident's functional capacity screening and negotiated service agreement.

(b) Administrator and operator criteria. Each licensee shall appoint an administrator or operator who meets the following criteria:

- (1) Is at least 21 years of age;
- (2) possesses a high school diploma or the equivalent;
- (3) holds a Kansas license as an adult care home administrator or has successfully completed an operator training course and passed the test approved by the secretary of Kansas department of

health and environment pursuant to K.S.A. 39-923 and amendments thereto; and

(4) has authority and responsibility for the operation of the facility and compliance with licensing requirements.

(c) Administrator and operator position description. Each licensee shall adopt a written position description for the administrator or operator that includes responsibilities for the following:

- (1) Planning, organizing, and directing the facility;
- (2) implementing operational policies and procedures for the facility; and
- (3) authorizing, in writing, a responsible employee who is 18 years old or older to act on the administrator's or operator's behalf in the absence of the administrator or operator.

(d) Resident rights. Each administrator or operator shall ensure the development and implementation of written policies and procedures that incorporate the principles of individuality, auton-

omy, dignity, choice, privacy, and a home environment for each resident. The following provisions shall be included in the policies and procedures:

(1) The recognition of each resident's rights, responsibilities, needs, and preferences;

(2) the freedom of each resident or the resident's legal representative to select or refuse a service and to accept responsibility for the consequences;

(3) the development and maintenance of social ties for each resident by providing opportunities for meaningful interaction and involvement within the facility and the community;

(4) furnishing and decorating each resident's personal space;

(5) the recognition of each resident's personal space as private and the sharing of an apartment or individual living unit only when agreed to by the resident;

(6) the maintenance of each resident's lifestyle if there are not adverse effects on the rights and safety of other residents; and

(7) the resolution of grievances through a specific process that includes a written response to each written grievance within 30 days.

(e) Resident liability. Each resident shall be liable only for the charges disclosed to the resident or the resident's legal representative and documented in a signed agreement at admission and in accordance with K.A.R. 26-39-103.

(1) A resident who is involuntarily discharged, including discharge due to death, shall not be responsible for the following:

(A) Fees for room and board beyond the date established in the signed contractual agreement or the date of actual discharge if an appropriate discharge notice has been given to the resident or the resident's legal representative in accordance with K.A.R. 26-39-102; and

(B) fees for any services specified in the negotiated services agreement after the date the resident has vacated the facility and no longer receives these services.

(2) A resident who is voluntarily discharged shall not be responsible for the following:

(A) Fees for room and board accrued beyond the end of the 30-day period following the facility's receipt of a written notice of voluntary discharge submitted by the resident or resident's legal representative or the date of actual discharge if this date extends beyond the 30-day period; and

(B) fees for any services specified in the negotiated services agreement after the date the

resident has vacated the facility and no longer receives these services.

(f) Staff treatment of residents. Each administrator or operator shall ensure the development and implementation of written policies and procedures that prohibit the abuse, neglect, and exploitation of residents by staff. The administrator or operator shall ensure that all of the following requirements are met:

(1) No resident shall be subjected to any of the following:

(A) Verbal, mental, sexual, or physical abuse, including corporal punishment and involuntary seclusion;

(B) neglect; or

(C) exploitation.

(2) The facility shall not employ any individual who has been identified on a state nurse aide registry as having abused, neglected, or exploited any resident in an adult care home.

(3) Each allegation of abuse, neglect, or exploitation shall be reported to the administrator or operator of the facility as soon as staff is aware of the allegation and to the department within 24 hours. The administrator or operator shall ensure that all of the following requirements are met:

(A) An investigation shall be started when the administrator or operator, or the designee, receives notification of an alleged violation.

(B) Immediate measures shall be taken to prevent further potential abuse, neglect, or exploitation while the investigation is in progress.

(C) Each alleged violation shall be thoroughly investigated within five working days of the initial report. Results of the investigation shall be reported to the administrator or operator.

(D) Appropriate corrective action shall be taken if the alleged violation is verified.

(E) The department's complaint investigation report shall be completed and submitted to the department within five working days of the initial report.

(F) A written record shall be maintained of each investigation of reported abuse, neglect, or exploitation.

(g) Availability of policies and procedures. Each administrator or operator shall ensure that policies and procedures related to resident services are available to staff at all times and are available to each resident, legal representatives of residents, case managers, and families during normal business hours. A notice of availability shall be posted in a place readily accessible to residents.

(h) Power of attorney, guardianship, and conservatorship. Authority as a power of attorney, durable power of attorney for health care decisions, guardian, or conservator shall not be exercised by anyone employed by or having a financial interest in the facility, unless the person is related to the resident within the second degree.

(i) Reports. Each administrator or operator shall ensure the accurate completion and electronic submission of annual and semiannual statistical reports regarding residents, employees, and facility occupancy to the department no later than 20 days following the last day of the period being reported. The administrator or operator shall ensure the submission of any other reports required by the department.

(j) Emergency telephone. Each administrator or operator shall ensure that the residents and employees have access to a telephone for emergency use at no cost. The administrator or operator shall ensure that the names and telephone numbers of persons or places commonly required in emergencies are posted adjacent to this telephone.

(k) Ombudsman. Each administrator or operator shall ensure the posting of the names, addresses, and telephone numbers of the Kansas department on aging and the office of the long-term care ombudsman with information that these agencies can be contacted to report actual or potential abuse, neglect, or exploitation of residents or to register complaints concerning the operation of the facility. The administrator or operator shall ensure that this information is posted in an area readily accessible to all residents and the public.

(l) Survey report and plan of correction. Each administrator or operator shall ensure that a copy of the most recent survey report and plan of correction is available in a public area to residents and any other individuals wishing to examine survey results. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-41-102. Staff qualifications.** (a) The administrator or operator of each assisted living facility or residential health care facility shall ensure the provision of a sufficient number of qualified personnel to provide each resident with services and care in accordance with that resident's functional capacity screening, health care service plan, and negotiated service agreement.

(b) Direct care staff or licensed nursing staff shall be awake and responsive at all times.

(c) A registered professional nurse shall be available to provide supervision to licensed practical nurses, pursuant to K.S.A. 65-1113 and amendments thereto.

(d) The employee records and agency staff records shall contain the following documentation:

(1) Evidence of licensure, registration, certification, or a certificate of successful completion of a training course for each employee performing a function that requires specialized education or training;

(2) supporting documentation for criminal background checks of facility staff and contract staff, excluding any staff licensed or registered by a state agency, pursuant to K.S.A. 39-970 and amendments thereto;

(3) supporting documentation from the Kansas nurse aide registry that the individual does not have a finding of having abused, neglected, or exploited a resident in an adult care home; and

(4) supporting documentation that the individual does not have a finding of having abused, neglected, or exploited any resident in an adult care home, from the nurse aide registry in each state in which the individual has been known to have worked as a certified nurse aide. (Authorized by K.S.A. 39-932 and K.S.A. 2008 Supp. 39-936; implementing K.S.A. 39-932, K.S.A. 2008 Supp. 39-936, and K.S.A. 2008 Supp. 39-970; effective May 29, 2009.)

**26-41-103. Staff development.** (a) The administrator or operator of each assisted living facility or residential health care facility shall ensure the provision of orientation to new employees and regular in-service education for all employees to ensure that the services provided assist residents to attain and maintain their individuality, autonomy, dignity, independence, and ability to make choices in a home environment.

(b) The topics for orientation and in-service education shall include the following:

(1) Principles of assisted living;

(2) fire prevention and safety;

(3) disaster procedures;

(4) accident prevention;

(5) resident rights;

(6) infection control; and

(7) prevention of abuse, neglect, and exploitation of residents.

(c) If the facility admits residents with dementia, the administrator or operator shall ensure the provision of staff orientation and in-service educa-

tion on the treatment and appropriate response to persons who exhibit behaviors associated with dementia. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-41-104. Disaster and emergency preparedness.** (a) The administrator or operator of each assisted living facility or residential health care facility shall ensure the provision of a sufficient number of staff members to take residents who would require assistance in an emergency or disaster to a secure location.

(b) Each administrator or operator shall ensure the development of a detailed written emergency management plan to manage potential emergencies and disasters, including the following:

- (1) Fire;
- (2) flood;
- (3) severe weather;
- (4) tornado;
- (5) explosion;
- (6) natural gas leak;
- (7) lack of electrical or water service;
- (8) missing residents; and
- (9) any other potential emergency situations.

(c) Each administrator or operator shall ensure the establishment of written agreements that will provide for the following if an emergency or disaster occurs:

- (1) Fresh water;
- (2) evacuation site; and
- (3) transportation of residents to an evacuation site.

(d) Each administrator or operator shall ensure disaster and emergency preparedness by ensuring the performance of the following:

(1) Orientation of new employees at the time of employment to the facility's emergency management plan;

(2) education of each resident upon admission to the facility regarding emergency procedures;

(3) quarterly review of the facility's emergency management plan with employees and residents; and

(4) an emergency drill, which shall be conducted at least annually with staff and residents. This drill shall include evacuation of the residents to a secure location.

(e) Each administrator or operator shall make the emergency management plan available to the staff, residents, and visitors. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-41-105. Resident records.** (a) The administrator or operator of each assisted living facility or residential health care facility shall ensure the maintenance of a record for each resident in accordance with accepted professional standards and practices.

(1) Designated staff shall maintain the record of each discharged resident who is 18 years of age or older for at least five years after the discharge of the resident.

(2) Designated staff shall maintain the record of each discharged resident who is less than 18 years of age for at least five years after the resident reaches 18 years of age or at least five years after the date of discharge, whichever time period is longer.

(b) Each administrator or operator shall ensure that all information in each resident's record, regardless of the form or storage method for the record, is kept confidential, unless release is required by any of the following:

(1) Transfer of the resident to another health care facility;

(2) law;

(3) third-party payment contract; or

(4) the resident or legal representative of the resident.

(c) Each administrator or operator shall ensure the safeguarding of resident records against the following:

(1) Loss;

(2) destruction;

(3) fire;

(4) theft; and

(5) unauthorized use.

(d) Each administrator or operator shall ensure the accuracy and confidentiality of all resident information transmitted by means of a facsimile machine.

(e) If electronic medical records are used, each administrator or operator shall ensure the development of policies addressing the following requirements:

(1) Protection of electronic medical records, including entries by only authorized users;

(2) safeguarding of electronic medical records against unauthorized alteration, loss, destruction, and use;

(3) prevention of the unauthorized use of electronic signatures;

(4) confidentiality of electronic medical records; and

(5) preservation of electronic medical records.

(f) Each resident record shall contain at least the following:

- (1) The resident's name;
- (2) the dates of admission and discharge;
- (3) the admission agreement and any amendments;
- (4) the functional capacity screenings;
- (5) the health care service plan, if applicable;
- (6) the negotiated service agreement and any revisions;
- (7) the name, address, and telephone number of the physician and the dentist to be notified in an emergency;
- (8) the name, address, and telephone number of the legal representative or the individual of the resident's choice to be notified in the event of a significant change in condition;
- (9) the name, address, and telephone number of the case manager, if applicable;
- (10) records of medications, biologicals, and treatments administered and each medical care provider's order if the facility is managing the resident's medications and medical treatments; and
- (11) documentation of all incidents, symptoms, and other indications of illness or injury including the date, time of occurrence, action taken, and results of the action. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-41-106. Community governance.** (a) The administrator or operator of each assisted living facility or residential health care facility shall ensure the facilitation of the organization of at least one resident council, each of which shall meet at least quarterly to provide residents with a forum to provide input into community governance.

(b) Each administrator or operator shall ensure the accommodation of the council process by providing space for the meetings, posting notices of the meetings, and assisting residents who wish to attend the meetings.

(c) In order to permit a free exchange of ideas and concerns, each administrator or operator shall ensure that all meetings are conducted without the presence of facility staff, unless allowed by the residents.

(d) Each administrator or operator shall respond to each written idea and concern received from the council, in writing, within 30 days after the meeting at which the written ideas and concerns were collected. The administrator or operator shall ensure that a copy of each written idea or concern and each response is available to sur-

veyors. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-41-200. Resident criteria.** (a) The administrator or operator of each assisted living facility or residential health care facility shall ensure the development and implementation of written admission, transfer, and discharge policies that protect the rights of each resident, pursuant to K.A.R. 26-39-102. In addition, the administrator or operator shall ensure that any resident who has one or more of the following conditions is not admitted or retained unless the negotiated service agreement includes services sufficient to meet the needs of the resident:

(1) Incontinence, if the resident cannot or will not participate in management of the problem;

(2) immobility, if the resident is totally dependent on another person's assistance to exit the building;

(3) any ongoing condition requiring two or more persons to physically assist the resident;

(4) any ongoing, skilled nursing intervention needed 24 hours a day; or

(5) any behavioral symptom that exceeds manageability.

(b) Each administrator or operator shall ensure that any resident whose clinical condition requires the use of physical restraints is not admitted or retained. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-41-201. Resident functional capacity screening.** (a) On or before each individual's admission to an assisted living facility or residential health care facility, a licensed nurse, a licensed social worker, or the administrator or operator shall conduct a screening to determine the individual's functional capacity and shall record all findings on a screening form specified by the department. The administrator or operator may integrate the department's screening form into a form developed by the facility, which shall include each element and definition specified by the department.

(b) A licensed nurse shall assess any resident whose functional capacity screening indicates the need for health care services.

(c) Designated facility staff shall conduct a screening to determine each resident's functional capacity according to the following requirements:

(1) At least once every 365 days;

(2) following any significant change in condition as defined in K.A.R. 26-39-100; and

(3) at least quarterly if the resident receives assistance with eating from a paid nutrition assistant.

(d) Designated facility staff shall ensure that each resident's functional capacity at the time of screening is accurately reflected on that resident's screening form.

(e) Designated facility staff shall use the results of the functional capacity screening as a basis for determining the services to be included in the resident's negotiated service agreement. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-41-202. Negotiated service agreement.** (a) The administrator or operator of each assisted living facility or residential health care facility shall ensure the development of a written negotiated service agreement for each resident, based on the resident's functional capacity screening, service needs, and preferences, in collaboration with the resident or the resident's legal representative, the case manager, and, if agreed to by the resident or the resident's legal representative, the resident's family. The negotiated service agreement shall provide the following information:

(1) A description of the services the resident will receive;

(2) identification of the provider of each service; and

(3) identification of each party responsible for payment if outside resources provide a service.

(b) The negotiated service agreement shall promote the dignity, privacy, choice, individuality, and autonomy of the resident.

(c) Each administrator or operator shall ensure the development of an initial negotiated service agreement at admission.

(d) Each administrator or operator shall ensure the review and, if necessary, revision of each negotiated service agreement according to the following requirements:

(1) At least once every 365 days;

(2) following any significant change in condition, as defined in K.A.R. 26-39-100;

(3) at least quarterly, if the resident receives assistance with eating from a paid nutrition assistant; and

(4) if requested by the resident or the resident's legal representative, facility staff, the case manager, or, if agreed to by the resident or the resident's legal representative, the resident's family.

(e) A licensed nurse shall participate in the development, review, and revision of the negotiat-

ed service agreement if the resident's functional capacity screening indicates the need for health care services.

(f) If a resident or the resident's legal representative refuses a service that the administrator or operator, the licensed nurse, the resident's medical care provider, or the case manager believes is necessary for the resident's health and safety, the negotiated service agreement shall include the following:

(1) The service or services refused;

(2) identification of any potential negative outcomes for the resident if the service or services are not provided;

(3) evidence of the provision of education to the resident or the resident's legal representative of the potential risk of any negative outcomes if the service or services are not provided; and

(4) an indication of acceptance by the resident or the resident's legal representative of the potential risk.

(g) The negotiated service agreement shall not include circumstances in which the lack of a service has the potential to affect the health and safety of other residents, facility staff, or the public.

(h) Each individual involved in the development of the negotiated service agreement shall sign the agreement. The administrator or operator shall ensure that a copy of the initial agreement and any subsequent revisions are provided to the resident or the resident's legal representative.

(i) Each administrator or operator shall ensure that each resident receives services according to the provisions of that resident's negotiated service agreement.

(j) If a resident's negotiated service agreement includes the use of outside resources, the designated facility staff shall perform the following:

(1) Provide the resident, the resident's legal representative, the case manager, and, if agreed to by the resident or the resident's legal representative, the resident's family, with a list of providers available to provide needed services;

(2) assist the resident, if requested, in contacting outside resources for services; and

(3) monitor the services provided by outside resources and act as an advocate for the resident if services do not meet professional standards of practice. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-41-203. General services.** (a) Range of services. The administrator or operator of each

assisted living facility or residential health care facility shall ensure the provision or coordination of the range of services specified in each resident's negotiated service agreement. The range of services may include the following:

(1) Daily meal service based on each resident's needs;

(2) health care services based on an assessment by a licensed nurse and in accordance with K.A.R. 26-41-204;

(3) housekeeping services essential for the health, comfort, and safety of each resident;

(4) medical, dental, and social transportation;

(5) planned group and individual activities that meet the needs and interests of each resident; and

(6) other services necessary to support the health and safety of each resident.

(b) Adult day care services. Any administrator or operator of an assisted living facility or residential health care facility may provide adult day care services to any individual who meets the facility's admission and retention criteria and receives services less than 24 hours a day if the administrator or operator ensures that all of the following conditions are met:

(1) Written policies are developed and procedures are implemented for the provision of adult day care services.

(2) All the requirements for admission of a resident to an assisted living facility or residential health care facility are met for an individual admitted for adult day care services.

(3) At least 60 square feet of common use living, dining, and activity space is available in the facility for each resident of the facility and each resident receiving adult day care services.

(4) The provision of adult day care services does not adversely affect the care and services offered to other residents of the facility.

(c) Respite care services. Any administrator or operator of an assisted living facility or residential health care facility may provide respite care services to individuals who meet the facility's admission and retention criteria on a short-term basis if the administrator or operator ensures that the following conditions are met:

(1) Written policies are developed and procedures are implemented for the provision of respite care services.

(2) All the requirements for admission of a resident to an assisted living facility or residential health care facility are met for an individual admitted for respite care services.

(d) Special care. Any administrator or operator of an assisted living facility or residential health care facility may choose to serve residents who do not exceed the facility's admission and retention criteria and who have special needs in a special care section of the facility or the entire facility, if the administrator or operator ensures that all of the following conditions are met:

(1) Written policies and procedures are developed and are implemented for the operation of the special care section or facility.

(2) Admission and discharge criteria are in effect that identify the diagnosis, behavior, or specific clinical needs of the residents to be served. The medical diagnosis, medical care provider's progress notes, or both shall justify admission to the special care section or the facility.

(3) A written order from a medical care provider is obtained for admission.

(4) The functional capacity screening indicates that the resident would benefit from the services and programs offered by the special care section or facility.

(5) Before the resident's admission to the special care section or facility, the resident or resident's legal representative is informed, in writing, of the available services and programs that are specific to the needs of the resident.

(6) Direct care staff are present in the special care section or facility at all times.

(7) Before assignment to the special care section or facility, each staff member is provided with a training program related to specific needs of the residents to be served, and evidence of completion of the training is maintained in the employee's personnel records.

(8) Living, dining, activity, and recreational areas are provided within the special care section, except when residents are able to access living, dining, activity, and recreational areas in another section of the facility.

(9) The control of exits in the special care section is the least restrictive possible for the residents in that section.

(e) Maintenance. Designated staff shall provide routine maintenance, including the control of pests and rodents, and repairs in each resident's bedroom and common areas inside and outside the facility as specified in the admission agreement.

(f) Services not provided. If an administrator or operator of an assisted living facility or residential health care facility chooses not to provide or

coordinate any service as specified in subsection (a), the administrator or operator shall notify the resident, in writing, on or before the resident's admission to the facility. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-41-204. Health care services.** (a) The administrator or operator in each assisted living facility or residential health care facility shall ensure that a licensed nurse provides or coordinates the provision of necessary health care services that meet the needs of each resident and are in accordance with the functional capacity screening and the negotiated service agreement.

(b) If the functional capacity screening indicates that a resident is in need of health care services, a licensed nurse, in collaboration with the resident, the resident's legal representative, the case manager, and, if agreed to by the resident or resident's legal representative, the resident's family, shall develop a health care service plan to be included as part of the negotiated service agreement.

(c) The health care services provided by or coordinated by a licensed nurse may include the following:

(1) Personal care provided by direct care staff or by certified or licensed nursing staff employed by a home health agency or a hospice;

(2) personal care provided gratuitously by friends or family members; and

(3) supervised nursing care provided by, or under the guidance of, a licensed nurse.

(d) The negotiated service agreement shall contain a description of the health care services to be provided and the name of the licensed nurse responsible for the implementation and supervision of the plan.

(e) A licensed nurse may delegate nursing procedures not included in the nurse aide or medication aide curriculums to nurse aides or medication aides, respectively, under the Kansas nurse practice act, K.S.A. 65-1124 and amendments thereto.

(f) Each administrator or operator shall ensure that a licensed nurse is available to provide immediate direction to medication aides and nurse aides for residents who have unscheduled needs.

(g) Skilled nursing care shall be provided in accordance with K.S.A. 39-923 and amendments thereto.

(1) The health care service plan shall include the skilled nursing care to be provided and the name of the licensed nurse or agency responsible for providing each service.

(2) The licensed nurse providing the skilled nursing care shall document the service and the outcome of the service in the resident's record.

(3) A medical care provider's order for skilled nursing care shall be documented in the resident's record in the facility. A copy of the medical care provider's order from a home health agency or hospice may be used. Medical care provider orders in the clinical records of a home health agency located in the same building as the facility may also be used if the clinical records are available to licensed nurses and direct care staff of the facility.

(4) The administrator or operator shall ensure that a licensed nurse is available to meet each resident's unscheduled needs related to skilled nursing services.

(h) A licensed nurse may provide wellness and health monitoring as specified in the resident's negotiated service agreement.

(i) All health care services shall be provided to residents by qualified staff in accordance with acceptable standards of practice. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-41-205. Medication management.** (a) Self-administration of medication. Any resident may self-administer and manage medications independently or by using a medication container or syringe prefilled by a licensed nurse or pharmacist or by a family member or friend providing this service gratuitously, if a licensed nurse has performed an assessment and determined that the resident can perform this function safely and accurately without staff assistance.

(1) An assessment shall be completed before the resident initially begins self-administration of medication, if the resident experiences a significant change of condition, and annually.

(2) Each assessment shall include an evaluation of the resident's physical, cognitive, and functional ability to safely and accurately self-administer and manage medications independently or by using a prefilled medication container or prefilled syringe.

(3) The resident's clinical record shall contain documentation of the assessment and the determination.

(4) If a resident self-administers medication with a prefilled medication container or syringe, the prefilled medication container or syringe shall have a label with the resident's name and the date the container or syringe was prefilled. The label, or a medication administration record provided to

the resident, shall also include the name and dosage of each medication and the time or event at which the medication is to be self-administered. Facility staff may remind residents to take medications or inquire as to whether medications were taken.

(b) Administration of select medications. Any resident who self-administers medication may select some medications to be administered by a licensed nurse or medication aide. The negotiated service agreement shall reflect this service and identify who is responsible for the administration and management of selected medications.

(c) Administration of medication by family or friends. Any resident may choose to have personal medication administered by family members or friends gratuitously, pursuant to K.S.A. 65-1124 and amendments thereto.

(d) Facility administration of resident's medications. If a facility is responsible for the administration of a resident's medications, the administrator or operator shall ensure that all medications and biologicals are administered to that resident in accordance with a medical care provider's written order, professional standards of practice, and each manufacturer's recommendations. The administrator or operator shall ensure that all of the following are met:

(1) Only licensed nurses and medication aides shall administer and manage medications for which the facility has responsibility.

(2) Medication aides shall not administer medication through the parenteral route.

(3) A licensed nurse or medication aide shall perform the following:

(A) Administer only the medication that the licensed nurse or medication aide has personally prepared;

(B) identify the resident before medication is administered;

(C) remain with the resident until the medication is ingested or applied; and

(D) document the administration of each resident's medication in the resident's medication administration record immediately before or following completion of the task. If the medication administration record identifies only time intervals or events for the administration of medication, the licensed nurse or medication aide shall document the actual clock time the medication is administered.

(4) Any licensed nurse may delegate nursing procedures not included in the medication aide

curriculum to medication aides under the Kansas nurse practice act, K.S.A. 65-1124 and amendments thereto.

(e) Medication orders. Only a licensed nurse or a licensed pharmacist may receive verbal orders for medication from a medical care provider. The licensed nurse shall ensure that all verbal orders are signed by the medical care provider within seven working days of receipt of the verbal order.

(f) Standing orders. Only a licensed nurse shall make the decision for implementation of standing orders for specified medications and treatments formulated and signed by the resident's medical care provider. Standing orders of medications shall not include orders for the administration of schedule II medications or psychopharmacological medications.

(g) Ordering, labeling, and identifying. All medications and biologicals administered by licensed nurses or medication aides shall be ordered from a pharmacy pursuant to a medical care provider's written order.

(1) Any resident who self-administers and manages personal medications may request that a licensed nurse or medication aide reorder the resident's medication from a pharmacy of the resident's choice.

(2) Each prescription medication container shall have a label that was provided by a dispensing pharmacist or affixed to the container by a dispensing pharmacist in accordance with K.A.R. 68-7-14.

(3) A licensed nurse or medication aide may accept over-the-counter medication only in its original, unbroken manufacturer's package. A licensed pharmacist or licensed nurse shall place the full name of the resident on the package. If the original manufacturer's package of an over-the-counter medication contains a medication in a container, bottle, or tube that can be removed from the original package, the licensed pharmacist or a licensed nurse shall place the full name of the resident on both the original manufacturer's medication package and the medication container.

(4) Licensed nurses and medication aides may administer sample medications and medications from indigent medication programs if the administrator or operator ensures the development of policies and implementation of procedures for receiving and identifying sample medications and medications from indigent medication programs that include all of the following conditions:

(A) The medication is not a controlled medication.

(B) A medical care provider's written order accompanies the medication, stating the resident's name; the medication name, strength, dosage, route, and frequency of administration; and any cautionary instructions regarding administration.

(C) A licensed nurse or medication aide receives the medication in its original, unbroken manufacturer's package.

(D) A licensed nurse documents receipt of the medication by entering the resident's name and the medication name, strength, and quantity into a log.

(E) A licensed nurse places identification information on the medication or package containing the medication that includes the medical care provider's name; the resident's name; the medication name, strength, dosage, route, and frequency of administration; and any cautionary instructions as documented on the medical care provider's order. Facility staff consisting of either two licensed nurses or a licensed nurse and a medication aide shall verify that the information on the medication matches the information on the medical care provider's order.

(F) A licensed nurse informs the resident or the resident's legal representative that the medication did not go through the usual process of labeling and initial review by a licensed pharmacist pursuant to K.S.A. 65-1642 and amendments thereto, which requires the identification of both adverse drug interactions or reactions and potential allergies. The resident's clinical record shall contain documentation that the resident or the resident's legal representative has received the information and accepted the risk of potential adverse consequences.

(h) Storage. Licensed nurses and medication aides shall ensure that all medications and biologicals are securely and properly stored in accordance with each manufacturer's recommendations or those of the pharmacy provider and with federal and state laws and regulations.

(1) Licensed nurses or medication aides shall store non-controlled medications and biologicals managed by the facility in a locked medication room, cabinet, or medication cart. Licensed nurses and medication aides shall store controlled medications managed by the facility in separately locked compartments within a locked medication room, cabinet, or medication cart. Only licensed nurses and medication aides shall have access to the stored medications and biologicals.

(2) Each resident managing and self-administering medication shall store medications

in a place that is accessible only to the resident, licensed nurses, and medication aides.

(3) Any resident who self-administers medication and is unable to provide proper storage as recommended by the manufacturer or pharmacy provider may request that the medication be stored by the facility.

(4) A licensed nurse or medication aide shall not administer medication beyond the manufacturer's or pharmacy provider's recommended date of expiration.

(i) Accountability and disposition of medications. Licensed nurses and medication aides shall maintain records of the receipt and disposition of all medications managed by the facility in sufficient detail for an accurate reconciliation.

(1) Records shall be maintained documenting the destruction of any deteriorated, outdated, or discontinued controlled medications and biologicals according to acceptable standards of practice by one of the following combinations:

(A) Two licensed nurses; or

(B) a licensed nurse and a licensed pharmacist.

(2) Records shall be maintained documenting the destruction of any deteriorated, outdated, or discontinued non-controlled medications and biologicals according to acceptable standards of practice by any of the following combinations:

(A) Two licensed nurses;

(B) a licensed nurse and a medication aide;

(C) a licensed nurse and a licensed pharmacist; or

(D) a medication aide and a licensed pharmacist.

(j) Medications sent for short-term absence. A licensed nurse or medication aide shall provide the resident's medication to the resident or the designated responsible party for the resident's short-term absences from the facility, upon request.

(k) Clinical record. The administrator or operator, or the designee, shall ensure that the clinical record of each resident for whom the facility manages medication or prefills medication containers or syringes contains the following documentation:

(1) A medical care provider's order for each medication;

(2) the name of the pharmacy provider of the resident's choice;

(3) any known medication allergies; and

(4) the date and the 12-hour or 24-hour clock time any medication is administered to the resident.

(l) Medication regimen review. A licensed pharmacist shall conduct a medication regimen review at least quarterly for each resident whose medication is managed by the facility and each time the resident experiences any significant change in condition.

(1) The medication regimen review shall identify any potential or current medication-related problems, including the following:

(A) Lack of clinical indication for use of medication;

(B) the use of a subtherapeutic dose of any medication;

(C) failure of the resident to receive an ordered medication;

(D) medications administered in excessive dosage, including duplicate therapy;

(E) medications administered in excessive duration;

(F) adverse medication reactions;

(G) medication interactions; and

(H) lack of adequate monitoring.

(2) The licensed pharmacist or licensed nurse shall notify the medical care provider upon discovery of any variance identified in the medication regimen review that requires immediate action by the medical care provider. The licensed pharmacist shall notify a licensed nurse within 48 hours of any variance identified in the resident's regimen review that does not require immediate action by the medical care provider and specify a time within which the licensed nurse must notify the resident's medical care provider. The licensed nurse shall seek a response from the medical care provider within five working days of the medical care provider's notification of a variance.

(3) The administrator or operator, or the designee, shall ensure that the medication regimen review is kept in each resident's clinical record.

(4) The administrator or operator, or the designee, shall offer each resident who self-administers medication a medication regimen review to be conducted by a licensed pharmacist at least quarterly and each time a resident experiences a significant change in condition. A licensed nurse shall document the resident's decision in the resident's clinical record. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-41-206. Dietary services.** (a) Provision of dietary services. The administrator or operator of each assisted living facility or residential health care facility shall ensure the provision or coordina-

tion of dietary services to residents as identified in each resident's negotiated service agreement. If the administrator or operator of the facility establishes a contract with another entity to provide or coordinate the provision of dietary services to the residents, the administrator or operator shall ensure that entity's compliance with these regulations.

(b) Staff. The supervisory responsibility for dietetic services shall be assigned to one employee.

(1) A dietetic services supervisor or licensed dietitian shall provide scheduled on-site supervision in each facility with 11 or more residents.

(2) If a resident's negotiated service agreement includes the provision of a therapeutic diet, mechanically altered diet, or thickened consistency of liquids, a medical care provider's order shall be on file in the resident's clinical record, and the diet or liquids, or both, shall be prepared according to instructions from a medical care provider or licensed dietitian.

(c) Menus. A dietetic services supervisor or licensed dietitian or, in any assisted living facility or residential health care facility with fewer than 11 residents, designated facility staff shall plan menus in advance and in accordance with the dietary guidelines adopted by reference in K.A.R. 26-39-105.

(1) Menu plans shall be available to each resident on at least a weekly basis.

(2) A method shall be established to incorporate input by residents in the selection of food to be served and scheduling of meal service.

(d) Food preparation. Food shall be prepared using safe methods that conserve the nutritive value, flavor, and appearance and shall be served at the proper temperature.

(1) Food used by facility staff to serve to the residents, including donated food, shall meet all applicable federal, state, and local laws and regulations.

(2) Food in cans that have significant defects, including swelling, leakage, punctures, holes, fractures, pitted rust, or denting severe enough to prevent normal stacking or opening with a manual, wheel-type can opener, shall not be used.

(3) Food provided by a resident's family or friends for individual residents shall not be required to meet federal, state, and local laws and regulations.

(e) Food storage. Facility staff shall store all food under safe and sanitary conditions.

(1) Containers of poisonous compounds and cleaning supplies shall not be stored in the areas used for food storage, preparation, or serving.

(2) Any resident may obtain, prepare, and store food in the resident's apartment or individual living unit if doing so does not present a health or safety hazard to that resident or any other individual. The administrator or operator shall ensure that residents are provided assistance with obtaining food if that service is included in the negotiated service agreement. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-41-207. Infection control.** (a) The administrator or operator of each assisted living facility or residential health care facility shall ensure the provision of a safe, sanitary, and comfortable environment for residents.

(b) Each administrator or operator shall ensure the development of policies and implementation of procedures to prevent the spread of infections. These policies and procedures shall include the following requirements:

(1) Using universal precautions to prevent the spread of blood-borne pathogens;

(2) techniques to ensure that hand hygiene meets professional health care standards;

(3) techniques to ensure that the laundering and handling of soiled and clean linens meet professional health care standards;

(4) providing sanitary conditions for food service;

(5) prohibiting any employee with a communicable disease or any infected skin lesions from coming in direct contact with any resident, any resident's food, or resident care equipment until the condition is no longer infectious;

(6) providing orientation to new employees and employee in-service education at least annually on the control of infections in a health care setting; and

(7) transferring a resident with an infectious disease to an appropriate health care facility if the administrator or operator is unable to provide the isolation precautions necessary to protect the health of other residents.

(c) Each administrator or operator shall ensure the facility's compliance with the department's tuberculosis guidelines for adult care homes adopted by reference in K.A.R. 26-39-105. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

## Article 42.—HOMES PLUS

**26-42-101. Administration.** (a) Administrator and operator responsibilities. The administrator or operator of each home plus ("home") shall ensure that the home is operated in a manner

so that each resident receives care and services in accordance with each resident's functional capacity screening and negotiated service agreement.

(b) Administrator and operator criteria. Each licensee shall appoint an administrator or operator who meets the following criteria:

(1) Is at least 21 years of age;

(2) possesses a high school diploma or the equivalent;

(3) holds a Kansas license as an adult care home administrator or has successfully completed an operator training course and passed the test approved by the secretary of Kansas department of health and environment pursuant to K.S.A. 39-923 and amendments thereto; and

(4) has authority and responsibility for the operation of the home and compliance with licensing requirements.

(c) Administrator and operator position description. Each licensee shall adopt a written position description for the administrator or operator that includes responsibilities for the following:

(1) Planning, organizing, and directing the home;

(2) implementing operational policies and procedures for the home; and

(3) authorizing, in writing, a responsible employee who is 18 years old or older to act on the administrator's or operator's behalf in the absence of the administrator or operator.

(d) Resident rights. Each administrator or operator shall ensure the development and implementation of written policies and procedures that incorporate the principles of individuality, autonomy, dignity, choice, privacy, and a home environment for each resident. The following provisions shall be included in the policies and procedures:

(1) The recognition of each resident's rights, responsibilities, needs, and preferences;

(2) the freedom of each resident or the resident's legal representative to select or refuse a service and to accept responsibility for the consequences;

(3) the development and maintenance of social ties for each resident by providing opportunities for meaningful interaction and involvement within the home and the community;

(4) furnishing and decorating each resident's personal space;

(5) the recognition of each resident's personal space as private and the sharing of a bedroom only when agreed to by the resident;

(6) the maintenance of each resident's lifestyle

if there are not adverse effects on the rights and safety of other residents; and

(7) the resolution of grievances through a specific process that includes a written response to each written grievance within 30 days.

(e) Resident liability. Each resident shall be liable only for the charges disclosed to the resident or the resident's legal representative and documented in a signed agreement at admission and in accordance with K.A.R. 26-39-103.

(1) A resident who is involuntarily discharged, including discharge due to death, shall not be responsible for the following:

(A) Fees for room and board beyond the date established in the signed contractual agreement or the date of actual discharge if an appropriate discharge notice has been given to the resident or the resident's legal representative in accordance with K.A.R. 26-39-102; and

(B) fees for any services specified in the negotiated services agreement after the date the resident has vacated the facility and no longer receives these services.

(2) A resident who is voluntarily discharged shall not be responsible for the following:

(A) Fees for room and board accrued beyond the end of the 30-day period following the home's receipt of a written notice of voluntary discharge submitted by the resident or resident's legal representative or the date of actual discharge if this date extends beyond the 30-day period; and

(B) fees for any services specified in the negotiated service agreement after the date the resident has vacated the home and no longer receives these services.

(f) Staff treatment of residents. Each administrator or operator shall ensure the development and implementation of written policies and procedures that prohibit the abuse, neglect, and exploitation of residents by staff. The administrator or operator shall ensure that all of the following requirements are met:

(1) No resident shall be subjected to any of the following:

(A) Verbal, mental, sexual, or physical abuse, including corporal punishment and involuntary seclusion;

(B) neglect; or

(C) exploitation.

(2) The home shall not employ any individual who has been identified on a state nurse aide registry as having abused, neglected, or exploited any resident in an adult care home.

(3) Each allegation of abuse, neglect, or exploitation shall be reported to the administrator or operator of the home as soon as staff is aware of the allegation and to the department within 24 hours. The administrator or operator shall ensure that all of the following requirements are met:

(A) An investigation shall be started when the administrator or operator, or the designee, receives notification of an alleged violation.

(B) Immediate measures shall be taken to prevent further potential abuse, neglect, or exploitation while the investigation is in progress.

(C) Each alleged violation shall be thoroughly investigated within five working days of the initial report. Results of the investigation shall be reported to the administrator or operator.

(D) Appropriate corrective action shall be taken if the alleged violation is verified.

(E) The department's complaint investigation report shall be completed and submitted to the department within five working days of the initial report.

(F) A written record shall be maintained of each investigation of reported abuse, neglect, or exploitation.

(g) Availability of policies and procedures. Each administrator or operator shall ensure that policies and procedures related to resident services are available to staff at all times and are available to each resident, legal representatives of residents, case managers, and families during normal business hours. A notice of availability shall be posted in a place readily accessible to residents.

(h) Power of attorney, guardianship, and conservatorship. Authority as a power of attorney, durable power of attorney for health care decisions, guardian, or conservator shall not be exercised by anyone employed by or having a financial interest in the home, unless the person is related to the resident within the second degree.

(i) Reports. Each administrator or operator shall ensure the accurate completion and electronic submission of annual and semiannual statistical reports regarding residents, employees, and home occupancy to the department no later than 20 days following the last day of the period being reported. The administrator or operator shall ensure the submission of any other reports required by the department.

(j) Emergency telephone. Each administrator or operator shall ensure that the residents and employees have access to a telephone for emergency use at no cost. Each administrator or

operator shall ensure that the names and telephone numbers of persons or places commonly required in emergencies are posted adjacent to this telephone.

(k) Ombudsman. Each administrator or operator shall ensure the posting of the names, addresses, and telephone numbers of the Kansas department on aging and the office of the long-term care ombudsman with information that these agencies can be contacted to report actual or potential abuse, neglect, or exploitation of residents or to register complaints concerning the operation of the home. The administrator or operator shall ensure that this information is posted in a common area accessible to all residents and the public.

(l) Survey report and plan of correction. Each administrator or operator shall ensure that a copy of the most recent survey report and plan of correction is available in a common area to residents and any other individuals wishing to examine survey results. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-42-102. Staff qualifications.** (a) The administrator or operator of each home plus shall ensure the provision of a sufficient number of qualified personnel to provide each resident with services and care in accordance with that resident's functional capacity screening, health care service plan, and negotiated service agreement.

(b) Direct care staff or licensed nursing staff shall be in attendance and responsive at all times.

(c) A registered professional nurse shall be available to provide supervision to licensed practical nurses, pursuant to K.S.A. 65-1113 and amendments thereto.

(d) The employee records and agency staff records shall contain the following information:

(1) Evidence of licensure, registration, certification, or a certificate of successful completion of a training course for each employee performing a function that requires specialized education or training;

(2) supporting documentation for criminal background checks of facility staff and contract staff, excluding any staff licensed or registered by a state agency, pursuant to K.S.A. 39-970 and amendments thereto;

(3) supporting documentation from the Kansas nurse aide registry that the individual does not have a finding of having abused, neglected, or exploited a resident in an adult care home; and

(4) supporting documentation that the individual does not have a finding of having abused, neglected, or exploited any resident in an adult care home, from the nurse aide registry in each state in which the individual has been known to work as a certified nurse aide. (Authorized by K.S.A. 39-932 and K.S.A. 2007 Supp. 39-936; implementing K.S.A. 39-932, K.S.A. 2007 Supp. 39-936, and K.S.A. 2007 Supp. 39-970; effective May 29, 2009.)

**26-42-103. Staff development.** (a) The administrator or operator of each home plus shall ensure the provision of orientation to new employees and regular in-service education for all employees to ensure that the services provided assist residents to attain and maintain their individuality, autonomy, dignity, independence, and ability to make choices in a home environment.

(b) The topics for orientation and in-service education shall include the following:

(1) Fire prevention and safety;

(2) disaster procedures;

(3) accident prevention;

(4) resident rights;

(5) infection control; and

(6) prevention of abuse, neglect, and exploitation of residents.

(c) If the home plus admits residents with dementia, the administrator or operator shall ensure the provision of staff education, at orientation and at least annually thereafter, on the treatment and appropriate response to persons who exhibit behaviors associated with dementia. (Authorized by and implementing K.S.A. 39-932; effective Oct. 14, 2011.)

**26-42-104. Disaster and emergency preparedness.** (a) The administrator or operator of each home plus shall ensure the provision of a sufficient number of staff members to take residents who would require assistance in an emergency or disaster to a secure location.

(b) Each administrator or operator shall ensure the development of a detailed written emergency management plan to manage potential emergencies and disasters, including the following:

(1) Fire;

(2) flood;

(3) severe weather;

(4) tornado;

(5) explosion;

(6) natural gas leak;

(7) lack of electrical or water service;

- (8) missing residents; and
- (9) any other potential emergency situations.
- (c) Each administrator or operator shall ensure the establishment of written agreements that will provide for the following if an emergency or disaster occurs:
  - (1) Fresh water;
  - (2) evacuation site; and
  - (3) transportation of residents to an evacuation site.
- (d) Each administrator or operator shall ensure disaster and emergency preparedness by ensuring the performance of the following:
  - (1) Orientation of new employees at the time of employment to the home's emergency management plan;
  - (2) education of each resident upon admission to the home regarding emergency procedures;
  - (3) quarterly review of the home's emergency management plan with employees and residents; and
  - (4) an emergency drill, which shall be conducted at least annually with staff and residents. This drill shall include evacuation of the residents to a secure location.
- (e) Each administrator or operator shall make the emergency management plan available to the staff, residents, and visitors. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-42-105. Resident records.** (a) The administrator or operator of each home plus shall ensure the maintenance of a record for each resident in accordance with accepted professional standards and practices.

(1) Designated staff shall maintain the record of each discharged resident who is 18 years of age or older for at least five years after the discharge of the resident.

(2) Designated staff shall maintain the record of each discharged resident who is less than 18 years of age for at least five years after the resident reaches 18 years of age or at least five years after the date of discharge, whichever time period is longer.

(b) Each administrator or operator shall ensure that all information in each resident's record, regardless of the form or storage method for the record, is kept confidential, unless release is required by any of the following:

(1) Transfer of the resident to another health care facility;

- (2) law;
- (3) third-party payment contract; or
- (4) the resident or legal representative of the resident.

(c) Each administrator or operator shall ensure the safeguarding of resident records against the following:

- (1) Loss;
- (2) destruction;
- (3) fire;
- (4) theft; and
- (5) unauthorized use.

(d) Each administrator or operator shall ensure the accuracy and confidentiality of all resident information transmitted by means of a facsimile machine.

(e) If electronic medical records are used, each administrator or operator shall ensure the development of policies addressing the following requirements:

- (1) Protection of electronic medical records, including entries by only authorized users;
- (2) safeguarding of electronic medical records against unauthorized alteration, loss, destruction, and use;

(3) prevention of the unauthorized use of electronic signatures;

(4) confidentiality of electronic medical records; and

- (5) preservation of electronic medical records.

(f) Each resident record shall contain at least the following:

- (1) The resident's name;
- (2) the dates of admission and discharge;
- (3) the admission agreement and any amendments;

(4) the functional capacity screenings;

(5) the health care service plan, if applicable;

(6) the negotiated service agreement and any revisions;

(7) the name, address, and telephone number of the physician and the dentist to be notified in an emergency;

(8) the name, address, and telephone number of the legal representative or the individual of the resident's choice to be notified in the event of a significant change in condition;

(9) the name, address, and telephone number of the case manager, if applicable;

(10) records of medications, biologicals, and treatments administered and each medical care provider's order if the facility is managing the resident's medications and medical treatments; and

(11) documentation of all incidents, symptoms, and other indications of illness or injury including the date, time of occurrence, action taken, and results of the action. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-42-200. Resident criteria.** (a) The administrator or operator of each home plus shall ensure the development and implementation of written admission, transfer, and discharge policies that protect the rights of each resident, pursuant to K.A.R. 26-39-102. In addition, the administrator or operator shall ensure that any resident who has one or more of the following conditions is not admitted or retained unless the negotiated service agreement includes services sufficient to meet the needs of the resident:

(1) Incontinence, if the resident cannot or will not participate in management of the problem;

(2) immobility, if the resident is totally dependent on another person's assistance to exit the building;

(3) any ongoing condition requiring two or more persons to physically assist the resident;

(4) any ongoing, skilled nursing intervention needed 24 hours a day; or

(5) any behavioral symptom that exceeds manageability.

(b) Each administrator or operator shall ensure that any resident whose clinical condition requires the use of physical restraints is not admitted or retained. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-42-201. Resident functional capacity screening.** (a) On or before each individual's admission to a home plus, a licensed nurse, a licensed social worker, or the administrator or operator shall conduct a screening to determine the individual's functional capacity and shall record all findings on a screening form specified by the department. The administrator or operator may integrate the department's screening form into a form developed by the home, which shall include each element and definition specified by the department.

(b) A licensed nurse shall assess any resident whose functional capacity screening indicates the need for health care services.

(c) Designated staff shall conduct a screening to determine each resident's functional capacity according to the following requirements:

(1) At least once every 365 days;

(2) following any significant change in condition as defined in K.A.R. 26-39-100; and

(3) at least quarterly if the resident receives assistance with eating from a paid nutrition assistant.

(d) Designated staff shall ensure that each resident's functional capacity at the time of screening is accurately reflected on that resident's screening form.

(e) Designated staff shall use the results of the functional capacity screening as a basis for determining the services to be included in the resident's negotiated service agreement. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-42-202. Negotiated service agreement.** (a) The administrator or operator of each home plus shall ensure the development of a written negotiated service agreement for each resident, based on the resident's functional capacity screening, service needs, and preferences, in collaboration with the resident or the resident's legal representative, the case manager, and, if agreed to by the resident or the resident's legal representative, the resident's family. The negotiated service agreement shall provide the following information:

(1) A description of the services the resident will receive;

(2) identification of the provider of each service; and

(3) identification of each party responsible for payment if outside resources provide a service.

(b) The negotiated service agreement shall promote the dignity, privacy, choice, individuality, and autonomy of the resident.

(c) Each administrator or operator shall ensure the development of an initial negotiated service agreement at admission.

(d) Each administrator or operator shall ensure the review and, if necessary, revision of each negotiated service agreement according to the following requirements:

(1) At least once every 365 days;

(2) following any significant change in condition, as defined in K.A.R. 26-39-100;

(3) at least quarterly if the resident receives assistance with eating from a paid nutrition assistant; and

(4) if requested by the resident or the resident's legal representative, staff, the case manager, or, if agreed to by the resident or the resident's legal representative, the resident's family.

(e) A licensed nurse shall participate in the development, review, and revision of the negotiated service agreement if the resident's functional capacity screening indicates the need for health care services.

(f) If a resident or the resident's legal representative refuses a service that the administrator or operator, the licensed nurse, the resident's medical care provider, or the case manager believes is necessary for the resident's health and safety, the negotiated service agreement shall include the following:

- (1) The service or services refused;
- (2) identification of any potential negative outcomes for the resident if the service or services are not provided;
- (3) evidence of the provision of education to the resident or the resident's legal representative of the potential risk of any negative outcomes if the service or services are not provided; and
- (4) an indication of acceptance by the resident or the resident's legal representative of the potential risk.

(g) The negotiated service agreement shall not include circumstances in which the lack of a service has the potential to affect the health and safety of other residents, staff, or the public.

(h) Each individual involved in the development of the negotiated service agreement shall sign the agreement. The administrator or operator shall ensure that a copy of the initial agreement and any subsequent revisions are provided to the resident or the resident's legal representative.

(i) Each administrator or operator shall ensure that each resident receives services according to the provisions of that resident's negotiated service agreement.

(j) If a resident's negotiated service agreement includes the use of outside resources, the designated staff shall perform the following:

- (1) Provide the resident, the resident's legal representative, the case manager, and, if agreed to by the resident or resident's legal representative, the resident's family, with a list of providers available to provide needed services;
- (2) assist the resident, if requested, in contacting outside resources for services; and
- (3) monitor the services provided by outside resources and act as an advocate for the resident if services do not meet professional standards of practice. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-42-203. General services.** (a) Range of services. The administrator or operator of each home plus shall ensure the provision or coordination of the range of services specified in each resident's negotiated service agreement. The range of services may include the following:

- (1) Daily meal service based on each resident's needs;
- (2) health care services based on an assessment by a licensed nurse and in accordance with K.A.R. 26-42-204;
- (3) housekeeping services essential for the health, comfort, and safety of each resident;
- (4) medical, dental, and social transportation;
- (5) planned group and individual activities that meet the needs and interests of each resident; and
- (6) other services necessary to support the health and safety of each resident.

(b) Adult day care services. Any administrator or operator of a home plus may provide adult day care services to any individual who meets the home's admission and retention criteria and receives services less than 24 hours a day if the administrator or operator ensures that all of the following conditions are met:

- (1) Written policies are developed and procedures are implemented for the provision of adult day care services.
- (2) All requirements for admission of a resident to a home plus are met for an individual admitted for adult day care services.
- (3) At least 60 square feet of common use living, dining, and activity space is available in the home for each resident of the home and each resident receiving adult day care services.
- (4) The provision of adult day care services does not adversely affect the care and services offered to other residents of the home.

(c) Respite care services. Any administrator or operator of a home plus may provide respite care services to individuals who meet the home's admission and retention criteria on a short-term basis if the administrator or operator ensures that the following conditions are met:

- (1) Written policies are developed and procedures are implemented for the provision of respite care services.
- (2) All the requirements for admission of a resident to a home plus are met for an individual admitted for respite care services.

(d) Maintenance. Designated staff shall provide routine maintenance, including the control of pests and rodents, and repairs in each resident's

bedroom and common areas inside and outside the home as specified in the admission agreement.

(e) Services not provided. If the administrator or operator of a home plus chooses not to provide or coordinate any service as specified in subsection (a), the administrator or operator shall notify the resident, in writing, on or before the resident's admission to the home. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-42-204. Health care services.** (a) The administrator or operator in each home plus shall ensure that a licensed nurse provides or coordinates the provision of necessary health care services that meet the needs of each resident and are in accordance with the functional capacity screening and the negotiated service agreement.

(b) If the functional capacity screening indicates that a resident is in need of health care services, a licensed nurse, in collaboration with the resident, the resident's legal representative, the case manager, and, if agreed to by the resident or resident's legal representative, the resident's family, shall develop a health care service plan to be included as part of the negotiated service agreement.

(c) The health care services provided by or coordinated by a licensed nurse may include the following:

(1) Personal care provided by direct care staff or by certified or licensed nursing staff employed by a home health agency or a hospice;

(2) personal care provided gratuitously by friends or family members; and

(3) supervised nursing care provided by, or under the guidance of, a licensed nurse.

(d) The negotiated service agreement shall contain a description of the health care services to be provided and the name of the licensed nurse responsible for the implementation and supervision of the plan.

(e) A licensed nurse may delegate nursing procedures not included in the nurse aide or medication aide curriculums to nurse aides or medication aides, respectively, under the Kansas nurse practice act, K.S.A. 65-1124 and amendments thereto.

(f) Each administrator or operator shall ensure that a licensed nurse is available to provide immediate direction to medication aides and nurse aides for residents who have unscheduled needs.

(g) Skilled nursing care shall be provided in accordance with K.S.A. 39-923 and amendments thereto.

(1) The health care service plan shall include the skilled nursing care to be provided and the

name of the licensed nurse or agency responsible for providing each service.

(2) The licensed nurse providing the skilled nursing care shall document the service and the outcome of the service in the resident's record.

(3) A medical care provider's order for skilled nursing care shall be documented in the resident's record in the home. A copy of the medical care provider's order from a home health agency or hospice may be used.

(4) The administrator or operator shall ensure that a licensed nurse is available to meet each resident's unscheduled needs related to skilled nursing services.

(h) A licensed nurse may provide wellness and health monitoring as specified in the resident's negotiated service agreement.

(i) All health care services shall be provided to residents by qualified staff in accordance with acceptable standards of practice. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-42-205. Medication management.** (a) Self-administration of medication. Any resident may self-administer and manage medications independently or by using a medication container or syringe prefilled by a licensed nurse or pharmacist or by a family member or friend providing this service gratuitously, if a licensed nurse has performed an assessment and determined that the resident can perform this function safely and accurately without staff assistance.

(1) An assessment shall be completed before the resident initially begins self-administration of medication, if the resident experiences a significant change of condition, and annually.

(2) Each assessment shall include an evaluation of the resident's physical, cognitive, and functional ability to safely and accurately self-administer and manage medications independently or by using a prefilled medication container or prefilled syringe.

(3) The resident's clinical record shall contain documentation of the assessment and the determination.

(4) If a resident self-administers medication with a prefilled medication container or syringe, the prefilled medication container or syringe shall have a label with the resident's name and the date the container or syringe was prefilled. The label, or a medication administration record provided to the resident, shall also include the name and dosage of each medication and the time or event at which

the medication is to be self-administered. Facility staff may remind residents to take medications or inquire as to whether medications were taken.

(b) Administration of select medications. Any resident who self-administers medication may select some medications to be administered by a licensed nurse or medication aide. The negotiated service agreement shall reflect this service and identify who is responsible for the administration and management of selected medications.

(c) Administration of medication by family or friends. Any resident may choose to have personal medication administered by family members or friends gratuitously, pursuant to K.S.A. 65-1124 and amendments thereto.

(d) Home administration of resident's medications. If a home is responsible for the administration of a resident's medications, the administrator or operator shall ensure that all medications and biologicals are administered to that resident in accordance with a medical care provider's written order, professional standards of practice, and each manufacturer's recommendations. The administrator or operator shall ensure that all of the following are met:

(1) Only licensed nurses and medication aides shall administer and manage medications for which the home has responsibility.

(2) Medication aides shall not administer medication through the parenteral route.

(3) A licensed nurse or medication aide shall perform the following:

(A) Administer only the medication that the licensed nurse or medication aide has personally prepared;

(B) identify the resident before medication is administered;

(C) remain with the resident until the medication is ingested or applied; and

(D) document the administration of each resident's medication in the resident's medication administration record immediately before or following completion of the task. If the medication administration record identifies only time intervals or events for the administration of medication, the licensed nurse or medication aide shall document the actual clock time the medication is administered.

(4) Any licensed nurse may delegate nursing procedures not included in the medication aide curriculum to medication aides under the Kansas nurse practice act, K.S.A. 65-1124 and amendments thereto.

(e) Medication orders. Only a licensed nurse or a licensed pharmacist may receive verbal orders for medication from a medical care provider. The licensed nurse shall ensure that all verbal orders are signed by the medical care provider within seven working days of receipt of the verbal order.

(f) Standing orders. Only a licensed nurse shall make the decision for implementation of standing orders for specified medications and treatments formulated and signed by the resident's medical care provider. Standing orders of medications shall not include orders for the administration of schedule II medications or psychopharmacological medications.

(g) Ordering, labeling, and identifying. All medications and biologicals administered by licensed nurses or medication aides shall be ordered from a pharmacy pursuant to a medical care provider's written order.

(1) Any resident who self-administers and manages personal medications may request that a licensed nurse or medication aide reorder the resident's medication from a pharmacy of the resident's choice.

(2) Each prescription medication container shall have a label that was provided by a dispensing pharmacist or affixed to the container by a dispensing pharmacist in accordance with K.A.R. 68-7-14.

(3) A licensed nurse or medication aide may accept over-the-counter medication only in its original, unbroken manufacturer's package. A licensed pharmacist or licensed nurse shall place the full name of the resident on the package. If the original manufacturer's package of an over-the-counter medication contains a medication in a container, bottle, or tube that can be removed from the original package, the licensed pharmacist or a licensed nurse shall place the full name of the resident on both the original manufacturer's medication package and the medication container.

(4) Licensed nurses and medication aides may administer sample medications and medications from indigent medication programs if the administrator or operator ensures the development of policies and implementation of procedures for receiving and identifying sample medications and medications from indigent medication programs that include all of the following conditions:

(A) The medication is not a controlled medication.

(B) A medical care provider's written order accompanies the medication, stating the resident's

name; the medication name, strength, dosage, route, and frequency of administration; and any cautionary instructions regarding administration.

(C) A licensed nurse or medication aide receives the medication in its original, unbroken manufacturer's package.

(D) A licensed nurse documents receipt of the medication by entering the resident's name and the medication name, strength, and quantity into a log.

(E) A licensed nurse places identification information on the medication or package containing the medication that includes the medical care provider's name; the resident's name; the medication name, strength, dosage, route, and frequency of administration; and any cautionary instructions as documented on the medical care provider's order. Staff consisting of either two licensed nurses or a licensed nurse and a medication aide shall verify that the information on the medication matches the information on the medical care provider's order.

(F) A licensed nurse informs the resident or the resident's legal representative that the medication did not go through the usual process of labeling and initial review by a licensed pharmacist pursuant to K.S.A. 65-1642 and amendments thereto, which requires the identification of both adverse drug interactions or reactions and potential allergies. The resident's clinical record shall contain documentation that the resident or resident's legal representative has received the information and accepted the risk of potential adverse consequences.

(h) Storage. Licensed nurses and medication aides shall ensure that all medications and biologicals are securely and properly stored in accordance with each manufacturer's recommendations or those of the pharmacy provider and with federal and state laws and regulations.

(1) Licensed nurses or medication aides shall store non-controlled medications and biologicals managed by the home in a locked medication room, cabinet, or medication cart. Licensed nurses and medication aides shall store controlled medications managed by the home in separately locked compartments within a locked medication room, cabinet, or medication cart. Only licensed nurses and medication aides shall have access to the stored medications and biologicals.

(2) Each resident managing and self-administering medication shall store medications in a place that is accessible only to the resident, licensed nurses, and medication aides.

(3) Any resident who self-administers medication and is unable to provide proper storage as recommended by the manufacturer or pharmacy provider may request that the medication be stored by the home.

(4) A licensed nurse or medication aide shall not administer medication beyond the manufacturer's or pharmacy provider's recommended date of expiration.

(i) Accountability and disposition of medications. Licensed nurses and medication aides shall maintain records of the receipt and disposition of all medications managed by the home in sufficient detail for an accurate reconciliation.

(1) Records shall be maintained documenting the destruction of any deteriorated, outdated, or discontinued controlled medications and biologicals according to acceptable standards of practice by one of the following combinations:

(A) Two licensed nurses; or

(B) a licensed nurse and a licensed pharmacist.

(2) Records shall be maintained documenting the destruction of any deteriorated, outdated, or discontinued non-controlled medications and biologicals according to acceptable standards of practice by any of the following combinations:

(A) Two licensed nurses;

(B) a licensed nurse and a medication aide;

(C) a licensed nurse and a licensed pharmacist; or

(D) a medication aide and a licensed pharmacist.

(j) Medications sent for short-term absence. A licensed nurse or medication aide shall provide the resident's medication to the resident or the designated responsible party for the resident's short-term absences from the home, upon request.

(k) Clinical record. The administrator or operator, or the designee, shall ensure that the clinical record of each resident for whom the home manages the resident's medication or prefills medication containers or syringes contains the following documentation:

(1) A medical care provider's order for each medication;

(2) the name of the pharmacy provider of the resident's choice;

(3) any known medication allergies; and

(4) the date and the 12-hour or 24-hour clock time any medication is administered to the resident.

(l) Medication regimen review. A licensed pharmacist or licensed nurse shall conduct a medica-

tion regimen review at least quarterly for each resident whose medication is managed by the home and each time the resident experiences any significant change in condition.

(1) The medication regimen review shall identify any potential or current medication-related problems, including the following:

(A) Lack of clinical indication for use of medication;

(B) the use of a subtherapeutic dose of any medication;

(C) failure of the resident to receive an ordered medication;

(D) medications administered in excessive dosage, including duplicate therapy;

(E) medications administered in excessive duration;

(F) adverse medication reactions;

(G) medication interactions; and

(H) lack of adequate monitoring.

(2) The licensed pharmacist or licensed nurse shall notify the medical care provider upon discovery of any variance identified in the medication regimen review that requires immediate action by the medical care provider. The licensed pharmacist shall notify a licensed nurse within 48 hours of any variance identified in the resident's regimen review that does not require immediate action by the medical care provider and specify a time within which the licensed nurse must notify the resident's medical care provider. The licensed nurse shall seek a response from the medical care provider within five working days of the medical care provider's notification of a variance.

(3) The administrator or operator, or the designee, shall ensure that the medication regimen review is kept in each resident's clinical record.

(4) The administrator or operator, or the designee, shall offer each resident who self-administers medication a medication regimen review to be conducted by a licensed pharmacist or licensed nurse at least quarterly and each time the resident experiences a significant change in condition. A licensed nurse shall maintain documentation of the resident's decision in the resident's clinical record. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-42-206. Dietary services.** (a) The administrator or operator of each home plus shall ensure the provision or coordination of dietary services to residents as identified in each resident's negotiated service agreement.

(b) The supervisory responsibility for dietetic services shall be assigned to one employee.

(c) If a resident's negotiated service agreement includes the provision of a therapeutic diet, mechanically altered diet, or thickened consistency of liquids, a medical care provider's order shall be on file in the resident's clinical record, and the diet or liquids, or both, shall be prepared according to instructions from a medical care provider or licensed dietitian.

(d) The menus shall be planned in advance and in accordance with the dietary guidelines adopted by reference in K.A.R. 26-39-105.

(1) Menu plans shall be available to each resident on at least a weekly basis.

(2) A method shall be established to incorporate input by residents in the selection of food to be served and scheduling of meal service.

(e) Food shall be prepared using safe methods that conserve the nutritive value, flavor, and appearance and shall be served at the proper temperature.

(1) Food used by facility staff to serve to the residents, including donated food, shall meet all applicable federal, state, and local laws and regulations.

(2) Food in cans that have significant defects, including swelling, leakage, punctures, holes, fractures, pitted rust, or denting severe enough to prevent normal stacking or opening with a manual, wheel-type can opener, shall not be used.

(3) Food provided by a resident's family or friends for individual residents shall not be required to meet federal, state, and local laws and regulations.

(f) Staff shall store all food under safe and sanitary conditions. Containers of poisonous compounds and cleaning supplies shall not be stored in the areas used for food storage, preparation, or serving.

(g) Each home shall maintain at least a three-day supply of food to meet the requirements of the planned menus. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-42-207. Infection control.** (a) The administrator or operator of each home plus shall ensure the provision of a safe, sanitary, and comfortable environment for residents.

(b) Each administrator or operator shall ensure the development of policies and implementation of procedures to prevent the spread of infections. These policies and procedures shall include the following requirements:

(1) Using universal precautions to prevent the spread of blood-borne pathogens;

(2) techniques to ensure that hand hygiene meets professional health care standards;

(3) techniques to ensure that the laundering and handling of soiled and clean linens meet professional health care standards;

(4) providing sanitary conditions for food service;

(5) prohibiting any employee with a communicable disease or any infected skin lesions from coming in direct contact with any resident, any resident's food, or resident care equipment until the condition is no longer infectious;

(6) providing orientation to new employees and employee in-service education at least annually on the control of infections in a health care setting; and

(7) transferring a resident with an infectious disease to an appropriate health care facility if the administrator or operator is unable to provide the isolation precautions necessary to protect the health of other residents.

(c) Each administrator or operator shall ensure the home's compliance with the department's tuberculosis guidelines for adult care homes adopted by reference in K.A.R. 26-39-105. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

#### Article 43.—ADULT DAY CARE FACILITIES

**26-43-101. Administration.** (a) Administrator and operator responsibilities. The administrator or operator of each adult day care facility ("facility") shall ensure that the facility is operated in a manner so that each resident receives care and services in accordance with each resident's functional capacity screening and negotiated service agreement.

(b) Administrator and operator criteria. Each licensee shall appoint an administrator or operator who meets the following criteria:

(1) Is at least 21 years of age;

(2) possesses a high school diploma or the equivalent;

(3) holds a Kansas license as an adult care home administrator or has successfully completed an operator training course and passed the test approved by the secretary of Kansas department of health and environment pursuant to K.S.A. 39-923 and amendments thereto; and

(4) has authority and responsibility for the operation of the facility and compliance with licensing requirements.

(c) Administrator and operator position description. Each licensee shall adopt a written position description for the administrator or operator that includes responsibilities for the following:

(1) Planning, organizing, and directing the facility;

(2) implementing operational policies and procedures for the facility; and

(3) authorizing, in writing, a responsible employee who is 18 years old or older to act on the administrator's or operator's behalf in the absence of the administrator or operator.

(d) Resident rights. Each administrator or operator shall ensure the development and implementation of written policies and procedures that incorporate the principles of individuality, autonomy, dignity, choice, privacy, and a home environment for each resident. The following provisions shall be included in the policies and procedures:

(1) The recognition of each resident's rights, responsibilities, needs, and preferences;

(2) the freedom of each resident or the resident's legal representative to select or refuse a service and to accept responsibility for the consequences;

(3) the development and maintenance of social ties for each resident by providing opportunities for meaningful interaction and involvement within the facility and the community;

(4) the maintenance of each resident's lifestyle if there are not adverse effects on the rights and safety of other residents; and

(5) the resolution of grievances through a specific process that includes a written response to each written grievance within 30 days.

(e) Resident liability. Each resident shall be liable only for the charges disclosed to the resident or the resident's legal representative and documented in a signed agreement at admission and in accordance with K.A.R. 26-39-103.

(f) Staff treatment of residents. Each administrator or operator shall ensure the development and implementation of written policies and procedures that prohibit the abuse, neglect, and exploitation of residents by staff. The administrator or operator shall ensure that all of the following requirements are met:

(1) No resident shall be subjected to any of the following:

(A) Verbal, mental, sexual, or physical abuse, including corporal punishment and involuntary seclusion;

(B) neglect; or

(C) exploitation.

(2) The facility shall not employ any individual who has been identified on a state nurse aide registry as having abused, neglected, or exploited any resident in an adult care home.

(3) Each allegation of abuse, neglect, or exploitation shall be reported to the administrator or operator of the facility as soon as staff is aware of the allegation and to the department within 24 hours. The administrator or operator shall ensure that all of the following requirements are met:

(A) An investigation shall be started when the administrator or operator, or the designee, receives notification of an alleged violation.

(B) Immediate measures shall be taken to prevent further potential abuse, neglect, or exploitation while the investigation is in progress.

(C) Each alleged violation shall be thoroughly investigated within five working days of the initial report. Results of the investigation shall be reported to the administrator or operator.

(D) Appropriate corrective action shall be taken if the alleged violation is verified.

(E) The department's complaint investigation report shall be completed and submitted to the department within five working days of the initial report.

(F) A written record shall be maintained of each investigation of reported abuse, neglect, or exploitation.

(g) Availability of policies and procedures. Each administrator or operator shall ensure that policies and procedures related to resident services are available to staff at all times and are available to each resident, legal representatives of residents, case managers, and families during normal business hours. A notice of availability shall be posted in a place readily accessible to residents and the public.

(h) Power of attorney, guardianship, and conservatorship. Authority as a power of attorney, durable power of attorney for health care decisions, guardian, or conservator shall not be exercised by anyone employed by or having a financial interest in the facility, unless the person is related to the resident within the second degree.

(i) Reports. Each administrator or operator shall ensure the accurate completion and electronic submission of annual and semiannual statistical reports regarding residents, employees, and facility occupancy to the department no later than 20 days following the last day of the period being reported. The administrator or operator shall en-

sure the submission of any other reports required by the department.

(j) Emergency telephone. Each administrator or operator shall ensure that the residents and employees have access to a telephone for emergency use at no cost. The administrator or operator shall ensure that the names and telephone numbers of persons or places commonly required in emergencies are posted adjacent to this telephone.

(k) Ombudsman. Each administrator or operator shall ensure the posting of the names, addresses, and telephone numbers of the Kansas department on aging and the office of the long-term care ombudsman with information that these agencies can be contacted to report actual or potential abuse, neglect, or exploitation of residents or to register complaints concerning the operation of the facility. The administrator or operator shall ensure that this information is posted in an area readily accessible to all residents and the public.

(l) Survey report and plan of correction. Each administrator or operator shall ensure that a copy of the most recent survey report and plan of correction is available in a public area to residents and any other individuals wishing to examine survey results. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-43-102. Staff qualifications.** (a) The administrator or operator of each adult day care facility shall ensure the provision of a sufficient number of qualified personnel to provide each resident with services and care in accordance with that resident's functional capacity screening, health care service plan, and negotiated service agreement.

(b) Direct care staff or licensed nursing staff shall be in attendance and responsive at all times.

(c) A registered professional nurse shall be available to provide supervision to licensed practical nurses, pursuant to K.S.A. 65-1113 and amendments thereto.

(d) The employee records and agency staff records shall contain the following documentation:

(1) Evidence of licensure, registration, certification, or a certificate of successful completion of a training course for each employee performing a function that requires specialized education or training;

(2) supporting documentation for criminal background checks of facility staff and contract staff, excluding any staff licensed or registered by a state agency, pursuant to K.S.A. 39-970 and amendments thereto;

(3) supporting documentation from the Kansas nurse aide registry that the individual does not have a finding of having abused, neglected, or exploited a resident in an adult care home; and

(4) supporting documentation that the individual does not have a finding of having abused, neglected, or exploited any resident in an adult care home, from the nurse aide registry in each state in which the individual has been known to work. (Authorized by K.S.A. 39-932 and K.S.A. 2007 Supp. 39-936; implementing K.S.A. 39-932, K.S.A. 2007 Supp. 39-936, and K.S.A. 2007 Supp. 39-970; effective May 29, 2009.)

**26-43-103. Staff development.** (a) The administrator or operator of each adult day care facility shall ensure the provision of orientation to new employees and regular in-service education for all employees to ensure that the services provided assist residents to attain and maintain their individuality, autonomy, dignity, independence, and ability to make choices in a home environment.

(b) The topics for orientation and in-service education shall include the following:

- (1) Principles of adult day care;
- (2) fire prevention and safety;
- (3) disaster procedures;
- (4) accident prevention;
- (5) resident rights;
- (6) infection control; and
- (7) prevention of abuse, neglect, and exploitation of residents.

(c) If the facility admits residents with dementia, the administrator or operator shall ensure the provision of staff orientation and in-service education on the treatment and appropriate response to persons who exhibit behaviors associated with dementia. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-43-104. Disaster and emergency preparedness.** (a) The administrator or operator of each adult day care facility shall ensure the provision of a sufficient number of staff members to take residents who would require assistance in an emergency or disaster to a secure location.

(b) Each administrator or operator shall ensure the development of a detailed written emergency management plan to manage potential emergencies and disasters, including the following:

- (1) Fire;
- (2) flood;

(3) severe weather;

(4) tornado;

(5) explosion;

(6) natural gas leak;

(7) lack of electrical or water service;

(8) missing residents; and

(9) any other potential emergency situations.

(c) Each administrator or operator shall ensure the establishment of written agreements that will provide for the following if an emergency or disaster occurs:

(1) Fresh water;

(2) evacuation site; and

(3) transportation of residents to an evacuation site.

(d) Each administrator or operator shall ensure disaster and emergency preparedness by ensuring the performance of the following:

(1) Orientation of new employees at the time of employment to the facility's emergency management plan;

(2) education of each resident upon admission to the facility regarding emergency procedures;

(3) quarterly review of the facility's emergency management plan with employees and residents; and

(4) an emergency drill, which shall be conducted at least annually with staff and residents. This drill shall include evacuation of the residents to a secure location.

(e) Each administrator or operator shall make the emergency management plan available to the staff, residents, and visitors. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-43-105. Resident records.** (a) The administrator or operator of each adult day care facility shall ensure the maintenance of a record for each resident in accordance with accepted professional standards and practices.

(1) Designated staff shall maintain the record of each discharged resident who is 18 years of age or older for at least five years after the discharge of the resident.

(2) Designated staff shall maintain the record of each discharged resident who is less than 18 years of age for at least five years after the resident reaches 18 years of age or at least five years after the date of discharge, whichever time period is longer.

(b) Each administrator or operator shall ensure that all information in each resident's record, regardless of the form or storage method for the

record, is kept confidential, unless release is required by any of the following:

- (1) Transfer of the resident to another health care facility;
- (2) law;
- (3) third-party payment contract; or
- (4) the resident or legal representative of the resident.

(c) Each administrator or operator shall ensure the safeguarding of resident records against the following:

- (1) Loss;
- (2) destruction;
- (3) fire;
- (4) theft; and
- (5) unauthorized use.

(d) Each administrator or operator shall ensure the accuracy and confidentiality of all resident information transmitted by means of a facsimile machine.

(e) If electronic medical records are used, each administrator or operator shall ensure the development of policies addressing the following requirements:

- (1) Protection of electronic medical records, including entries by only authorized users;
  - (2) safeguarding of electronic medical records against unauthorized alteration, loss, destruction, and use;
  - (3) prevention of the unauthorized use of electronic signatures;
  - (4) confidentiality of electronic medical records; and
  - (5) preservation of electronic medical records.
- (f) Each resident record shall contain at least the following:

- (1) The resident's name;
- (2) the dates of admission and discharge;
- (3) the admission agreement and any amendments;
- (4) the functional capacity screenings;
- (5) the health care service plan, if applicable;
- (6) the negotiated service agreement and any revisions;
- (7) the name, address, and telephone number of the physician and the dentist to be notified in an emergency;
- (8) the name, address, and telephone number of the legal representative or the individual of the resident's choice to be notified in the event of a significant change in condition;
- (9) the name, address, and telephone number of the case manager, if applicable;

(10) records of medications, biologicals, and treatments administered and each medical care provider's order if the facility is managing the resident's medications and medical treatments; and

(11) documentation of all incidents, symptoms, and other indications of illness or injury including the date, time of occurrence, action taken, and results of the action. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-43-106. Community governance.** (a) The administrator or operator of each adult day care facility shall ensure the facilitation of the organization of at least one resident council, each of which shall meet at least quarterly to provide residents with a forum to provide input into community governance.

(b) Each administrator or operator shall ensure the accommodation of the council process by providing space for the meetings, posting notices of the meetings, and assisting residents who wish to attend the meetings.

(c) In order to permit a free exchange of ideas and concerns, each administrator or operator shall ensure that all meetings are conducted without the presence of facility staff, unless allowed by the residents.

(d) Each administrator or operator shall respond to each written idea and concern received from the council, in writing, within 30 days after the meeting at which the written ideas and concerns were collected. The administrator or operator shall ensure that a copy of each written idea or concern and each response is available to surveyors. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-43-200. Resident criteria.** (a) The administrator or operator of each adult day care facility shall ensure the development and implementation of written admission, transfer, and discharge policies that protect the rights of each resident, pursuant to K.A.R. 26-39-102. In addition, the administrator or operator shall ensure that any resident who has one or more of the following conditions is not admitted or retained unless the negotiated service agreement includes services sufficient to meet the needs of the resident while in the facility:

- (1) Incontinence, if the resident cannot or will not participate in management of the problem;
- (2) immobility, if the resident is totally dependent on another person's assistance to exit the building;

(3) any ongoing condition requiring two or more persons to physically assist the resident; or

(4) any behavioral symptom that exceeds manageability.

(b) Each administrator or operator shall ensure that any resident whose clinical condition requires the use of physical restraints is not admitted or retained. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-43-201. Resident functional capacity screening.** (a) On or before each individual's admission to an adult day care facility, a licensed nurse, a licensed social worker, or the administrator or operator shall conduct a screening to determine the individual's functional capacity and shall record all findings on a screening form specified by the department. The administrator or operator may integrate the department's screening form into a form developed by the facility, which shall include each element and definition specified by the department.

(b) A licensed nurse shall assess any resident whose functional capacity screening indicates the need for health care services.

(c) Designated facility staff shall conduct a screening to determine each resident's functional capacity according to the following requirements:

(1) At least once every 365 days;

(2) following any significant change in condition as defined in K.A.R. 26-39-100; and

(3) at least quarterly if the resident receives assistance with eating from a paid nutrition assistant.

(d) Designated facility staff shall ensure that each resident's functional capacity at the time of screening is accurately reflected on that resident's screening form.

(e) Designated facility staff shall use the results of the functional capacity screening as a basis for determining the services to be included in the resident's negotiated service agreement. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-43-202. Negotiated service agreement.** (a) The administrator or operator of each adult day care facility shall ensure the development of a written negotiated service agreement for each resident, based on the resident's functional capacity screening, service needs, and preferences, in collaboration with the resident or the resident's legal representative, the case manager, and, if agreed to by the resident or the resident's

legal representative, the resident's family. The negotiated service agreement shall provide the following information:

(1) A description of the services the resident will receive;

(2) identification of the provider of each service; and

(3) identification of each party responsible for payment if outside resources provide a service.

(b) The negotiated service agreement shall promote the dignity, privacy, choice, individuality, and autonomy of the resident.

(c) Each administrator or operator shall ensure the development of an initial negotiated service agreement at admission.

(d) Each administrator or operator shall ensure the review and, if necessary, revision of each negotiated service agreement according to the following requirements:

(1) At least once every 365 days;

(2) following any significant change in condition, as defined in K.A.R. 26-39-100;

(3) at least quarterly, if the resident receives assistance with eating from a paid nutrition assistant; and

(4) if requested by the resident or the resident's legal representative, facility staff, the case manager, or, if agreed to by the resident or the resident's legal representative, the resident's family.

(e) A licensed nurse shall participate in the development, review, and revision of the negotiated service agreement if the resident's functional capacity screening indicates the need for health care services.

(f) If a resident or the resident's legal representative refuses a service that the administrator or operator, the licensed nurse, the resident's medical care provider, or the case manager believes is necessary for the resident's health and safety, the negotiated service agreement shall include the following:

(1) The service or services refused;

(2) identification of any potential negative outcomes for the resident if the service or services are not provided;

(3) evidence of the provision of education to the resident or the resident's legal representative of the potential risk of any negative outcomes if the service or services are not provided; and

(4) an indication of acceptance by the resident or the resident's legal representative of the potential risk.

(g) The negotiated service agreement shall not include circumstances in which the lack of a ser-

vice has the potential to affect the health and safety of other residents, facility staff, or the public.

(h) Each individual involved in the development of the negotiated service agreement shall sign the agreement. The administrator or operator shall ensure that a copy of the initial agreement and any subsequent revisions are provided to the resident or the resident's legal representative.

(i) Each administrator or operator shall ensure that each resident receives services according to the provisions of that resident's negotiated service agreement.

(j) If a resident's negotiated service agreement includes the use of outside resources, the designated facility staff shall perform the following:

(1) Provide the resident, the resident's legal representative, the case manager, and, if agreed to by the resident or resident's legal representative, the resident's family, with a list of providers available to provide needed services;

(2) assist the resident, if requested, in contacting outside resources for services; and

(3) monitor the services provided by outside resources and act as an advocate for the resident if services do not meet professional standards of practice. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-43-203. General services.** (a) Range of services. The administrator or operator of each adult day care facility shall ensure the provision or coordination of the range of services specified in each resident's negotiated service agreement. The range of services may include the following:

(1) Daily meal service based on each resident's needs;

(2) health care services based on an assessment by a licensed nurse and in accordance with K.A.R. 26-43-204;

(3) medical, dental, and social transportation;

(4) planned group and individual activities that meet the needs and interests of each resident; and

(5) other services necessary to support the health and safety of each resident.

(b) Special care. Any administrator or operator of an adult day care facility may choose to serve residents who do not exceed the facility's admission and retention criteria and who have special needs in a special care section of the facility or the entire facility, if the administrator or operator ensures that all of the following conditions are met:

(1) Written policies are developed and proce-

dures are implemented for the operation of the special care section or facility.

(2) Admission and discharge criteria are in effect that identify the diagnosis, behavior, or specific clinical needs of the residents to be served. The medical diagnosis, medical care provider's progress notes, or both shall justify admission to the special care section or the facility.

(3) A medical care provider's written order is obtained for admission.

(4) The functional capacity screening indicates that the resident would benefit from the services and programs offered by the special care section or facility.

(5) Before the resident's admission to the special care section or facility, the resident or resident's legal representative is informed, in writing, of the available services and programs that are specific to the needs of the resident.

(6) Direct care staff are present in the special care section or facility at all times.

(7) Before assignment to the special care section or facility employment, each staff member is provided with a training program related to specific needs of the residents to be served, and evidence of completion of the training is maintained in the employee's personnel records.

(8) Living, dining, activity, and recreational areas are provided within the special care section, except when residents are able to access living, dining, activity, and recreational areas in another section of the facility.

(9) The control of exits in the special care section is the least restrictive possible for the residents in the section.

(c) Maintenance. Designated staff shall provide routine maintenance, including the control of pests and rodents, and repairs in common areas inside and outside the facility.

(d) Services not provided. If an administrator or operator of an adult day care facility chooses not to provide or coordinate any service as specified in subsection (a), the administrator or operator shall notify the resident, in writing, on or before the resident's admission to the facility. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-43-204. Health care services.** (a) The administrator or operator in each adult day care facility shall ensure that a licensed nurse provides or coordinates the provision of necessary health care services that meet the needs of each resident

and are in accordance with the functional capacity screening and the negotiated service agreement.

(b) If the functional capacity screening indicates that a resident is in need of health care services, a licensed nurse, in collaboration with the resident, the resident's legal representative, the case manager, and, if agreed to by the resident or resident's legal representative, the resident's family, shall develop a health care service plan to be included as part of the negotiated service agreement.

(c) The health care services provided by or coordinated by a licensed nurse may include the following:

(1) Personal care provided by direct care staff or by certified or licensed nursing staff employed by a home health agency or a hospice;

(2) personal care provided gratuitously by friends or family members; and

(3) supervised nursing care provided by, or under the guidance of, a licensed nurse.

(d) The negotiated service agreement shall contain a description of the health care services to be provided and the name of the licensed nurse responsible for the implementation and supervision of the plan.

(e) A licensed nurse may delegate nursing procedures not included in the nurse aide or medication aide curriculums to nurse aides or medication aides, respectively, under the Kansas nurse practice act, K.S.A. 65-1124 and amendments thereto.

(f) Each administrator or operator shall ensure that a licensed nurse is available to provide immediate direction to medication aides and nurse aides for residents who have unscheduled needs.

(g) Skilled nursing care shall be provided in accordance with K.S.A. 39-923 and amendments thereto.

(1) The health care service plan shall include the skilled nursing care to be provided and the name of the licensed nurse or agency responsible for providing each service.

(2) The licensed nurse providing the skilled nursing care shall document the service and the outcome of the service in the resident's record.

(3) A medical care provider's order for skilled nursing care shall be documented in the resident's record in the facility. A copy of the medical care provider's order from a home health agency or hospice may be used. Medical care provider orders in the clinical records of a home health agency located in the same building as the facility may also be used if the clinical records are available to licensed nurses and direct care staff of the facility.

(4) The administrator or operator shall ensure that a licensed nurse is available to meet each resident's unscheduled needs related to skilled nursing services.

(h) A licensed nurse may provide wellness and health monitoring as specified in the resident's negotiated service agreement.

(i) All health care services shall be provided to residents by qualified staff in accordance with acceptable standards of practice. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-43-205. Medication management.** (a) Self-administration of medication. Any resident may self-administer and manage medications independently or by using a medication container or syringe prefilled by a licensed nurse or pharmacist or by a family member or friend providing this service gratuitously, if a licensed nurse has performed an assessment and determined that the resident can perform this function safely and accurately without staff assistance.

(1) An assessment shall be completed before the resident initially begins self-administration of medication, if the resident experiences a significant change of condition, and annually.

(2) Each assessment shall include an evaluation of the resident's physical, cognitive, and functional ability to safely and accurately self-administer and manage medications independently or by using a prefilled medication container or prefilled syringe.

(3) The resident's clinical record shall contain documentation of the assessment and the determination.

(4) If a resident self-administers medication with a prefilled medication container or syringe, the prefilled medication container or syringe shall have a label with the resident's name and the date the container or syringe was prefilled. The label, or a medication administration record provided to the resident, shall also include the name and dosage of each medication and the time or event at which the medication is to be self-administered. Facility staff may remind residents to take medications or inquire as to whether medications were taken.

(b) Administration of select medications. Any resident who self-administers medication may select some medications to be administered by a licensed nurse or medication aide. The negotiated service agreement shall reflect this service and identify who is responsible for the administration and management of selected medications.

(c) Administration of medication by family or friends. Any resident may choose to have personal medication administered by family members or friends gratuitously, pursuant to K.S.A. 65-1124 and amendments thereto.

(d) Facility administration of resident's medications. If a facility is responsible for the administration of a resident's medications, the administrator or operator shall ensure that all medications and biologicals are administered to that resident in accordance with a medical care provider's written order, professional standards of practice, and each manufacturer's recommendations. The administrator or operator shall ensure that all of the following are met:

(1) Only licensed nurses and medication aides shall administer medications for which the facility has responsibility.

(2) Medication aides shall not administer medication through the parenteral route.

(3) A licensed nurse or medication aide shall perform the following:

(A) Administer only the medication that the licensed nurse or medication aide has personally prepared;

(B) identify the resident before medication is administered;

(C) remain with the resident until the medication is ingested or applied; and

(D) document the administration of each resident's medication in the resident's medication administration record immediately before or following completion of the task. If the medication administration record identifies only time intervals or events for the administration of medication, the licensed nurse or medication aide shall document the actual clock time the medication is administered.

(4) Any licensed nurse may delegate nursing procedures not included in the medication aide curriculum to medication aides under the Kansas nurse practice act, K.S.A. 65-1124 and amendments thereto.

(e) Medication orders. Only a licensed nurse or a licensed pharmacist may receive verbal orders for medication from a medical care provider. The licensed nurse shall ensure that all verbal orders are signed by the medical care provider within seven working days of receipt of the verbal order.

(f) Standing orders. Only a licensed nurse shall make the decision for implementation of standing orders for specified medications and treatments formulated and signed by the resident's medical

care provider. Standing orders of medications shall not include orders for the administration of schedule II medications or psychopharmacological medications.

(g) Ordering, labeling, and identifying. All medications and biologicals administered by licensed nurses or medication aides shall be ordered from a pharmacy pursuant to a medical care provider's written order.

(1) Any resident who self-administers and manages personal medications may request that a licensed nurse or medication aide reorder the resident's medication from a pharmacy of the resident's choice.

(2) Each prescription medication container shall have a label that was provided by a dispensing pharmacist or affixed to the container by a dispensing pharmacist in accordance with K.A.R. 68-7-14.

(3) A licensed nurse or medication aide may accept over-the-counter medication only in its original, unbroken manufacturer's package. A licensed pharmacist or licensed nurse shall place the full name of the resident on the package. If the original manufacturer's package of an over-the-counter medication contains a medication in a container, bottle, or tube that can be removed from the original package, the licensed pharmacist or a licensed nurse shall place the full name of the resident on both the original manufacturer's medication package and the medication container.

(4) Licensed nurses and medication aides may administer sample medications and medications from indigent medication programs if the administrator or operator ensures the development of policies and implementation of procedures for receiving and identifying sample medications and medications from indigent medication programs that include all of the following conditions:

(A) The medication is not a controlled medication.

(B) A medical care provider's written order accompanies the medication, stating the resident's name; the medication name, strength, dosage, route, and frequency of administration; and any cautionary instructions regarding administration.

(C) A licensed nurse or medication aide receives the medication in its original, unbroken manufacturer's package.

(D) A licensed nurse documents receipt of the medication by entering the resident's name and the medication name, strength, and quantity into a log.

(E) A licensed nurse places identification information on the medication or package containing the medication that includes the medical care provider's name; the resident's name; the medication name, strength, dosage, route, and frequency of administration; and any cautionary instructions as documented on the medical care provider's order. Facility staff consisting of either two licensed nurses or a licensed nurse and a medication aide shall verify that the information on the medication matches the information on the medical care provider's order.

(F) A licensed nurse informs the resident or the resident's legal representative that the medication did not go through the usual process of labeling and initial review by a licensed pharmacist pursuant to K.S.A. 65-1642 and amendments thereto, which requires the identification of both adverse drug interactions or reactions and potential allergies. The resident's clinical record shall contain documentation that the resident or the resident's legal representative has received the information and accepted the risk of potential adverse consequences.

(h) Storage. Licensed nurses and medication aides shall ensure that all medications and biologicals are securely and properly stored in accordance with each manufacturer's recommendations or those of the pharmacy provider and with federal and state laws and regulations.

(1) Licensed nurses or medication aides shall store non-controlled medications and biologicals managed by the facility in a locked medication room, cabinet, or medication cart. Licensed nurses and medication aides shall store controlled medications managed by the facility in separately locked compartments within a locked medication room, cabinet, or medication cart. Only licensed nurses and medication aides shall have access to the stored medications and biologicals.

(2) Each resident managing and self-administering medication shall store medications in a place that is accessible only to the resident, licensed nurses, and medication aides.

(3) Any resident who self-administers medication and is unable to provide proper storage as recommended by the manufacturer or pharmacy provider may request that the medication be stored by the facility.

(4) A licensed nurse or medication aide shall not administer medication beyond the manufacturer's or pharmacy provider's recommended date of expiration.

(i) Accountability and disposition of medications. Licensed nurses and medication aides shall maintain records of the receipt and disposition of all medications managed by the facility in sufficient detail for an accurate reconciliation.

(1) Records shall be maintained documenting the destruction of any deteriorated, outdated, or discontinued controlled medications and biologicals according to acceptable standards of practice by one of the following combinations:

(A) Two licensed nurses; or

(B) a licensed nurse and a licensed pharmacist.

(2) Records shall be maintained documenting the destruction of any deteriorated, outdated, or discontinued non-controlled medications and biologicals according to acceptable standards of practice by any of the following combinations:

(A) Two licensed nurses;

(B) a licensed nurse and a medication aide;

(C) a licensed nurse and a licensed pharmacist; or

(D) a medication aide and a licensed pharmacist.

(j) Clinical record. The administrator or operator, or the designee, shall ensure that the clinical record of each resident for whom the facility manages the resident's medication or prefills medication containers or syringes contains the following documentation:

(1) A medical care provider's order for each medication;

(2) the name of the pharmacy provider of the resident's choice;

(3) any known medication allergies; and

(4) the date and the 12-hour or 24-hour clock time any medication is administered to the resident.

(k) Medication regimen review. The administrator or operator, or the designee, shall offer each resident a medication regimen review to be conducted by a licensed pharmacist or a licensed nurse at least quarterly and each time the resident experiences any significant change in condition. A licensed nurse shall document the resident's decision in the resident's clinical record.

(1) The medication regimen review shall identify any potential or current medication-related problems, including the following:

(A) Lack of clinical indication for use of medication;

(B) the use of subtherapeutic dose of any medication;

(C) failure of the resident to receive an ordered medication;

(D) medications administered in excessive dosage, including duplicate therapy;

(E) medications administered in excessive duration;

(F) adverse medication reactions;

(G) medication interactions; and

(H) lack of adequate monitoring.

(2) The licensed pharmacist or licensed nurse shall report each variance identified in the medication regimen review to the resident's medical care provider.

(3) The administrator or operator, or the designee, shall ensure that the medication regimen review is kept in each resident's clinical record.

(l) At least annually, the administrator or operator shall ensure that a licensed pharmacist or a licensed nurse conducts an educational program on medication usage and health-related topics for the residents, the residents' legal representatives, and the residents' families. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-43-206. Dietary services.** (a) Provision of dietary services. The administrator or operator of each adult day care facility shall ensure the provision or coordination of dietary services to residents as identified in each resident's negotiated service agreement. If the administrator or operator of the facility establishes a contract with another entity to provide or coordinate the provision of dietary services to the residents, the administrator or operator shall ensure that entity's compliance with these regulations.

(b) Staff. The supervisory responsibility for dietetic services shall be assigned to one employee.

(1) A dietetic services supervisor or licensed dietitian shall provide scheduled on-site supervision in each facility with 11 or more residents.

(2) If a resident's negotiated service agreement includes the provision of a therapeutic diet, mechanically altered diet, or thickened consistency of liquids, a medical care provider's order shall be on file in the resident's clinical record, and the diet or liquids, or both, shall be prepared according to instructions from a medical care provider or licensed dietitian.

(c) Menus. A dietetic services supervisor or licensed dietitian or, in any facility with fewer than 11 residents, designated facility staff shall plan menus in advance and in accordance with the dietary guidelines adopted by reference in K.A.R. 26-39-105.

(1) Menu plans shall be available to each resident on at least a weekly basis.

(2) A method shall be established to incorporate residents' input in the selection of food to be served and scheduling of meal service.

(d) Food preparation. Food shall be prepared using safe methods that conserve the nutritive value, flavor, and appearance and shall be served at the proper temperature.

(1) Food used by facility staff to serve to the residents, including donated food, shall meet all applicable federal, state, and local laws and regulations.

(2) Food in cans that have significant defects, including swelling, leakage, punctures, holes, fractures, pitted rust, or denting severe enough to prevent normal stacking or opening with a manual, wheel-type can opener, shall not be used.

(3) Food provided by a resident's family or friends for individual residents shall not be required to meet federal, state, and local laws and regulations.

(e) Food storage. Facility staff shall store all food under safe and sanitary conditions. Containers of poisonous compounds and cleaning supplies shall not be stored in the areas used for food storage, preparation, or serving. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

**26-43-207. Infection control.** (a) The administrator or operator of each adult day care facility shall ensure the provision of a safe, sanitary, and comfortable environment for residents.

(b) Each administrator or operator shall ensure the development of policies and implementation of procedures to prevent the spread of infections. These policies and procedures shall include the following requirements:

(1) Using universal precautions to prevent the spread of blood-borne pathogens;

(2) techniques to ensure that hand hygiene meets professional health care standards;

(3) techniques to ensure that the laundering and handling of soiled and clean linens meet professional health care standards;

(4) providing sanitary conditions for food service;

(5) prohibiting any employee with a communicable disease or any infected skin lesions from coming in direct contact with any resident, any resident's food, or resident care equipment until the condition is no longer infectious; and

(6) providing orientation to new employees and employee in-service education at least annually on the control of infections in a health care setting.

(c) Each administrator or operator shall ensure the facility's compliance with the department's tuberculosis guidelines for adult care homes adopted by reference in K.A.R. 26-39-105. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

#### Article 50.—UNLICENSED EMPLOYEES IN ADULT CARE HOMES

**26-50-10. Definitions.** Each of the following terms, as used in this article, shall have the meaning specified in this regulation: (a) "Clinical instruction" shall mean training in which the trainee demonstrates knowledge and skills while performing tasks on a person under the direct supervision of the instructor.

(b) "Course supervisor" shall mean an individual who has been approved by the secretary to provide general supervision of the nurse aide training course.

(c) "Direct care" shall mean assistance provided to perform activities of daily living.

(d) "Direct supervision" shall mean that a supervisor or an instructor is on the facility premises and is readily accessible for one-on-one consultation, instruction, and assistance, as needed.

(e) "Eligible for employment," when describing a certified nurse aide, shall mean that the certified nurse aide meets the following criteria:

(1) Was employed to perform nursing or nursing-related services for at least eight hours in the preceding 24 months;

(2) has no record of medicare or medicaid fraud;

(3) has no record of abuse, neglect, and exploitation; and

(4) is not prohibited from employment based upon criminal convictions pursuant to K.S.A. 39-970, and amendments thereto.

(f) "General supervision" shall mean a course supervisor's provision of the necessary guidance and maintenance of ultimate responsibility for a nurse aide training course in accordance with the standards established by the department in the "Kansas certified nurse aide curriculum guidelines (90 hours)" and the "Kansas certified nurse aide course (90 hour) instruction manual," which are adopted by reference in K.A.R. 26-50-12.

(g) "Instructor" shall mean either of the following:

(1) An individual who has been approved by the nurse aide course supervisor to teach the nurse aide training course; or

(2) an individual who has been approved by the secretary to teach the home health aide or medication aide training courses.

(h) "Licensed nursing experience" shall mean experience as an RN or LPN.

(i) "Nurse aide trainee I" shall mean a nurse aide trainee who is in the process of completing part I of a 90-hour nurse aide course as specified in K.A.R. 26-50-20.

(j) "Nurse aide trainee II" shall mean a nurse aide trainee who has successfully completed part I of a 90-hour nurse aide course specified in K.A.R. 26-50-20 or whose training has been determined equivalent as specified in K.A.R. 26-50-26.

(k) "Qualified intellectual disability professional" shall mean an individual who meets the requirement specified in 42 C.F.R. 483.430 (a), as revised on July 16, 2012 and hereby adopted by reference.

(l) "Simulated laboratory" shall mean an enclosed area that is in a school, institution, adult care home, or other facility and that is similar to a resident's room in an adult care home. A simulated laboratory may serve as a setting for nurse aide trainees to practice basic nurse aide skills with the instructor and to demonstrate basic nurse aide skills for competency evaluation. (Authorized by K.S.A. 2012 Supp. 39-925, 39-936, 39-1901, and 39-1908; implementing K.S.A. 2012 Supp. 39-936 and 39-1908; effective, T-26-6-28-13, June 28, 2013; effective Oct. 25, 2013.)

**26-50-12. Curricula and instruction manuals.** (a) The following departmental documents, which are hereby adopted by reference, shall apply to each certified nurse aide program:

(1) "Kansas certified nurse aide curriculum guidelines (90 hours)," dated May 10, 2013, including appendix C, except the resource list on page 172, and excluding the preface and appendices A and B; and

(2) the cover page and pages 1 through 16 in the "Kansas certified nurse aide course (90 hour) instruction manual," dated May 10, 2013.

(b) The following departmental documents, which are hereby adopted by reference, shall apply to each certified medication aide program:

(1) "Kansas certified medication aide curriculum," dated May 10, 2013, excluding the foreword and the appendices; and

(2) pages 1 through 20 in the "Kansas certified medication aide course instruction manual," dated May 10, 2013. (Authorized by K.S.A. 2012 Supp. 39-925, 39-936, 39-1901, and 39-1908; imple-

menting K.S.A. 2012 Supp. 39-936 and 39-1908; effective, T-26-6-28-13, June 28, 2013; effective Oct. 25, 2013.)

**26-50-20. Nurse aide; training program.**

(a) Each unlicensed employee who provides direct care to residents shall meet the following training program requirements:

(1) Successfully complete at least a 90-hour nurse aide course approved by the secretary; and

(2) pass the state test as specified in K.A.R. 26-50-24.

(b) Each person shall be certified and shall be listed on the Kansas nurse aide registry upon completion of the training program requirements specified in subsection (a).

(c)(1) Each nurse aide trainee I in an approved 90-hour course shall be required to successfully complete part I of the course, including the nurse aide training and competency evaluation program task checklist to demonstrate initial competency, before being employed as a nurse aide trainee II. Any nurse aide trainee II may provide direct care to residents only under the direct supervision of an RN or LPN.

(2) Nurse aide trainee II status for employment shall be valid for only one four-month period from the beginning date of the course.

(d)(1) Each nurse aide course shall meet the following requirements:

(A) Consist of a combination of didactic and clinical instruction, with at least 50 percent of part I and at least 50 percent of part II of the curriculum provided as clinical instruction;

(B) be prepared and administered in accordance with the “Kansas certified nurse aide curriculum guidelines (90 hours)” and the “Kansas certified nurse aide course (90 hour) instruction manual,” as adopted by reference in K.A.R. 26-50-12; and

(C) be sponsored by one of the following, except as specified in paragraph (d)(3):

(i) An adult care home;

(ii) a long-term care unit of a hospital; or

(iii) a postsecondary school under the jurisdiction of the state board of regents.

(2) Clinical instruction and demonstration of the skills specified in the part I nurse aide training and competency evaluation program task checklist shall be performed in only one or a combination of the following settings that offer the full range of clinical tasks and experiences as specified in the “Kansas certified nurse aide curriculum guidelines (90 hours)”:

(A) An adult care home;

(B) a long-term care unit of a hospital; or

(C) a simulated laboratory.

(3) An adult care home shall not sponsor or provide clinical instruction for a 90-hour nurse aide course if that adult care home has been subject to any of the sanctions under the federal regulations for long-term care facilities listed in 42 C.F.R. 483.151(b)(2), as in effect on May 24, 2010.

(e) No correspondence course shall be approved as a nurse aide course.

(f) Each distance-learning offering and each computer-based educational offering of the nurse aide course shall meet the requirements specified in subsection (d). (Authorized by K.S.A. 2012 Supp. 39-925, 39-936, 39-1901, and 39-1908; implementing K.S.A. 2012 Supp. 39-936 and 39-1908; effective, T-26-6-28-13, June 28, 2013; effective Oct. 25, 2013.)

**26-50-22. Nurse aide training course; personnel and course sponsor.**

(a) The training of nurse aides shall be performed by or under the general supervision of a course supervisor. Each course supervisor shall meet the following requirements:

(1) Be licensed to practice as an RN and have no pending or current disciplinary actions against that individual’s license;

(2) have at least two years of full-time licensed nursing experience, which shall include at least 1,750 hours of licensed nursing experience in an adult care home or a long-term care unit of a hospital; and

(3) meet at least one of the following requirements:

(A) Completed a course in adult education;

(B) completed a professional continuing education offering on supervision or adult education;

(C) taught adults; or

(D) supervised nurse aides.

(b) When seeking approval as a course supervisor, the person shall submit a completed course supervisor application to the department at least three weeks before offering an initial training course and shall have obtained approval from the secretary before the beginning date of that training course.

(c) Each instructor of any nurse aide training course shall meet the following requirements:

(1) Be licensed to practice as an RN and have no pending or current disciplinary actions against that individual’s license;

(2) have at least two years of full-time licensed nursing experience;

(3) have completed at least seven hours of professional continuing education offerings on person-centered care in an adult care home or a long-term care unit of a hospital not more than one year before becoming an instructor of the nurse aide training course and each year while serving as an instructor; and

(4) meet at least one of the following requirements:

(A) Completed a course in adult education;

(B) completed a professional continuing education offering on supervision or adult education;

(C) taught adults; or

(D) supervised nurse aides.

(d) Any supplemental instructor may provide training in a subject area of the supplemental instructor's healthcare profession if that person has skills and knowledge in the subject area, has at least one year of full-time experience in that person's healthcare profession, and is under the direct supervision of the course supervisor or instructor.

(e) One person may serve as both course supervisor or instructor, if the person meets the qualifications of the designated positions as specified in subsections (a) and (c).

(f) Each course supervisor and course sponsor shall ensure that the following requirements are met:

(1) A completed course approval application shall be submitted to the department at least three weeks before offering any initial or subsequent nurse aide training course. Course approval shall be obtained from the secretary before the beginning date of the initial course and each subsequent course. Each change in course supervisor, course location, or course schedule shall require prior approval by the secretary.

(2) All course objectives shall be accomplished.

(3) The course shall be prepared and administered in accordance with the "Kansas certified nurse aide curriculum guidelines (90 hours)" and the "Kansas certified nurse aide course (90 hour) instruction manual," as adopted by reference in K.A.R. 26-50-12.

(4) The provision of direct care to residents by a nurse aide trainee II during clinical instruction shall be under the direct supervision of the instructor and shall be limited to clinical experiences that are only for the purpose of learning nursing skills.

(5) During the clinical instruction, the instructor shall perform no duties other than the provision of direct supervision to the nurse aide trainees.

(6) Each nurse aide trainee in the 90-hour nurse aide course shall demonstrate competency in all skills identified on the part I nurse aide training and competency evaluation program task checklist to an RN, as evidence of successful completion of the training course. The RN shall be licensed in the state of Kansas with no pending or current disciplinary action against that person's license and shall have at least one year of licensed nurse experience in providing care for the elderly or chronically ill who are 16 years of age or older. This RN shall date and sign the checklist verifying the nurse aide trainee's skills competency.

(7) Each course supervisor, instructor, and supplemental instructor shall meet the requirements of the designated positions as specified in subsections (a), (c), and (d).

(g) Any course supervisor or course sponsor who does not meet the requirements of this regulation may be subject to withdrawal of approval to serve as a course supervisor or course sponsor. (Authorized by K.S.A. 2012 Supp. 39-925, 39-936, 39-1901, and 39-1908; implementing K.S.A. 2012 Supp. 39-936 and 39-1908; effective, T-26-6-28-13, June 28, 2013; effective Oct. 25, 2013.)

**26-50-24. Nurse aide; state test.** (a) The state test for nurse aides shall consist of 100 multiple-choice questions. A score of 75 percent or higher shall constitute a passing score.

(b)(1) Only persons who have successfully completed an approved 90-hour nurse aide course or have completed education or training that has been deemed equivalent as specified in K.A.R. 26-50-26 shall be allowed to take the state test.

(2) Each person who has completed an approved 90-hour course as specified in K.A.R. 26-50-20 shall have no more than three attempts within 12 months after the beginning date of the course to pass the state test. If the person does not pass the state test within this 12-month period, the person shall be required to retake and successfully complete the entire nurse aide course.

(3) Each person whose education or training has been endorsed or deemed equivalent as specified in K.A.R. 26-50-26 shall have no more than one attempt to pass the state test, except as specified in this paragraph. If the person does not pass the state test, the person shall be required to successfully complete an approved 90-hour

nurse aide course as specified in K.A.R. 26-50-20 to be eligible to retake the state test. The person shall have no more than three attempts within 12 months after the beginning date of the course to pass the state test.

(c)(1) Each nurse aide trainee II shall pay a nonrefundable application fee of \$20.00 before taking the state test. A nonrefundable application fee shall be required each time the person is scheduled to take the state test.

(2) Each person who is scheduled to take the state test but fails to take the state test shall submit another nonrefundable application fee of \$20.00 before being scheduled for another opportunity to take the state test.

(3) Each instructor shall collect the application fee and application for each nurse aide trainee II who is eligible to take the state test and shall submit the application fees, application forms, class roster, and accommodation request forms to the department or its designated agent.

(d)(1) Any person who is eligible to take the state test may request reasonable test accommodation or an auxiliary aid to address the person's disability. Each time the person is scheduled to take the test, the person shall submit a request for reasonable accommodation or an auxiliary aid.

(2) Each person who requests a test accommodation shall submit an accommodation request form with the person's application form to the instructor. The instructor shall forward these forms to the department or its designated agent at least three weeks before the desired test date.

(3) Each person whose second language is English shall be allowed to use a bilingual dictionary while taking the state test. Limited English proficiency shall not constitute a disability with regard to accommodations. An extended testing period of up to two additional hours may be offered to persons with limited English proficiency. (Authorized by K.S.A. 2012 Supp. 39-925, 39-936, 39-1901, and 39-1908; implementing K.S.A. 2012 Supp. 39-936 and 39-1908; effective, T-26-6-28-13, June 28, 2013; effective Oct. 25, 2013.)

**26-50-26. Nurse aide; out-of-state and allied health training equivalency.** (a) Any person may be employed in the state without taking the Kansas state test if the person meets the following requirements:

(1) Has been employed as a nurse aide in another state and is eligible for employment in that state; and

(2) has been determined by the secretary to have successfully completed training or passed a test, or both, that is equivalent to the training and state test required in Kansas for nurse aides.

(b) Each person qualified under subsection (a) shall receive written notification from the department of the following:

(1) Exemption from the requirement to take the state test for nurse aides;

(2) placement on the Kansas nurse aide registry; and

(3) eligibility for employment.

(c) Each of the individuals specified in this subsection shall be determined to have training equivalent to the nurse aide training. Any of the following individuals may be deemed eligible to take the state test, as specified in K.A.R. 26-50-24:

(1) The person is currently licensed to practice as an RN or LPN in another state and has no pending or current disciplinary actions against that individual's license.

(2) The person is currently licensed to practice as a licensed mental health technician in Kansas or another state and has no pending or current disciplinary action against that individual's license.

(3) The person's license to practice as an RN, LPN, or licensed mental health technician has become inactive within the 24-month period immediately before the individual applied for equivalency, and the person has no pending disciplinary actions against that person's license.

(4) The person is currently enrolled in an accredited practical or professional nursing program or mental health technician training program and has successfully completed basic skills courses covering personal hygiene, nutrition and feeding, safe transfer and ambulation techniques, normal range of motion and positioning, and a supervised clinical experience in geriatrics.

(d) Any person eligible under subsection (c) may receive written approval from the secretary or the secretary's designee to take the state test. Upon receiving this written approval, that person may be employed by an adult care home as a nurse aide trainee II to provide direct care under the direct supervision of an RN or LPN. That person shall be required to pass the state test as specified in K.A.R. 26-50-24 for certification and placement on the Kansas nurse aide registry, within one four-month period beginning on the date of approval to take the state test, to continue employment providing direct care. (Authorized by K.S.A. 2012 Supp. 39-925, 39-936, 39-1901, and

39-1908; implementing K.S.A. 2012 Supp. 39-936 and 39-1908; effective, T-26-6-28-13, June 28, 2013; effective Oct. 25, 2013.)

**26-50-30. Medication aide; program.** (a) Each medication aide shall meet the following requirements:

(1)(A) Be a certified nurse aide listed on the Kansas nurse aide registry with no pending or current prohibitions against that individual's certification; or

(B) be a qualified intellectual disability professional;

(2) successfully complete a course in medication administration approved by the secretary;

(3) pass the state test approved by the secretary; and

(4) be at least 18 years old.

(b) Each person shall meet one of the following requirements to be eligible to enroll in a medication aide course:

(1) Be a nurse aide listed on the Kansas nurse aide registry with no pending or current prohibitions against that individual's certification and have been screened and tested for reading and comprehension of the written English language at an eighth-grade level; or

(2) be a qualified intellectual disability professional employed by an intermediate care facility for people with intellectual disability.

(c) A qualified intellectual disability professional who is not listed as a certified nurse aide on the Kansas nurse aide registry shall be allowed to administer medications only to residents in an intermediate care facility for people with intellectual disability after the individual has completed a course in medication administration approved by the secretary and has passed the state test.

(d) Each medication aide course shall meet the following requirements:

(1) Consist of at least 75 hours, which shall include at least 25 hours of clinical instruction;

(2) be prepared and administered in accordance with the "Kansas certified medication aide curriculum" and the "Kansas certified medication aide course instruction manual," as adopted by reference in K.A.R. 26-50-12; and

(3) be sponsored by one of the following:

(A) A postsecondary school under the jurisdiction of the state board of regents;

(B) A state-operated institution for persons with intellectual disability; or

(C) a professional health care association approved by the secretary.

(e) No correspondence course shall be approved as a medication aide course.

(f) Each distance-learning offering and each computer-based educational offering of the medication aide course shall meet the requirements in subsection (d). (Authorized by K.S.A. 2012 Supp. 39-925, 39-936, 39-1901, and 39-1908; implementing K.S.A. 2012 Supp. 39-925, 39-936, and 39-1908 and K.S.A. 65-1,120; effective, T-26-6-28-13, June 28, 2013; effective Oct. 25, 2013.)

**26-50-32. Medication aide course; instructor and course sponsor.** (a) Each instructor of the medication aide course shall meet the following requirements:

(1) Be licensed to practice as an RN and have no pending or current disciplinary actions against that individual's license; and

(2) have at least two years of clinical experience as an RN. Any pharmacist licensed in Kansas and actively working in the pharmacy field may conduct part of the training under the supervision of an approved instructor.

(b) When seeking approval as a medication aide course instructor, the applicant shall submit a completed instructor approval application to the department at least three weeks before offering an initial course and shall have obtained approval from the secretary before the beginning date of the initial course.

(c) Each instructor and each course sponsor shall ensure that the following requirements are met:

(1) A completed course approval application form shall be submitted to the department at least three weeks before offering any initial or subsequent medication aide course. Course approval shall be obtained from the secretary before the beginning date of each initial or subsequent medication aide course.

(2) The course shall be prepared and administered in accordance with the "Kansas certified medication aide curriculum" and the "Kansas certified medication aide course instruction manual," as adopted by reference in K.A.R. 26-50-12.

(3) Each person shall be screened and tested for comprehension of the written English language at an eighth-grade reading level before enrolling in the course.

(4) The clinical instruction and skills performance involving the administering of medica-

tions shall be under the direct supervision of the instructor and shall be limited to clinical experiences that are only for the purpose of learning medication administration skills.

(5) During the clinical instruction and skills performance, the instructor shall perform no duties other than the provision of direct supervision to the student.

(6) A list of the name of each person who successfully completed the course and passed the state test, along with a nonrefundable application fee of \$20.00 for each person and that person's completed application form, shall be submitted to the department.

(d) Any instructor or course sponsor who does not fulfill the requirements of this regulation may be subject to withdrawal of approval to serve as an instructor or a course sponsor. (Authorized by K.S.A. 2012 Supp. 39-925, 39-936, 39-1901, and 39-1908; implementing K.S.A. 2012 Supp. 39-925, 39-936, and 39-1908 and K.S.A. 65-1,120 and 65-1,121; effective, T-26-6-28-13, June 28, 2013; effective Oct. 25, 2013.)

**26-50-34. Medication aide; state test; registry.** (a) The state test for medication aides shall be administered by the secretary or the secretary's designee and in accordance with the "Kansas certified medication aide course instruction manual," as adopted by reference in K.A.R. 26-50-12.

(b) The state test for medication aides shall consist of 85 multiple-choice questions. A score of at least 65 correct answers shall constitute a passing score.

(c)(1) Only persons who have met the requirements in K.A.R. 26-50-30 (a)(1), (2), and (4) and in K.A.R. 26-50-36 shall be eligible to take the state test for medication aides.

(2) Each person who has completed the medication aide course as specified in K.A.R. 26-50-30 shall have no more than two attempts within 12 months after the beginning date of the course to pass the state test for medication aides. If the person does not pass the test within this 12-month period, the person shall retake the medication aide course. Each time the person successfully completes the course, the person shall have two attempts to pass the state test within 12 months after the beginning date of the course. The number of times a person may retake the course shall be unlimited.

(3) Each person who is listed on the Kansas nurse aide registry with no current or pending

prohibitions and whose training has been deemed equivalent to the Kansas medication aide course shall have no more than one attempt to pass the state test within 12 months after the beginning date of the equivalency approval. If the person does not pass the state test within this 12-month period, the person shall be required to take the state medication aide course.

(d) Each person whose second language is English shall be allowed to use a bilingual dictionary while taking the state test. Limited English proficiency shall not constitute a disability with regard to accommodation. An extended testing period of up to 90 minutes may be offered to persons with limited English proficiency.

(e) Each person shall be identified on the Kansas nurse aide registry as a certified medication aide after the department has received the following:

(1) A list of the name of each person who successfully completed the course;

(2) each person's application; and

(3) each person's nonrefundable fee of \$20.00. (Authorized by K.S.A. 2012 Supp. 39-925, 39-936, 39-1901, and 39-1908; implementing K.S.A. 2012 Supp. 39-925, 39-936, and 39-1908 and K.S.A. 65-1,120 and 65-1,121; effective, T-26-6-28-13, June 28, 2013; effective Oct. 25, 2013.)

**26-50-36. Medication aide; out-of-state and allied health training equivalency.** Any person whose education or training has been deemed equivalent to the medication aide course offered by an approved sponsor as specified in K.A.R. 26-50-30 may apply to take the state test to become certified as a medication aide. Before requesting a determination of education or training equivalency as a medication aide, that person shall be listed on the Kansas nurse aide registry with no pending or current prohibitions against that person's certification and shall meet one of the following requirements:

(a) The person shall be currently certified to administer medications in another state. The department or its designated agent shall evaluate that state's certification training for equivalency in content and skills level with the requirements for certification as a medication aide in Kansas.

(b) The person shall be currently enrolled in an accredited practical nursing or professional nursing program and shall have completed a course of study in pharmacology with a grade of C or better.

(c) The person shall be currently licensed in Kansas or another state as a licensed mental health

technician and shall have no pending or current disciplinary actions against that person's license.

(d) The person's license to practice as an RN, an LPN, or a licensed mental health technician shall have become inactive within the 24-month period immediately before the individual applied for equivalency, and the person shall have no pending or current disciplinary actions against that person's license. (Authorized by K.S.A. 2012 Supp. 39-925, 39-936, 39-1901, and 39-1908; implementing K.S.A. 2012 Supp. 39-925, 39-936, and 39-1908 and K.S.A. 65-1,120; effective, T-26-6-28-13, June 28, 2013; effective Oct. 25, 2013.)

**26-50-38. Medication aide; certification renewal and reinstatement; notification of changes.** (a) Each person who has been certified as a medication aide as specified in K.A.R. 26-50-30 and wants to maintain that person's certification shall complete a 10-hour continuing education course every two years before that person's certification expires. The course shall be approved by the secretary. Approved continuing education hours completed in excess of the requirement shall not be carried over to the next certification renewal period.

(b) Each medication aide's certification shall be renewed every two years upon the department's receipt of each of the following from the course instructor before that medication aide's certification expires:

- (1) Verification of the medication aide's completion of 10 hours of an approved continuing education course;
- (2) the medication aide's renewal form; and
- (3) a nonrefundable renewal fee of \$20.00.

(c)(1) Each person's medication aide certification shall be valid for two years from the date of issuance.

(2) Each person whose medication aide certification has been expired for not more than one year may have that person's certification reinstated and may be listed on the Kansas nurse aide registry if the department receives the items specified in paragraphs (b)(1) through (3) from the course instructor.

(3) Each person whose certification has been expired for more than one year shall retake the 75-hour medication aide course and the state test, for reinstatement of certification and listing on the Kansas nurse aide registry.

(d) Each certified medication aide shall notify the department of any change in that person's ad-

dress or name. (Authorized by K.S.A. 2012 Supp. 39-925, 39-936, 39-1901, and 39-1908; implementing K.S.A. 2012 Supp. 39-925, 39-936, and 39-1908 and K.S.A. 65-1,120 and 65-1,121; effective, T-26-6-28-13, June 28, 2013; effective Oct. 25, 2013.)

**26-50-40. Medication aide; continuing education course.** (a) A 10-hour continuing education course shall be approved by the secretary for renewal or reinstatement of certification as a medication aide, as specified in K.A.R. 26-50-38.

(b) The continuing education course requirement shall include one or more of the following topics:

- (1) Classes of drugs and new drugs;
- (2) new uses of existing drugs;
- (3) methods of administering medications;
- (4) alternative treatments, including herbal drugs and their potential interaction with traditional drugs;
- (5) safety in the administration of medications; or
- (6) documentation.

(c) Each continuing education program shall be sponsored by one of the following:

- (1) A postsecondary school under the jurisdiction of the state board of regents;
- (2) an adult care home;
- (3) a long-term care unit of a hospital;
- (4) a state-operated institution for persons with intellectual disability; or
- (5) a professional health care association approved by the secretary.

(d) Each instructor of the medication aide continuing education course shall meet the following requirements:

- (1) Be licensed to practice as an RN and have no pending or current disciplinary actions against that individual's license;
- (2) have at least two years of clinical experience as a licensed nurse. Any pharmacist licensed in Kansas and actively working in the pharmacy field may conduct part of the training under the supervision of an approved instructor; and
- (3) submit a completed instructor approval application to the department at least three weeks before first offering a medication aide continuing education course and obtain approval from the secretary before the beginning date of that course.

(e) Each instructor and course sponsor shall ensure that the following requirements are met:

- (1) A course approval application form shall be submitted to the department at least three weeks

before offering a course, and course approval shall be received from the secretary before the beginning date of the course.

(2) The course shall be prepared and administered in accordance with “Kansas certified medication aide curriculum” and the “Kansas certified medication aide course instruction manual,” as adopted by reference in K.A.R. 26-50-12.

(3) If clinical instruction and skills performance in administering medication are included in the course, each student administering medication shall be under the direct supervision of the instructor.

(4) A listing of the name of each person who successfully completed the course, along with each person’s nonrefundable renewal fee of \$20.00 and application form, shall be submitted to the department.

(f) Any course sponsor or instructor who does not fulfill the requirements specified in subsections (a) through (e) may be subject to withdrawal of approval to serve as a course sponsor or an instructor.

(g) College courses and vocational training may be approved by the secretary as substantially equivalent to a medication aide continuing education course. The instructor or nursing program coordinator shall submit a department-approved form attesting that the course content is substantially equivalent to the topics listed in paragraphs (b)(1) through (6).

(h) No correspondence course shall be approved for a medication aide continuing education course.

(i) Each distance-learning educational offering and each computer-based educational offering of continuing education for any medication aide shall meet the requirements in subsections (a) through (f). (Authorized by K.S.A. 2012 Supp. 39-925, 39-936, 39-1901, and 39-1908; implementing K.S.A. 2012 Supp. 39-936 and 39-1908 and K.S.A. 65-1,121; effective, T-26-6-28-13, June 28, 2013; effective Oct. 25, 2013.)

**Agency 28**  
**Department of Health and Environment**

*Articles*

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- 28-14. COLLECTION AND ANALYSIS OF WATER AND PUBLIC WATER SUPPLIES.
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**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.)

#### **28-1-4. 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.)

#### **28-1-6. 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) coccidioidomycosis;
- (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.)

**28-1-12. 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.)

**28-1-18. 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.)

**28-1-20. 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.)

**28-1-23. 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.)

**28-1-27. 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 physical attendance in a classroom setting with one or more persons.

(h) "TB" means tuberculosis.

(i) "TB prevention and control plan" means the policies and procedures adopted pursuant to K.S.A. 65-129f, and amendments thereto, used at a postsecondary educational institution to reduce the risk of tuberculosis transmission and derived from pages 32 through 42 of the guidelines in "controlling tuberculosis in the United States: recommendations from the American thoracic society, CDC, and the infectious diseases society of America," published in morbidity and mortality weekly report (MMWR) on November 4, 2005, vol. 54, no. RR-12. The pages specified in this subsection are hereby adopted by reference.

(j) "Tuberculosis" has the meaning specified in K.S.A. 65-116a, and amendments thereto. For the purposes of these regulations, the term "active TB" shall mean a person diagnosed with tuberculosis by a health care provider, and the term "latent TB infection" shall mean a person who is determined by a health care provider to have the bacterium that causes tuberculosis but has not been diagnosed with active TB. (Authorized by and implementing K.S.A. 2010 Supp. 65-129e and 65-129f; effective April 15, 2011.)

**28-1-31. TB prevention and control plan.**

(a) Each college designee and university designee shall implement a TB prevention and control plan.

(1) The TB prevention and control plan shall include a TB evaluation component for each student determined to be a high-risk student, which shall include the following as necessary:

- (A) Tuberculin skin testing;
- (B) interferon gamma release assay;
- (C) chest radiograph;
- (D) sputum evaluation;
- (E) physical exam; and
- (F) review of signs of symptoms.

(2) The TB prevention and control plan shall provide notification to the department if a student has been found to have latent TB infection or active TB, in accordance with K.A.R. 28-1-2.

(b) Each postsecondary educational institution shall be in compliance with this regulation within 12 months after the beginning of the academic

year following the effective date of this regulation. (Authorized by and implementing K.S.A. 2010 Supp. 65-129e and 65-129f; effective April 15, 2011.)

**28-1-32. Health services at colleges and universities; submission of a TB prevention and control plan; monitoring of compliance.**

(a) Each college designee and university designee shall submit to the department a TB prevention and control plan and any revisions that have been developed in consultation with the department, to ensure that the TB prevention and control plan includes evaluation criteria that are in compliance with the best practice standards as recommended by the division of tuberculosis elimination of the centers for disease control and prevention.

(b) Each postsecondary educational institution that provides health services and that performs infection or disease evaluations, or both, shall keep internal TB evaluation records for each high-risk student.

(c) Each postsecondary educational institution that does not have health services to perform infection or disease evaluations, or both, shall maintain the data on the form provided by the department for each individual considered to be a high-risk student.

(d) Each postsecondary educational institution shall be in compliance with this regulation within 12 months after the beginning of the academic year following the effective date of this regulation. (Authorized by and implementing K.S.A. 2010 Supp. 65-129e and 65-129f; effective April 15, 2011.)

**28-1-40. Definitions.** In addition to the terms defined in L. 2020 Special Session, ch. 1, sec. 16 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 regulation:

(a) “Department” means Kansas department of health and environment.

(b) “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.

(c) “Protected health information” has the meaning specified in K.S.A. 65-6822, and amendments thereto.

(d) “Third party” means 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;
- (3) a business; or
- (4) an entity similar to any of the entities specified in paragraphs (d)(1) through (3). (Authorized by and implementing L. 2020 Special Session, ch. 1, sec. 16; effective, T-28-7-30-20, July 30, 2020; effective Nov. 20, 2020.)

**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. 2020 Special Session, ch. 1, sec. 16, 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. 2020 Special Session, ch. 1, sec. 16; effective, T-28-7-30-20, July 30, 2020; effective Nov. 20, 2020.)

**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) Identity;
- (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) physical biometrics;
- (3) temperature; and
- (4) symptoms.

(c) Whenever a contact tracer communicates with a contact, the contact tracer shall advise the contact that the contact is under no compulsion or prohibition from participating in the contact tracing.

(1) The contact tracer shall use the following text, or a substantially similar text, when advising the contact:

“Participation in COVID-19 contact tracing is voluntary. You may not be compelled or prohibited from participation with 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. 2020 Special Session, ch. 1, sec. 16; effective, T-28-7-30-20, July 30, 2020; effective Nov. 20, 2020.)

**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. 2020 Special Session, ch. 1, sec. 16, and amendments thereto, shall surrender all contact data to the secretary or the local health officer when the contact data is no longer needed to monitor the contact’s health and 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 destroy 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 containing the spread of COVID-19. (Authorized by and implementing L. 2020 Special Session, ch. 1, sec. 16; effective, T-28-7-30-20, July 30, 2020; effective Nov. 20, 2020.)

**28-1-44. Sunset provision.** K.A.R. 28-1-40 through 28-1-43 shall have no force and effect after May 1, 2021 or upon the expiration of L. 2020 Special Session, ch. 1, sec. 16 and amendments thereto, whichever is later. (Authorized by and implementing L. 2020 Special Session, ch. 1, sec. 16; effective, T-28-7-30-20, July 30, 2020; effective Nov. 20, 2020.)

#### **Article 4.—MATERNAL AND CHILD HEALTH**

**28-4-92. License fees.** When an applicant or licensee submits an application for a license or for the renewal of a license, the applicant or licensee shall submit to the secretary the appropriate nonrefundable license fee specified in this regulation:

- (a) For each maternity center as defined in K.S.A. 65-502 and amendments thereto, \$75;
- (b) for each child placement agency as defined in K.S.A. 65-503 and amendments thereto, \$75;
- (c) for each child care resource and referral agency as defined in K.S.A. 65-503 and amendments thereto, \$75;
- (d) for each of the following child care facilities, \$75 plus \$1 times the maximum number of children to be authorized under the license:

(1) Day care home or group day care home, as defined in K.A.R. 28-4-113; and

(2) child care center, as defined in K.A.R. 28-4-420; and

(e) for each of the following child care facilities with a license capacity of 13 or more children, \$35 plus \$1 for each child included in the license capacity, with the total not to exceed \$75, and for each of the following child care facilities with a license capacity of 12 or fewer children, \$15:

(1) Attendant care facility, as defined in K.A.R. 28-4-285;

(2) detention center or secure care center, as defined in K.A.R. 28-4-350;

(3) preschool, as defined in K.A.R. 28-4-420;

(4) psychiatric residential treatment facility, as defined in K.A.R. 28-4-1200;

(5) residential center or group boarding home, as defined in K.A.R. 28-4-268; and

(6) secure residential treatment facility, as defined in K.A.R. 28-4-330. (Authorized by and implementing K.S.A. 65-505, as amended by L. 2010, ch. 161, sec. 6; effective, T-83-24, Aug. 25, 1982; effective May 1, 1983; amended, T-86-46, Dec. 18, 1985; amended May 1, 1986; amended, T-87-22, Aug. 21, 1986; amended May 1, 1987; amended, T-28-8-16-10, Aug. 16, 2010; amended Dec. 17, 2010.)

**28-4-93. Online information dissemination system.** This regulation shall apply to the department's online information dissemination system for child care facilities, as defined in K.S.A. 65-503 and amendments thereto. (a) Definitions. The following terms shall have the meanings specified in this regulation:

(1) "Applicant" means a person who has applied for a license to operate a child care facility but who has not yet been granted the license.

(2) "Applicant with a temporary permit" means a person who has been granted a temporary permit to operate a child care facility.

(3) "Department" means Kansas department of health and environment.

(4) "Licensee" means a person who has been granted a license to operate a child care facility.

(5) "Online information dissemination system" means the electronic database of the department that is accessible to the public.

(b) Identifying information. Each applicant, each applicant with a temporary permit, and each licensee that wants the department to display the address and the telephone number of the child care facility on the online information dissemination system shall notify the department on a form provided by the department. (Authorized by and implementing K.S.A. 2010 Supp. 65-534; effective Feb. 3, 2012.)

**28-4-94. Background check requests for residential centers, group boarding homes, and child placement agencies.** (a) Initial and renewal background check requests. Each appli-

cant 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.)

**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 desig-

nee 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 individual 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, individual bedding, including a bottom and a top cover, shall be provided for each child.

(8) Cribs, cots, playpens, and pads, when in use for napping or sleeping, shall be separated by at least 24 inches in all directions except when bordering on the wall.

(9) When not in use, cribs, cots, playpens, pads, and bedding shall be stored in a clean and sanitary manner.

(d) Consumer warning or recall. Each applicant with a temporary permit and each licensee shall make any necessary changes to follow the recom-

mendations 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.)

**28-4-118. 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.)

**28-4-120.** (Authorized by K.S.A. 65-522; implementing K.S.A. 65-519 and 65-521; effective May 1, 1981; amended May 1, 1986; amended Feb. 26, 1990; amended July 11, 2008; revoked Feb. 3, 2012.)

**28-4-121.** (Authorized by K.S.A. 65-522; implementing K.S.A. 65-519; effective July 11, 2008; revoked Feb. 3, 2012.)

**28-4-125. 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.)

**28-4-133. 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.)

**28-4-370.** (Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, 65-502, 65-504, 65-508; effective May 1, 1981; revoked July 9, 2010.)

**28-4-371.** (Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, 65-503, 65-508, K.S.A. 1982 Supp. 65-504, 65-505; effective May 1, 1981; amended, T-83-24, Aug. 25, 1982; amended May 1, 1983; revoked July 9, 2010.)

**28-4-372.** (Authorized by K.S.A. 65-508; implementing K.S.A. 65-502, 65-504, 65-509, 65-510, 65-511; effective May 1, 1981; revoked July 9, 2010.)

**28-4-373.** (Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, 65-502, 65-504, 65-507, 65-508; effective May 1, 1981; revoked July 9, 2010.)

**28-4-374.** (Authorized by K.S.A. 65-508; implementing K.S.A. 65-507, 65-508; effective May 1, 1981; amended May 1, 1985; revoked July 9, 2010.)

**28-4-375.** (Authorized by K.S.A. 65-508; implementing K.S.A. 65-507, 65-508; effective May 1, 1981; amended May 1, 1985; revoked July 9, 2010.)

**28-4-376.** (Authorized by K.S.A. 65-508; implementing K.S.A. 65-507, 65-508, 65-510; effective May 1, 1981; amended May 1, 1985; revoked July 9, 2010.)

**28-4-377.** (Authorized by and implementing K.S.A. 65-508; effective May 1, 1981; amended, T-87-34, Nov. 19, 1986; amended May 1, 1987; revoked July 9, 2010.)

**28-4-378 and 28-4-379.** (Authorized by and implementing K.S.A. 65-508; effective May 1, 1981; revoked July 9, 2010.)

**28-4-428. 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.)

**28-4-440. 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 in-

fant's back but then shall be allowed to remain in a position preferred by the infant. Wedges or infant positioners shall not be used.

(F) Each infant shall sleep in a crib or a playpen that is free of any soft items, which may include pillows, quilts, heavy blankets, bumpers, and toys.

(G) If a lightweight blanket is used, the blanket shall be tucked along the sides and foot of the mattress. The blanket shall not be placed higher than the infant's chest. The head of the infant shall remain uncovered. Any infant may nap or sleep in sleep clothing, including sleepers and sleep sacks, in place of a lightweight blanket.

(i) When children are awake, they shall not be left unattended in cribs or other confinement for more than 30 minutes.

(j) An adult-size rocking chair shall be provided for each unit of infants.

(k) Children not held for feeding shall have low chairs and tables, infant seats with trays, or high chairs with a wide base and a safety strap.

(l) Either individually labeled towels and washcloths or disposable products shall be provided.

(m) Items that children can place in their mouths shall be washed and sanitized daily and shall be washed and sanitized before being used by another child, if contaminated by saliva or other bodily fluids.

(n) Each licensee shall ensure that at least one staff member who meets one of the following staff requirements is present for each unit of infants and each unit of toddlers:

(1) Option 1: An individual who meets the qualifications of K.A.R. 28-4-429(b) and has at least three months' experience caring for infants and toddlers;

(2) option 2: a licensed L.P.N. or R.N. with three months' experience in pediatrics or in licensed child care centers enrolling infants and toddlers; or

(3) option 3: a child development associate credential in infant and toddler care.

(o) Each licensee shall ensure that the following program requirements are met:

(1) Daily activities shall contribute to the following:

(A) Gross and fine motor development;

(B) visual-motor coordination;

(C) language stimulation; and

(D) social and personal growth.

(2) Infants and toddlers shall spend time outdoors daily unless extreme weather conditions prevail.

(p) Each licensee shall ensure that the following food service requirements are met:

(1) The nitrate content of water for children under one year of age shall not exceed 10 milligrams per liter (10 mg/l) as nitrogen.

(2) Drinking water shall be available to each child at all times when the child is in care.

(3) Infants shall be held when bottle-fed until they can hold their own bottles.

(4) Infants and toddlers shall not be allowed to sleep with bottles in their mouths.

(5) Each bottle that contains prepared formula or breast milk shall be refrigerated with the nipple covered. The bottle shall be labeled with the child's name, the contents, and the date received and shall be used within 24 hours of the date on the label. If a child does not finish a bottle, the contents of the bottle shall be discarded. No formula or breast milk shall be heated in a microwave oven.

(6) Solid foods shall be offered when the program director and the parent or legal guardian of a child determine that the child is ready for solid foods. Opened containers of solid foods shall be labeled with child's name, the contents, and the date opened. Containers shall be covered and refrigerated. The food shall be used within three calendar days of the date opened. Food in previously opened containers shall be reheated only once and shall not be served to another child.

(q) Each licensee shall ensure that the following toileting requirements are met:

(1) Children's clothing shall be changed whenever wet or soiled.

(2) Each child shall have at least two complete changes of clothing.

(3) Handwashing facilities shall be in or adjacent to the diaper-changing area.

(4) A changing table shall be provided for each unit of infants and each unit of toddlers.

(5) Each changing table shall have an impervious, undamaged surface. Each table shall be sturdy and shall be equipped with railings or safety straps.

(6) Changing tables shall be sanitized after each use by washing with a disinfectant solution of ¼ cup of chlorine bleach to one gallon of water or with an appropriate commercial disinfectant.

(7) Wet or soiled washable diapers or training pants shall be stored in a labeled, covered container or plastic bag and shall be returned home with the parent.

(8) Wet or soiled disposable diapers shall be

placed in a covered container or plastic bag, which shall be emptied daily.

(9) There shall be one potty chair or child-sized toilet for every five toddlers. When a potty chair is used, the following requirements shall be met:

(A) Potty chairs shall be left in the toilet room.

(B) The wastes shall be disposed of immediately in a flush toilet.

(C) The container shall be sanitized after each use and shall be washed with soap and water daily.

(D) Potty chairs shall not be counted as toilets.

(10) Each individual shall wash that individual's hands after diapering, assisting a child with toileting, or changing a child's wet or soiled clothing.

(11) Changing and toileting procedures shall be posted.

(r) There shall be daily communication between the parent, parents, or legal guardian and the staff about each child's behavior and development. (Authorized by and implementing K.S.A. 2010 Supp. 65-508; effective May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-34, Nov. 19, 1986; amended May 1, 1987; amended Feb. 3, 2012.)

**28-4-503. Timing of specimen collections.** (a) The initial specimen from each infant born in an institution shall be obtained as follows:

(1) (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.)

**28-4-505. Unsatisfactory specimens.** (a) Each unsatisfactory specimen shall be retained by the department. The sending agency or facility shall be notified that the specimen is unsatisfactory. The physician or birth attendant shall be notified that the specimen is unsatisfactory with a request to submit another specimen.

(b) A specimen shall be labeled unsatisfactory if one of the following criteria is met:

- (1) Identifying information is missing.
- (2) More than 10 days have elapsed since the date of collection.
- (3) The specimen is of unacceptable quality or quantity for analysis. (Authorized by K.S.A. 65-101 and K.S.A. 2009 Supp. 65-180; implementing K.S.A. 2009 Supp. 65-180 and K.S.A. 65-181; effective, T-87-48, Dec. 19, 1986; effective May 1, 1987; amended April 14, 2000; amended Dec. 3, 2010.)

**28-4-514. MSUD and PKU; financial assistance availability for certain related expenses.**

(a)(1) The following factors shall be used to determine each family's eligibility for financial assistance for necessary treatment products or medically necessary food treatment products, or both:

- (A) Applicable income; and
- (B) cash assets in excess of 15 percent of the applicable income.

(2) If a family seeking financial assistance under this regulation has more than one family member with MSUD or PKU, the family shall be considered eligible for financial assistance at a level that is 100 percent less than the eligibility level for a family with one family member.

(b) Each individual who applies for or who receives financial assistance under this regulation shall also meet the requirements in K.A.R. 28-4-401.

(c) The following eligibility requirements shall apply to each family:

(1) Each family with applicable income and cash assets less than or equal to 185 percent of the federal poverty level shall be eligible to receive 100 percent of the cost of necessary treatment products. This family shall be eligible each year for up to \$1,000 of medically necessary food treatment products for family members who are 18 years of age and younger.

(2) Each family with applicable income and cash assets more than 185 percent but not more than 285 percent of the federal poverty level shall be eligible to receive 50 percent of the cost of necessary treatment products.

(3) Each family with applicable income and cash assets more than 285 percent but not more than 385 percent of the federal poverty level shall be eligible to receive 25 percent of the cost of necessary treatment products.

(4) No family with applicable income and cash assets over 385 percent of the federal poverty level shall be eligible to receive any of the cost of necessary treatment products.

(d) If a family's health insurance covers a portion of the cost of necessary treatment products, the family's financial responsibility for this cost shall be determined pursuant to subsection (c).

(e) If the department orders any necessary treatment products for a family that is responsible for part of the cost, that family shall receive a statement indicating the amount to be reimbursed to the department. If reimbursement is not received from the family within 60 days of the statement date, the placement of any future orders for necessary treatment products for that family shall no longer be processed by the department. (Authorized by K.S.A. 65-101 and K.S.A. 2009 Supp. 65-180; implementing K.S.A. 2009 Supp. 65-180; effective, T-28-7-5-06, July 5, 2006; effective Oct. 20, 2006; amended Dec. 3, 2010.)

**28-4-520. Definitions.** In addition to the definitions in K.S.A. 65-1,241 and amendments thereto, each of the following terms shall have the meaning assigned in this regulation:

(a) "Abnormal condition" means any condition established at conception or acquired in utero that results in a morphologic, metabolic, functional, or behavioral disorder requiring medical or other intervention.

(b) "Birth defects information system" means the Kansas birth defects reporting system, which collects, maintains, analyzes, and disseminates information regarding abnormal conditions, birth defects, and congenital anomalies of each stillbirth and of each child from birth to five years of age with a birth defect.

(c) "Congenital anomaly" means an error of morphogenesis that is established at conception or acquired during intrauterine life, which is also referred to as a birth defect.

(d) “ICD-9-CM” means the clinical modification of the “international classification of diseases,” ninth revision, published by Ingenix inc., which is used to code and classify morbidity data from inpatient and outpatient records, physician offices, and most surveys from the national center for health statistics. The following portions of volume one of this document are hereby adopted by reference:

(1) “Genetic and metabolic conditions,” codes 243 through 279.2 on pages 49 through 60;

(2) “sickle cell anemia and other hemoglobinopathies,” codes 282.4 through 282.7 on pages 61 and 62;

(3) “congenital anomalies,” codes 740 through 759 on pages 227 through 240; and

(4) “fetal alcohol syndrome,” code 760.71 on page 241.

(e) “Primary diagnosis” means the principal disease or condition assigned to an infant by a licensed physician based on the history of the disease process, signs and symptoms, laboratory data, and special tests. (Authorized by and implementing K.S.A. 2009 Supp. 65-1,245; effective Dec. 3, 2010.)

**28-4-521. Reporting abnormal conditions and congenital anomalies.** (a) Reporting requirements. Each physician, hospital, and 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.)

**28-4-550. 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.)

**28-4-552.** (Authorized by and implementing K.S.A. 1996 Supp. 75-5649; effective Jan. 30, 1995; amended Aug. 15, 1997; revoked March 7, 2014.)

**28-4-556.** (Authorized by and implementing K.S.A. 1996 Supp. 75-5649; effective Jan. 30, 1995; amended Aug. 15, 1997; revoked March 7, 2014.)

**28-4-564. Personnel requirements.** (a) Early intervention services shall be provided by qualified personnel.

(b) Qualified personnel shall meet state-approved or state-recognized certification, li-

censing, 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.)

**28-4-568. 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.)

**28-4-573. 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.)

**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.)

**28-4-587. 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 member 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.)

**28-4-592. 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 emergencies. 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 chlorine 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.)

**28-4-705. 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 in-

volve 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.)

**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.)

**28-4-814. 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.)

**28-4-816. 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.)

**28-4-820. 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 fam-

ily 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.)

**28-4-1200. 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 assessment and referrals for any concerns identified in the health checklist and review;

(3) if medically indicated, chronic care, convalescent care, and preventive care;

(4) care for minor illness, including the use and administration of prescription and nonprescription drugs;

(5) care for residents under the influence of alcohol or other drugs;

(6) consultation regarding each individual resident, if indicated;

(7) infection control measures and universal precautions to prevent the spread of blood-borne infectious diseases, including medically indicated isolation; and

(8) maternity care as required by K.A.R. 28-4-279.

(b) Physical health of residents at admission and throughout placement. Each licensee shall maintain a health record for each resident to document the provision of health services, including dental services.

(1) Each licensee shall ensure that a health checklist is completed for each resident at the time of admission by the individual who admits the resident. The health checklist shall serve as a guide to determine if a resident is in need of medical or dental care and to determine if the resident is using any prescribed medications.

(2) Each licensee shall ensure that the PRTF's physician, a physician's assistant operating under a written protocol as authorized by a responsible physician, or an advanced registered nurse practitioner (ARNP) operating under a written protocol

as authorized by a responsible physician and operating under the ARNP's scope of practice is contacted for any resident who is taking a prescribed medication at the time of admission, to assess the need for continuation of the medication.

(3) Each change of prescription or directions for administering a prescription medication shall be ordered by the authorized medical practitioner with documentation placed in the resident's record. Prescription medications shall be administered only to the designated resident as ordered by the authorized medical practitioner.

(4) Each licensee shall ensure that a physician, a physician's assistant operating under a written protocol as authorized by the responsible physician, or an ARNP operating under a written protocol as authorized by a responsible physician and operating within the ARNP's scope of practice is contacted for any resident who has acute symptoms of illness or who has a chronic illness.

(5) Within 72 hours of admission, a physician, a physician's assistant operating under a written protocol as authorized by a responsible physician, or a nurse approved to conduct screening and health assessments shall review the health checklist. Based upon health indicators derived from the checklist or in the absence of documentation of a screening within the past 24 months, the reviewing physician, physician's assistant, or nurse shall determine whether or not a full screening and health assessment are necessary. If a full screening and health assessment are necessary, the following requirements shall be met:

(A) The screening and health assessment shall be conducted by a licensed physician, a physician's assistant operating under a written protocol as authorized by a responsible physician, or a nurse approved to conduct these examinations.

(B) The screening and health assessment shall be completed within 10 days of admission.

(6) Each licensee shall ensure that each resident receives a screening for symptoms of tuberculosis. A Mantoux test, a tuberculin blood assay test, or a chest X-ray shall be required if any of the following occurs:

(A) The resident has a health history or shows symptoms compatible with tuberculosis.

(B) The location of the PRTF is in an area identified by the local health department or the secretary as a high-risk area for tuberculosis exposure.

(C) Significant exposure to an active case of tuberculosis occurs, or symptoms compatible with tuberculosis develop.

(D) If there is a positive reaction to the diagnostic procedures, proof of proper treatment or prophylaxis shall be required. Documentation of the test, X-ray, or treatment results shall be kept on file in the resident's health record, and the county health department shall be informed of the results.

(7) Each licensee shall ensure that written policies and procedures prohibit the use of tobacco in any form by any resident while in care.

(c) Oral health of residents. Each licensee shall ensure that the following requirements are met:

(1) Dental care shall be available for all residents.

(2) Each resident who has not had a dental examination within the year before admission to the PRTF shall have a dental examination no later than 60 days after admission.

(3) Each resident shall receive emergency dental care as needed.

(4) Each licensee shall develop and implement a plan for oral health education and staff supervision of residents in the practice of good oral hygiene.

(d) Health record. Each licensee shall maintain a health record for each resident to document the provision of health services required in subsections (a), (b), and (c).

(e) Personal health and hygiene of residents.

(1) Each resident shall have access to drinking water, a lavatory, and a toilet.

(2) Each licensee shall ensure that each resident is given the opportunity to bathe upon admission and daily.

(3) Each licensee shall furnish each resident with toothpaste and a toothbrush.

(4) Each licensee shall ensure that each resident is given the opportunity to brush the resident's teeth after each meal.

(5) Each licensee shall make opportunities available to the residents for daily shaving and regular haircuts.

(6) Each resident's washable clothing shall be changed and laundered at least twice a week. Each licensee shall ensure that clean underwear and socks are available to each resident on a daily basis.

(7) Each female resident shall be provided personal hygiene supplies for use during her menstrual cycle.

(8) Each licensee shall ensure that clean, individual washcloths and bath towels are issued to each resident at least twice each week.

(9) Each licensee shall allow each resident to have at least eight hours of sleep each day.

(f) Personal health of staff members and volunteers of the PRTF.

(1) Each individual shall meet the following requirements:

(A) Be free from any infectious or contagious disease requiring isolation or quarantine as specified in K.A.R. 28-1-6;

(B) be free of any physical, mental, or emotional health conditions that would adversely affect the individual's ability to fulfill the responsibilities listed in the individual's job description and to protect the health, safety, and welfare of the residents; and

(C) be free from impaired ability due to the use of alcohol, prescription or nonprescription drugs, or other chemicals.

(2) Each individual who has contact with any resident or who is involved in food preparation or service shall have received a health assessment within one year before employment. This assessment shall be conducted by a licensed physician, a physician's assistant operating under a written protocol as authorized by a responsible physician, or a nurse authorized to conduct these assessments.

(3) The results of each health assessment shall be recorded on forms provided by the department and shall be kept on file.

(4) A health assessment record may be transferred from a previous place of employment if the assessment occurred within one year before the individual's employment at the PRTF and if the assessment was recorded on the form provided by the department.

(5) The initial health examination shall include a screening for symptoms of tuberculosis. A Mantoux test, a tuberculin blood assay test, or a chest X-ray shall be required if any of the following occurs:

(A) The individual has a health history or shows symptoms compatible with tuberculosis.

(B) The PRTF is located in an area identified by the local health department or the secretary as a high-risk area for tuberculosis exposure.

(C) Significant exposure to an active case of tuberculosis occurs, or symptoms compatible with tuberculosis develop.

(D) If there is a positive reaction to any of the diagnostic procedures, proof of proper treatment or prophylaxis shall be required. Documentation of the test, X-ray, and treatment results shall be

kept on file in the individual's health record, and the county health department shall be informed of the results.

(6) If an individual experiences a significant 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 refrigerated

erator, 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 de-

partment, the police, a hospital, a physician, the poison control center, and an ambulance, shall be posted by each phone.

(13) A service sink and a locked storage area for cleaning supplies shall be provided in a room or closet that is well ventilated and separate from kitchen and living areas.

(d) Bathroom facilities.

(1) For each eight or fewer residents of each sex, at least one toilet, one lavatory, and either a bathtub or a shower shall be provided. All toilets shall be above floor level.

(2) Each bathroom shall be ventilated to the outdoors by means of either a window or a mechanical ventilating system, with a minimum of 10 air changes each hour.

(3) Toilet and bathing accommodations and drinking water shall be in a location accessible to sleeping rooms and living and recreation rooms.

(4) Drinking water and at least one bathroom shall be accessible to the reception and admission areas.

(5) Cold water and hot water not exceeding 120 degrees Fahrenheit shall be supplied to lavatories, bathtubs, and showers.

(6) Liquid soap, toilet paper, and paper towels shall be available in all bathroom facilities.

(e) Building maintenance standards.

(1) Each building shall be clean at all times and free from vermin infestation.

(2) The walls shall be smooth, easily cleanable, and sound. Lead-free paint shall be used on all painted surfaces.

(3) The floors and walking surfaces shall be kept free of hazardous substances at all times.

(4) The floors shall not be slippery or cracked.

(5) Each rug or carpet used as a floor covering shall be slip-resistant and free from tripping hazards. A floor covering, paint, or sealant shall be required over concrete floors for all buildings used by the residents.

(6) All bare floors shall be swept and mopped daily.

(7) A schedule for cleaning each building shall be established and maintained.

(8) Washing aids, including brushes, dish mops, and other hand aids used in dishwashing activities, shall be clean and used for no other purpose.

(9) Mops and other cleaning tools shall be cleaned and dried after each use and shall be hung on racks in a well-ventilated place.

(10) Pesticides and any other poisons shall be used in accordance with the product instructions.

These substances and all other poisons shall be stored in a locked area.

(11) Toilets, lavatories, sinks, and other such accommodations in the living areas shall be cleaned each day. (Authorized by and implementing K.S.A. 65-508; effective Oct. 9, 2009.)

**28-4-1216. Food services.** Each licensee shall ensure that food preparation, service, safety, and nutrition meet the requirements of this regulation. For purposes of this regulation, "food" shall include beverages.

(a) Sanitary practices. Each individual engaged in food preparation and food service shall use sanitary methods of food handling, food service, and storage.

(1) Only authorized individuals shall be in the food preparation area.

(2) Each individual who has any symptoms of an illness, including fever, vomiting, or diarrhea, shall be excluded from the food preparation area and shall remain excluded from the food preparation area until the time at which the individual has been asymptomatic for at least 24 hours or provides the PRTF with written documentation from a health care provider stating that the symptoms are from a noninfectious condition.

(3) Each individual who has contracted an infectious or contagious disease specified in K.A.R. 28-1-6 shall be excluded from the food preparation area and shall remain excluded from the food preparation area for the time period required for that disease.

(4) Each individual with an open cut or abrasion on the hand or forearm or with a skin sore shall cover the sore, cut, or abrasion with a bandage before handling or serving food.

(5) The hair of each individual shall be restrained when the individual is handling food.

(6) Each individual handling or serving food shall comply with each of the following requirements for handwashing:

(A) Each individual shall wash that individual's hands and exposed portions of the individual's arms before working with food, after using the toilet, and as often as necessary to keep the individual's hands clean and to minimize the risk of contamination.

(B) Each individual shall use an individual towel, disposable paper towels, or an air dryer to dry that individual's hands.

(7) Each individual preparing or handling food shall minimize bare hand and bare arm contact with exposed food that is not in a ready-to-eat form.

(8) Except when washing fruits and vegetables, no individual handling or serving food may contact exposed, ready-to-eat food with the individual's bare hands.

(9) Each individual shall use single-use gloves, food-grade tissue paper, dispensing equipment, or utensils, including spatulas or tongs, when handling or serving exposed ready-to-eat food.

(b) Nutrition.

(1) Meals and snacks shall meet the nutritional needs of the residents in accordance with the United States department of agriculture's recommended daily allowances. A sufficient quantity of food shall be prepared for each meal to allow each resident second portions of bread and milk and either vegetables or fruit.

(2) Special diets shall be provided for residents for either of the following reasons:

(A) Medical indication; or

(B) accommodation of religious practice, as indicated by a religious consultant.

(3) Each meal shall be planned and the menu shall be posted at least one week in advance. A copy of the menu of each meal served for the preceding month shall be kept on file and available for inspection.

(c) Food service and preparation areas. If food is prepared on the premises, each licensee shall provide a food preparation area that is separate from the eating area, activity area, laundry area, and bathrooms and that is not used as a passageway during the hours of food preparation and cleanup.

(1) All surfaces used for food preparation and tables used for eating shall be made of smooth, nonporous material.

(2) Before and after each use, all food preparation surfaces shall be cleaned with soapy water and sanitized by use of a solution of one ounce of bleach to one gallon of water or a sanitizing solution used in accordance with the manufacturer's instructions.

(3) Before and after each use, the tables used for eating shall be cleaned by washing with soapy water.

(4) All floors shall be swept daily and mopped when spills occur.

(5) Garbage shall be disposed of in a garbage disposal or in a covered container. If a container is used, the container shall be removed at the end of each day or more often as needed to prevent overflow or to control odor.

(6) Each food preparation area shall have handwashing facilities equipped with soap and hot and

cold running water and with individual towels, paper towels, or air dryers. Each sink used for handwashing shall be equipped to provide water at a temperature of at least 100 degrees Fahrenheit. The water temperature shall not exceed 120 degrees Fahrenheit.

(A) If the food preparation sink is used for handwashing, the sink shall be sanitized before using it for food preparation by use of a solution of ¼ cup of bleach to one gallon of water.

(B) Each PRTF with 25 or more residents shall be equipped with handwashing facilities that are separate from the food preparation sink.

(7) Clean linen used for food preparation or service shall be stored separately from soiled linen.

(d) Food storage and refrigeration. All food shall be stored and served in a way that protects the food from cross-contamination.

(1) Nonrefrigerated food.

(A) All food not requiring refrigeration shall be stored at least six inches above the floor in a clean, dry, well-ventilated storeroom or cabinet in an area with no overhead drain or sewer lines and no vermin infestation.

(B) Dry bulk food that has been opened shall be stored in metal, glass, or food-grade plastic containers with tightly fitting covers and shall be labeled with the contents and the date opened.

(C) Food shall not be stored with poisonous or toxic materials. If cleaning agents cannot be stored in a room separate from food storage areas, the cleaning agents shall be clearly labeled and kept in locked cabinets not used for the storage of food.

(2) Refrigerated and frozen food.

(A) All perishables and potentially hazardous foods requiring refrigeration shall be continuously maintained at 41 degrees Fahrenheit or lower in the refrigerator or 0 degrees Fahrenheit in the freezer.

(B) Each refrigerator and each freezer shall be equipped with a visible, accurate thermometer.

(C) Each refrigerator and each freezer shall be kept clean inside and out.

(D) All food stored in the refrigerator shall be covered, wrapped, or otherwise protected from contamination. Unserved, leftover perishable foods shall be dated, refrigerated immediately after service, and eaten within three days.

(E) Raw meat shall be stored in the refrigerator in a manner that prevents meat fluids from dripping on other foods.

(F) Ready-to-eat, commercially processed foods, including luncheon meats, cream cheese,

and cottage cheese, shall be eaten within five days after opening the package.

(G) If medication requiring refrigeration is stored with refrigerated food, the medication shall be stored in a locked medicine box in a manner that prevents cross-contamination.

(3) Hot foods.

(A) Hot foods that are to be refrigerated shall be transferred to shallow containers in layers less than three inches deep and shall not be covered until cool.

(B) Potentially hazardous cooked foods shall be cooled in a manner to allow the food to cool within two hours from 135 degrees Fahrenheit to 70 degrees Fahrenheit or within six hours from 135 degrees Fahrenheit to 41 degrees Fahrenheit.

(e) Meals or snacks prepared on the premises.

(1) Each licensee shall ensure that all of the following requirements are met:

(A) All dairy products shall be pasteurized. Dry milk shall be used for cooking only.

(B) Meat shall be obtained from government-inspected sources.

(C) Raw fruits and vegetables shall be washed thoroughly before being eaten or used for cooking.

(D) Frozen foods shall be defrosted in the refrigerator, under cold running water, in a microwave oven using the defrost setting, or during the cooking process. Frozen foods shall not be defrosted by leaving them at room temperature or in standing water.

(E) Cold foods shall be maintained and served at temperatures of 41 degrees Fahrenheit or less.

(F) Hot foods shall be maintained and served at temperatures of at least 140 degrees Fahrenheit.

(2) Each licensee shall ensure that the following foods are not served or kept:

(A) Home-canned food;

(B) food from dented, rusted, bulging, or leaking cans; and

(C) food from cans without labels.

(f) Meals or snacks catered. If the licensee serves a meal or snack that is not prepared on the premises, the snack or meal shall be obtained from a food service establishment or a catering service licensed by the secretary of the Kansas department of agriculture. If food is transported to the premises, the licensee shall ensure that only food that has been transported promptly in clean, covered containers is served to the residents.

(g) Table service and cooking utensils.

(1) Each licensee shall ensure that all of the table service, serving utensils, and food cooking or

servicing 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 drainboard shall be used for washing, rinsing, sanitizing, and air-drying.

(ii) An appropriate chemical test kit, a thermometer, or another device shall be used for testing the sanitizing solution and the water temperature.

(B) If using a mechanical dishwasher, each licensee shall ensure that all of the following requirements are met:

(i) Each commercial dishwashing machine and each domestic-type dishwashing machine shall be installed and operated in accordance with the manufacturer's instructions and shall be maintained in good repair.

(ii) If an automatic detergent dispenser, rinsing agents dispenser, or liquid sanitizer dispenser is used, the dispenser shall be installed and maintained according to the manufacturer's instructions.

(iii) Each dishwashing machine using hot water to sanitize shall be installed and operated according to the manufacturer's specifications and shall achieve surface temperature of at least 160 degrees Fahrenheit for all items.

(iv) If a domestic-type dishwasher is used, the dishwasher shall have the capacity to complete the cleaning cycle for all items in two cycles between each meal. (Authorized by and implementing K.S.A. 65-508; effective Oct. 9, 2009.)

**28-4-1217. Laundry.** (a) If laundry is done at the PRTF, the laundry sinks, appliances, and countertops or tables used for laundry shall be located in an area separate from food preparation areas and shall be installed and used in a manner that safeguards the health and safety of the residents. Adequate space shall be allocated for the laundry room and the storage of laundry supplies, including locked storage for all chemical agents used in the laundry area.

(b) Adequate space shall be allocated for the storage of clean and dirty linen and clothing. Soiled linen shall be stored separately from clean linen.

(c) Blankets shall be laundered at least once each month or, if soiled, more frequently. Blankets shall be laundered or sanitized before reissue.

(d) Each mattress shall be water-repellent and washed down and sprayed with disinfectant before reissue. Mattress materials and treatments shall meet the applicable requirements of the state fire marshal's regulations. (Authorized by and implementing K.S.A. 65-508; effective Oct. 9, 2009.)

**28-4-1218. Transportation.** Each licensee shall establish and implement written policies and procedures for transporting residents.

(a) The transportation policies and procedures shall include all of the following information:

(1) A list of the individuals authorized to transport residents for the PRTF;

(2) a description of precautions to prevent the escape of any resident during transfer;

(3) documentation of a current and appropriate license for each PRTF driver for the type of vehicle in use; and

(4) procedures to be followed in case of accident, injury, or other incident as specified in K.A.R. 28-4-1214, including notification procedures.

(b) Each transporting vehicle owned or leased by the licensee shall have a yearly safety check. A record of the yearly safety check and all repairs or improvements made shall be kept on file at the PRTF. When residents are transported in a privately owned vehicle, the vehicle shall be in safe working condition.

(c) Each vehicle used by the PRTF to transport residents shall be covered by accident and liability insurance as required by the state of Kansas.

(d) A first-aid kit shall be kept in the transporting vehicle and shall include disposable nonporous gloves in various sizes, a cleansing agent, scissors, bandages of assorted sizes, adhesive tape,

a roll of gauze, one package of gauze squares at least four inches by four inches in size, and one elastic bandage.

(e) Each vehicle used to transport residents shall be equipped with an individual seat belt for the driver and an individual seat belt or child safety seat for each passenger. The driver and each passenger shall be secured by a seat belt or a child safety seat when the vehicle is in motion.

(f) Seat belts and child safety seats shall be used appropriate to the age, weight, and height of each individual and the placement of each individual in the vehicle, in accordance with state statutes and regulations. Each child safety seat shall be installed and used according to manufacturer's instructions.

(g) Residents who are less than 13 years of age shall not be seated in the front seat of a vehicle that is equipped with a passenger air bag.

(h) Smoking in any vehicle owned or leased by the licensee shall be prohibited whether or not a resident is present in the vehicle.

(i) Residents shall be transported directly to the location designated by the licensee and shall make no unauthorized stops along the way, except in an emergency.

(j) Handcuffs or shackles shall not be used on any resident being transported by staff members.

(k) No 15-passenger vans shall be used to transport residents. Each licensee owning or leasing a 15-passenger van purchased or leased before the effective date of this regulation shall be exempt from the requirements of this subsection. (Authorized by and implementing K.S.A. 65-508; effective Oct. 9, 2009.)

**28-4-1250. 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 district. 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 fam-

ilies 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, judgment, 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 fol-

lowing 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. (Au-

thorized 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 hand-washing fixtures equipped with soap and hot and cold running water and with individual towels, paper towels, or air dryers. Each sink used for hand-washing 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 hand-washing, the sink shall be sanitized before using it for food preparation by use of a solution of ¼ cup of bleach to one gallon of water.

(B) Each 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, adhe-

sive 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.)

**28-4-1300. Definitions.** For the purposes of K.A.R. 28-4-1300 through K.A.R. 28-4-1318, the following terms shall have the meanings specified in this regulation:

(a) "Apgar scores" means a measure of a newborn's physical condition at one, five, and 10 minutes after birth.

(b) "Applicant" means a person who has applied for a license but who has not yet been granted a license to operate a birth center. This term shall include an applicant who has been granted a temporary permit to operate a birth center.

(c) "Birthing room" means a room designed, equipped, and arranged to provide for the care of a patient, a newborn, and the patient's support person or persons during and following childbirth.

(d) "Certified midwife" means an individual who is educated in the discipline of midwifery and who is currently certified by the American college of nurse-midwives or the American midwifery certification board, inc.

(e) "Certified nurse-midwife" means an individual who meets the following requirements:

(1) Is educated in the two disciplines of nursing and midwifery;

(2) is currently certified by the American college of nurse-midwives or the American midwifery certification board, inc; and

(3) has a current nursing license in Kansas.

(f) "Certified professional midwife" means an individual who is educated in the discipline of midwifery and who is currently certified by the North American registry of midwives.

(g) "Clinical director" means an individual who is appointed by the licensee and is responsible for the direction and oversight of clinical services at a birth center as specified in K.A.R. 28-4-1305.

(h) "Clinical staff member" means an individual employed by or serving as a consultant to the birth center who is one of the following:

(1) The clinical director or acting clinical director;

(2) a licensed physician;

(3) a certified nurse-midwife;

(4) a certified professional midwife;

- (5) a certified midwife; or
- (6) a registered professional nurse.
- (i) “Department” means Kansas department of health and environment.
- (j) “Exception” means a waiver of an applicant’s or a licensee’s compliance with a specific birth center regulation or any portion of a specific birth center regulation, granted by the secretary to the applicant or licensee.
- (k) “License capacity” means the maximum number of patients that can be cared for in a birth center during labor, delivery, and recovery.
- (l) “Licensee” means a person who has been granted a license to operate a birth center.
- (m) “Maternity center” has the meaning specified in K.S.A. 65-502, and amendments thereto, and may also be referred to as a “birth center.”
- (n) “Normal, uncomplicated delivery” means a delivery that results in a vaginal birth and that does not require the use of general, spinal, or epidural anesthesia.
- (o) “Normal, uncomplicated pregnancy” means a pregnancy that is initially determined to be at a low risk for a poor pregnancy outcome and that remains at a low risk throughout the pregnancy.
- (p) “Patient” means a woman who has been accepted for services at a birth center during pregnancy, labor, delivery, and recovery.
- (q) “Poor pregnancy outcome” means any outcome other than a live, healthy patient and newborn.
- (r) “Premises” means the location, including each building and any adjoining grounds, of a birth center.
- (s) “Secretary” means secretary of the Kansas department of health and environment. (Authorized by K.S.A. 65-508 and 65-510; implementing K.S.A. 65-502 and 65-508; effective July 9, 2010.)

**28-4-1301. Applicant and licensee requirements.** (a) Each applicant, if an individual, shall be at least 21 years of age at the time of application.

(b) Each applicant and each licensee, if a corporation, shall be in good standing with the Kansas secretary of state. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-504 and 65-508; effective July 9, 2010.)

**28-4-1302. Application procedures.** (a) Each person, in order to obtain a license, shall submit a complete application on the form provided by the department. The application shall

be submitted at least 90 calendar days before the planned opening date of the birth center and shall include all of the following:

- (1) A detailed description of the services to be provided;
- (2) a detailed floor plan and site plan for the premises to be licensed; and
- (3) the nonrefundable license fee specified in K.A.R. 28-4-92.

(b) At the time of the initial inspection, each applicant shall have the following information on file:

- (1) Written verification from the applicable local authorities showing that the premises are in compliance with all local codes and ordinances, including all building, fire, and zoning requirements;

(2) written verification from the state fire marshal showing that the premises are in compliance with all applicable fire codes and regulations;

(3) written verification from local or state authorities showing that the private water supply and sewerage systems conform to all state and local laws; and

(4) documentation of the specific arrangements that have been made for the removal of biomedical waste and human tissue from the premises.

(c) The granting of a license to any applicant may be refused by the secretary if the applicant is not in compliance with the requirements of the following:

(1) K.S.A. 65-504 through 65-508, and amendments thereto;

(2) K.S.A. 65-512 and 65-513, and amendments thereto;

(3) K.S.A. 65-531, and amendments thereto; and

(4) all regulations governing birth centers. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, 65-504, 65-505, and 65-508; effective July 9, 2010.)

**28-4-1303. Terms of a temporary permit or a license.** (a) License capacity. The maximum number of patients authorized by a temporary permit or a license shall not be exceeded.

(b) Posting temporary permit or license. The current temporary permit or the current license shall be posted conspicuously within the birth center.

(c) Validity of temporary permit or a license. Each temporary permit or license shall be valid for the applicant or licensee and the address specified

on the temporary permit or the license. When an initial or amended license becomes effective, all temporary permits or licenses previously granted to the applicant or licensee at the same address shall become invalid.

(d) Advertising. The advertising for each birth center shall conform to the statement of services included with the application. A claim for specialized services, even if specified on the application for a birth center, shall not be made unless the birth center is staffed and equipped to offer those services. No general claim of being “state-approved” shall be made until the applicant has been issued a temporary permit or a license by the secretary.

(e) Withdrawal of application or request to close. Any applicant may withdraw the application for a license. Any licensee may, at any time, request to close a birth center. If an application is withdrawn or a birth center is closed, each temporary permit or license granted for that birth center shall become invalid. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-504 and 65-508; effective July 9, 2010.)

**28-4-1304. Temporary permit or license; amended license; exceptions; notification; renewal.**

(a) Temporary permit or license required. Each person shall obtain a temporary permit or a license from the secretary to operate a birth center before providing any birth center services.

(b) New temporary permit or license required. Each applicant or licensee shall submit a new application, the required verifications and documentation, and license fee and shall obtain a temporary permit or a license from the secretary under any of the following circumstances:

(1) Before a birth center that has been closed is reopened;

(2) if there is a change in the location of the birth center; or

(3) if there is a change of ownership of the birth center.

(c) Amended license.

(1) Any licensee may submit a request for an amended license. Each licensee who intends to change the terms of the license, including the maximum number of patients to be served, shall submit a request for an amended license on a form provided by the department and a nonrefundable amendment fee of \$35. An amendment fee shall not be required if the request to change the terms of the license is made at the time of the renewal.

(2) The licensee shall make no change to the terms of the license unless permission is granted, in writing, by the secretary. If granted, the licensee shall post the amended license, and the previous license shall no longer be in effect.

(d) Exceptions.

(1) Any applicant or licensee may request an exception from the secretary. Any request for an exception may be granted if the secretary determines that the exception is in the best interest of one or more patients or newborns and the exception does not violate statutory requirements.

(2) Written notice from the secretary stating the nature of the exception and the duration of the exception shall be kept on file at the birth center and shall be readily accessible to the department.

(e) Notification. Each applicant and each licensee shall notify the secretary, in writing, before changing any of the following:

(1) The clinical services or activities offered by the birth center;

(2) the physical structure of the birth center due to new construction or substantial remodeling; or

(3) the use of any part of the premises that affects the use of the space or affects the license capacity.

(f) Renewal. No earlier than 90 days before but no later than the renewal date, each licensee wishing to renew the license shall submit the following:

(1) The nonrefundable license fee specified in K.A.R. 28-4-92; and

(2) an application to renew the license on the form provided by the department.

(g) Late renewal. Failure to submit the renewal application and fee as required by subsection (f) shall result in an assessment of a late renewal fee specified in K.S.A. 65-505, and amendments thereto, and may result in closure of the birth center.

(h) Copy of current regulations. A copy of the current Kansas administrative regulations governing birth centers shall be kept on the premises and shall be available to all employees. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-504, 65-505, and 65-508; effective July 9, 2010.)

**28-4-1305. Administration.** (a) Each licensee shall be responsible for the operation of the birth center, including the following:

(1) Establishing and maintaining a written organizational plan, including an organizational chart designating the lines of authority;

(2) providing employees, facilities, equipment, supplies, and services to patients, newborns, and families;

(3) developing and implementing administrative policies and procedures for the operation of the birth center;

(4) developing and implementing policies and procedures for quality assurance;

(5) appointing an administrator to oversee the operation of the birth center;

(6) appointing a clinical director and hiring employees;

(7) appointing an acting clinical director to provide direction and oversight of clinical services in the absence of the clinical director; and

(8) documenting all of the information specified in this subsection.

(b) Each licensee shall ensure that all birth 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 licens-

ee 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 inservice 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 con-

sultation 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 arrange-

ments 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.)

#### 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.)

#### Article 15.—APPLICATION FOR PERMITS; DOMESTIC WATER SUPPLY

**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/m<sup>2</sup>) 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 sub-

section. (Authorized by and implementing K.S.A. 65-171m; effective May 1, 1982; amended Sept. 26, 1994; amended June 7, 2018.)

**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.)

## 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 regularly 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 groundwater 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 imple-

menting 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. (Authorized 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 imple-

menting 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 paragraph (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 imple-

menting 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 systems 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 imple-

menting 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 implementing 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

**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 ( $LC_{50}$ ). 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 ( $IC_{25}$ ). 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 estimating 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 "IC<sub>25</sub>" 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 combina-

tion 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 out-

standing 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 discharges 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 limitations 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 dis-

charge 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 streamflow 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 attainability 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 import-

ant 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 nonharm-

ful 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 objection-

able 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 pollutant 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.)

**28-16-58. 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.)

## Article 17.—DIVISION OF VITAL STATISTICS

**28-17-6. Fees for copies, abstracts, and searches.** (a)(1) Subject to the requirements of K.S.A. 65-2417 and K.S.A. 65-2418 (a)(2) and amendments thereto, certified copies or abstracts of certificates or parts of certificates shall be furnished by the state registrar upon request by an authorized applicant and payment of the required fee.

(2)(A) The fees for making and certifying copies or abstracts of birth, stillbirth, marriage, and divorce certificates shall be \$15.00 for the first copy or abstract and \$15.00 for each additional copy or abstract of the same record requested at the same time.

(B) The fees for making and certifying copies or abstracts of death certificates shall be \$15.00 for the first copy or abstract and \$15.00 for each additional copy or abstract of the same record requested at the same time.

(b) For any search or verification of the files and records for birth, death, stillbirth, marriage, or divorce certificates if no certified copy or abstract is made, the fee shall be \$15.00 for each five-year period for which a search is requested, or for each fractional part of a five-year period.

(c) For any search of the files necessary for preparing an amendment to a birth, stillbirth, death, marriage, or divorce certificate or abstract already on file, the fee shall be \$15.00.

(d) For non-certified copies or abstracts of certificates or parts of certificates requested for statistical research purposes, the following fees shall be charged:

(1)(A) \$10.00 for each copy of a birth, marriage, divorce, or stillbirth certificate, if the state certificate number is provided; and

(B) \$15.00 for each copy of a birth, marriage, divorce, or stillbirth certificate, if the state certificate number is not provided; and

(2)(A) \$10.00 for each copy of a death certificate, if the state certificate number is provided; and

(B) \$15.00 for each copy of a death certificate, if the state certificate number is not provided.

(e) For each certified copy of an heirloom certificate, the fee shall not exceed \$40.00. (Authorized by K.S.A. 2008 Supp. 65-2418; implementing K.S.A. 23-110 and 65-2417 and K.S.A. 2008 Supp. 65-2418 and 65-2422d; effective Jan. 1, 1966; amended Jan. 1, 1968; amended, E-78-18, July 7, 1977; amended May 1, 1978; amended May 1, 1983; amended, T-84-13, July 1, 1983; amended May 1, 1984; amended May 1, 1988; amended Oct. 7, 1991; amended, T-28-9-25-92, Sept. 25, 1992; amended Nov. 16, 1992; amended Aug. 16, 1993; amended, T-28-7-2-01, July 2, 2001; amended Oct. 12, 2001; amended, T-28-6-27-02, July 1, 2002; amended Oct. 18, 2002; amended, T-28-7-1-03, July 1, 2003; amended Oct. 17, 2003; amended, T-28-11-5-04, Nov. 5, 2004; amended Feb. 25, 2005; amended Jan. 15, 2010.)

**28-17-10. 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.)

**28-17-20. 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.)

**Article 19.—AMBIENT AIR  
QUALITY STANDARDS AND  
AIR POLLUTION CONTROL**

**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.)

**28-19-200a. General provisions; definitions to implement the federal greenhouse gas tailoring rule.** (a) The definition of "major source," as adopted by reference in this regulation, shall supersede the definition of "major source" in K.A.R. 28-19-200 for the purposes of the following regulations:

- (1) K.A.R. 28-19-500 through K.A.R. 28-19-502;
- (2) K.A.R. 28-19-510 through K.A.R. 28-19-518;
- (3) K.A.R. 28-19-540 through K.A.R. 28-19-546; and

(4) K.A.R. 28-19-561 through K.A.R. 28-19-564.

(b) "Major source," as defined in 40 C.F.R. 70.2 and as revised on July 1, 2009 and amended by 75 fed. reg. 31607 (2010), is adopted by reference.

(c) "Subject to regulation," as defined by 75 fed. reg. 31607 (2010), which amends 40 C.F.R. 70.2, is adopted by reference. This definition of "subject to regulation" shall apply only to that term as used in the definition of "major source," which is adopted by reference in subsection (b) of this regulation.

This regulation shall be effective on and after January 2, 2011. (Authorized by and implementing K.S.A. 2009 Supp. 65-3005; effective Jan. 2, 2011.)

**28-19-202.** (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.)

**28-19-274. Nitrogen oxides; allocations.** (a)(1) For purposes of this regulation, the terms "allocate," "allocation," "TR NO<sub>x</sub> annual allowance," "TR NO<sub>x</sub> annual trading program," and "TR NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> annual trading program by the department.

(d) Each TR NO<sub>x</sub> annual unit shall receive TR NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> annual units listed in the department’s document titled “TR NO<sub>x</sub> 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<sub>x</sub> 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.)

**28-19-300. 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 PM<sub>10</sub> per year, except for any agricultural-related activity, in which case the emission level shall be 100 tons of particulate matter per year, including PM<sub>10</sub>;

(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 PM<sub>2.5</sub> per year. For the purposes of this paragraph, “PM<sub>2.5</sub>” 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.)

**28-19-304. 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 accor-

dance 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 inspect-

ed 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:

**Averaging Time**

<b>Pollutant</b>	<b>Annual</b>	<b>24hrs.</b>	<b>8hrs.</b>	<b>3hrs.</b>	<b>1hr.</b>
Sulphur dioxide	1.0 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>	-----	25 µg/m <sup>3</sup>	-----
PM <sub>10</sub>	1.0 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>	-----	-----	-----
PM <sub>2.5</sub>	0.3 µg/m <sup>3</sup>	1.2 µg/m <sup>3</sup>	-----	-----	-----
Nitrogen dioxide	1.0 µg/m <sup>3</sup>	-----	-----	-----	-----
Carbon dioxide	-----	-----	0.5 mg/m <sup>3</sup>	-----	2 mg/m <sup>3</sup>

(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.)

**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 de-

partment 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.)

**28-19-645a. Restrictions on open burning operations for certain counties during the month of April.** This regulation shall supersede K.A.R. 28-19-645 during the month of April for the counties listed in subsection (a) below.

(a) A person shall not cause or permit open burning operations of any waste, including vegetation and wood waste, structures, or any other materials on any premises during the month of April in Butler, Chase, Chautauqua, Cowley, Elk,

Geary, Greenwood, Johnson, Lyon, Marion, Morris, Pottawatomie, Riley, Sedgwick, Wabaunsee, and Wyandotte counties, except as authorized by subsections (b) through (d).

(b) The following activities shall be exempt from the prohibition in subsection (a):

(1) Open burning operations for the purpose of range or pasture management and conservation reserve program (CRP) burning activities meeting the requirements in K.A.R. 28-19-648 (a)(1) through (a)(4); and

(2) open burning operations listed in K.A.R. 28-19-647 (a)(1) and (a)(2).

(c) A person may obtain approval by the secretary to conduct an open burning operation that is not otherwise exempt if the conditions and requirements of the following are met:

(1) K.A.R. 28-19-647 (b)(1) through (b)(3); and

(2) K.A.R. 28-19-647 (d) and (e).

(d) Open burning operations that shall require approval by the secretary and are deemed necessary and in the public interest shall include the open burning operations listed in K.A.R. 28-19-647 (c)(1) through (c)(3).

(e) In Johnson, Wyandotte, and Sedgwick counties, the open burning operations listed in K.A.R. 28-19-647 (c)(4) and (c)(5) shall require approval by the local authority.

(f) Nothing in this regulation shall restrict the authority of local jurisdictions to adopt more restrictive ordinances or resolutions governing agricultural open burning operations. (Authorized by K.S.A. 2010 Supp. 65-3005; implementing K.S.A. 2010 Supp. 65-3005 and K.S.A. 65-3010; effective, T-28-3-1-11, March 1, 2011; effective Sept. 9, 2011.)

**28-19-712. Definitions.** The following terms shall apply to K.A.R. 28-19-712 through K.A.R. 28-19-712d.

(a) "Auxiliary power unit" means an integrated system that provides heat, air conditioning, engine warming, or electricity to components of a heavy-duty diesel vehicle and is certified by the administrator of the USEPA under 40 C.F.R. part 89 as meeting applicable emission standards.

(b) "Commercial vehicle" means any motor vehicle, other than a passenger vehicle, and any trailer, semitrailer, or pole trailer drawn by the motor vehicle that is designed, used, and maintained for the transportation of persons or property for hire, compensation, or profit or in the furtherance of a commercial enterprise.

(c) "Gross vehicle weight rating" means the weight specified by the manufacturer as the loaded weight of a single vehicle.

(d) "Heavy-duty diesel vehicle" means any motor vehicle that meets the following conditions:

(1) Has a gross vehicle weight rating of more than 14,001 pounds;

(2) is powered by a diesel engine; and

(3) is designed primarily for transporting persons or property on a public street or highway.

(e) "Idling" means the operation of an engine in the operating mode during either of the following situations:

(1) When the engine is not in gear; or

(2) when the engine operates at the revolutions per minute specified by the engine or vehicle manufacturer, the accelerator is fully released, and there is no load on the engine.

(f) "Institutional vehicle" means any motor vehicle, other than a passenger vehicle, and any trailer, semitrailer, or pole trailer drawn by the motor vehicle that is designed, used, and maintained for the transportation of persons or property for an organization, establishment, foundation, or society.

(g) "Load or unload location" means any site where a driver idles a heavy-duty diesel vehicle while waiting to load or unload. This term shall include the following:

(1) Distribution centers;

(2) warehouses;

(3) retail stores;

(4) railroad facilities; and

(5) ports.

(h) "Passenger vehicle" means any motor vehicle designed for carrying not more than 10 passengers and used for the transportation of persons.

(i) "Public vehicle" means any motor vehicle, other than a passenger vehicle, and any trailer, semitrailer, or pole trailer drawn by the motor vehicle that is designed, used, and maintained for the transportation of persons or property at the public expense and under public control. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 25, 2010.)

**28-19-712a. Applicability.** K.A.R. 28-19-712 through K.A.R. 28-19-712d shall apply only in Johnson and Wyandotte counties to any person who owns or operates either of the following:

(a) Any heavy-duty diesel vehicle that is also a commercial vehicle, institutional vehicle, or public vehicle; or

(b) any load or unload location. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 25, 2010.)

**28-19-712b. General requirement for heavy-duty diesel vehicles.** No person who owns or operates a heavy-duty diesel vehicle specified in K.A.R. 28-19-712a(a) shall cause that vehicle to idle for more than five minutes in any 60-minute period, except as provided in K.A.R. 28-19-712c and K.A.R. 28-19-712d. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 25, 2010.)

**28-19-712c. General requirement for load or unload locations.** No person who owns or operates a load or unload location for freight shall cause any heavy-duty diesel vehicle that is also a commercial vehicle to idle for a period longer than 30 minutes in any 60-minute period while waiting to load or unload at that location. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 25, 2010.)

**28-19-712d. Exemptions.** K.A.R. 28-19-712b shall not apply to the following:

(a) Any heavy-duty diesel vehicle specified in K.A.R. 28-19-712a(a) that idles in any of the following conditions:

(1) While forced to remain motionless because of road traffic or an official traffic control device or signal or at the direction of a law enforcement official;

(2) when operating defrosters, heaters, air conditioners, safety lights, or other equipment solely for safety or health reasons and not as part of a rest period;

(3) during a state or federal inspection to verify that all equipment is in good working order, if idling is required as part of the inspection; or

(4) during mechanical difficulties over which the driver has no control;

(b) a police, fire, ambulance, military, utility, emergency, or law enforcement vehicle or any vehicle being used in an emergency capacity that idles while in an emergency or training mode and not for the convenience of the vehicle operator;

(c) an armored vehicle that idles when a person remains inside the vehicle to guard the contents or while the vehicle is being loaded or unloaded;

(d) an occupied vehicle with a sleeper berth compartment that idles for purposes of air conditioning or heating during government-mandated rest periods;

(e) a vehicle that is used exclusively for agricultural operations and only incidentally operated or moved upon the highway;

(f) a primary propulsion engine that idles for maintenance, servicing, repairing, or diagnostic purposes if idling is necessary for the activity;

(g) a primary propulsion engine that idles when necessary to power mechanical or electrical operations other than propulsion, including mixing, refrigerating, or processing cargo, or the operation of a hydraulic lift. This exemption shall not apply when idling for cabin comfort or operating nonessential onboard equipment;

(h) an auxiliary power unit or generator that is operated as an alternative to idling the main engine; and

(i) a bus that is also a commercial vehicle, institutional vehicle, or public vehicle that idles a maximum of 15 minutes in any 60-minute period to maintain passenger comfort while nondriver passengers are on board. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 25, 2010.)

**28-19-713. Applicability.** K.A.R. 28-19-713 through K.A.R. 28-19-713d shall apply to the owner or operator of each stationary source located in Wyandotte or Johnson county that annually emits at least 1,000 tons of nitrogen oxides from the entire facility, based on an average of the total emissions for the 2005, 2006, and 2007 calendar years. The total emissions shall be the sum of the actual emissions and the potential-to-emit emissions for each calendar year. The actual emissions shall be calculated pursuant to K.A.R. 28-19-210. If the actual emissions are more than 1,000 tons of nitrogen oxides for each calendar year, the potential-to-emit emissions may be excluded from the total emissions calculation. The potential-to-emit emissions shall be used for periods exceeding two weeks of operational inactivity due to maintenance, construction, or modification. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 25, 2010.)

**28-19-713a. Emission limitation requirements.** No owner or operator subject to K.A.R. 28-19-713 shall allow any emission unit to emit nitrogen oxides in excess of the following emission limitations based on a 30-day rolling average:

(a) From electric generating units, for the purposes of K.A.R. 28-19-713 through K.A.R. 28-19-713d, the following:

(1) 0.26 pounds per million British thermal units (lbs/MMBtu) for unit 1, a turbo wall-fired Riley Stoker boiler located at the Nearman Creek power station in Kansas City, Kansas; and

(2) 0.20 lbs/MMBtu for unit 2, a wall-fired Riley Stoker boiler located at the Quindaro power station in Kansas City, Kansas; and

(b) from flat glass furnaces, 7.0 pounds per ton of glass produced. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 25, 2010.)

**28-19-713b. Alternate emissions limit.** Each owner or operator of an emission unit subject to an emissions limit for nitrogen oxides specified in K.A.R. 28-19-713a(a) that is also subject to a more stringent Kansas or USEPA emissions limit for nitrogen oxides shall comply with the more stringent emissions limit for that emission unit. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 25, 2010.)

**28-19-713c. Control measures and equipment.** Each owner or operator of any emission unit subject to an emissions limit specified in K.A.R. 28-19-713a or K.A.R. 28-19-713b shall implement control measures and install, operate, and maintain equipment necessary to achieve these limits no later than 18 months after the effective date of this regulation. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 25, 2010.)

**28-19-713d. Compliance demonstration, monitoring, and reporting requirements.** No later than 24 months after the effective date of this regulation, each owner or operator of any emission unit subject to the nitrogen oxide emission limits specified in K.A.R. 28-19-713a or K.A.R. 28-19-713b shall meet the following requirements:

(a) Demonstrate compliance with the applicable emissions limit by performing an emissions test in accordance with 40 C.F.R. 60.8, as adopted by reference in K.A.R. 28-19-720, and either of the following:

(1) Test method 7, 7A, 7C, 7D, or 7E in appendix A-4 to 40 C.F.R. part 60, as adopted by reference in K.A.R. 28-19-720; or

(2) any other USEPA test method approved by the department;

(b) ensure continuous compliance with the applicable emissions limit by installing, calibrating, maintaining, and operating a continuous emission

monitoring system (CEMS) for nitrogen oxides that meets the requirements of 40 C.F.R. 60.13 and performance specification 2 in appendix B to 40 C.F.R. part 60, as adopted by reference in K.A.R. 28-19-720;

(c) certify the CEMS at least three months before the compliance demonstration required by subsection (a) pursuant to either of the following:

(1) The quality assurance procedures in appendix F to 40 C.F.R. part 60, as adopted by reference in K.A.R. 28-19-720; or

(2) an equivalent quality assurance procedure approved by the department; and

(d) document compliance by continuously monitoring and maintaining records of nitrogen oxide emissions. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 25, 2010.)

**28-19-719.** (Authorized by K.S.A. 1999 Supp. 65-3005; implementing K.S.A. 65-3010; effective April 27, 2001; revoked Dec. 11, 2020.)

**28-19-720. 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.)

**28-19-728 through 28-19-728e.** (Authorized by K.S.A. 2006 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 15, 2007; revoked Nov. 5, 2010.)

**28-19-728f.** (Authorized by K.S.A. 2006 Supp. 65-3005 and K.S.A. 65-3007; implementing K.S.A. 65-3007 and 65-3010; effective June 15, 2007; revoked Nov. 5, 2010.)

**28-19-735. National emission standards for hazardous air pollutants.** (a) 40 C.F.R. part 61 and its appendices, as in effect on July 1, 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.)

**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; and
  - (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.)

## Article 21.—FOOD, DRUGS AND COSMETICS

**28-21-1.** (Authorized by K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966; revoked June 4, 2010.)

**28-21-2.** (Authorized by K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966; revoked Feb. 8, 2013.)

**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,



**28-21-55a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-56a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-57a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-58a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-59a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-60a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-61a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-62a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-63 and 28-21-64.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-70a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-71a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-72a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-82 through 28-21-85.** (Authorized by K.S.A. 65-663, K.S.A. 1972 Supp. 65-673; effective Jan. 1, 1973; revoked June 4, 2010.)

#### Article 23.—SANITATION; FOOD AND DRUG ESTABLISHMENTS

**28-23-1 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.)

**28-23-6.** (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.)

**28-23-9.** (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.)

**28-23-20 through 28-23-24.** (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked June 4, 2010.)

**28-23-26 through 28-23-32.** (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked June 4, 2010.)

**28-23-34 through 28-23-36.** (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked June 4, 2010.)

**28-23-41.** (Authorized by K.S.A. 65-663, K.S.A. 1968 Supp. 65-673; effective Jan. 1, 1969; revoked June 4, 2010.)

**28-23-42 through 28-23-55.** (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked June 4, 2010.)

**28-23-70 and 28-23-71.** (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked June 4, 2010.)

**28-23-73.** (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked June 4, 2010.)

**28-23-75.** (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked June 4, 2010.)

**28-23-78 through 28-23-80.** (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked June 4, 2010.)

**Article 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 epi-

dermis 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 electrology, 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 storage 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 electrolysis.

(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.)

## Article 29.—SOLID WASTE MANAGEMENT

**28-29-1a. Modification of obsolete references and text.** The following modifications shall be made to article 29:

(a) In K.A.R. 28-29-23(t), “K.A.R. 28-31-3” shall be replaced with “K.A.R. 28-31-261.”

(b) In K.A.R. 28-29-23a(c)(8), the phrase “K.A.R. 28-31-3 and K.A.R. 28-29-4” shall be replaced with “K.A.R. 28-31-261.”

(c) In K.A.R. 28-29-27(g)(3), “K.A.R. 28-31-9” shall be replaced with “K.A.R. 28-31-270.”

(d) In K.A.R. 28-29-102, the following modifications shall be made:

(1) In paragraph (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.)

**28-29-109. 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 disposal 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.)

**28-29-300. 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.)

**28-29-330. 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 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.

(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  $1 \times 10^{-7}$  centimeters per second or less, including quarry landfills with competent shale bases, unless the owner or oper-

ator 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 department 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.)

**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.)

**Article 30.—WATER WELL  
CONTRACTOR’S LICENSE; WATER  
WELL CONSTRUCTION AND  
ABANDONMENT**

**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 formation 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 November 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.)

**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 de-

partment KDHE form 8700-12 or another form approved by the secretary.

(b) Each person that is newly subject to these notification requirements due to promulgation of a statute or regulation shall notify the department of that person's hazardous waste, universal waste, and used oil activities within 60 days of the effective date of the statute or regulation, unless a different date is specified in that statute or regulation.

(c) Each person shall update the information associated with that person's EPA identification number if there is a change in the information. The person shall submit these changes to the department on KDHE form 8700-12 or another form approved by the secretary, no more than 60 days after the change occurs. (Authorized by and implementing K.S.A. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended March 22, 1996; amended June 4, 1999; amended Sept. 20, 2002; amended April 29, 2011.)

**28-31-5.** (Authorized by and implementing K.S.A. 65-3431 and K.S.A. 65-3458; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-86-6, March 22, 1985; amended, T-86-32, Sept. 24, 1985; amended, May 1, 1986; amended May 1, 1987; amended Feb. 5, 1990; amended April 25, 1994; revoked April 29, 2011.)

**28-31-6. Registration and insurance requirements for transporters of hazardous waste and used oil.** Each reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279. (a) Applicability. This regulation shall apply to the following:

(1) Each person that transports hazardous waste and is subject to the requirements of K.A.R. 28-31-263a; and

(2) each person that transports used oil and is subject to the requirements of 40 CFR part 279, subpart E.

(b) Registration. Each transporter shall register with the secretary according to the following requirements:

(1) The transporter shall submit the registration application on forms provided by the department.

(2) The transporter shall obtain written acknowledgment from the secretary that registration is complete before transporting hazardous waste or used oil within, into, out of, or through Kansas.

(3) The transporter shall carry a copy of the written acknowledgment in all vehicles transporting hazardous waste or used oil and shall provide the written acknowledgment for review upon request.

(4) The transporter shall update the registration information if there is a change in that information. The transporter shall submit these changes on forms provided by the department within 60 days of the date of the change.

(c) Insurance requirements. Each transporter shall secure and maintain liability insurance on each of the transporter's vehicles transporting hazardous waste or used oil in Kansas.

(1) The limits of insurance shall not be less than \$1 million per person and \$1 million per occurrence for bodily injury or death and \$1 million for all damage to the property of others. When combined bodily injury or death and property damage coverage are provided, the total limits shall not be less than \$1 million.

(2) If any coverage is reduced or canceled, the transporter shall notify the secretary in writing at least 35 days before the effective date of the reduction or cancellation.

(3) The transporter shall, before the expiration date of the insurance policy, provide the secretary with proof of periodic renewal in the form of a certificate of insurance showing the monetary coverage and the expiration date.

(d) Denial or suspension of registration.

(1) Any application may be denied and any transporter's registration may be suspended if the secretary determines that one or more of the following apply:

(A) The transporter failed or continues to fail to comply with any of the following:

(i) Provisions of the air, water, or waste statutes relating to environmental protection or to the protection of public health or safety, including regulations issued by Kansas or by the federal government; or

(ii) any condition of any permit or order issued to the transporter by the secretary.

(B) Any state or territory or the District of Columbia has found that the applicant or transporter has violated that government's hazardous waste or used oil transporter laws or regulations.

(C) One or more of the following is a principal of another corporation that would not be eligible for registration:

(i) The transporter;

(ii) a person who holds an interest in the transporter;

(iii) a person who exercises total or partial control of the transporter; or

(iv) a person who is a principal of the parent corporation.

(2) Each notice of denial or suspension shall be issued in writing by the secretary and shall inform the applicant or transporter of the procedures for requesting a hearing pursuant to K.S.A. 65-3456a and amendments thereto. (Authorized by and implementing K.S.A. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999; amended Sept. 20, 2002; amended April 29, 2011.)

**28-31-7.** (Authorized by and implementing K.S.A. 1984 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985; revoked April 29, 2011.)

**28-31-8.** (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999; amended Sept. 20, 2002; revoked April 29, 2011.)

**28-31-8b.** (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999; amended Sept. 20, 2002; revoked April 29, 2011.)

**28-31-9.** (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999; amended Sept. 20, 2002; revoked April 29, 2011.)

**28-31-10. Hazardous waste monitoring fees.** Each reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279. (a) 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:

<b>Total Yearly Quantity Generated</b>	<b>Monitoring Fee</b>
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.)

**28-31-12. 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”;

(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”;
- (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”;
- (C) 40 CFR 270.2, in the following definitions:
  - (i) “Director”;
  - (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 provi-

sion 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”;

(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”;
- (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”;
- (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”;
- (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”;
- (B) “RCRA standardized permit (RCRA).”

(5) The phrase “a final permit under RCRA section 3005” shall be replaced with “a final per-

mit 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”;
- (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”;

(E) “state”;

(3) 40 CFR part 261, in the following locations:

- (A) 40 CFR 261.4(g)(2)(i); and
- (B) 40 CFR 261.5;

(4) 40 CFR part 262;

(5) 40 CFR part 264, in the following locations:

- (A) 40 CFR part 264, subparts C and D;
- (B) 40 CFR 264.71(e); and
- (C) 40 CFR part 264, subpart H;

(6) 40 CFR part 265, in the following locations:

- (A) 40 CFR part 265, subparts C and D;
- (B) 40 CFR 265.71(e); and
- (C) 40 CFR 265.147;

(7) 40 CFR 266.210, in the following definitions:

- (A) "Agreement state"; and
- (B) "naturally occurring and/or accelerator-produced radioactive material (NARM)";
- (8) 40 CFR part 267, subparts C, D, and H;
- (9) 40 CFR part 270, in the following locations:
  - (A) 40 CFR 270.2, in the following definitions:
    - (i) "Approved program or approved state";
    - (ii) "director";
    - (iii) "final authorization";
    - (iv) "interim authorization";
    - (v) "person";
    - (vi) "POTW";
    - (vii) "state";
    - (viii) "state director"; and
    - (ix) "state/EPA agreement";
  - (B) 40 CFR 270.10(g)(1)(ii), where only the term "approved State" shall not be replaced;
  - (C) 40 CFR 270.11(a)(3); and
  - (D) 40 CFR 270.13;
  - (10) 40 CFR 273.14(c)(1)(iii); and
  - (11) 40 CFR 279.24(a)(3). (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

**28-31-124. Procedures for permitting; adoption and modification of federal regulations.** (a) Adoption. The provisions of 40 CFR 124.11 through 124.17 and 40 CFR part 124, subparts B and G, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:

- (1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;
- (2) the exclusions from adoption listed in subsection (b); and
- (3) the modifications listed in subsection (c).
- (b) Exclusions. The following portions of 40 CFR 124.12 through 124.17 and 40 CFR part 124, subpart G shall be excluded from adoption:
  - (1) 40 CFR 124.12(b);
  - (2) 40 CFR 124.16(b)(2);
  - (3) 40 CFR 124.17(b);
  - (4) 40 CFR 124.204(d)(1), (4) through (7), and (9); and
  - (5) 40 CFR 124.205(a), (c), and (i) through (l).
- (c) Modifications. The following modifications shall be made to 40 CFR 124.11 through 124.17 and 40 CFR part 124, subparts B and G:
  - (1) Each occurrence of the term "decisionmaking" shall be replaced with "permitting."
  - (2) Each parenthetical statement starting with "Applicable to State programs" shall be deleted.

(3) In 40 CFR 124.11, the text "or the permit application for 404 permits when no draft permit is required (see § 233.39)" shall be deleted.

(4) In 40 CFR 124.12(a)(3), the phrase "For RCRA permits only," shall be deleted.

(5) In 40 CFR 124.13, the term "EPA documents" shall be replaced with "EPA or department documents."

(6) The first sentence of 40 CFR 124.14(a)(4) shall be deleted.

(7) In 40 CFR 124.14(b)(2), the phrase "a revised statement of basis under § 124.7," shall be deleted.

(8) The following text shall be added to the end of 40 CFR 124.15(b)(2): "by a person who filed comments on the draft permit or participated in the public hearing through written or oral comments. Stays of contested permit conditions are subject to § 124.16."

(9) In 40 CFR 124.16(a)(1), the following text shall be deleted:

(A) "(No stay of a PSD permit is available under this section.);"

(B) "or new injection well, new source, new discharger or a recommencing discharger"; and

(C) ", injection well, source or discharger pending final agency action. See also § 124.60."

(10) In 40 CFR 124.16(a)(2)(i), the following text shall be deleted:

(A) ", injection wells, and sources"; and

(B) ", injection well, or source."

(11) In 40 CFR 124.16(a)(2)(ii), the following text shall be deleted:

(A) "[R]eceiving notification from the EAB of";

(B) "the EAB,"; and

(C) "[f]or NPDES permits only, the notice shall comply with the requirements of § 124.60(b)."

(12) In 40 CFR 124.16(b), the text "and he or she has accepted each appeal" shall be deleted.

(13) In 40 CFR 124.17(a), the text "States are" shall be replaced with "The department is."

(14) In 40 CFR 124.17(a)(2), the phrase "or the permit application (for section 404 permits only)" shall be deleted.

(15) In 40 CFR 124.31(a), 124.32(a), and 124.33(a), the following sentence shall be deleted: "For the purposes of this section only, 'hazardous waste management units over which EPA has permit issuance authority' refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271."

(16) In 40 CFR 124.204(d)(3), the sentence shall be replaced with “All subsections shall apply.”

(17) In 40 CFR 124.205(d), the text “(b),” shall be deleted.

(18) In 40 CFR 124.208(e), the phrase “§ 124.12(b), (c), and (d)” shall be replaced with “§ 124.12(c) and (d).” (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3440; effective April 29, 2011.)

**28-31-124a. Procedures for permitting; application for a permit.** Each reference in this regulation to 40 CFR part 270 shall mean 40 CFR part 270 as adopted by reference in K.A.R. 28-31-270. (a) Each person that is required to have a Kansas hazardous waste facility permit, as specified in 40 CFR part 270, K.S.A. 65-3433 and amendments thereto, or K.S.A. 65-3437 and amendments thereto, shall submit a completed, signed application to the department.

(b) Before submitting the application, the applicant shall submit to the department a disclosure statement that contains all information necessary for the secretary to conduct the background investigation required by K.S.A. 65-3437, and amendments thereto.

(1) The disclosure statement shall be submitted on forms provided by the department.

(2) If there is a parent company, the parent company shall submit a separate disclosure statement to the department on forms provided by the department.

(c) The application shall be reviewed by the department after the applicant has fully complied with the requirements of 40 CFR 270.10 and 270.13.

(d) The application signature and certification shall meet the requirements of 40 CFR 270.11.

(e) Applications shall not be required for permits by rule. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431, 65-3433, and 65-3437; effective April 29, 2011.)

**28-31-124b. Procedures for permitting; modification, revocation and reissuance, or termination of permits.** Each reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279. (a) Reasons for modification, revocation and reissuance, or termination of a permit. A permit may be modified, revoked and reissued, or terminated by the secretary only for the reasons specified in 40 CFR

270.41, 40 CFR 270.43, and K.S.A. 65-3439 and amendments thereto.

(b) Request for modification, revocation and reissuance, or termination of a permit. Any person, including the permittee or the secretary, may request that a permit be modified, revoked and reissued, or terminated. Each request shall be submitted to the department in writing and shall contain the facts and reasons supporting the request.

(c) Procedures for modification or for revocation and reissuance of a permit. Modification of a permit, and revocation and reissuance of a permit, shall be subject to the following requirements:

(1) A draft permit shall be prepared by the department if either of the following occurs:

(A) The secretary tentatively decides to modify or to revoke and reissue a permit according to the criteria specified in 40 CFR 270.41, other than 40 CFR 270.41(b)(3).

(B) The permittee requests a modification in accordance with 40 CFR 270.42(c).

(2) The draft permit shall be prepared by the department according to the following criteria:

(A) The draft permit shall incorporate the proposed changes.

(B) Additional information from the permittee may be requested by the secretary.

(C) If a permit is modified, the permittee may be required by the secretary to submit an updated application.

(D) If a permit is revoked and reissued for a cause not listed in 40 CFR 270.41(b)(3), the permittee shall submit a new application to the department.

(E) If a permit is revoked and reissued in accordance with 40 CFR 270.41(b)(3), the requirements in 40 CFR part 124, subpart G for standardized permits shall be met by the secretary and the permittee.

(3) If a permit is modified, only those conditions to be modified shall be reopened by the department when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit.

(4) If a permit is revoked and reissued, the entire permit shall be reopened by the department as if the permit had expired and was being reissued. During the revocation and reissuance proceedings, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(5) “Class 1 modifications” and “Class 2 modifications,” as defined in 40 CFR 270.42 (a) and (b),

shall not be subject to the requirements of this regulation.

(d) Termination of permit. If the secretary tentatively decides to terminate a permit in accordance with 40 CFR 270.43 and the permittee objects, a notice of intent to terminate shall be issued by the secretary. Each notice of intent to terminate shall be deemed a type of draft permit and shall be subject to the procedures specified in K.A.R. 28-31-124c and in K.S.A. 65-3440 and amendments thereto. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431, 65-3437, and 65-3439; effective April 29, 2011.)

**28-31-124c. 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/Cl<sub>2</sub> emission sampling train," dated December 1996;

(iv) method 0051, "midget impinger HCl/Cl<sub>2</sub> 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 edition, 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;

(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 re-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”; and

(C) the phrase “and EPA administered programs.”

(15) In 40 CFR 270.43(b), the phrase “or part 22” shall be deleted.

(16) In 40 CFR 270.51(a), the title shall be replaced with “Kansas hazardous waste facility permits” and the phrase “under 5 U.S.C. 558(c)” shall be deleted.

(17) In 40 CFR 270.51(d), the title shall be replaced with “State continuation of an EPA permit” and the phrase “In a State with a hazardous waste program authorized under 40 CFR part 271,” shall be deleted.

(18) In 40 CFR 270.60, the phrase “facilities in Kansas” shall be inserted after the word “following” in the introductory paragraph.

(19) In 40 CFR 270.70(a) and 270.73(d), the phrase “under the Act” shall be deleted.

(20) 40 CFR 270.115 shall be replaced with the following: “K.S.A. 65-3447 shall apply to all information claimed as confidential.”

(21) In 40 CFR 270.155(a), the following phrases shall be deleted:

(A) “[T]o EPA’s Environmental Appeals Board”;

(B) “[i]nstead of the notice required under §§ 124.19(c) and 124.10 of this chapter,”;

(C) “by the Environmental Appeals Board”;

(D) “as provided by the Board”; and

(E) “with the Board.”

(22) In 40 CFR 270.195, the phrase “in RCRA sections 3004 and 3005” shall be deleted.

(23) In 40 CFR 270.255(a)(3), each occurrence of the term “we” shall be replaced with “the secretary.”

(24) In 40 CFR 270.310(d)(3), the phrase “(incorporated by reference as specified in 40 CFR 260.11)” shall be deleted. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431, 65-3433, 65-3437, and 65-3439; effective April 29, 2011.)

**28-31-270a. Hazardous waste permits; petition to be granted an exception to the prohibition against underground burial of hazardous waste.** This regulation shall apply to each person that wants to apply for a permit for the underground burial of hazardous waste. For the purposes of this regulation, this person shall be called a “potential applicant.”

(a) Exception petition. Before applying for a permit according to the requirements of K.A.R. 28-31-124 through 28-31-124e and 28-31-270, each potential applicant shall submit to the secretary a petition for an exception to the prohibition against the underground burial of hazardous waste, as specified in K.S.A. 65-3458 and amendments thereto.

(b) Contents of the exception petition. Each exception petition shall include the following items:

(1) A complete chemical and physical analysis of the waste;

(2) a list and description of all technological-ly 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 premises” 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

### 28-32-11. 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.)

**28-32-13. 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.)

#### Article 34.—HOSPITALS

**28-34-126. Definitions.** For the purposes of K.A.R. 28-34-126, 28-34-127, and 28-34-129

through 28-34-144, the following terms shall have the meanings specified in this regulation. (a) "Admitting privileges" means permission extended by a hospital to a physician to allow the physician to admit a patient to that hospital either as active or courtesy staff.

(b) "Ancillary services" means laboratory, radiology, or pharmacy services.

(c) "Ancillary staff member" means an individual who performs laboratory, radiology, or pharmacy services at a facility.

(d) "Applicant" means a person who has applied for a license but who has not yet been granted a license to operate a facility.

(e) "Clinical privileges" means permission extended by a hospital to a physician to allow the physician to provide treatment to a patient in that hospital.

(f) "Health professional" means an individual, other than a physician, who is one of the following:

- (1) A nurse licensed by the Kansas state board of nursing; or
- (2) a physician assistant licensed by the Kansas state board of healing arts.

(g) "Licensee" means a person who has been granted a license to operate a facility.

(h) "Medical staff member" means an individual who is one of the following:

- (1) A physician licensed by the Kansas state board of healing arts;
- (2) a health professional; or
- (3) an ancillary staff member.

(i) "Newborn child" means a viable child delivered during an abortion procedure.

(j) "Person" means any individual, firm, partnership, corporation, company, association, or joint-stock association, and the legal successor thereof.

(k) "Reportable incident" means an act by a medical staff member which:

(1) Is or may be below the applicable standard of care and has a reasonable probability of causing injury to a patient; or

(2) may be grounds for disciplinary action by the appropriate licensing agency.

(l) "Risk manager" means the individual designated by the applicant or licensee to administer the facility's internal risk management program and to receive reports of reportable incidents within the facility.

(m) "Staff member" means an individual who provides services at the facility and who is compensated for those services.

(n) "Unborn child" means a living individual or-

ganism 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 developed and implemented for the operation of the facility. The policies and procedures shall include the following requirements:

(1) An organized recordkeeping system to meet the requirements in K.A.R. 28-34-144;

(2) documentation of personnel qualifications, duties, and responsibilities to meet the requirements in K.A.R. 28-34-132;

(3) that the facility is designed, constructed, equipped, and maintained to protect the health and safety of patients, staff, and visitors to meet the requirements in K.A.R. 28-34-133 through 28-34-136;

(4) ensure proper and adequate medical screening and evaluation of each patient to meet the requirements in K.A.R. 28-34-137;

(5) consent is obtained from each patient before the procedure;

(6) safe conduct of abortion procedures to meet the requirements in K.A.R. 28-34-138;

(7) the appropriate use of anesthesia, analgesia and sedation to meet the requirements in K.A.R. 28-34-138;

(8) ensure the use of appropriate precautions for any patient undergoing a second or third trimester abortion to meet the requirements in K.A.R. 28-34-138;

(9) post-procedure care of patients to meet the requirements in K.A.R. 28-34-139;

(10) identify and ensure a physician with admitting privileges at an accredited hospital located within 30 miles of the facility is available during facility hours of operation;

(11) if indicated, the transfer of any patient and newborn child to a hospital to meet the requirements in K.A.R. 28-34-140;

(12) follow-up and aftercare for each patient receiving an abortion procedure in the facility to meet the requirements in K.A.R. 28-34-141;

(13) a written plan for risk management to meet the requirements in K.A.R. 28-34-142, including policies and procedures for staff member or volunteer reporting of any clinical care concerns; and

(14) ensure that incidents that require reporting to the department are completed as required in K.A.R. 28-34-143. (Authorized by L. 2011, ch. 82, sec. 9; implementing L. 2011, ch. 82, secs. 2 and 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

**28-34-132. Staff requirements.** (a) Each applicant and each licensee shall ensure that each physician performing surgery in a facility is approved by the medical director, licensed to practice medicine and surgery in the state of Kansas, and demonstrates competence in the procedure involved in the physician's duties at the facility. Competence shall be demonstrated through both of the following means and methods:

(1) Documentation of education and experience; and

(2) observation by or interaction with the medical director.

(b) Each applicant and each licensee shall ensure the following:

(1) A physician with admitting privileges at an accredited hospital located within 30 miles of the facility is available.

(2) Any physician performing or inducing abortion procedures in the facility has clinical privileges at a hospital located within 30 miles of the facility.

(c) Each applicant and each licensee shall ensure that each individual who performs an ultrasound is one of the following:

(1) A physician licensed in the state of Kansas who has completed a course for the type of ultrasound examination the physician performs; or

(2) an individual who performs ultrasounds under the supervision of a physician and who meets all of the following requirements:

(A) Has completed a course in performing ultrasounds;

(B) has completed a training for the specific type of ultrasound examination the individual performs; and

(C) is not otherwise precluded by law from performing ultrasound examinations.

(d) Each applicant and each licensee shall ensure that each staff member employed by or contracted with the facility is licensed, if required by state law, is qualified, and provides services to patients consistent with the scope of practice of the individual's training and experience.

(e) Each applicant and each licensee shall ensure that each surgical assistant employed by or contracted with the facility receives training in the specific responsibilities of the services the surgical assistant provides in the facility.

(f) Each applicant and each licensee shall ensure that each volunteer receives training as identified by the medical director in the specific responsibilities the volunteer provides at the facility.

(g) Each applicant and each licensee shall ensure that at least one physician or registered nurse is certified in advanced cardiovascular life support and is present at the facility when any patient who is having an abortion procedure or recovering from an abortion procedure is present at the facility. (Authorized by and implementing L. 2011, ch. 82, sec. 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

**28-34-133. Facility environmental standards.** (a) Each applicant and each licensee shall ensure that the facility is designed, constructed, equipped, and maintained to protect the health and safety of patients, staff members, volunteers, and visitors.

(b) Each facility shall include the following rooms and areas:

(1) At least one room designated for patient interviews, counseling, and medical evaluations, located and arranged to preserve patient privacy;

(2) at least one dressing room for patients only and arrangements for storage of patient clothing and valuables;

(3) at least one dressing room for staff members, including a toilet, hand washing station, and arrangements for storage for staff member clothing and valuables;

(4) a toilet room and hand washing station designated for patients;

(5) hand washing stations for pre-procedure hand washing by staff members;

(6) private procedure rooms and doorways of those rooms of sufficient size to accommodate the following:

(A) The equipment, supplies, and medical staff members required for performance of an abortion procedure; and

(B) emergency equipment and personnel in the event of a transfer, as described in K.A.R. 28-34-140;

(7) a recovery area that meets all of the following requirements:

(A) Has a nurse station with visual observation of each patient in the recovery area;

(B) provides privacy for each patient in the recovery area with at least cubicle curtains around each patient gurney or bed; and

(C) has sufficient space to accommodate emergency equipment and personnel in the event of a transfer, as described in K.A.R. 28-34-140;

(8) a waiting area for patients and visitors;

(9) an administrative area, including office space for the secure filing and storage of facility patient records;

(10) a workroom separate from the procedure rooms for cleaning, preparation, and sterilization of instruments, arranged to separate soiled or contaminated instruments from clean or sterilized instruments, including the following:

(A) A hand washing station;

(B) receptacles for waste and soiled items;

(C) designated counter space for soiled or contaminated instruments;

(D) a sink for cleaning soiled or contaminated instruments;

(E) designated counter space for clean instruments; and

(F) an area for sterilizing instruments, if sterilization is completed at the facility;

(11) storage space for clean and sterile instruments and supplies; and

(12) at least one room equipped with a service sink or a floor basin and space for storage of janitorial supplies and equipment. (Authorized by and implementing L. 2011, ch. 82, sec. 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

**28-34-134. Health and safety requirements.** (a) Each applicant and each licensee shall ensure that the facility meets the following health and safety requirements:

(1) The temperature in each procedure room and in each recovery area shall be between 65 and 75 degrees Fahrenheit unless otherwise ordered by a physician in order to meet the comfort or medical needs of the patient.

(2) Fixed or portable lighting units shall be present in each examination, procedure, and recovery room or area, in addition to general lighting.

(3) Each emergency exit shall accommodate a stretcher or a gurney.

(4) The facility shall be maintained in a clean condition.

(5) The facility shall not be infested by insects and vermin.

(6) A warning notice shall be placed at the entrance to any room or area where oxygen is in use.

(7) Soiled linen and clothing shall be kept in covered containers in a separate area from clean linen and clothing.

(b) A written emergency plan shall be developed and implemented, including procedures for protecting the health and safety of patients and other individuals in any of the following circumstances:

(1) A fire;

(2) a natural disaster;

(3) loss of electrical power; or

(4) threat or incidence of violence.

(c) An evacuation drill shall be conducted at least once every six months, including participation by all individuals in the facility at the time of the drill. Documentation shall be maintained at

the facility for one year from the date of the drill and shall include the date and time of the drill. (Authorized by and implementing L. 2011, ch. 82, sec. 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

**28-34-135. Equipment; supplies; drugs and medications.** (a) Each applicant and each licensee shall ensure that supplies, equipment, drugs, and medications are immediately available for use or in an emergency.

(b) Equipment and supplies shall be maintained in the amount required to assure sufficient quantities of clean and sterilized durable equipment to meet the needs of each patient during any abortion procedure and for monitoring each patient throughout the procedure and recovery period.

(c) Each applicant and each licensee shall ensure that the following equipment and supplies are maintained in the facility for airway management:

- (1) An oxygen source with flowmeter;
- (2) face masks, in child and adult sizes for assisting ventilation;
- (3) a non self-inflating bag with face mask;
- (4) suction, either wall or machine;
- (5) suction catheters, in sizes 8, 10, 14F, and Yankauer;
- (6) oral airways, in child and adult sizes;
- (7) nasal cannulas, in child and adult sizes; and
- (8) the following additional equipment and supplies for airway management for any abortion procedure performed when the gestational age of the unborn child is 22 weeks or more:

(A) A self-inflating bag with reservoir, 500 cc and 1000 cc;

- (B) oral airways, in infant sizes;
- (C) a laryngoscope handle with batteries;
- (D) straight blades or curved blades, in sizes 0, 1, 2, and 3;
- (E) endotracheal tubes, uncuffed, in sizes 3.0, 3.5, 4.0, 4.5, 5.0, 6.0, 7.0, and 8.0;
- (F) stylets, small and large; and
- (G) adhesive tape to secure airway.

(d) Each applicant and each licensee shall ensure that the following supplies are maintained in the facility for fluid management:

- (1) Intraosseous needles, 15 or 18 gauge;
- (2) intravenous catheters, 18, 20, 22, and 24 gauge;
- (3) butterfly needles, 23 gauge;
- (4) tourniquets, alcohol swabs, and tape;
- (5) isotonic fluids, either normal saline or lactated Ringer's solution; and

(6) for any abortion procedure performed when the gestational age of the unborn child is 22 weeks or more, pediatric drip chambers and tubing.

(e) Each applicant and each licensee shall ensure that the following miscellaneous equipment and supplies are maintained in the facility:

- (1) Blood pressure cuffs, in small, medium and large adult sizes;
- (2) adult nasogastric tubes;
- (3) manual sphygmomanometer; and
- (4) for any abortion procedure performed when the gestational age of the unborn child is 22 weeks or more, blood pressure cuffs in preemie and infant sizes.

(f) Each applicant and each licensee shall ensure that all equipment is safe for each patient and for the staff.

(g) Each applicant and each licensee shall ensure that each item of equipment is installed and used according to the manufacturer's recommendations for use.

(h) Each applicant and each licensee shall ensure that each item of equipment is checked annually to ensure safety and required calibration.

(i) Each applicant and each licensee shall ensure that equipment and supplies are clean and sterile, if applicable, before each use.

(j) Each applicant and each licensee shall ensure that the facility meets the following requirements for equipment:

(1) All equipment shall be clean, functional, and maintained in accordance with the manufacturer's instructions.

(2) The following equipment shall be available at all times:

- (A) Ultrasound equipment;
- (B) intravenous equipment;
- (C) laboratory equipment;
- (D) patient resuscitation and suction equipment;
- (E) equipment to monitor vital signs in each room in which an abortion is performed;
- (F) a surgical or gynecologic examination table;
- (G) equipment to measure blood pressure;
- (H) a stethoscope; and
- (I) a scale for weighing a patient.

(k) Each applicant and each licensee shall ensure that, for any abortion procedure performed when the gestational age of the unborn child is 22 weeks or more, the following equipment and supplies are maintained in the facility:

- (1) Equipment to monitor cardiopulmonary status; and
- (2) drugs to support cardiopulmonary function.

(l) Each applicant and each licensee shall ensure that equipment and appropriate medications are located in the recovery area as needed for the provision of appropriate emergency resuscitative and life support procedures pending the transfer to a hospital of a patient or a newborn child.

(1) Each applicant and each licensee shall maintain a stock supply of drugs and medications for the use of the physician in treating the emergency needs of patients.

(2) The medications shall be stored in such a manner as to prohibit access by unauthorized personnel.

(3) The stock supplies of medications shall be regularly reviewed to ensure proper inventory control with removal or replacement of expired drugs and medications.

(4) Drugs and equipment shall be available within the facility to treat the following conditions consistent with standards of care for advanced cardiovascular life support:

- (A) Cardiac arrest;
- (B) a seizure;
- (C) an asthma attack;
- (D) allergic reaction;
- (E) narcotic or sedative toxicity;
- (F) hypovolemic shock;
- (G) vasovagal shock; and
- (H) anesthetic reactions.

(m) Drugs and medications shall be administered to individual patients only by a facility physician or a facility health professional.

(n) If a stock of controlled drugs is to be maintained at the facility, the applicant or licensee shall ensure that the facility is registered by the Kansas board of pharmacy. Each applicant and each licensee shall ensure the proper safeguarding and handling of controlled substances within the facility, and shall ensure that all possible control measures are observed and that any suspected diversion or mishandling of controlled substances is reported immediately.

(o) Records shall be kept of all stock supplies of controlled substances giving an accounting of all items received or administered. (Authorized by and implementing L. 2011, ch. 82, sec. 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

**28-34-136. Ancillary services.** (a) Each applicant and each licensee shall document that the facility maintains a certificate of compliance from the centers for medicare and medicaid services pursuant to section 353 of the public health

services act, 42 U.S.C. 263a, as revised by the clinical laboratory and current clinical laboratory improvement amendments for the purpose of performing examinations or procedures.

(b) Each applicant and each licensee shall ensure that the facility meets the following requirements for radiology services:

(1) Allow only trained and qualified individuals to operate radiology equipment;

(2) document annual checks and calibration of radiology equipment and maintain records of the annual checks and calibrations;

(3) ensure that all radiology and diagnostic procedures are provided only on the order of a physician; and

(4) maintain signed and dated clinical reports of the radiological findings in each patient's record.

(c) Each applicant and each licensee shall ensure that written policies and procedures are developed and implemented relating to drugs, including the following:

- (1) Storage of drugs;
- (2) security of drugs;
- (3) labeling and preparation of drugs;
- (4) administration of drugs; and
- (5) disposal of drugs.

(d) Each applicant and each licensee shall ensure that all drugs and medications shall be administered pursuant to a written order from a facility physician or a facility health professional.

(e) Each applicant and each licensee shall ensure that each adverse drug reaction is reported to the physician responsible for the patient and is documented in the patient record.

(f) Each applicant and each licensee shall ensure that each drug and each medication requiring refrigeration is stored in a refrigerator that is used only for drug and medication storage.

(g) Each applicant and each licensee shall ensure that there is a mechanism for the ongoing review and evaluation of the quality and scope of laboratory, radiology, and pharmaceutical services. (Authorized by and implementing L. 2011, ch. 82, sec. 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

**28-34-137. Patient screening and evaluation.** (a) Each applicant and each licensee shall ensure written policies and procedures are developed and implemented for the medical screening and evaluation of patients. A medical screening and evaluation shall be completed on each patient before an abortion procedure is performed.

(b) The medical screening and evaluation shall consist of the following:

(1) A medical history shall be completed, including the following:

(A) Reported allergies to medications, antiseptic solution, or latex;

(B) obstetric and gynecologic history;

(C) past surgeries;

(D) medication currently being taken by the patient; and

(E) any other medical conditions.

(2) A physical examination shall be performed by a physician, including a bimanual examination to estimate uterine size and palpation of the adnexa.

(3) An ultrasound evaluation shall be completed for any patient who elects to have an abortion of an unborn child. The physician shall estimate the gestational age of the unborn child based on the ultrasound examination and obstetric standards in keeping with established standards of care regarding the estimation of the age of the unborn child and shall verify the estimate in the patient's medical history. The physician shall keep the original prints of each ultrasound examination for each patient in the patient's medical history file. The original prints may consist of a digitized record or an electronic record.

(4) The appropriate laboratory tests shall be completed, including the following:

(A) For an abortion performed in a medical emergency and in which an ultrasound examination is not performed before the abortion procedure, urine or blood tests for pregnancy, which shall be completed before the abortion procedure;

(B) a test for anemia as indicated;

(C) determination of Rh factor or Rh typing, unless the patient provides written documentation of blood type acceptable to the physician; and

(D) other tests recommended by the physician or the medical director on the basis of the physical examination, which may include tests for chlamydia and gonorrhea and other cultures, syphilis serology, and a papanicolaou procedure.

(c) Each licensee shall ensure that another individual is present in the room during a pelvic examination or an abortion procedure. If the physician conducting the examination or the procedure is male, the other individual in the room shall be female.

(d) The physician or health care professional shall review, at the request of the patient, the ultrasound evaluation results with the patient before the abortion procedure is performed, includ-

ing 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

**28-35-135a. Definitions.** As used in these regulations, each of the following terms shall have the meaning specified in this regulation: (a) "A<sub>1</sub>" means the maximum activity of special form radioactive material permitted in a type A package.

(b) "A<sub>2</sub>" 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 concentrations 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 re-

view 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.)

**28-35-135c. 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 licens-

ee 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:

$$C = \frac{s}{\bar{x}} = \frac{1}{\bar{x}} \left( \frac{\sum_{i=1}^n (x_i - \bar{x})^2}{n - 1} \right)^{1/2}$$

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  $3.7 \times 10^{10}$  transformations per second (tps). Commonly used submultiples of the curie are the millicurie and the microcurie. One millicurie ( $mCi$ ) = 0.001 curie =  $3.7 \times 10^7$  tps. One microcurie ( $\mu Ci$ ) = 0.000001 curie =  $3.7 \times 10^4$  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.)

**28-35-135i. 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 vis-

ible 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.)

**28-35-1351. 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.)

**28-35-135s. 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<sub>s</sub>," 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/cm<sup>2</sup>) 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 cm<sup>2</sup>, at a distance of one meter from the source, does not exceed any of the values specified in this subsection.

(m) "These regulations" means article 35 in its entirety.

(n) "Tomogram" means the depiction of the X-ray attenuation properties of a section through the body.

(o) "Total effective dose equivalent" and "TEDE" mean the sum of the effective dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

(p) "Total organ dose equivalent" and "TODE" mean the sum of the deep dose equivalent and the committed dose equivalent delivered to the organ receiving the highest dose.

(q) "Traceable to a national standard" means that a quantity or a measurement has been compared to a national standard directly or indirectly through one or more intermediate steps and that all comparisons are documented.

(r) "Transport index" means the dimensionless number, rounded up to the first decimal place, placed on the label of a package to designate the degree of control to be exercised by the carrier during transportation. The transport index is the maximum radiation level in millirems per hour at one meter from the external surface of the package.

(s) "Tritium neutron-generator-target source" means a tritium source used within a neutron generator tube to produce neutrons for use in well-logging applications.

(t) "Tube" means an X-ray tube, unless otherwise specified.

(u) "Tube housing assembly" means the tube housing with a tube installed, including high-voltage transformers or filament transformers, or both, and other appropriate elements when contained within the tube housing.

(v) "Treatment site" means the anatomical description of the tissue intended to receive a radiation dose, as specified in a written directive.

(w) "Tube rating chart" means the set of curves that describes the rated limits of operation of the tube in terms of the technique factors.

(x) "Type A package" means packaging that, together with the radioactive contents limited to A<sub>1</sub> or A<sub>2</sub> 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.)

**28-35-135w. Definitions.** As used in these regulations, each of the following terms shall have the meaning assigned in this regulation: (a) “Waste” means any low-level radioactive waste that is acceptable for disposal in a land disposal facility. Low-level radioactive waste shall mean radioactive waste that meets both of the following conditions:

(1) Is not classified as any of the following:

(A) High-level radioactive waste;

(B) spent nuclear fuel;

(C) “byproduct material,” as defined in paragraphs (2), (3), and (4) in the definition of “byproduct material” in 10 CFR 20.1003, dated December 1, 2009;

(D) uranium or thorium tailings; and

(E) transuranic waste; and

(2) is classified as low-level radioactive waste consistent with existing law and in accordance

with paragraph (a)(1) by the nuclear regulatory commission.

(b) “Waste-handling licensee” means any person licensed to receive and store radioactive wastes before disposal, any person licensed to dispose of radioactive waste, or any person licensed to both receive and dispose of radioactive waste.

(c) “Wedge filter” means an added filter effecting continuous, progressive attenuation of all or part of the useful beam.

(d) “Week” means seven consecutive days, starting on Sunday.

(e) “Weighting factor ( $w_T$ ) for an organ or tissue (T)” means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of  $w_T$  shall be as follows:

ORGAN OR TISSUE DOSE WEIGHTING FACTORS	
Organ or Tissue (T)	$w_T$
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Organ or Tissue (T)	$w_T$
Thyroid	0.03
Bone surfaces	0.03
Remainder organs	0.30 <sup>a</sup>
Whole body	1.00 <sup>b</sup>

<sup>a</sup>0.30 results from 0.06 for each of the five remainder organs that receive the highest doses, excluding the skin and the lens of the eye.

<sup>b</sup>For the purpose of weighting the external whole body dose in determining the total effective dose equivalent, a single weighting factor,  $w_T = 1.0$ , is specified. The use of other weighting factors for external exposure may be approved by the secretary if the licensee or registrant demonstrates that the effective dose to be received is within the limits specified in these regulations.

(f) “Well bore” means a drilled hole in which wireline service operations and subsurface tracer studies are performed.

(g) “Well logging” means the lowering and raising of measuring devices or tools that could contain sources of radiation into well bores or cavities for the purpose of obtaining information about the well or adjacent formations.

(h) “Wet-source-change irradiator” means an irradiator whose sources are replaced underwater.

(i) “Wet-source-storage irradiator” means an irradiator whose sources are stored underwater.

(j) "Whole body," for purposes of external exposure, means the head and trunk, including the male gonads, and shall include the arms above the elbow and the legs above the knee.

(k) "Wireline" means a cable containing one or more electrical conductors that is used to raise and lower logging tools in the well bore.

(l) "Wireline service operation" means any evaluation or mechanical service that is performed in the well bore using devices on a wireline.

(m) "Worker" means an individual, contractor, or subcontractor engaged in work that is performed under a license or registration, or both, issued by the department and that is controlled by a licensee or registrant, or both. This term shall not include a specific licensee or registrant.

(n) "Working level (WL)" means any combination of short-lived radon daughters in one liter of air that will result in the ultimate emission of  $1.3E+5$  MeV of potential alpha particle energy. The short-lived radon daughters are the following:

(1) For radon-222, the following:

(A) Polonium-218;

(B) lead-214;

(C) bismuth-214; and

(D) polonium-214; and

(2) for radon-220, the following:

(A) Polonium-216;

(B) lead-212;

(C) bismuth-212; and

(D) polonium-212.

(o) "Working-level month (WLM)" means an exposure to one working level for 170 hours.

(p) "Written directive" means a written order for a specific patient that is dated and signed by an authorized user before the administration of a radiopharmaceutical or radiation and that contains any of the following sets of information:

(1) For any administration of quantities greater than 1.11 megabecquerels (30  $\mu$ 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.)

**28-35-140. 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.)

**28-35-146a. 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.)

**28-35-147a. 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 ma-

terial, 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

(2) Licenses for possession and use of radioactive material or by-product material for field flooding tracer studies.

Annual fee ..... \$2,350.00

(f) Nuclear laundries.

Licenses for commercial collection and laundry of items contaminated with radioactive material or by-product material, source material, or special nuclear material.

Annual fee ..... \$11,550.00

(g) Medical licenses.

(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.

Annual fee ..... \$5,500.00

(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).

Annual fee ..... \$12,350.00

(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).

Annual fee ..... \$2,300.00

(h) Civil defense.

Licenses for possession and use of radioactive material or by-product material, source material, or special nuclear material for civil defense activities.

Annual fee ..... \$650.00

(i) Device, product, or sealed source safety evaluation.

(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.

Fee..... \$3,500.00

(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.

Fee..... \$3,500.00  
 (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.

Fee..... \$1,100.00  
 (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.

Fee..... \$365.00  
 (j) Reciprocity.  
 (1) Licensees who conduct activities under a reciprocal agreement.

Annual fee ..... \$750.00  
 (2) Registrants who conduct activities under a reciprocal agreement.

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.)

**28-35-175a. 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.)

**28-35-177a. 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 re-

quest. 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.)

**28-35-178b. 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 quar-

terly physical inventories of the device while the device is in storage.

(c) Nothing in this regulation shall be deemed to authorize the manufacture or import of any device containing radioactive material.

(d) The general license specified in subsection (a) shall be subject to the provisions of K.A.R. 28-35-184a and K.A.R. 28-35-184b. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended Nov. 1, 1996; amended March 24, 2006; amended July 27, 2007; amended March 18, 2011.)

**28-35-178e. Americium-241 or radium-226 in the form of calibration or reference sources.**

(a) A general license to acquire, possess, use and transfer, in accordance with the provisions of subsections (b) and (c), americium-241 or radium-226 in the form of calibration or reference sources is hereby issued to any person who holds a specific license issued by the nuclear regulatory commission that authorizes the agency to acquire, possess, use, and transfer by-product material, source material, or special nuclear material.

(b) The general license issued in subsection (a) shall apply only to calibration or reference sources that have been manufactured or initially transferred in accordance with the specifications contained in a specific license issued by the secretary, the nuclear regulatory commission, or an agreement state.

(c) The general license issued in subsection (a) shall be subject to the provisions of K.A.R. 28-35-184a, and to all of the provisions of parts 4 and 10 of these regulations. In addition, persons who acquire, possess, use, and transfer one or more calibration or reference sources pursuant to this general license shall meet the following requirements:

(1) Not possess, at any one time, at any one location of storage or use, more than 5 microcuries of either americium-241 or radium-226 in such sources;

(2) not receive, possess, use, or transfer such a source unless the source, or the storage container, bears a label that includes the following statement or a substantially similar statement that contains the information called for in the following statement:

"The receipt, possession, use and transfer of this source, Model \_\_\_\_\_, Serial No. \_\_\_\_\_, are subject to a general license and the regulations of the United States Nuclear Regulatory Commission or of a State with which the commission has entered into an agreement for the exercise of regulatory authority. Do not remove this label.

CAUTION—RADIOACTIVE MATERIAL—THIS SOURCE CONTAINS AMERICIUM-241 (or RADIUM-226). DO NOT TOUCH RADIOACTIVE PORTION OF THIS SOURCE.

(Name of manufacturer or initial transferor)";

(3) not transfer, abandon, or dispose of such source except by transfer to a person authorized by a license issued by the secretary, the nuclear regulatory commission, or an agreement state to receive the source;

(4) store such source, except when the source is being used, in a closed container designed and constructed to contain either americium-241 or radium-226 that might otherwise escape during storage; and

(5) not use the source for any purpose other than the calibration of radiation detectors or the standardization of other sources.

(d) The general license issued in this regulation shall not authorize the manufacture, or the importation or exportation, of calibration or reference sources containing either americium-241 or radium-226. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended March 18, 2011.)

**28-35-178i. 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  $\mu$ 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.)

**28-35-179a. 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 pro-

vide 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.)

**28-35-180a. 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<sup>5</sup> 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 decom-

missioning 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 <sup>4</sup> but less than or equal to 10 <sup>5</sup> 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 <sup>4</sup> is greater than one, but R divided by 10 <sup>5</sup> is equal to or less than one .....	\$1,125,000.00
If the possession limit is greater than 10 <sup>3</sup> but less than or equal to 10 <sup>4</sup> 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 <sup>3</sup> is greater than one, but R divided by 10 <sup>4</sup> is less than or equal to one .....	\$225,000.00
If the possession limit is greater than 10 <sup>10</sup> 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 <sup>10</sup> 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 sub-

stitute available information concerning these areas and locations;

(3) a list of the following information, which shall be contained in a single document and updated every two years:

(A) All areas designated and formerly designated as restricted areas;

(B) all areas outside of restricted areas that require the documentation specified in this subsection;

(C) all areas outside of restricted areas where current and previous wastes have been buried and documented as specified in K.A.R. 28-35-227j; and

(D) all areas outside of restricted areas that contain material so that, if the license expired, the licensee would be required either to decontaminate the area to unrestricted release levels or to apply for approval for disposal as specified in K.A.R. 28-35-225a.

Those areas containing sealed sources only shall not be included in the list if the sources have not leaked, no contamination remains in the area after any leak, or the area contains only radioactive materials having half-lives of less than 65 days; and

(4) the following records:

(A) Records of the cost estimate performed for the decommissioning funding plan or records of the amount certified for decommissioning; and

(B) if either a funding plan or certification is used, records of the funding method used for assuring funds.

(i) Each applicant for a specific license shall make 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.)

**28-35-181a. Specific licenses for human use of radioactive material in medical institutions.** An application for a specific license for human use of radioactive material in institutions shall not be approved unless all of the following conditions are met:

(a) The applicant has appointed a radiation safety committee as specified in 10 CFR 35.24(f), which is adopted by reference in K.A.R. 28-35-264.

(b) The applicant possesses adequate facilities for the clinical care of patients.

(c) The physician or physicians designated on the application as the user or users have substantial experience in handling and administering radioactive materials and, if applicable, clinical management of radioactive patients.

(d) If the application is for a license to use unspecified quantities or multiple types of radioactive material, the applicant or applicant's staff has substantial experience in the use of a variety of radioactive materials for a variety of human uses. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended March 18, 2011.)

**28-35-181e.** (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended Dec. 30, 2005; revoked March 18, 2011.)

**28-35-181h. 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 li-

cense 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  $\mu\text{Ci}$  of americium-241 or radium-226.

(4) The method of incorporation and binding of more than 0.005  $\mu\text{Ci}$  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 radioactive material deposited on the source shall be measured by direct counting of the source.

(B) Dry wipe test. The entire radioactive surface of the source shall be wiped with filter paper with the application of moderate finger pressure. Removal of radioactive material from the source shall be determined by measuring the radioactivity on the filter paper or by direct measurement of the radioactivity on the source following the dry wipe.

(C) Wet wipe test. The entire radioactive surface of the source shall be wiped with filter paper, moistened with water, with the application of moderate finger pressure. Removal of radioactive material from the source shall be determined by measuring the radioactivity on the filter paper after the paper has dried or by direct measurement of the radioactivity on the source following the wet wipe.

(D) Water soak test. The source shall be immersed in water at room temperature for 24 consecutive hours. The source shall then be removed from the water. Removal of radioactive material from the source shall be determined by direct measurement of the radioactivity on the source after the source has dried or by measuring the radioactivity in the residue obtained by evaporation of the water in which the source was immersed.

(E) Dry wipe test. On completion of the water soak test, the dry wipe test described in paragraph (a)(5)(B) shall be repeated.

(F) Observations. Removal of more than 0.005 microcurie of radioactivity in any test prescribed by paragraph (a)(5) shall be cause for rejection of the source design. Results of prototype tests submitted to the nuclear regulatory commission shall

be given in terms of radioactivity in microcuries and percent of removal from the total amount of radioactive material deposited on the source.

(6) Each source or storage container for the source shall have a label affixed that contains sufficient information about safe use and storage of the source and includes the following or an equivalent statement:

“The receipt, possession, use and transfer of this source, Model \_\_\_\_\_, Serial No. \_\_\_\_\_, are subject to a general license and the regulations of the United States Nuclear Regulatory Commission or of a State with which the commission has entered into an agreement for the exercise of regulatory authority. Do not remove this label.

CAUTION—RADIOACTIVE MATERIAL—THIS SOURCE CONTAINS AMERICIUM-241 (or RADIUM-226). DO NOT TOUCH RADIOACTIVE PORTION OF THIS SOURCE.

(Name of manufacturer or initial transferor).”

(b) Each person licensed under this regulation shall perform a dry wipe test upon each source containing more than 3.7 kilobecquerels (0.1 microcurie) of americium-241 or radium-226 before transferring the source to a general licensee in accordance with K.A.R. 28-35-178e or equivalent regulations of an agreement state or the nuclear regulatory commission. This test shall be performed by wiping the entire radioactive surface of the source with a filter paper with the application of moderate finger pressure.

The radioactivity on the paper shall be measured by using radiation detection instrumentation capable of detecting 0.185 kilobecquerel (0.005 microcurie) of americium-241 or radium-226. If this test discloses more than 0.185 kilobecquerel (0.005 microcurie) of radioactive material, the source shall be deemed to be leaking or losing americium-241 or radium-226 and shall not be transferred to a general licensee in accordance with K.A.R. 28-35-178e or equivalent regulations of an agreement state or the nuclear regulatory commission. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended March 18, 2011.)

**28-35-181k. 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 ref-

erence, 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.)

**28-35-181m. 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 ref-

erence 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.)

**28-35-181o. 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 appli-

cation 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.)

**28-35-181t. 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.)

**28-35-184a. 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 trans-

fers 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.)

**28-35-192a. 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—RADIO-

ACTIVE 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 ( $\mu\text{Ci}$ ) 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  $\mu\text{Ci}$  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.)

**28-35-192g. 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 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 containing 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.)

**28-35-194a. 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.)

**28-35-197a.** (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.)

**28-35-205b. 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.)

**28-35-212a. Occupational dose limits for adults.** (a) Each licensee or registrant shall control the occupational dose to individual adults, ex-

cept for planned special exposures to the following dose limits:

(1) The annual limit shall be the more limiting of either of the following:

(A) The total effective dose equivalent being equal to 0.05 Sv (5 rem); or

(B) the sum of the deep dose equivalent and the committed dose equivalent to any individual organ or tissue other than the lens of the eye being equal to 0.50 Sv (50 rem).

(2) The annual limits to the lens of the eye, to the skin, and to the extremities shall be the following:

(A) An eye dose equivalent of 0.15 Sv (15 rem); and

(B) a shallow dose equivalent of 0.50 Sv (50 rem) to the skin or to any extremity.

(b) Doses received in excess of the annual limits, including doses received during accidents, emergencies, and planned special exposures, shall be subtracted from the limits for planned special exposures that the individual could receive during the current year and during the individual's lifetime.

(c) When the external exposure is determined by measurement with an external personal monitoring device, the deep dose equivalent shall be used in place of the effective dose equivalent, unless the effective dose equivalent is determined by a dosimetry method approved by the secretary. The assigned deep dose equivalent shall be for the portion of the body receiving the highest exposure. The assigned shallow dose equivalent shall be the dose averaged over the contiguous 10 square centimeters of skin receiving the highest exposure.

(1) The deep dose equivalent, eye dose equivalent, and shallow dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure or the results of individual monitoring are unavailable.

(2) If a protective apron is worn by medical fluoroscopists performing special and interventional fluoroscopic procedures and monitoring is conducted as specified in K.A.R. 28-35-217a, the use of weighting factors in determining the effective dose equivalent for external radiation may be approved by the secretary upon receipt of a written request. In no case shall the use of weighting factors be approved unless the request is accompanied by a list of the procedures to be used to ensure that

exposures are maintained ALARA and the effective dose equivalent is determined as follows:

(A) If only one individual monitoring device is used and the device is located at the neck outside the protective apron, the reported deep dose equivalent shall be the effective dose equivalent for external radiation.

(B) If only one individual monitoring device is used, the device is located at the neck outside the protective apron, and the reported dose exceeds 25 percent of the limit specified in this regulation, then the reported deep dose equivalent value multiplied by 0.3 shall be the effective dose equivalent for external radiation.

(C) If individual monitoring devices are worn, both under the protective apron at the waist and outside the protective apron at the neck, the effective dose equivalent for external radiation shall be assigned the value of the sum of the deep dose equivalent reported for the individual monitoring device located at the waist under the protective apron multiplied by 1.5 and the deep dose equivalent reported for the individual monitoring device located at the neck outside the protective apron multiplied by 0.04.

(3) All individuals who are associated with the operation of an X-ray system shall be subject to the occupational exposure limits and the requirements for the determination of the doses that are specified in this regulation. In addition, each individual shall meet the following requirements:

(A) When protective clothing or devices are worn on portions of the body and one or more monitoring devices are required, at least one monitoring device shall be utilized as follows:

(i) When an apron is worn, the monitoring device shall be worn at the collar outside of the apron;

(ii) the dose to the device, if one is used, shall be recorded as the whole-body dose based on the maximum dose attributed to any one critical organ, including the gonads, the blood-forming organs, the head and trunk, and the lens of the eye. If more than one device is used and a record is made of the data, each dose shall be identified with the area where the device was worn on the body;

(4) Exposure of a personnel-monitoring device to deceptively indicate a dose delivered to an individual shall be prohibited.

(5) If the individual is exposed during procedures not specifically approved, weighting factors shall not be applied.

(d) Derived air concentration (DAC) and annual limit on intake (ALI) values, in appendix B, table I, published in “appendices to part 4: standards for protection against radiation,” which is adopted in K.A.R. 28-35-135a, shall be used to determine the individual’s dose and to demonstrate compliance with the occupational dose limits.

(e) Notwithstanding the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to 10 milligrams in a week in consideration of chemical toxicity, in accordance with footnote 3 of appendix B published in “appendices to part 4: standards for protection against radiation,” which is adopted in K.A.R. 28-35-135a.

(f) Each licensee or registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received while employed by any other person. (Authorized by and implementing K.S.A. 48-1607; effective, T-85-43, Dec. 19, 1984; effective May 1, 1985; amended Sept. 20, 1993; amended Oct. 17, 1994; amended Dec. 30, 2005; amended March 18, 2011.)

**28-35-216a. Testing for leakage or contamination of sealed sources.** (a) Each licensee in possession of any sealed source shall ensure that all of the following requirements are met:

(1) Each sealed source, except as specified in subsection (b), shall be tested for leakage or contamination, and the test results shall be received before the sealed source is put into use, unless the licensee has a certificate from the transferor indicating that the sealed source was tested within six months before transfer to the licensee.

(2) Each sealed source that is not designed to emit alpha particles shall be tested for leakage or contamination at intervals not to exceed six months or at alternative intervals approved by the secretary, an agreement state, a licensing state, or the nuclear regulatory commission.

(3) Each sealed source designed to emit alpha particles shall be tested for leakage or contamination at intervals not to exceed three months or at alternative intervals approved by the secretary, an agreement state, a licensing state, or the nuclear regulatory commission.

(4) For each sealed source required to be tested for leakage or contamination, whenever there is reason to suspect that the sealed source might have been damaged or might be leaking, the licensee shall ensure that the sealed source is tested for leakage or contamination before further use.

(5) Tests for leakage for all sealed sources shall be capable of detecting the presence at 185 Bq (0.005  $\mu$ 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  $\mu$ Ci) or less of beta-emitting or photon-emitting material or 370 kBq (10  $\mu$ 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.)

**28-35-217b. 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.)

**28-35-221a. 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 <sup>2</sup>	uCi/cm <sup>2</sup>	dpm/cm <sup>2</sup>
Beta and gamma emitters and low-toxicity alpha emitters	4	10 <sup>-4</sup>	220
All other alpha-emitting radionuclides	0.4	10 <sup>-5</sup>	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 A<sub>1</sub>, A<sub>2</sub>, 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.)

**28-35-225b. 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.)

**28-35-230d.** (Authorized by and implementing K.S.A. 48-1607; effective Oct. 17, 1994; amended Dec. 30, 2005; revoked May 4, 2018.)

**28-35-231c. Transfer for disposal; manifests.** The provisions of 10 CFR 20.2006 as in effect on October 1, 2007, including appendix G to 10 CFR part 20 as in effect on November 16, 2005, are hereby adopted by reference. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005; amended March 18, 2011.)

**28-35-242. General requirements.** (a) Waiver of requirements. Compliance with the specific requirements of these regulations relative to an existing machine or installation may be waived by the secretary if the registrant provides an alternative to the requirement that provides radiation protection equal to that prescribed in part 4 of these regulations.

(b) Responsibility to meet requirements. A person shall not make, sell, lease, transfer, lend, or install X-ray or fluoroscopic equipment, or the supplies used in connection with this equipment, unless both of the following conditions are met:

(1) Those supplies and equipment, when properly placed in operation and properly used, will meet the requirements of parts 1, 4, and 5 and the applicable regulations under parts 7, 8, and 10 of these regulations.

(2) The person delivers, if applicable, cones or collimators, filters, appropriate timers, and fluoroscopic shutters.

(c) Limitations on human use. An individual shall not be exposed to the useful beam, unless the exposure is for healing arts purposes and each exposure has been authorized by one of the following:

(1) A licensed practitioner of the healing arts;

(2) a physician assistant licensed by the state board of healing arts, when working under the supervision and direction of a person licensed to practice medicine or surgery;

(3) an advanced registered nurse practitioner who holds a certificate of qualification from the state board of nursing, when working under the supervision and direction of a person licensed to practice medicine or surgery; or

(4) an individual licensed to practice dentistry or podiatry within the authority granted to the individual by Kansas licensing laws applying to dentists and podiatrists.

(d) Prohibited uses. Deliberate exposure for the following purposes shall be specifically prohibited:

(1) Exposure of an individual for patient positioning, training, demonstration, or other purposes, unless a healing arts purpose exists and a proper prescription has been provided; and

(2) exposure of an individual for the purpose of healing arts screening without the prior written approval of the department, except mammography screening, if the facility is certified to perform mammography by the food and drug administration. Each person requesting approval for healing arts screening shall submit the information outlined in K.A.R. 28-35-255. Each person requesting approval for a healing arts screening shall notify the department within 30 days if any of the information submitted becomes invalid or outdated. (Authorized by and implementing K.S.A. 48-1607; effective Jan. 1, 1970; amended Jan. 1, 1972; amended May 1, 1976; amended Sept. 20, 1993; amended Dec. 30, 2005; amended March 18, 2011.)

**28-35-264. General requirements.** The provisions of 10 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.)

**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.)

**28-35-334. 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 re-

port 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.)

**28-35-343. 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.)

**28-35-346. 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.)

**28-35-362. 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 1/2-inch letters and all other information shall be written in 1/4-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.)

**28-35-411. 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 <sup>1</sup>	Release Fraction	Quantity (GBq)	Quantity (Ci)
Actinium-228	0.001	148,000	4,000
Americium-241	0.001	74	2
Americium-242	0.001	74	2
Americium-243	0.001	74	2
Antimony-124	0.01	148,000	4,000
Antimony-126	0.01	222,000	6,000
Barium-133	0.01	370,000	10,000
Barium-140	0.01	1,110,000	30,000
Bismuth-207	0.01	185,000	5,000
Bismuth-210	0.01	22,200	600
Cadmium-109	0.01	37,000	1,000
Cadmium-113	0.01	2,960	80
Calcium-45	0.01	740,000	20,000
Californium-252	0.001	333	9 (20 mg)
Carbon-14 (Non-CO)	0.01	1,850,000	50,000
Cerium-141	0.01	370,000	10,000
Cerium-144	0.01	11,100	300
Cesium-134	0.01	74,000	2,000
Cesium-137	0.01	111,000	3,000
Chlorine-36	0.5	3,700	100
Chromium-51	0.01	11,100,000	300,000
Cobalt-60	0.001	185,000	5,000
Copper-64	0.01	7,400,000	200,000
Curium-242	0.001	2,220	60
Curium-243	0.001	110	3
Curium-244	0.001	148	4
Curium-245	0.001	74	2
Europium-152	0.01	18,500	500
Europium-154	0.01	14,800	400
Europium-155	0.01	111,000	3,000
Gadolinium-153	0.01	185,000	5,000
Gold-198	0.01	1,110,000	30,000
Hafnium-172	0.01	14,800	400
Hafnium-181	0.01	259,000	7,000
Holmium-166m	0.01	3,700	100
Hydrogen-3	0.5	740,000	20,000
Indium-114m	0.01	37,000	1,000
Iodine-124	0.5	370	10
Iodine-125	0.5	370	10
Iodine-131	0.5	370	10
Indium-114m	0.01	37,000	1,000
Iridium-192	0.001	1,480,000	40,000
Iron-55	0.01	1,480,000	40,000
Iron-59	0.01	259,000	7,000
Krypton-85	1.0	222,000,000	6,000,000
Lead-210	0.01	296	8
Manganese-56	0.01	2,220,000	60,000
Mercury-203	0.01	370,000	10,000
Molybdenum-99	0.01	1,110,000	30,000
Neptunium-237	0.001	74	2
Nickel-63	0.01	740,000	20,000
Niobium-94	0.01	11,100	300
Phosphorus-32	0.5	3,700	100
Phosphorus-33	0.5	37,000	1,000
Polonium-210	0.01	370	10
Potassium-42	0.01	333,000	9,000

	Release	Quantity	Quantity
Promethium-145	0.01	148,000	4,000
Promethium-147	0.01	148,000	4,000
Radium-226	0.001	3,700	100
Ruthenium-106	0.01	7,400	200
Samarium-151	0.01	148,000	4,000
Scandium-46	0.01	111,000	3,000
Selenium-75	0.01	370,000	10,000
Silver-110m	0.01	37,000	1,000
Sodium-22	0.01	333,000	9,000
Sodium-24	0.01	370,000	10,000
Strontium-89	0.01	111,000	3,000
Strontium-90	0.01	3,330	90
Sulfur-35	0.5	3,330	900
Technetium-99	0.01	370,000	10,000
Technetium-99m	0.01	14,800,000	400,000
Tellurium-127m	0.01	185,000	5,000
Tellurium-129m	0.01	185,000	5,000
Terbium-160	0.01	148,000	4,000
Thulium-170	0.01	148,000	4,000
Tin-113	0.01	370,000	10,000
Tin-123	0.01	111,000	3,000
Tin-126	0.01	37,000	1,000
Titanium-44	0.01	3,700	100
Vanadium-48	0.01	259,000	7,000
Xenon-133	1.0	33,300,000	900,000
Yttrium-91	0.01	74,000	2,000
Zinc-65	0.01	185,000	5,000
Zirconium-93	0.01	14,800	400
Zirconium-95	0.01	185,000	5,000
Any other beta-gamma emitter	0.01	370,000	10,000
Mixed fission products	0.01	37,000	1,000
Contaminated equipment: beta-gamma emitters	0.001	370,000	10,000
Irradiated material, in any form other than solid noncombustible	0.01	370,000	10,000
Irradiated material that is solid and noncombustible	0.001	370,000	10,000
Mixed radioactive waste: beta-gamma emitters	0.01	37,000	1,000
Packaged mixed waste <sup>2</sup> : beta-gamma emitters	0.001	370,000	10,000
Any other alpha emitter	0.001	74	2
Contaminated equipment: alpha emitters	0.0001	740	20
Packaged waste <sup>2</sup> : alpha emitters	0.0001	740	20

<sup>1</sup> 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.

<sup>2</sup> 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.)

**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 delivering 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<sub>1</sub> 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.)

**28-35-600. 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 product 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.)

**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 wherever 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**

**28-36-30.** (Authorized by and implementing K.S.A. 2002 Supp. 36-503; effective, E-79-16, July 1, 1978; effective May 1, 1979; amended, E-82-21, Nov. 16, 1981; amended May 1, 1982; amended Dec. 30, 1991; amended Sept. 27, 1993; amended Nov. 20, 1998; amended, T-28-7-2-01, July 2, 2001; amended Nov. 9, 2001; amended Oct. 24, 2003; revoked June 4, 2010.)

**28-36-31.** (Authorized by K.S.A. 1978 Supp. 36-502; effective, E-79-16, July 1, 1978; effective May 1, 1979; revoked June 4, 2010.)

**28-36-70.** (Authorized by K.S.A. 36-506; implementing K.S.A. 36-501 and 36-506; effective, T-28-10-8-07, Oct. 8, 2007; effective Feb. 5, 2008; revoked June 4, 2010.)

**28-36-71.** (Authorized by and implementing K.S.A. 36-502 and 36-506; effective, T-28-10-8-07, Oct. 8, 2007; effective Feb. 5, 2008; revoked June 4, 2010.)

**28-36-72 through 28-36-89.** (Authorized by and implementing K.S.A. 36-506; 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.)

#### Article 38.—LICENSURE OF ADULT CARE HOME ADMINISTRATORS

**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.)

**28-38-26.** (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.)

**28-38-28.** (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

**28-39-145a.** (Authorized by K.S.A. 39-930, 39-932, and 39-933; implementing K.S.A. 39-927, 39-930, 39-932, and 39-933; effective Oct. 8, 1999; revoked May 22, 2009.)

**28-39-146.** (Authorized by and implementing K.S.A. 39-954; effective Nov. 1, 1993; amended Feb. 21, 1997; revoked May 22, 2009.)

**28-39-147 and 28-39-148.** (Authorized by and implementing K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21, 1997; revoked May 22, 2009.)

**28-39-162.** (Authorized by and implementing K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21, 1997; revoked Jan. 7, 2011.)

**28-39-162a.** (Authorized by and implementing K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21, 1997; amended Oct. 8, 1999; revoked Jan. 7, 2011.)

**28-39-162b.** (Authorized by and implementing K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21, 1997; revoked Jan. 7, 2011.)

**28-39-162c.** (Authorized by and implementing K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21, 1997; amended Oct. 8, 1999; revoked Jan. 7, 2011.)

**28-39-164. Definitions.** (a) "Adult care home" means any facility that meets the definition specified in K.A.R. 28-39-144.

(b) "Clinical instruction" means training in which the trainee demonstrates knowledge and skills while performing tasks on an individual under the direct supervision of the course instructor. Clinical instruction may be performed in any of the following settings:

- (1) An adult care home;
- (2) a long-term care unit of a hospital; or
- (3) a simulated laboratory.

(c) "Department" means Kansas department of health and environment.

(d) "Direct care" means assistance provided in activities of daily living. These activities shall include grooming, eating, toileting, transferring, and ambulation.

(e) "Direct supervision" means that the supervisor is on the facility premises and is readily accessible for one-on-one consultation, instruction, and assistance, as needed.

(f) "Eligible for employment," when describing a certified nurse aide, means that the certified nurse aide meets the following criteria:

(1) Has been employed to perform nursing or nursing-related services for at least eight hours in the preceding 24 months;

(2) has no record of abuse, neglect, and exploitation; and

(3) is not prohibited from employment based upon criminal convictions pursuant to K.S.A. 39-970, and amendments thereto.

(g) "Instructor" means an individual who has been approved by the secretary to teach nurse aide, home health aide, or medication aide training courses.

(h) "Licensed nursing experience" means experience as a registered nurse or licensed practical nurse.

(i) "Nurse aide trainee I" means an individual in the process of completing part I of a 90-hour nurse aide course as specified in K.A.R. 28-39-165.

(j) "Nurse aide trainee II" means an individual who has successfully completed part I of a 90-hour nurse aide course specified in K.A.R. 28-39-165 or whose training has been endorsed as specified in K.A.R. 28-39-167.

(k) "Secretary" means secretary of the Kansas department of health and environment.

(l) "Simulated laboratory" means an enclosed area that is in a school, institution, adult care home, or other facility and that is similar to an adult care home residential room. In a simulated laboratory, trainees practice and demonstrate basic nurse aide skills while an instructor observes and evaluates the trainees. (Authorized by K.S.A. 2008 Supp. 39-925(d)(2); implementing K.S.A. 2008 Supp. 39-936; effective Feb. 28, 1994; amended Dec. 29, 2003; amended June 12, 2009.)

**28-39-165. Nurse aide training program.**

(a) Requirements. Unlicensed employees who provide direct individual care to residents shall be required to perform the following:

(1) Successfully complete at least a 90-hour nurse aide course that has been approved by the secretary; and

(2) pass a state test as specified in K.A.R. 28-39-168.

(b) Certification. Each person shall be issued a nurse aide certificate by the secretary and shall be listed on a public registry upon completion of the requirements specified in subsection (a).

(c) Employment as a trainee.

(1) Each nurse aide trainee I in an approved 90-hour course shall be required to successfully complete part I of the course to demonstrate 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 di-

rect 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 com-

pleting an approved 90-hour course as specified in K.A.R. 28-39-165.

(3) If the person does not pass the state test within 12 months after the starting date of taking an approved 90-hour course, the person shall retake the entire course.

(4) If a person whose education or training has been endorsed or deemed equivalent as specified in K.A.R. 28-39-167 and the person does not pass the state test on the first attempt, the person shall successfully complete an approved 90-hour nurse aide course as specified in K.A.R. 28-39-165 to retake the state test. Each person whose training was endorsed or deemed equivalent, who failed the state test, and who has successfully completed an approved nurse aide course shall be eligible to take the test three times within a year after the beginning date of the course.

(c) Application fee.

(1) Each nurse aide trainee shall pay a nonrefundable application fee of \$20.00 before taking the state test. A nonrefundable application fee shall be required each time the test is scheduled to be taken. Each person who is scheduled to take the state test, but fails to take the state test, shall submit another fee before being scheduled for another opportunity to take the test.

(2) Each course instructor shall collect the application fee for each nurse aide candidate eligible to take the state test and shall submit the fees, class roster, application forms, and accommodation request forms to the department or its designated agent.

(d) Each person who is eligible to take the state test and who has submitted the application fee and application form shall be issued written approval, which shall be proof of eligibility to sit for the test.

(e) Test accommodation.

(1) Any reasonable test accommodation or auxiliary aid to address a disability may be requested by any person who is eligible to take the state test. Each request for reasonable accommodation or auxiliary aid shall be submitted each time a candidate is scheduled to take the test.

(2) Each person requesting a test accommodation shall submit an accommodation request form along with an application form to the instructor. The instructor shall forward these forms to the department or its designated agent at least three weeks before the desired test date. Each instructor shall verify the need for the accommodation by signing the accommodation request form.

(3) Each person whose second language is English shall be allowed to use a bilingual dictionary while taking the state test. Limited English proficiency shall not constitute a disability with regard to accommodations. An extended testing period of up to two additional hours may be offered to persons with limited English proficiency.

(f) This regulation shall not apply to any person who meets the requirement of K.A.R. 28-39-167(a). (Authorized by K.S.A. 2008 Supp. 39-925(d)(2) and 39-936; implementing K.S.A. 2008 Supp. 39-936; effective Feb. 28, 1994; amended Dec. 29, 2003; amended June 12, 2009.)

**28-39-169a. Medication aide.** (a) Each medication aide candidate shall be either a nurse aide who has been issued a certificate by the secretary or a qualified mental retardation professional as defined in 42 C.F.R. 483.430(a), revised October 1, 2010 and hereby adopted by reference, and shall meet the following requirements:

(1) Has completed a course in medication administration approved by the secretary; and

(2) has passed a state test as approved by the secretary.

(b) Each person who has met one of the following requirements shall be eligible to enroll in a medication aide course:

(1) Is a nurse aide who has a Kansas nurse aide certificate and who has been screened and tested for reading comprehension at an eighth-grade level; or

(2) is a qualified mental retardation professional employed by an intermediate care facility for the mentally retarded.

(c) A qualified mental retardation professional who is not a nurse aide, who has completed a course in medication administration as approved by the secretary, and who has passed the state test shall be allowed to administer medications only to residents in an intermediate care facility for the mentally retarded.

(d) (1) Each medication aide course shall meet the following requirements:

(A) Consist of a minimum of 75 total hours, which shall include a minimum of 25 hours of clinical instruction;

(B) be prepared and administered in accordance with the guidelines prescribed by the secretary and follow the content outlined in the "Kansas certified medication aide curriculum" and appendices, dated February 2011, and the "Kansas certified medication aide sponsor and instruc-

tor manual,” pages 2 through 21, dated February 2011, which are hereby adopted by reference; and

(C) be sponsored by one of the following:

(i) A postsecondary school under the jurisdiction of the state board of regents;

(ii) a state-operated institution for the mentally retarded; or

(iii) a professional health care association approved by the secretary.

(2) No correspondence course shall be approved as a medication aide course.

(3) Distance-learning and computer-based educational offerings shall be required to meet the requirements specified in this subsection.

(e) Each medication aide course instructor shall meet the following requirements:

(1) Each person who intends to be a course instructor shall submit an instructor approval application form to the secretary at least three weeks before offering an initial course and shall be required to receive approval as an instructor before the first day of an initial course.

(2) Each instructor shall be a registered nurse with a current Kansas license and two years of clinical experience as a registered nurse. Any Kansas-licensed pharmacist actively working in the pharmacy field may conduct part of the training under the supervision of an approved instructor.

(f) Each course sponsor and course instructor shall be responsible for ensuring that the following requirements are met:

(1) Only persons who meet the qualifications specified in subsection (b) shall be eligible to take the course.

(2) Each trainee shall be screened and tested for comprehension of the written English language at an eighth-grade reading level before enrolling in the course.

(3) The course shall be prepared and administered in accordance with the guidelines and follow the content in the “Kansas certified medication aide curriculum” and the “Kansas certified medication aide sponsor and instructor manual,” as adopted in subsection (d).

(4) The clinical instruction and skills performance involving the administering of medications shall be under the direct supervision of the course instructor.

(5) During the clinical instruction and skills performance, the course instructor shall perform no other duties than the provision of direct supervision to the trainees.

(g) Any course instructor or course sponsor who does not fulfill the requirements of this regulation may be subject to withdrawal of approval to serve as a course instructor or a course sponsor.

(h) Any person whose education or training has been deemed equivalent to the medication aide course by an approved sponsor as specified in paragraph (d)(1)(C) may apply to take the state test to become certified as a medication aide. Before requesting a determination of equivalency for a person’s education or training, that person shall be a Kansas-certified nurse aide and shall meet one of the following conditions:

(1) The person is currently credentialed to administer medications in another state. The secretary or the designated agent shall evaluate that state’s credentialed training for equivalency in content and skills level to the requirements for certification as a medication aide in Kansas.

(2) The person is currently enrolled in an accredited practical nursing or professional nursing program and has completed a course of study in pharmacology with a grade of C or better.

(3) The person is currently licensed in Kansas or another state, or has been licensed within 24 months from the date of application, as a licensed mental health technician, and there are no pending or current disciplinary actions against the individual’s license.

(4) The person has been licensed in Kansas or another state, within 24 months from the date of application, as a licensed practical nurse whose license is inactive or a registered nurse whose license is inactive, and there are no pending or current disciplinary actions against the individual’s license. (Authorized by K.S.A. 75-5625; implementing K.S.A. 65-1,120 and K.S.A. 2010 Supp. 65-1124; effective Dec. 29, 2003; amended Oct. 14, 2011.)

**28-39-169b. State medication aide test.**

(a) The state test shall be administered by the secretary or the designated agent and in accordance with guidelines prescribed by the secretary as outlined in the “certified medication aide test manual” on pages 24 through 31 of the “Kansas certified medication aide sponsor and instructor manual,” dated February 2011. These pages are hereby adopted by reference.

(1) Each person who has completed the medication aide course as specified in K.A.R. 28-39-169a shall have a maximum of two attempts to pass the state test within 12 months after the first day of the

course. If the person does not pass the test within this 12-month period, the course shall be retaken. Each time the person successfully completes the course, the person shall have two attempts to pass the state test within 12 months after the first day of the course. The number of times a person may retake the course shall be unlimited.

(2) Each person who is a Kansas-certified nurse aide and whose training has been deemed equivalent to the Kansas medication aide course shall have a maximum of one attempt to pass the test within 12 months after the date the equivalency is approved. If the person does not pass the test within this 12-month period, the person shall be required to take the medication aide course.

(3) There shall be three different forms of the state test. The different forms of the test shall be used on an alternating basis. Each of the three forms shall be comprised of 85 multiple-choice questions. The passing score for each of the three forms of the test shall be 65 or higher.

(4) Only persons who have met the requirements specified in K.A.R. 28-39-169a(a)(1) and (h) shall be eligible to take the state test.

(5) Each person whose second language is English shall be allowed to use a bilingual dictionary while taking the state test. Limited English proficiency shall not constitute a disability with regard to accommodation. An extended testing period of up to two additional hours may be offered to persons with limited English proficiency.

(b) Each person shall be issued a medication aide certificate by the secretary and shall be listed on a public nurse aide registry upon successful completion of the requirements specified in K.A.R. 28-39-169a(a) and (h).

(c) The course instructor shall submit to the secretary a course roster of names, an application form, and a nonrefundable application fee of \$20.00 for each medication aide who has completed the course and passed the state test.

(d) A replacement medication aide certificate for a medication aide whose certification is current shall be issued by the secretary upon the receipt and processing of a certificate replacement form and a nonrefundable fee of \$20.00. (Authorized by K.S.A. 75-5625; implementing K.S.A. 65-1,120 and K.S.A. 2010 Supp. 65-1124; effective Dec. 29, 2003; amended Oct. 14, 2011.)

**28-39-169c. Medication aide continuing education.** (a) Each person who has a certificate of completion for a medication aide training

course as specified in K.A.R. 28-39-169a and who wishes to maintain the certificate shall complete, every two years, a program of 10 hours of continuing education approved by the secretary.

(b) The continuing education requirement shall include one or more of the following topics:

(1) Classes of drugs and new drugs;

(2) new uses of drugs;

(3) methods of administering medications;

(4) alternative treatments, including herbal drugs and their potential interaction with traditional drugs;

(5) safety in the administration of medications;

or

(6) documentation.

(c) Each program of continuing education shall be sponsored by one of the following:

(1) A postsecondary school under the jurisdiction of the state board of regents;

(2) an adult care home;

(3) a long-term care unit of a hospital;

(4) a state-operated institution for the mentally retarded; or

(5) a professional health care association approved by the secretary.

(d) Each course instructor shall be a registered nurse with a current Kansas license and two years of clinical experience as a registered nurse or a licensed practical nurse. Any Kansas-licensed pharmacist actively working in the pharmacy field may be selected to conduct part of the training under the supervision of the instructor.

(e) Each person who intends to be a course instructor shall submit an instructor approval application form to the secretary at least three weeks before offering an initial course and shall be required to receive approval as an instructor before the first day of an initial course.

(f) Each sponsor and course instructor of continuing education shall be responsible for ensuring that the following requirements are met:

(1) The course shall be prepared and administered as prescribed by regulation and the "Kansas certified medication aide sponsor and instructor manual," as adopted in K.A.R. 28-39-169a.

(2) A course approval application form shall be submitted to the secretary at least three weeks before offering a course, and course approval shall be required to be received before beginning the course.

(3) A course roster of names, a renewal application form, and a nonrefundable renewal application fee of \$20.00 for each medication aide who

has completed the course shall be submitted to the secretary.

(4) If clinical instruction in administering medications is included in the program, each student administering medications shall be under the direct supervision of the registered nurse instructor.

(g) Any sponsor or instructor who does not fulfill the requirements specified in subsections (d), (e), and (f) may be subject to withdrawal of approval to serve as a course instructor or a course sponsor.

(h) College credits or vocational training may be approved by the secretary as substantially equivalent to medication aide continuing education. The instructor or nursing program coordinator shall submit a department-approved form attesting that the course content is substantially equivalent to the topics listed in paragraphs (b)(1) through (6).

(i) Each certified medication aide shall be responsible for notifying the secretary of any change in the aide's address or name.

(j) No correspondence course shall be approved for a medication aide continuing education course.

(k) Distance-learning educational offerings and computer-based educational offerings shall meet the requirements specified in subsections (b), (c), (d), (e), (f), and (g).

(l) Each medication aide certificate shall be renewed upon the department's receipt from the course instructor of the following:

(1) Verification of the applicant's completion of 10 hours of approved continuing education;

(2) a renewal application form; and

(3) a nonrefundable renewal application fee of \$20.00.

(m) Each medication aide certificate or renewed certificate shall be valid for two years from the date of issue.

(n) Each applicant for renewal of certification shall have completed the required number of hours of documented and approved continuing education during each certification period immediately preceding renewal of the certificate. Approved continuing education hours completed in excess of the requirement shall not be carried over to a subsequent renewal period.

(o) Each medication aide certificate that has been expired for three or fewer years shall be reinstated upon the department's receipt of the following:

(1) Verification of the applicant's completion of 10 hours of approved continuing education. This continuing education shall have been completed within the three-year period following expiration of the certification;

(2) a renewal application form; and

(3) a nonrefundable renewal application fee of \$20.00.

(p) Each lapsed certificate renewed within the three-year period specified in subsection (o) shall be valid for two years from the date of issuance.

(q) Each person whose medication aide certification has been expired for more than three years shall be required to retake the 75-hour medication aide course. (Authorized by K.S.A. 65-1,121 and 75-5625; implementing K.S.A. 65-1,121 and K.S.A. 2010 Supp. 65-1124; effective Dec. 29, 2003; amended Oct. 14, 2011.)

**28-39-240.** (Authorized by and implementing K.S.A. 39-932; effective Feb. 21, 1997; amended Oct. 8, 1999; revoked May 29, 2009.)

**28-39-241 through 28-39-244.** (Authorized by and implementing K.S.A. 39-932; effective Feb. 21, 1997; revoked May 29, 2009.)

**28-39-245.** (Authorized by and implementing K.S.A. 39-932; effective Feb. 21, 1997; amended Oct. 8, 1999; revoked May 29, 2009.)

**28-39-246.** (Authorized by and implementing K.S.A. 39-932; effective Feb. 21, 1997; revoked May 29, 2009.)

**28-39-247.** (Authorized by and implementing K.S.A. 39-932; effective Feb. 21, 1997; amended Oct. 8, 1999; revoked May 29, 2009.)

**28-39-248 through 28-39-253.** (Authorized by and implementing K.S.A. 39-932; effective Feb. 21, 1997; revoked May 29, 2009.)

**28-39-275 through 28-39-288.** (Authorized by and implementing K.S.A. 39-932; effective Oct. 8, 1999; revoked May 29, 2009.)

**28-39-425 through 28-39-436.** (Authorized by and implementing K.S.A. 39-932; effective Oct. 8, 1999; revoked May 29, 2009.)

**Article 43.—CONSTRUCTION,  
OPERATION, MONITORING AND  
ABANDONMENT OF SALT SOLUTION  
MINING WELLS**

**28-43-1.** (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981; revoked Aug. 6, 2010.)

**28-43-2.** (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981; revoked Aug. 6, 2010.)

**28-43-3.** (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981; revoked Aug. 6, 2010.)

**28-43-4.** (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981; revoked Aug. 6, 2010.)

**28-43-5.** (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981; revoked Aug. 6, 2010.)

**28-43-6.** (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981; revoked Aug. 6, 2010.)

**28-43-7.** (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981; revoked Aug. 6, 2010.)

**28-43-8.** (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981; amended May 1, 1984; revoked Aug. 6, 2010.)

**28-43-9.** (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981; revoked Aug. 6, 2010.)

**28-43-10.** (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981; revoked Aug. 6, 2010.)

**28-43-11.** (Authorized by and implementing K.S.A. 1984 Supp. 65-171d; effective, T-85-7, Feb. 15, 1984; effective May 1, 1984; amended May 1, 1985; revoked Aug. 6, 2010.)

**Article 44.—PETROLEUM PRODUCTS STORAGE TANKS**

**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 licensee 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 department’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 operat-

ing 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 ≥ 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 judg-

ment of the implementing agency.” (Authorized by and implementing K.S.A. 65-34,105; effective July 6, 2020.)

**Article 45b.—UNDERGROUND CRUDE OIL STORAGE WELLS AND ASSOCIATED BRINE PONDS**

**28-45b-1. Definitions.** (a) “Active well” means an unplugged well that is in service or in monitoring status.

(b) “American petroleum institute gravity” and “API gravity” mean the specific gravity scale developed by the American petroleum institute for measuring the relative density of various petroleum liquids, expressed in degrees API.

(c) “Applicant” means the operator and the owner requesting a permit as specified in this article. If the operator and the owner are not the same person, the owner and the operator shall jointly submit an application for a permit.

(d) “Brine” means saline water with a sodium chloride concentration equal to or greater than 90 percent.

(e) “Brine pond” means the excavated or diked structure used for the surface containment of brine used in the creation, maintenance, and operation of an underground crude oil storage well.

(f) “Crude oil” means unrefined, liquid petroleum.

(g) “Crude oil reserve” means the storage of crude oil for future use.

(h) “Crude oil storage well,” “underground crude oil storage well,” and “storage well” mean a well used for the injection or withdrawal of crude oil into or out of an underground crude oil storage cavern.

(i) “Department” means Kansas department of health and environment.

(j) “Draft permit” means a document that is pending approval by the secretary to be issued as a permit.

(k) “Fracture gradient” means the pressure gradient, measured in pounds per square inch per foot, that causes the geological formations to physically fracture.

(l) “Freshwater” means water containing not more than 1,000 milligrams per liter of total dissolved solids (TDS).

(m) “Licensed geologist” means a geologist licensed to practice geology in Kansas by the Kansas board of technical professions.

(n) “Licensed professional engineer” means a

professional engineer licensed to practice engineering in Kansas by the Kansas board of technical professions.

(o) “Licensed professional land surveyor” means a professional land surveyor licensed to practice land surveying in Kansas by the Kansas board of technical professions.

(p) “Liner” means the casing normally installed within the production casing.

(q) “Maximum allowable operating pressure” means the maximum pressure authorized by the department and measured at the product side of the wellhead.

(r) “Maximum allowable synthetic membrane liner leakage rate” means a monitored or a calculated leakage rate of 10 percent of the collection and leak return system capacity.

(s) “Maximum operating pressure” means the maximum pressure monitored during a 24-hour period and measured at the product side of the wellhead.

(t) “Monitoring status” means temporary status for a well that has been placed out of service by removing the product and filling the cavern with brine.

(u) “Municipal population center” means an incorporated city.

(v) “Operator” means the person recognized by the secretary as being responsible for the physical operation of an underground crude oil storage facility or a brine pond.

(w) “Owner” means the person owning all or part of any underground crude oil storage facility or brine pond.

(x) “Permit” means an authorization, license, or equivalent control document issued to the owner and the operator by the secretary. A permit may be issued for any of the following:

(1) A new underground crude oil storage facility and the associated crude oil storage wells;

(2) an existing underground crude oil storage facility and the associated crude oil storage wells; or

(3) a brine pond.

(y) “Permittee” means the owner and the operator issued a permit, as defined in this regulation, by the secretary.

(z) “Person” means any individual, company, corporation, institution, association, partnership, municipality, township, and local, state, or federal agency.

(aa) “Plugged well” means a storage well that has been plugged or placed into plugging-monitoring status pursuant to K.A.R. 28-45b-18.

(bb) “Plugging-monitoring status” means the status of a storage well that will not be returned to active status but will be filled with brine to monitor cavern stabilization in lieu of plugging.

(cc) “Porosity storage” means the storage of hydrocarbon gas in underground porous and permeable strata that have been converted to hydrocarbon gas storage.

(dd) “Pressure gradient” means the ratio of pressure per unit depth, expressed as pounds per square inch per foot of depth.

(ee) “Product” means crude oil.

(ff) “Saturated brine” means saline water with a sodium chloride concentration that is equal to or greater than 90 percent.

(gg) “Secretary” means secretary of the department of health and environment.

(hh) “Solutioning” means the process of injecting fluid into a well to dissolve salt or any other readily soluble rock or mineral.

(ii) “Sour crude oil” means crude oil with a sulfur content greater than 0.5 percent.

(jj) “Supervisory control and data acquisition” means an automated surveillance system in which the monitoring and control of storage activities are accomplished at a central or remote location.

(kk) “Sweet crude oil” means crude oil with a sulfur content not greater than 0.5 percent by weight.

(ll) “Type” means the description of the product that includes American petroleum institute gravity, non-hydrocarbon impurities, and hydrogen sulfide content.

(mm) “Underground crude oil storage cavern,” “cavern,” and “storage cavern” mean the storage space for crude oil created in a salt formation by solution mining.

(nn) “Underground crude oil storage facility” and “facility” mean the acreage associated with the storage field, with facility boundaries approved by the secretary. This term shall include the brine ponds, storage wells, wellbore tubular goods, the wellheads, and any related equipment, including any appurtenances associated with the well field.

(oo) “Unplugged,” when used to describe a well, means a storage well that either is not plugged or is in plugging-monitoring status.

(pp) “Unsaturated brine” means saline water with a sodium chloride concentration less than 90 percent.

(qq) “Usable water formation” means an aquifer or any portion of the aquifer that meets any of the following criteria:

(1) Supplies any public water system;

(2) contains a supply of groundwater that is sufficient to supply a public water system and that currently supplies drinking water for human consumption; or

(3) contains fewer than 10,000 milligrams per liter total dissolved solids and is not an exempted aquifer.

(rr) “Variance” means the secretary’s written approval authorizing an alternative action to one or more of the requirements of these regulations. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

### **28-45b-2. Permit required for facilities and storage wells; variances.**

(a) No person shall create, operate, or maintain an underground crude oil storage facility or any crude oil storage well without first obtaining a permit from the secretary.

(b) The storage of crude oil in caverns constructed in any rock formations other than bedded salt shall be prohibited.

(c) A variance to any requirement of this article may be granted by the secretary if both of the following conditions are met:

(1) The variance is protective of public health, safety, and the environment.

(2) The applicant or permittee agrees to perform any additional testing, monitoring, or well improvements, or any combination, if required by the secretary.

(d) Each applicant or permittee seeking a variance shall submit a written request, including justification for the variance and any supporting data, to the secretary for review and consideration for approval. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

### **28-45b-3. Well conversions and reentry.**

(a) The conversion of an existing well that was not originally designed for crude oil storage to an underground crude oil storage well shall be considered for approval if both of the following conditions are met:

(1) The applicant submits a completed application as required by K.A.R. 28-45b-4.

(2) The secretary determines that the conversion is protective of public health, safety, and the environment.

(b) Any permittee may convert an unplugged underground crude oil storage well to monitoring status if all of the following requirements are met:

(1) Each permittee shall verify the integrity of the storage well and cavern by conducting a mechanical integrity test before converting the well to monitoring status.

(2) Each permittee shall run a gamma-density log, a thermal neutron decay time log, or a pulsed neutron log to verify the roof thickness before converting the well to monitoring status.

(3) Each permittee shall meet the requirements specified in the department's document titled "procedure for converting a crude oil storage well to monitoring status," procedure #UICLPG-27, dated October 2008, which is hereby adopted by reference.

(4) Each permittee of an underground crude oil storage cavern that is in monitoring status shall conduct a casing inspection evaluation before placing the cavern into service. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-4. Permit required for facility and associated storage wells.**

(a) Each applicant who intends to construct a new underground crude oil storage well shall submit a completed permit application to the secretary, on a form approved by the department, at least 180 days before the proposed commencement date for the construction of the new crude oil storage well. Well construction shall not begin until the secretary has issued the permit.

(b) Each applicant who intends to convert an existing well to a crude oil storage well shall submit a completed permit application to the secretary, on a form approved by the department, at least 180 days before the proposed date for operation of the crude oil storage well. Well modifications and operations shall not commence until the secretary has issued the permit.

(c) Each applicant who intends to construct a new storage well for the purpose of creating a crude oil reserve shall submit a completed permit application to the secretary at least 180 days before the proposed commencement date for storage well construction. Well construction shall not begin until the secretary has issued the permit.

(d) Each applicant who wishes to convert an existing storage well for the purpose of creating a crude oil reserve shall submit a completed permit application to the secretary at least 180 days before the proposed date for operation of the crude oil storage well. Well modifications and operations

shall not commence until the secretary has issued the permit.

(e) Each applicant who intends to create a crude oil reserve shall include the following with the permit application:

(1) A description of monitoring and testing methods to demonstrate that the quality of the crude oil is maintained during storage;

(2) a description of methods and a schedule for routinely testing the integrity of the wellhead, casing, and transfer equipment; and

(3) a description of the brine transfer system, including brine source, disposal method, and means of transfer.

(f) Upon review of each application, one of the following shall be issued by the secretary:

(1) A permit, if the application is approved; or

(2) a notice that the permit has been denied if the applicant has not complied with the requirements of this article. The notice shall include justification for the permit denial.

(g) Each application for a permit shall include a report prepared by a licensed geologist and shall include the following:

(1) An evaluation of the geology and hydrogeology, including cross-sections, isopach and structure maps of the salt formation, and water-level or potentiometric maps;

(2) a regional stratigraphic evaluation;

(3) local and regional structural analyses, including maps, cross-sections, and available geophysical data;

(4) a flood assessment identifying floodplain and flood-prone areas, including the following:

(A) Flood response procedures; and

(B) design criteria for the well and facility equipment; and

(5) an assessment of the potential for ground subsidence.

(h) Each applicant shall submit the following information with the application:

(1) A plan view map showing locations of all water, solution-mining, storage, monitoring, disposal, injection, oil, and gas wells within a one-mile perimeter of the facility's boundary; and

(2) a plan view map of man-made surface structures and activities within a one-mile perimeter of the facility's boundary.

(i) Each permittee shall submit a compliance audit every 10 years, on a form furnished by the department, for review and consideration for approval for the continued operation of each storage well.

(j) Each permittee shall submit a sample log of well cuttings from any new well drilled at the facility, including new crude oil storage wells, monitoring wells, and stratigraphic test holes.

(1) Cuttings shall be collected at 10-foot intervals from surface to total well depth or at an interval specified by the department.

(2) Well cuttings shall be collected, described, and logged as specified in the department's document titled "procedure for sample logging," which is adopted by reference in K.A.R. 28-45-6a.

(3) The collection of cuttings shall be supervised by a licensed geologist or a licensed geologist's designee.

(4) The description and logging of the sample cuttings shall be performed by a licensed geologist.

(5) Each permittee shall submit a sample log and a dry sample set to the department within 45 days after the completion of the well.

(k) Each permittee shall provide a minimum of one core from each facility. The following provisions shall apply:

(1) Each permittee shall submit a plan for a new core describing the coring interval, coring procedures, and core testing with the permit application to the secretary for review and consideration for approval. The plan shall be submitted at least 60 days before the coring event.

(2) Each permittee shall submit the core analysis for a new core after installing the first storage well and before developing the storage field.

(3) Any permittee may submit existing core data if the secretary determines that the core is representative of the geology of the area.

(4) Each permittee shall submit the core analysis for an approved existing core with the permit application.

(5) Each permittee shall make the core available for inspection upon request by the secretary.

(l) Each permittee shall submit a water analysis for any water-bearing formation encountered in drilling a new monitoring well. The water shall be analyzed for the following parameters:

(1) Chloride;

(2) total dissolved solids; and

(3) any parameter that the secretary determines could pose a potential threat to public health, safety, and the environment.

(m) Each permittee shall ensure that the stored crude oil, formation water, lithology, and substances used in the solutioning of the storage caverns are compatible.

(n) Each permittee shall submit open-hole logs for any new crude oil storage well. The logging interval shall be from the surface to at least 100 feet below the top of the salt section. At a minimum, the following logs shall be run:

(1) A gamma ray log;

(2) a neutron log, if the source is registered in Kansas, or a sonic log;

(3) a density log; and

(4) a caliper log.

(o) Any permittee may use an alternative log if the secretary determines that the alternative log is substantially equivalent to one of the logs specified in subsection (n). The permittee shall submit the following information:

(1) A description of the log and the theory of operation for that log;

(2) a description of the field conditions under which the log can be used;

(3) the procedure for interpreting the log; and

(4) an interpretation of the log upon completion of the logging event.

(p) If a facility has a new storage cavern, the permittee shall ensure that a minimum salt roof thickness of 100 feet is maintained above the storage cavern.

(q) Each permittee shall submit supporting data showing that a minimum crude oil inventory in each storage cavern shall be maintained to protect the salt roof during short time periods when changing service, conducting workover activities, or performing surface facility maintenance.

(r) If a facility has an existing cavern approved for crude oil storage with a salt roof thickness greater than 50 feet but less than 100 feet, the permittee shall meet the following requirements:

(1) The permittee shall use only saturated brine to displace product.

(2) The permittee shall submit a schedule for monitoring brine salinity.

(3) The salt roof thickness shall be monitored with gamma ray and density logs, or any other log specified in subsection (o), every three years.

(4) The permittee shall provide any additional information, including a geomechanical study from core analysis, that may be requested by the secretary to verify the integrity of the salt roof.

(s) Underground crude oil storage caverns with a salt roof thickness of 50 feet or less shall be prohibited.

(t) Underground communication between underground crude oil storage caverns in the upper 50 feet of the salt formation shall be prohibited.

(u) Underground communication between underground crude oil storage caverns below the upper 50 feet of the salt formation shall be prohibited, unless the secretary determines that the communication is protective of public health, safety, and the environment. The permittee shall submit the following:

(1) A sonar survey for each cavern that is in communication with another cavern; and

(2) a plan describing the monitoring and testing that the permittee will conduct to ensure that the integrity of the underground crude oil storage wells and caverns will be maintained.

(v) The horizontal distance separating new underground crude oil storage caverns shall be at least 100 feet between the cavern boundaries.

(w) Any existing cavern approved for crude oil storage with horizontal separation less than 100 feet may operate if the following requirements are met:

(1) Each permittee shall submit a justification for each existing underground crude oil storage cavern with horizontal separation less than 100 feet. The following requirements shall apply:

(A) The justification shall include spacing-to-diameter ratios, cavern pressure differentials, and analyses of cavern shape, size, and depth.

(B) The horizontal spacing shall be reevaluated every five years.

(2) Horizontal spacing of less than 50 feet between caverns shall be prohibited.

(x) The maximum horizontal diameter of each cavern shall not exceed 300 feet.

(y) Each permittee shall ensure the integrity of the storage well, including the wellhead and casing, and storage cavern before commissioning any new storage cavern into service. Storage operations may commence when the following requirements are met:

(1) The permittee shall submit a notice of completion of construction on a form furnished by the department.

(2) Each new storage well shall be inspected by the secretary before storage operations commence. If the well fails the inspection, the permittee shall not commence storage operations. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-5. Public notice.** (a) Public notice shall be given by the secretary for any of the following permit actions:

(1) Any permit application for a crude oil storage well;

(2) the denial of a permit; or

(3) a scheduled hearing.

(b) Public notice and, if applicable, a copy of the draft permit shall be mailed or electronically mailed by the department to the permit applicant.

(c) Each public notice shall be mailed by the department to the following:

(1) Any person who submits a written request for placement on the mailing list;

(2) the official county newspaper of each county in which the lands affected by the application are located, for publication in at least two issues; and

(3) the Kansas register.

(d) Each public notice shall include the following information:

(1) The name and address of the department processing the permit action for which the notice is being given;

(2) the name and address of the person or company seeking the permit;

(3) a brief description of the business conducted at the facility or the activity described in the permit application;

(4) the name, address, and telephone number of the departmental contact whom interested persons may contact for further information, including copies of the application, draft permit, or any other appropriate information;

(5) a brief description of the comment procedures for public notice; and

(6) a statement of the procedure to request a hearing and any other procedures that allow public participation in the final permit decision.

(e) Any interested person may submit written comments on any permit action to the secretary during the 30-day public comment period. The following requirements shall apply:

(1) All comments shall be submitted by the close of the public comment period.

(2) All supporting materials submitted shall be included in full. The supporting materials shall not be incorporated by reference, unless the supporting materials are any of the following:

(A) Part of the administrative record in the same proceeding;

(B) state or federal statutes and regulations;

(C) state or environmental protection agency documents of general applicability; or

(D) other generally available reference materials.

(3) Commentators shall make supporting materials not already included in the administrative record available to the secretary.

(f) The response to all relevant comments concerning any permit actions and the reasons for changing any provisions in the draft permit shall be issued when the permit decision is issued.

(g) The response to comments shall be made available to the public upon request. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-6. Modification and transfer of a permit.** (a) The automatic transfer of a permit shall be prohibited. The requirements for each permit transfer shall be as follows:

(1) Each person requesting a permit transfer shall notify the secretary at least 60 days before the effective date of the proposed transfer.

(2) Each owner and each operator shall comply with the conditions of the existing permit until the secretary reissues the permit.

(b) Any permit may be modified by the secretary under any of the following conditions:

(1) The secretary receives information that was not available when the permit was issued.

(2) The secretary receives a request for the modification of a permit.

(3) The secretary conducts a review of the permit file and determines that a modification is necessary.

(c) Only the permit actions subject to modification shall be reopened.

(d) Minor modifications that do not require public notification shall include the following, except as otherwise specified:

(1) Correction of typographical errors;

(2) requirements for more frequent monitoring or reporting by the permittee;

(3) a date change in a schedule of compliance;

(4) a change in ownership or operational control of the facility, unless the secretary determines that public notification is necessary to protect the public interest;

(5) a change in construction requirements, if the secretary determines that the change is protective of public health, safety, and the environment; and

(6) any amendments to a facility plugging plan.

(e) A draft permit and notification to the public shall be required if any of the following conditions is met:

(1) A permittee proposes substantial alterations or additions to the facility or proposes an activity

that justifies a change in the permit requirements, including cumulative effects on public health, safety, or the environment.

(2) Information has become available that would have initially justified different permit requirements.

(3) Regulations on which the permit was based have changed due to the promulgation of new or amended regulations or due to a judicial decision after the permit was issued.

(f) Any permittee may request a permit modification within 180 days after any of the following:

(1) The adoption of new regulations;

(2) any deadline to achieve compliance with regulations; or

(3) any judicial remand and stay of a promulgated regulation if the permit requirement was based on the remanded regulation. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-7. Signatories for permit applications and reports.** (a) Each applicant for a permit shall designate at least one signatory to sign the permit applications and all reports required by the secretary.

(b) The positions that may be approved by the secretary to be signatories shall be the following:

(1) Plant or operations manager;

(2) cavern specialist;

(3) superintendent; and

(4) any position with responsibility at least equivalent to that required by the positions listed in this subsection.

(c) Any signatory may submit written notification to the secretary specifying a position having responsibility for the overall operation of the facility or activity to act as a designated signatory.

(d) Each signatory and each signatory's designee shall submit a signature statement, on a form furnished by the department, to the secretary with each permit application. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-8. Siting requirements for new storage wells and facilities.** (a) Each applicant shall assess the geographical, topographical, and physical data for any proposed underground crude oil storage well location to determine whether siting requirements have been met. The following siting requirements shall be met:

(1) Each new storage facility shall be located at least three miles from the established boundaries of municipal population centers.

(2) Each proposed new facility or boundary expansion for an existing facility shall be located as follows:

(A) Not less than five miles from an active or abandoned conventional shaft mining operation; and

(B) not less than two miles from the facility's boundary of any solution mining operation.

(3) Each applicant shall assess the extent and nature of current or past conventional subsurface mining activities within five miles of the underground crude oil storage facility's boundary to determine any potential impact to public health, safety, or the environment resulting from the proposed activities at the facility.

(4) Each applicant shall identify and assess all wells, including abandoned wells, from available sources of information, within a one-mile perimeter of the facility's boundary to determine if the following conditions are met:

(A) The wells have been constructed in a manner to protect public health, property, and the environment.

(B) The abandoned wells, including water, oil, gas, monitoring, and underground storage wells, have been properly plugged.

(b) Each applicant shall conduct a regional geological evaluation to determine if the integrity of each proposed storage cavern will be adversely affected by any of the following:

- (1) Salt thinning due to any stratigraphic change;
- (2) a dissolution zone in the bedded salt; or
- (3) abrupt changes in the lithology within the salt interval.

(c) Each applicant shall determine if the facility's location is in a floodplain or flood-prone area.

(d) No new facility's boundary or the expansion of an existing facility's boundary shall be located less than one mile from any existing underground porosity storage facility.

(e) Each applicant shall identify potential risks to the storage operation from activities conducted at adjacent facilities.

(f) Each applicant shall identify all utilities having a right-of-way, including pipeline, railway, roadway, and electrical lines, and shall assess the potential impact of the utilities on the location or operation of the facility. If a facility is exposed and subject to hazards, including vehicular traffic, railroads, electrical power lines, and aircraft traf-

fic, 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 cuttings shall be disposed of in a manner determined by the secretary to be protective of public health, safety, and the environment.

(m) A licensed professional engineer shall review and approve the construction plans for the crude oil storage well and cavern system.

(n) A licensed professional engineer or a licensed geologist, or the licensed professional engineer's or licensed geologist's designee, shall supervise the installation of each storage well.

(o) Each permittee shall maintain a corrosion control system. The following requirements shall apply:

(1) The corrosion control system shall be capable of protecting the well casings.

(2) The corrosion control system shall be assessed according to the protocol and time schedule recommended by the corrosion control system manufacturer, and the results shall be reported

to the secretary. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-13. Monitoring.** (a) Each permittee shall ensure that pressure sensors continuously monitor wellhead pressures for both the product and brine sides at the wellhead for each storage well. The following requirements shall apply:

(1) The pressure sensor shall be capable of recording the maximum and minimum operating pressures during a 24-hour period.

(2) The pressure sensor shall be capable of recording operating pressures at an interval approved by the secretary.

(3) Each permittee shall provide pressure data, including historic continuous monitoring, to the secretary upon request.

(b) Each permittee shall submit a plan for any monitoring activity, including logging and sonar surveys, to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment, at least 60 days before the commencement of these monitoring activities.

(c) Each permittee shall submit a summary and the results of the monitoring activity to the secretary within 45 days after completion of the monitoring activity.

(d) Each permittee shall monitor the thickness of the salt roof for each cavern with a gamma ray log and a density log, or with another log as specified in K.A.R. 28-45b-4, as follows:

(1) Every five years;

(2) every three years, if the cavern meets criteria specified in K.A.R. 28-45b-4;

(3) at any time that the secretary determines that cavern integrity is suspect; and

(4) before plugging the well.

(e) Each permittee shall monitor the cavern storage capacity and the cavern geometry with a sonar survey. The sonar survey shall be conducted as follows:

(1) Before placing the underground crude oil storage cavern in service;

(2) every 10 years;

(3) for determining the stability of the cavern and the overburden if the salt roof thickness and cavern geometry indicate that the stability of the cavern or overburden is at risk;

(4) after any growth of the cavern that results in a solution volume increase of 20 percent or more of cavern capacity; and

(5) before plugging the well if a sonar survey has not been run in the past five years.

(f) Any permittee may use an alternative method for the sonar survey if the secretary determines that the alternative method is substantially equivalent to the method specified in subsection (e). The permittee shall submit the following information for the secretary's consideration:

(1) A description of the proposed method and the theory for its operation;

(2) a description of the storage well and cavern conditions under which the log can be used;

(3) the procedure for interpreting the survey results; and

(4) an assessment of the capacity and stability of the cavern upon completion of the survey.

(g)(1) Each applicant shall submit a ground subsidence monitoring plan to the secretary with the permit application. The ground subsidence monitoring plan shall include the following information:

(A) A description of the method for conducting an elevation survey; and

(B) the criteria for establishing monuments, benchmarks, and wellhead survey points.

(2)(A) Each permittee shall meet the following requirements:

(i) Ensure level measurements to the accuracy of 0.01 foot;

(ii) report any surface elevation changes in excess of 0.10 foot within 24 hours to the secretary;

(iii) for any change in established benchmarks, submit justification that the change is protective of public health, safety, and the environment; and

(iv) for each change in established benchmarks, note the elevation change from the previous benchmark noted in the elevation survey report.

(B) Each permittee shall submit the elevation before and after any wellhead work that results in a change in the survey point at the wellhead.

(C) The elevation survey shall be conducted by a licensed professional land surveyor.

(D) Each permittee shall submit biennial survey results to the department within 30 days after completion of the survey.

(h) Before commencing facility operations, each permittee shall submit to the secretary, for review and consideration for approval, an inventory balance plan for measuring the volume of crude oil injected into or withdrawn from each underground crude oil storage well, including methods for measuring and verifying volume. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-14. Testing and inspections.** (a)

Each permittee shall submit a plan to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment, before conducting any testing of a storage well or a cavern. Testing shall not commence without prior approval from the secretary.

(b) Each permittee shall submit a summary of the testing to the secretary within 45 days after completing the test. The summary shall include the following:

(1) A chronology of the test;

(2) copies of all logs;

(3) storage well construction information;

(4) pressure readings;

(5) volume measurements; and

(6) an explanation of the test results.

(c) Each permittee shall test each unplugged storage well and cavern for mechanical integrity. The following requirements shall apply:

(1) Integrity tests shall be conducted on the storage well and cavern as follows:

(A) Before the cavern is initially placed in service;

(B) every five years after the initial service date;

(C) before the storage well is placed back in service after being in monitoring status; and

(D) before the well is plugged, unless the mechanical integrity test has been performed in the last five years.

(2) Integrity tests shall be conducted on the underground crude oil storage well after each workover that involves physical changes to any cemented casing string.

(3) Each underground crude oil storage cavern shall be tested for mechanical integrity using a product-brine interface test.

(4) The nitrogen-brine test may be used if the surface equipment is rated for the nitrogen pressure on the upstream side of the well head valves.

(5) Each underground crude oil storage well shall be tested for mechanical integrity using one of the following:

(A) An interface test capable of identifying the location of a leak in the casing; or

(B) a hydraulic casing test.

(6) Each permittee shall submit a test procedure plan, on a form furnished by the department, to the secretary for review and consideration for approval at least 30 days before test commencement. The plan shall include the following information:

(A) The justification for test parameters;

(B) the test sensitivities; and

(C) the pass and fail criteria for the test.

(7) Each permittee shall notify the secretary at least five days before conducting any integrity test.

(8) The integrity test shall be conducted at the maximum allowable operating pressure.

(9) All test procedures shall use certified gauges and pressure transducers that have been calibrated annually.

(d) Any permittee may use an alternative integrity test if the secretary determines that the alternative integrity test is substantially equivalent to the integrity tests specified in subsection (c). The permittee shall submit the following information for the secretary's consideration:

(1) A description of the test method and the theory of operation, including the test sensitivities, a justification for the test parameters, and the pass and fail criteria for the test;

(2) a description of the well and cavern conditions under which the test can be conducted;

(3) the procedure for interpreting the test results; and

(4) an interpretation of the test upon completion of the test.

(e) No storage well and cavern shall be used for storage if the mechanical integrity is not verified.

(f) Each permittee shall submit a casing evaluation for each underground crude oil storage well. Acceptable casing evaluation methods shall include magnetic flux and ultrasonic imaging.

(g) Any permittee may use an alternative casing evaluation method if the secretary determines that the alternative casing evaluation method is substantially equivalent to the casing evaluation methods specified in subsection (f). The permittee shall meet the following requirements:

(1) Each permittee shall submit a description of the logging method, including the theory of operation and the well conditions suitable for log use.

(2) Each permittee shall submit the specifications for the logging tool, including tool dimensions, maximum temperature and pressure rating, recommended logging speed, approximate image resolution, and hole size range.

(3) Each permittee shall describe the capabilities of the log for determining the following:

(A) The presence of any metal loss due to either of the following:

(i) Internal or external corrosion; or

(ii) internal wear;

(B) the degree of penetration of the corrosion or the casing defect; and

(C) the circumferential extent of the corrosion or the casing defect.

(4) Each permittee shall submit a log and an interpretation of the log to the secretary.

(h) Each permittee shall submit a casing evaluation according to the following time schedule:

(1) Every 10 years for either of the following conditions:

(A) The storage well has double casing protection; or

(B) an existing storage well has a liner and a production casing;

(2) after any workover involving the cemented casing; and

(3) every five years, if the storage well does not have double casing protection or if a determination is made by the secretary that the integrity of the long string casing could be adversely affected by any naturally occurring condition or man-made activity.

(i) Each permittee shall submit a cement bond log with the casing evaluation if a cement bond log has not been previously submitted.

(j) A licensed professional engineer or licensed geologist, or licensed professional engineer's or licensed geologist's designee, shall supervise all test procedures and associated field activity.

(k) Each permittee shall have a licensed professional engineer or licensed geologist review all test results.

(l) Each permittee shall visually inspect each wellhead monthly for any leakage.

(m) Each permittee shall conduct an inspection of facility records, using a form furnished by the department, every two years to ensure that the required records are being maintained in accordance with these regulations. The permittee shall maintain these records at the facility and shall make the records available to the secretary upon request. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-15. Groundwater monitoring.** (a)

Each applicant shall submit a groundwater monitoring plan with the permit application to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment.

(b) Each permittee shall ensure that the groundwater monitoring wells meet the following requirements:

(1) Each permittee shall set the screen in each shallow monitoring well at a depth that is inclusive of the seasonal fluctuation of the water table.

(2) Each permittee shall ensure that all deep groundwater monitoring wells extend a minimum of 25 feet into the bedrock, or to a depth based on the geology and hydrogeology at the facility and approved by the secretary to ensure the protection of public health, safety, and the environment.

(c) All well locations and the spacing between all well locations shall be based on the geology and the hydrogeology at the facility and shall be required to be approved by the secretary to ensure the protection of public health, safety, and the environment.

(d) Before commencing facility operations, each applicant shall submit a quality assurance plan, including techniques for sampling and analysis, to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment.

(e) Each permittee shall collect groundwater samples and analyze the samples for chlorides and any other parameter determined by the secretary to pose a threat to public health, safety, and the environment. The reporting format shall be determined by the secretary.

(f) Each permittee shall submit the results for chloride analyses from groundwater samples to the department on a quarterly basis.

(g) Each permittee shall monitor monthly for the presence of combustible gas in the headspace in monitoring wells and shall quarterly submit the results to the department.

(h) Each permittee shall submit a static groundwater level measurement for each monitoring well with the quarterly chloride analyses results specified in subsection (f).

(i) Any permittee of a facility where chloride concentrations in the groundwater exceed 250 milligrams per liter may be required by the secretary to submit a work plan, for review and consideration for approval, that describes the methods to delineate potential source areas and to control migration of the chloride contamination.

(j) Each permittee of a well in which combustible gas is detected shall submit a work plan to the secretary for review and consideration for approval. Each permittee shall describe the proposed methods to eliminate any source areas and return the combustible gas levels to levels that do not pose a potential threat to public health, safety, or the environment. The plan shall be approved if the secretary determines that the plan is protective of public health, safety, and the environment.

(Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-16. Record requirements and retention.** (a) Each permittee shall submit an annual report, on a form approved by the department, on or before April 1 of each year. The annual report shall include the following:

(1) A description of any incident of uncontrolled or unanticipated product loss;

(2) the well number and date of any logs or sonar surveys conducted;

(3) the estimated storage capacity for each cavern associated with an unplugged well;

(4) a list of any caverns being washed;

(5) a list of the volume of product injected and withdrawn for each storage well;

(6) a list, by well number, of the type of product stored; and

(7) a list, by well number, of the maximum and minimum product storage pressures encountered during the report year.

(b) Each permittee shall maintain facility records at the facility or at a location approved by the secretary for the following time periods:

(1) A period of 10 years, for the following records:

(A) The maximum and minimum operating pressures for each storage well; and

(B) the annual inspections required by the secretary;

(2) the life of each storage well, for the following records:

(A) The casing records for each storage well;

(B) the cementing records for each storage well;

(C) the workover records;

(D) monitoring information, including calibration and maintenance records; and

(E) continuous monitoring data; and

(3) the life of the facility, for the following records:

(A) All logging events;

(B) all mechanical integrity tests and other testing;

(C) all groundwater monitoring data; and

(D) all correspondence relating to the permit, including electronic mail.

(c) Surface elevation surveys shall be maintained and retained for the life of facility plus 20 years after the facility's closure.

(d) If the facility permit is transferred, the former permittee shall provide all required fa-

cility 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 workover all relevant information concerning the status and condition of the storage well and cavern before initiating any work. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-18. Plugging and plugging-monitoring requirements.** (a) Each permittee shall submit a plugging plan, including monitoring and testing requirements, to the secretary for review and consideration for approval at least 60 days before each plugging event.

(b) Each permittee shall follow the plugging procedure for a plugging event specified in the department's document titled "procedure for the plugging and abandonment of a crude oil storage well," procedure #UICLPG-29, dated October 2008, which is hereby adopted by reference.

(c) Each permittee wishing to place a storage well and cavern into plugging-monitoring status shall submit a plugging-monitoring plan to the

secretary for review and consideration for approval at least 60 days before the plugging-monitoring event. The plan shall include the following:

(1) A schematic of the storage well configuration;

(2) the most recent results from the gamma-density log, the casing inspection log, the cement bond log, and the sonar survey; and

(3) the procedure for placing the cavern into plugging-monitoring status.

(d) Each permittee of a crude oil storage well to be placed into plugging-monitoring status may be required to perform additional testing or logging before placing the cavern into plugging-monitoring status if either of the following conditions exists:

(1) The required logging and testing are not current.

(2) A lack of storage well or cavern integrity poses a threat to public health, safety, or the environment.

(e) Each permittee of a storage well and cavern placed into plugging-monitoring status shall monitor the cavern pressure with a gauge on a weekly basis or continue to monitor pressures with a pressure transducer connected to a supervisory control and data acquisition system.

(f) Each permittee shall report any unexpected increase or decrease in pressure at a well in plugging-monitoring status to the secretary within 24 hours. Testing, logging, or any other necessary measures may be required by the secretary to determine if a threat to public health, safety, or the environment exists.

(g) Each permittee shall restore and preserve the integrity of the site as follows:

(1) Dispose of all liquid waste in an environmentally safe manner;

(2) clear the area of debris;

(3) drain and fill all excavations;

(4) remove all unused concrete bases, machinery, and materials; and

(5) level and restore the site. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-19. Underground crude oil storage fees.** (a) Each permit applicant shall submit a fee of \$700 for each proposed storage well with the permit application.

(b) Each permittee shall submit an annual permit fee of \$18,890 per facility and \$305 per unplugged storage well on or before April 1 of each year.

(c) Fees shall be made payable to the “Kansas department of health and environment — subsurface hydrocarbon storage fund.”

(d) The fees collected under the provisions of this regulation shall not be refunded.

(e) If ownership of an underground crude oil storage well or underground crude oil storage facility changes during the term of a valid permit, no additional fee shall be required unless a change occurs that results in a new storage well or an expanded facility operation. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-20. Permit required for a brine pond.** Since the underground storage of crude oil and the access to and transfer of crude oil are dependent on the safe and secure operation and maintenance of associated brine ponds, no person shall construct, operate, or maintain any brine pond associated with an underground crude oil storage facility without first obtaining a brine pond permit from the secretary. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-21. Brine pond permit application; permit renewal.** (a)(1) Each applicant for a permit for a new brine pond shall submit an application to the secretary at least 90 days before the construction of the new brine pond commences. Brine pond construction shall not begin until the secretary has issued the permit.

(2) Upon review of the application, either of the following shall be issued by the secretary:

(A) A final permit if the application is approved; or

(B) a notice that the permit has been denied if the applicant has not complied with the applicable requirements of this article. The notice shall include justification for the permit denial.

(b) Each permit for a brine pond shall be authorized for a term not to exceed 10 years.

(c) Each permittee wanting to renew the permit shall submit a completed renewal application at least 90 days before the expiration date of the permit in effect.

(d) Each permit application for a new brine pond shall include a hydrogeological investigation conducted under the direction of a licensed geologist or a licensed professional engineer. Each hydrogeological investigation for a new brine pond shall include the following information:

(1) A site characterization for brine pond construction, which shall meet the following requirements:

(A) The bottom of the brine pond shall be determined by the lowest surface elevation of compacted or excavated soils used in creating the pond structure;

(B) all required excavations or boreholes shall be drilled to a depth of at least 10 feet below the bottom of the brine pond;

(C) the separation distance between the bottom of the brine pond and the water table, which shall meet one of the following requirements:

(i) A separation distance of at least 10 feet shall be maintained between the brine pond bottom and the water table; or

(ii) a separation distance of less than 10 feet shall require the installation of a clay tertiary 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.

(l) Each permittee shall ensure that the following requirements for the installation of the liners at each brine pond are met:

(1) The primary and secondary liners shall be anchored at the top of the brine pond dike in accordance with the liner manufacturer's instructions.

(2) Installation shall be performed in accordance with the liner manufacturer's instructions.

(3) Installation shall be performed by a contractor experienced in the installation of impermeable synthetic membrane liners.

(4) On-site supervision of the liner installation shall be provided by an individual that has experience in liner installation practices.

(m) Each permittee shall ensure that the volume of fluid monitored from the intermediate leak detection system at the brine pond is based on a rate of 10 percent of leak return system capacity and does not exceed 1,000 gallons per day per acre of pond area.

(n) Each permittee shall submit, to the secretary, a seam testing method to verify the adequacy of the seaming process for the liners at each brine pond. The following requirements shall apply:

(1) The testing method shall include the following:

(A) The methods for destructive and nondestructive seam testing;

(B) the protocol describing the number of tests per lineal foot of field seam;

(C) the size of the destructive test specimen required; and

(D) any other pertinent quality control provisions recommended by the liner manufacturer.

(2) All field seams shall be subjected to nondestructive testing.

(o) Each permittee shall install an oil-brine separator to separate entrained product from the brine used to transfer product. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-27. Groundwater monitoring for brine ponds.** (a) Each applicant for a permit for a new brine pond shall submit a groundwater monitoring plan with the application for a brine pond permit to the secretary for review and consideration for approval. The monitoring plan shall be approved if the secretary determines that the plan is protective of public health, safety, and the environment.

(b) Each applicant for a permit for a new brine pond shall meet the following requirements:

(1) Install monitoring wells around the perimeter of the brine pond. The well spacing shall be based on the geology and hydrogeology at the facility and shall be approved by the secretary if the secretary determines that the well spacing is protective of public health, safety, and the environment; and

(2) set the screen in all shallow groundwater monitoring wells at a depth that is inclusive of the seasonal fluctuation of the water table.

(c) Each applicant for a permit for a new brine pond shall submit, with the groundwater monitoring plan, a quality assurance plan to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment.

(d) Each permittee shall collect groundwater

samples and analyze the samples for chloride and any other parameter determined by the secretary as posing a potential threat to public health, safety, and the environment. The reporting format shall be determined by the secretary.

(1) Each permittee shall submit the following to the department on a quarterly basis:

(A) The results for the chloride analyses from groundwater samples; and

(B) a static groundwater level measurement for each monitoring well.

(2) Each permittee shall monitor monthly for the presence of combustible gas in the headspace in monitoring wells and submit the results to the department on a quarterly basis.

(e) Any permittee of a brine pond where chloride concentrations in the groundwater exceed 250 milligrams per liter may be required by the secretary to submit a work plan, for review and consideration for approval, that describes proposed methods to delineate the extent of the contamination and to control migration of the chloride contamination. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-28. Brine pond closure requirements.** (a) Each brine pond permittee shall submit a closure plan, including monitoring and testing requirements, to the secretary for review and consideration for approval at least 60 days before the closure of a brine pond. The closure plan shall be approved if the secretary determines that the closure plan is protective of public health, safety, and the environment.

(b) The permittee shall not commence closure activities without the secretary's prior approval.

(c) Each permittee shall include the following information in the brine pond closure plan:

(1) The procedure for deactivating the various brine lines employed at the facility;

(2) the procedures for the remediation, removal, or disposal of brine, accumulated sludge in the brine pond, contaminated soils, and contaminated groundwater;

(3) a description regarding the proposed maintenance, deactivation, conversion, or demolition of the brine pond structure; and

(4) procedures addressing the plugging of any water wells or groundwater monitoring wells associated with the brine pond. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

